

Explanatory Memorandum to the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Education and Public Services Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Julie James MS, Minister for Climate Change
12 January 2022.

PART 1

1. Description

These regulations are made under the Renting Homes (Wales) Act 2016 ('the 2016 Act'). Section 91 of the 2016 Act requires landlords under a secure contract, a periodic standard contract, or a fixed term standard contract made for a term of less than seven years to ensure that the accommodation they let is fit for human habitation ('FFHH'), both at the start of, and throughout the duration of, the occupation contract. Where a landlord lets accommodation that is determined to be unfit, the contract-holder will be able to seek an order from the court requiring the landlord to remedy any issue(s) which are making the accommodation unfit.

These regulations provide details of the factors that must be taken into consideration in determining whether accommodation is FFHH. These broadly reflect the 29 'matters and circumstances' set out in the Housing Health and Safety Rating System (Wales) Regulations 2006 ('HHSRS'), as prescribed under the Housing Act 2004. The titles and wording of some of the 29 matters and circumstances have been modified slightly to provide greater clarity, but the hazards they address remain unchanged. The approach taken in these regulations is that landlords will be required to 'have regard' to these matters and circumstances when determining whether a property is FFHH. This means a landlord must pay attention to the 29 matters and circumstances set out in the Schedule to the regulations when considering whether the condition of the accommodation is a fit place for the contract-holder to live.

Should any dispute arise between a landlord and a contract-holder regarding the fitness of a dwelling which they are unable to resolve between themselves, a contract-holder can escalate the issue to the court for a determination as to whether a landlord has met their obligations. If a court determines that any of the relevant matter(s) or circumstance(s) are of an unacceptable condition, the accommodation will be considered unfit until such time as appropriate action is taken to satisfactorily address the issue.

In addition, these regulations include further specific requirements which landlords must ensure are met if a property is to be considered fit. These are requirements to ensure that smoke alarms and carbon monoxide alarms, in repair and proper working order, are present in a dwelling and that the electrical service installations in a dwelling are subject to inspection and testing by a qualified person at specified intervals(see 'Specific Landlord Requirements' section below). If any of these requirements are not met, a property will be considered unfit until such time as appropriate action is taken to ensure that they are met.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

Section 91 of the 2016 Act requires a landlord, under a secure contract, a periodic standard contract, or a fixed term standard contract made for a term of less than seven years, to ensure that the dwelling is FFHH.

Section 92 of the 2016 Act requires the landlord to keep the dwelling in repair.

Section 94(1) of the 2016 Act requires the Welsh Ministers to prescribe matters and circumstances to which regard must be had when determining whether a dwelling is FFHH and section 94(2)(b) enables the Welsh Ministers to prescribe matters and circumstances which may arise because of a landlord's failure to keep the dwelling in repair. Section 94(3) enables the Welsh Ministers to impose requirements on landlords for the purpose of preventing those matters or circumstances from arising and to prescribe that if those requirements are not complied with, the dwelling is to be treated as if it were unfit for human habitation.

Section 256 of the 2016 Act makes provision about the making of regulations under the 2016 Act.

These regulations are being made pursuant to the powers in sections 94(1), (2)(b) and (3) and 256(1) of 2016 Act.

These regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

The 2016 Act will make it simpler and easier to rent a home in Wales, replacing various complex pieces of existing legislation and case law with one clear legal framework. The new 'occupation contracts', which will replace most existing tenancy and licence types, will make the rights and obligations of both landlord and 'contract-holder' (currently the tenant or licensee) much clearer. This includes the landlord's duty, set out in section 91 of the 2016 Act, to ensure a dwelling is FFHH.

Where a landlord rents a dwelling that a contract-holder believes is in some way unfit, the contract-holder can ask the landlord to address the issue. If the contract-holder and landlord are unable to reach a satisfactory outcome between themselves, the contract-holder will be able to seek a determination

from the court. Such proceedings may result in an order for 'specific performance' in order to remedy the problem, and may also result in an order for compensation related to injury, loss or damage caused.

These obligations are in addition to a landlord's repairing obligations. Further information on the repairing obligations can be found in section 92 of the 2016 Act, but they are in summary:

- a) to keep in repair the structure and exterior of the dwelling (including drains, gutters and external pipes); and,
- b) to keep in repair and proper working order the service installations in the dwelling.

The Housing Health and Safety Rating System (HHSRS) prescribes the 29 hazards associated with a risk of harm. A local authority will assess the dwelling by reference to these hazards to identify whether a Category 1 or 2 hazard exists. These regulations broadly reflect these matters and circumstances, and require that they be used to determine whether a dwelling is FFHH. They are:

1. Damp, mites and mould or fungal growth
2. Cold
3. Heat
4. Asbestos and manufactured mineral fibres
5. Biocides
6. Carbon monoxide and fuel combustion products
7. Lead
8. Radiation
9. Uncombusted fuel gas
10. Volatile organic compounds
11. Crowding and space
12. Entry by intruders
13. Lighting
14. Noise
15. Domestic hygiene, pests and refuse
16. Food safety
17. Personal hygiene, sanitation and drainage
18. Water supply for domestic purposes
19. Falls associated with baths, etc.
20. Falls on surfaces
21. Falls on stairs, etc.
22. Falls between surfaces
23. Electrical hazards
24. Fire
25. Flames, hot surfaces, etc.
26. Collision and entrapment
27. Explosions
28. Position and operability of amenities, etc.

29. Structural collapse and falling elements

If a contract-holder and landlord are not able to reach agreement where a concern has been raised, the matter can be referred to the court for ultimate determination. However, in the majority of cases it is expected that escalation to the courts will not be necessary, as it should be clear to both landlord and contract-holder whether the dwelling is of a reasonable condition to occupy.

Specific landlord requirements.

These regulations impose a number of requirements on landlords for the purpose of preventing certain matters or circumstances which may cause a dwelling to be unfit for human habitation from arising.

These provisions apply in relation to a secure contract, a periodic standard contract, and a fixed term standard contract made for a term of less than seven years, which incorporates section 91 of the 2016 Act as a term of the contract.

These provisions require landlords to ensure that:

- a working, hard-wired and interlinked smoke alarm is present on each floor of the dwelling;
- a working carbon monoxide alarm is present in any room containing a gas appliance, an oil-fired combustion appliance or a solid fuel burning combustion appliance; and,
- electrical service installations are subject to electrical safety inspections, in accordance with the British Standard BS7671, by a qualified person at intervals of 5 years or sooner where a previous electrical inspection has made such a recommendation, and to ensure that a copy of the condition report setting out the results of an electrical safety inspection is provided to the contract-holder. In addition, a landlord is also required to provide the contract-holder with written confirmation of all investigatory and remedial work carried out on the electrical service installation as a result of an inspection.

These duties will apply from the occupation date of a new contract issued under the 2016 Act, but existing contracts which convert under the 2016 Act will have a twelve month grace period to undertake electrical safety testing and the installation of smoke alarms. This will ensure that those landlords with sitting tenants/contract-holders on the day the 2016 Act comes into force have sufficient time to gain access to the dwelling and carry out the necessary work. However, this twelve month grace period does not apply to carbon monoxide alarms which must be in place by the conversion date.

Where a landlord fails to comply with any of the requirements imposed the dwelling is to be treated as if it were unfit for human habitation; and the dwelling will continue to be treated as if it were unfit for human habitation until the failure has been rectified by the landlord. The regulations set out the circumstances in which a landlord who has not complied with a requirement can rectify the failure

and be treated as being in compliance with the provision in question. If the failure re-occurs after rectification, the dwelling will again be treated as unfit for human habitation until it is rectified.

The landlord is also subject to the obligations in section 92 of the 2016 Act to keep electrical service installations in repair and proper working order. Those obligations will be relevant where an electrical safety inspection reveals that there are issues with an installation.

The landlord's duty to ensure a dwelling is FFHH will also be included in the Landlord's Code of Practice, issued under Part 1 of the Housing (Wales) Act 2014, which will be updated prior to the implementation of the 2016 Act. A landlord who lets a dwelling which is not fit, or who fails to rectify an issue which is causing the dwelling to be unfit, may therefore also risk having their landlord licence revoked as a consequence of not complying with the Code.

These regulations do not place any obligations on local authorities to undertake assessments to ensure that properties let by private landlords are FFHH. Rather, the onus is on individual landlords to ensure that they are in compliance. Contract-holders will also be made aware of the 29 matters and circumstances and the specific requirements as part of the written statement of their occupation contract, which must be provided by landlords to all contract-holders. This will also advise contract-holders on what to do if they believe the property does not meet these standards.

PART 2 – REGULATORY IMPACT ASSESSMENT

This part sets out the options considered by Welsh Ministers in making these regulations. It describes each in turn, estimating the additional costs, if any, of each option, and summarising the potential benefits.

There are inherent difficulties involved in assessing the costs and benefits in respect of legislation which seeks to ensure decent property conditions for all those who rent their home in Wales. Nonetheless this RIA attempts to estimate the potential costs and benefits based on the evidence that is available.

6. Options (including costs and benefits)

Three options have been considered:

- **Option 1:** Continue with current system of determining fitness for human habitation set out under the Landlord and Tenant Act 1985;
- **Option 2:** Place a requirement on all landlords to ensure the dwelling they rent is FFHH in accordance with section 94(1) of the 2016 Act, by reference to a number of matters and circumstances which broadly reflect the 29 matters and circumstances set out in the HHSRS; and,
- **Option 3:** (recommended option) Place a requirement on all landlords to ensure the dwelling they rent is FFHH in accordance with section 94(1), 94(2)(b) and 94(3) of the 2016 Act, by reference to a number of matters and circumstances which broadly reflect the 29 matters and circumstances set out in the HHSRS and specific additional duties.

Option 3 is considered the preferred option.

Option 1: Continue with the current system of determining fitness for human habitation set out under the Landlord and Tenant Act 1985

The concept of ensuring a dwelling is FFHH dates back over 130 years as a desire to improve what was deemed as “working class housing”. The provision was first included in the Housing of the Working Classes Act 1885. Early legislation in this area often tied the fitness standard to the class of person occupying the dwelling in question, or was subject to the limited aspirations of the time. The current obligation on a landlord to keep a dwelling FFHH is set out in the Landlord and Tenant Act 1985 (‘the 1985 Act’). The 1985 Act implies a contractual term on the landlord-tenant relationship, placing an obligation on the landlord to ensure the dwelling is FFHH at the start of, and during, the tenancy. The landlord of a qualifying dwelling is required to ensure that the

house is “reasonably suitable for occupation” in respect of the following nine matters:

- repair
- stability
- freedom from damp
- internal arrangement
- natural lighting
- ventilation
- water supply
- drainage and sanitary conveniences
- facilities for preparation and cooking of food and for the disposal of waste water

However, the applicability of the legislation is severely hampered by the rent qualifications applied to it: only dwellings where the rent does not exceed £80 per annum in London, and £52 per annum elsewhere, are covered. These rent limits have remained unchanged since 1957 so clearly there can be few, if any, dwellings to which this Act now applies.

Welsh Government has given consideration to removing these rent limits, so that the provisions are applied to all rental properties, and transposing the current system to the FFHH regulations under the 2016 Act. This would in effect prescribe these nine matters and circumstances as something a landlord has a duty to consider in determining whether their property is FFHH, and would set a basic level of fitness applicable to all properties rented in Wales, with the added benefit of the existing case law.

However, the nine tests set out under the 1985 Act are no longer adequate for a modern standard of FFHH. They do not, for example, make any reference to the electrical safety, fire, security of the dwelling, or to heat or cold, which are considered essential in a modern determination of fitness. In particular, the calls for electrical safety testing and installation of smoke alarms, which were endorsed by the scrutiny committee during passage of the 2016 Bill, would not fall within the remit of these regulations.

Therefore, if no new obligations under the 2016 Act were introduced via these Regulations, and reliance was instead placed on the 1985 Act arrangements, the vast majority of rental dwellings currently in a poor condition in Wales would likely remain in poor condition for longer than would be the case if an alternative legislative approach is taken.

Whilst a contract-holder within the private rented sector ('PRS') could still request their local authority to undertake a Housing Health and Safety Rating System (HHSRS) assessment if, for example, they believed the property contained risks or hazards (including electrical or fire hazards), the local authority would continue to have discretion as to whether to undertake such an assessment. It would also likely take some time to arrange such an

assessment, and the outcome may not necessarily result in remedial measures being undertaken.

Costs

On the basis that this approach would not result in a marked improvement to the overall condition of rental properties in Wales, nor meet modern standards of fitness, Welsh Government has not undertaken a detailed cost/benefit analysis for this (essentially 'do nothing') option. There are no additional costs associated with this option.

Benefits

The requirements of this option would likely be fairly easy for landlords to meet in the vast majority of cases, meaning that the costs, and time taken to improve their dwellings, would be negligible. It is possible that this option may lead to an improvement in the worst conditions which exist within the PRS, but is unlikely to have much of an impact upon the majority of housing, particularly social rented housing, which already meets the nine matters in the 1985 Act.

Option 2: Place a requirement on all landlords to ensure the dwellings they let are FFHH in accordance with section 94(1) of the 2106 Act, by reference to a number of matters and circumstances which broadly reflect the 29 matters and circumstances set out in the HHSRS.

Given that the fitness standards applicable under the 1985 Act do not satisfy a modern test of FFHH, an alternative approach would be to dispense with the 1985 Act requirements and instead prescribe the matters and circumstances a landlord must have regard to by using a number of matters and circumstances which broadly reflect the 29 hazards listed under the HHSRS system. For the purposes of the regulations, these matters and circumstances are:

1. Damp, mites and mould or fungal growth
2. Cold
3. Heat
4. Asbestos and manufactured mineral fibres
5. Biocides
6. Carbon monoxide and fuel combustion products
7. Lead
8. Radiation
9. Uncombusted fuel gas
10. Volatile organic compounds
11. Crowding and space
12. Entry by intruders
13. Lighting
14. Noise
15. Domestic hygiene, pests and refuse

16. Food safety
17. Personal hygiene, sanitation and drainage
18. Water supply for domestic purposes
19. Falls associated with baths etc.
20. Falls on surfaces
21. Falls on stairs, etc.
22. Falls between surfaces
23. Electrical hazards
24. Fire
25. Flames, hot surfaces, etc.
26. Collision and entrapment
27. Explosions
28. Position and operability of amenities, etc.
29. Structural collapse and falling elements

This option proposes broadly adopting the 29 hazards from the HHSRS (as per the list above) as 'matters and circumstances', but not the requirement for a local authority assessor to undertake a detailed assessment. Instead, the individual landlord would be required to 'have regard to' these matters and circumstances in determining whether their dwelling is FFHH.

By way of background - the HHSRS is not in itself a standard, but was introduced under the Housing Act 2004 as a replacement for the old Housing Fitness Standard. However, unlike the fitness obligation under the 1985 Act, the HHSRS can only be enforced by a local authority, not by a tenant.

The HHSRS system works by evaluating the potential health and safety risks of any deficiencies identified in dwellings. In order to establish the level of a hazard (defined as a Category 1 or Category 2 hazard), an inspection is carried out to determine the likelihood of a risk occurring that could cause harm, and the probable severity of the outcomes of such an occurrence. The determination of whether a Category 1 or 2 hazard exists will depend upon a number of detailed factors, including the occupier, or potential occupier, of the dwelling. This determination requires a detailed procedure to be undertaken by a trained assessor such as an Environmental Health Officer.

HHSRS is used by local authorities to determine whether a particular dwelling is safe to live in (in order to meet its duty under the Housing Act 2004). The determination of whether a hazard exists under HHSRS is based upon its impact, or potential impact, on the most vulnerable person susceptible to that particular hazard, as opposed to the person actually living in the dwelling.

Under this option, a requirement would be placed on all landlords to ensure the dwellings they let are FFHH in accordance with section 94(1) of the 2106 Act, by having regard to the matters and circumstances listed in the Schedule. Whilst the adoption of these 29 matters and circumstances are more reflective of modern expectations of FFHH and rectify the omissions of the 1985 Act such

as electrical dangers, heat, cold fire etc. there remain some areas of concern. For example, this option would require a landlord to address any issues when they arise, rather than proactively preventing them from arising in the first instance (e.g. a landlord would be required to repair any electrical problems if they arose, but would not be required to arrange regular testing of the electrical installation to help ensure they are unlikely to arise in the first place). Nor would it be under this option to ensure a landlord installs smoke and carbon monoxide alarms

Furthermore, any landlord who owns a property in Wales which is let under an occupation contract will be required to register with Rent Smart Wales. A landlord who lets a dwelling which is not fit, or who fails to remedy any issue causing the dwelling to be unfit, may risk having their landlord licence revoked. Along with other aspects of the 2016 Act, the landlord's duty to ensure a dwelling is FFHH will be reflected in the updated *Landlord's Code of Practice* issued under the Housing (Wales) Act 2014.

Costs

In determining any costs associated with this option, we have considered the latest available evidence on the number of Category 1 hazards identified in the [Welsh Housing Conditions Survey of 2017-8](#) (the most recent data source that provides an assessment of HHSRS hazards present across all tenures in Wales) to estimate the potential impact on landlords of adopting this approach.

The following tables, taken from data collected in the Welsh Housing Conditions Survey 2017-8, show the breakdown of Welsh dwellings with or without category 1 hazards and estimated costs to make these dwellings safe¹:

Table 1: Category 1 hazards by tenure, Wales, 2017-18*

	Tenure		
Number	Owner-occupied	Social Housing	Private rented
0 Category 1 hazards	745,000	221,000	137,000
1 Category 1 hazard	179,000	13,000	32,000
Total	924,000	238,000	180,000

Table 2: Costs to make safe for 26 HHSRS hazards for the rented sector Wales, 2017-2018 *

	Social Housing	Private Rented	Total

¹ <https://gov.wales/welsh-housing-conditions-survey>

Costs(£)	31,000,000	92,000,000	123,000,000
----------	------------	------------	-------------

*26 of the 29 Hazards were assessed in the survey. Asbestos (and MMF), Biocides and volatile organic compounds were not assessed

As part of the Welsh Housing Conditions Survey, surveyors identified the remedial works required to reduce hazard risks to an acceptable level – this level usually being the average for the type and age of dwelling. These remedial works are costed up using standard 2017-18 prices. For the modelled hazards (apart from excess cold) a ‘typical’ package of works has been used. For excess cold the latest EPC improvements model for Wales was used.

Benefits

A purely risk-based approach, such as the HHSRS, could be particularly burdensome for landlords who would be required to make alterations which had little or no benefit for the majority of potential occupiers. Landlords who already have regard to the requirements of HHSRS and provide good quality accommodation will see little impact as a result of these regulations.

Option 3: Place a requirement on all landlords to ensure the dwelling they let is FFHH in accordance with section 94(1) and 94(3) of the 2016 Act by reference to a number of matters and circumstances which broadly reflect the 29 matters and circumstances set out in the HHSRS, and specific additional duties.

Whilst we consider option 2 would be able to provide a clear and modern system of determining whether a dwelling is FFHH, there remain aspects of that approach which would not be robust enough in dealing with prevention of dangerous occurrences. Therefore, we propose that additional obligations are imposed on landlords under section 94(3) of the 2016 Act. These additional requirements will help prevent the most serious dangers from arising in a dwelling.

Specific landlord requirements

Under this option, new duties will require a landlord to ensure:

- a working, hard-wired and interlinked smoke alarm is present on each floor of the dwelling;
- a working carbon monoxide alarm is present in any room containing a gas appliance, an oil-fired combustion appliance or a solid fuel burning combustion appliance; and,

- electrical service installations are subject to electrical safety inspections, in accordance with the British Standard BS7671, by a qualified person at intervals of 5 years or sooner where a previous electrical inspection has made such a recommendation, and to ensure that a copy of the condition report setting out the results of an electrical safety inspection is provided to the contract-holder. In addition, a landlord is also required to provide the contract-holder with written confirmation of all investigatory and remedial work carried out on the electrical service installation as a result of an inspection.

These duties will apply from the occupation date of a new contract issued under the 2016 Act, but existing contracts which convert under the Act will have a twelve month grace period to undertake electrical safety testing and the installation of smoke alarms. This will ensure that those landlords with sitting tenants/contract-holders on the day the 2016 Act comes into force have sufficient time to carry out the necessary work.

Implementation and Enforcement

In relation to the specific requirements, landlords will have to ensure that these are met in relation to any occupation contract in place after the coming into force date of the 2016 Act (subject to the grace period arrangements for converted contracts described above). Where any of the above requirements are not complied with, a dwelling is to be treated as being unfit for human habitation, regardless of any other prevention measures or improvements undertaken. The dwelling will continue to be treated as if it were unfit for human habitation until the failure has been rectified by the landlord. If the contract-holder believes the property does not comply with any of these requirements, they will be able to bring a claim against the landlord through the court.

Furthermore, any landlord who owns a property in Wales which is let under an occupation contract will be required to register with Rent Smart Wales. A landlord who lets a dwelling which is not fit, or who fails to remedy any issue causing the dwelling to be unfit, may risk having their landlord licence revoked. Along with other aspects of the 2016 Act, the landlord's duty to ensure a dwelling is FFHH will be reflected in the updated *Landlord's Code of Practice* issued under the Housing (Wales) Act 2014.

Costs

The estimated costs for this option will include the costs of option 2 in addition to the requirements for smoke alarms, electrical safety checks and carbon monoxide detectors as detailed below.

Landlords will incur a cost where additional smoke alarms and carbon monoxide detectors are required in their property. This will be an upfront cost;

however, further expenditure is likely to be incurred in future years as and when the devices need to be replaced.

There will be an additional cost to landlords who do not currently undertake an electrical safety test on their property every five years. The cost will be incurred every five years.

Prescription of matters and circumstances to which regard must be had

Evidence from the Welsh Housing Conditions Survey 2017-18 found that 24% of PRS dwellings contained at least one Category 1 HHSRS hazard, compared to 7% of social sector dwellings. This higher rate of dwellings within the PRS containing Category 1 hazards suggests that some landlords in the sector are not ensuring dwellings they let are in a reasonable state of repair.

Any costs that may be incurred by PRS landlords who are required to carry out repair, maintenance or improvement to ensure that properties they let are FFHH cannot be directly attributed to these regulations. Rather, any such costs arise as a result of unwillingness or inability on the part of the landlord to provide accommodation that is in line with current requirements as set out under HHSRS. Furthermore, if, as a result of these regulations, some landlords choose to exit the sector rather than improve their property, this will not negatively impact on the overall quantity of housing stock available, and any such properties subsequently bought by another landlord will have to meet the necessary requirements before being re-let.

With respect to community landlords, the Welsh Housing Quality Standard (WHQS) already require these landlords to ensure all homes they let meet certain standards of repair, which are generally higher than those included in the HHSRS. Therefore the likelihood of a contract-holder taking action against a community landlord are considered to be very low, and any resulting costs negligible.

Since local authorities are themselves the enforcing authority for the HHSRS system, they cannot take action against themselves. Therefore, the obligation to ensure a dwelling is fit at the start of, and throughout the duration of, the occupation contract could also be said to provide an additional safeguard by ensuring any remaining poor conditions in the social rented sector are identified and addressed.

Preventative measures

Following the implementation of these regulations, landlords will be required to ensure a number of preventative measures are undertaken to ensure certain matters and circumstances with respect to the condition of the dwelling do not arise.

Fire alarms - costs to PRS landlords

The PRS in Wales as at 31 March 2020 accounted for approximately 14% of all dwelling stock in Wales (204,955 dwellings), according to Welsh Government Dwelling Stock Estimates².

The Welsh Housing Conditions Survey shows that 42% of PRS dwellings did not have a hard-wired smoke alarm in 2017-18. Landlords of these properties will be required to install alarms, and, where more than one alarm is required, to ensure that the alarms are interlinked. A typical cost of a unit and installation is considered to be approximately £70-100 per unit installed.³ If a home consists of one floor, one smoke alarm may be enough to provide early warning of a fire. The costs of installation will obviously vary depending on the size of the property, and a landlord may benefit from economies of scale should multiple units be required for multiple properties. Taking the upper end of these figures, for every alarm installed (£100) for each alarm we have set out the costs for all properties without smoke alarms for one, two and three storey dwellings.

Number of Dwellings in PRS	Estimated Number without Smoke Detectors (42%)	1 Storey @ £100 per unit	2 Storey @ £100 per unit	3 Storey @ £100 per unit
204,955	86,081	£8,608,110	£17,216,220	£25,824,330

Assuming the average PRS dwelling has two storeys, we consider the upper end cost to PRS landlords to install smoke alarms is £17,216,220 and the lower range is £12,051,354 (£70 per unit)

Fire alarms - costs to community landlords

The 2020 Welsh Government dwelling stock estimates indicate that there are 87,331 properties which are local authority managed and 142,571 owned by Registered Social Landlords. The WHQS already require all community landlords to install hard-wired fire detectors in all their properties. While there is no obligation within the WHQS for the detectors to be interlinked, it is assumed that the vast majority are interlinked as this is a standard feature built into detectors. Therefore it is further assumed that additional costs to community landlords are negligible. For the purposes of this costings exercise it has also been assumed that all new stock which has been developed since these estimates were published will have had a smoke detector fitted as standard as part of the construction/renovation process, and that, as such, there will be no additional costs in relation to these properties.

² [Dwelling stock estimates \(gov.wales\)](https://gov.wales/dwelling-stock-estimates)

³ <https://www.yourjobcost.co.uk/hardwired-smoke-alarm-cost/>

Carbon Monoxide Detectors – costs to PRS landlords

Almost all dwellings contain some form of gas, oil, or solid fuel appliance. It is therefore assumed for the purpose of this costings exercise that all properties let by PRS landlords will require carbon monoxide detectors.

The 2017-18 Welsh Housing Conditions Survey found that 57% of PRS dwellings did not have a carbon monoxide detector.

The costs of installation will obviously vary depending on the size of the property, and the type of Carbon Monoxide device fitted⁴.

The cost of devices can vary from £10 for a basic battery operated model, rising to £100 per unit for combined smoke and carbon monoxide alarms.

Number of Dwellings in PRS	Estimated number without Carbon Monoxide Detectors (57%)	Assumed number required	Cost (Low) (£10)	Cost (High) (£100)
204,955	116,824	2	£2,336,487	£23,364,870

The cost of installing each dwelling with at least 2 working CO devices is estimated to range between £2.336 million and £23.365 million.

Carbon Monoxide Detectors – Costs to Community Landlords

There is currently no requirement within the WHQS guidance regarding the installation of carbon monoxide detectors. The 2017-18 Welsh Housing Conditions Survey shows that 49% of social rented dwellings did not have a carbon monoxide alarm.

The costs of installation will obviously vary depending on the size of the property, and the type of Carbon Monoxide device fitted⁵.

The cost of devices can vary from £10 for a basic battery operated model, rising to £100 per unit for combined smoke and carbon monoxide alarms.

⁴ <https://www.which.co.uk/reviews/carbon-monoxide-detectors/article/how-to-choose-a-carbonmonoxide-detector-a0DaC4i4sXME>

⁵ <https://www.which.co.uk/reviews/carbon-monoxide-detectors/article/how-to-choose-a-carbonmonoxide-detector-a0DaC4i4sXME>

Number of Dwellings in Social Sector	Estimated number without Carbon Monoxide Detectors (49%)	Assumed number required	Cost (Low) (£10)	Cost (High) (£100)
229,902	112,652	2	£2,253,040	£22,530,396

The cost of installing each dwelling with at least 2 working CO devices is estimated to range between £2.253 million and £22.530 million.

Electrical Safety Testing every five years - Costs to Private Sector Landlords
There is no data available regarding the percentage of dwellings in the PRS which have had an electrical safety test conducted in the previous five years.

The average PRS property has 4.6 habitable rooms ('habitable rooms' provide the living accommodation of the dwelling and include living rooms and bedrooms but not kitchens or bathrooms). It has therefore been assumed that the minimum cost to conduct an electrical test is £150 (the average cost to test a medium house) and the maximum average cost would be £300 (the average cost to test a large house)⁶.

Whilst we do not have data on the number of electrical safety tests carried out by the sector, we do believe that some landlords do routinely carry electrical safety tests. The table below provides an estimate of costs based on electrical safety inspections being carried out within the PRS.

These costs cover a five year period and the costs will be recurrent as a test is required every five years.

Potential percentage Requiring Electrical Safety Tests	Number of PRS Dwellings (204,955)	Cost (Low) £150	Cost (High) £300
100%	204955	£30,743,250	£61,486,500
75%	153716	£23,057,438	£46,114,875
50%	102478	£15,371,625	£30,743,250
25%	51239	£7,685,813	£15,371,625

⁶ <https://www.checktrade.com/blog/cost-guides/electrical-safety-check-cost/>

Electrical Safety Testing every five years - Costs to Community Landlords

The current WHQS states that the Institution of Electrical Engineers recommend that electrical installations be inspected at least once every 10 years (every 5 years for Houses in Multiple Occupation) or as required by law.

It has been assumed any new-build dwellings would have been tested prior to their being let and would therefore incur no additional costs.

According to the Welsh Housing Conditions Survey, dwellings in the social rented sector had an average of 3.7 habitable rooms⁷ in 2017-18. It has therefore been assumed the minimum cost to conduct an electrical test is £150 (the average cost to test a medium house) and £300 (the average cost to test a large house).

Section 92 of the 2016 Act provides that the landlord must keep the electrical service installations in the dwelling in repair and proper working order. This will include any necessary work resulting from the electrical inspection.

The tables below provide a summary of the estimated costs for options 2 and 3. Option 2 being that which places a requirement on all landlords to ensure the dwelling they rent is FFHH in accordance with section 94(1) of the 2016 Act, by reference to a number of matters and circumstances which broadly reflect the 29 matters and circumstances set out in the HHSRS.

Option 3 which places a requirement on all landlords to ensure the dwelling they rent is FFHH in accordance with section 94(1), 94(2)(b) and 94(3) of the 2016 Act, by reference to a number of matters and circumstances which broadly reflect the 29 matters and circumstances set out in the HHSRS and specific additional duties.

Total Cost to PRS	Low	High
Option 2	£92,000,000	£92,000,000
Option 3	£106,387,841	£194,067,590

Total Cost to Social Rented Sector	Low	High
Option 2	£31,000,000	£31,000,000
Option 3	£33,253,040	£53,530,396

⁷ Habitable rooms provide the living accommodation of the dwelling and include living rooms and bedrooms but not kitchens, bathrooms, hallways or storerooms

Potential costs to HM Courts and Tribunals Service

The Regulatory Impact Assessment which was published alongside what is now the 2016 Act recognised that the fitness for human habitation arrangements could potentially lead to an increase in court activity, due to contract-holders seeking a determination from the court where a dispute had arisen with the landlord in relation to a fitness matter. However, that document also contended that any such increase would likely be offset by a commensurate reduction in the number of disputes which currently arise as a result of a lack of understanding or confusion regarding the rights and obligations of landlords and tenants once the 2016 Act is in force, and that the overall impact on HM Courts and Tribunals Service was therefore likely to be cost-neutral.

Benefits

Poor quality housing can have significant negative impacts on the health and wellbeing of occupiers, with the greatest impacts felt by already potentially vulnerable groups such as older people, children, those with a low income, and those with pre-existing health conditions.

Public Health Wales has linked poor quality housing to a number of specific physical health conditions⁸. Damp and mould are well-known causes of respiratory health problems, leading to increased risk of bronchitis and asthma.

Where there are trip and fall hazards, such as uneven floors, or lack of stairrails, these can lead to an increase in accidents in the home, particularly for elderly residents.

Shelter has undertaken a number of research activities which point to a link between mental health and housing problems. One recent study⁹ which involved interviewing GPs about mental health, revealed that many doctors believed there was a link between housing problems and health, and in particular, mental health problems. A survey of the general public was also undertaken as part of the study, with one in five participants stating that a housing issue had affected their mental health over the past five years. Of those, 38% said that the condition, or poor repair of the property, was the reason.

⁸ Public Health Wales (2018) Making difference: Housing and Health – a case for investment <https://phw.nhs.wales/files/housing-and-health-reports/a-case-for-investment-report/>

⁹ Shelter England (2017) Housing Problems and Mental Health: http://england.shelter.org.uk/professional_resources/housing_and_mental_health

Shelter have also highlighted the impact of poor housing specifically on children's lives¹⁰, including negative impacts on educational outcomes, safety, and economic wellbeing, and note that growing up in poor or overcrowded housing has been found to have a lasting impact on an individual's health and wellbeing throughout their life.

Individuals on low incomes, who are more likely to live in rented accommodation, are also particularly vulnerable to the detrimental impacts of poor quality housing, and this can compound health and wellbeing inequalities. For instance, those on low incomes are more likely to live in poorly insulated dwellings and heat their home inadequately due to fuel poverty. The National Survey for Wales in 2014-15 asked respondents whether they had enough money to heat their homes adequately. Whilst 96% of people in owneroccupied housing stated that they did, this compared with 89% of PRS tenants and 87% of those in social housing. We also know that a disproportionately higher number of ethnic minority people live in the PRS¹¹.

There is also clear evidence that improving housing quality also leads to direct savings to the NHS and other public services. For example, a study based on the impact of the improvement of social housing in Carmarthenshire¹² found that residents aged 60 years and over living in homes when improvements were made were associated with up to 39% fewer admissions, compared with those living in homes that were not upgraded. A recent report from the BRE Trust modelled the costs and savings to the NHS in Wales from addressing defects in dwellings which contain at least one category 1 HHSRS hazard¹³. It estimated that poor quality homes in Wales cost the NHS £95m per year, and the total cost on wider society caused by unnecessary fatal and non-fatal injuries at £1bn.

Potential benefits arising from the specific requirements included in these regulations

¹⁰ [Chance of a lifetime - the impact of bad housing on children's lives - Shelter England](#)

¹¹ There is a disproportionately greater proportion of Black, Asian and Minority Ethnic from these groups living in the PRS than the population as a whole. Data from the 2011 census on residents in the PRS found that 16% of the population lived in PRS accommodation. Of these 8% of Household Reference Persons identified as ethnic minority (compared to 4% of the whole population); the highest concentration (44%) Household Reference Persons under 35 lived in the PRS; though Christianity was the most common religion reported in the PRS (46%), the PRS had the highest percentage of those reporting a religion other than Christian.

www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/articles/2011censusanalysisshowdolivingarrangementsfamilytypeandfamilysizevaryinenglandandwales/2014-06-24

¹² <http://www.wales.nhs.uk/sitesplus/documents/888/Sarah%20Rodgers.pdf>

¹³ BRE Group (2017) The Cost of Poor Housing in Wales
<https://www.bregroup.com/bretrust/wpcontent/uploads/sites/12/2019/05/The-Cost-of-Poor-Housing-in-Wales-2017..002.pdf>

Whilst it is not possible to quantify the whole range of health and wellbeing benefits which would arise from these regulations, it is certain that the requirements around smoke and carbon monoxide alarms and electrical safety testing will result in fewer deaths or injuries.

Smoke alarms - The installation of hard-wired interlinked smoke alarms in an increasing number of properties will help prevent fatalities, non-fatal injuries, as well as damage to property.

In 2019-20, there were 1,627 reported domestic fires (in Wales). These fires resulted in 12 fatalities and 378 non-fatal injuries¹⁴. Whilst in the majority of dwellings smoke alarms are present, many of them are not in proper working order. There were 225 smoke alarm failures in relation to recorded fire incidents: reasons included batteries being removed or defective, the alarm itself being removed, turned off, or the system not being set up properly¹⁵.

These figures would likely improve if hard-wired smoke alarms were installed in more properties.

Carbon Monoxide Alarms – In 2019 There were 53¹⁶ recorded deaths from carbon monoxide poisoning in the UK. This does include non-house settings. However, the actual number is believed to be significantly higher, due to problems with accurate recording. Those groups most vulnerable to carbon monoxide exposure include unborn children, infants, elderly people and people with anaemia or heart or lung disease. The highest rate of deaths from carbon monoxide poisoning occurs in older age-groups, especially in people aged 75+ years.

Whilst it is difficult to put a figure on potential savings, it is beyond doubt that installing carbon monoxide detectors in a greater number of rented sector properties will help to reduce the number of fatalities over time, as well as longterm health problems associated with carbon monoxide poisoning.

Electrical safety testing every five years - Ensuring that electrical safety testing, is undertaken every five years for all rented properties in Wales will undoubtedly help save lives, prevent injuries, and protect properties and possessions.

¹⁴ <https://statswales.gov.wales/Catalogue/Community-Safety-and-Social-Inclusion/Community-Safety/Fire-Incidents/Fires-and-False-Alarms/fires-by-detailedlocation-motive-year>

¹⁵ <https://statswales.gov.wales/Catalogue/Community-Safety-and-Social-Inclusion/CommunitySafety/Fire-Incidents/Smoke-Alarms/smokealarmfailuresatfiresinbuildings-by-reason-financialyear>

¹⁶ [Number of deaths from accidental poisoning by carbon monoxide, England and Wales, deaths registered in 2019 - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/healthandlife/deathsandmortality/englandandwales/accidentalpoisoningbycarbonmonoxide)

The landlord is subject to the obligations in section 92 of the 2016 Act to keep electrical service installations in repair and proper working order. Those obligations will be relevant where an electrical safety inspection reveals that there are issues with an electrical service installation.

Fires resulting from electrical installations and appliances cause more than half of house fires in Wales per year, and electrical sources have consistently been the main cause of accidental dwelling fires in Wales in recent years. Although it is difficult to quantify, ensuring electrical testing every five years will significantly reduce the number of electrical fires in rented homes.

In addition to fire risks, there should also be a reduction in the number of electrical shocks resulting from faulty wiring or appliances, which present a particular risk to the under-five age group¹⁷.

Conclusion

The intention of these regulations is to set out those matters and circumstances that a landlord must consider in determining whether a dwelling complies with the obligation in the 2016 Act for it to be FFHH and to impose specific requirements on a landlord, for the purpose of preventing any matters or circumstances which may cause a dwelling to be unfit for human habitation from arising. The findings of the most recent Welsh Housing Conditions Survey, referenced above, confirm that the majority of landlords are already providing accommodation which is of a reasonable standard and free from hazards. Those landlords are unlikely to incur any significant additional costs as a result of the requirements of these regulations.

Landlords of properties which fall short of these requirements may choose to either take the necessary actions to ensure that the requirements are met, or remove such properties from the rental market. Whilst a small number of landlords may face significant costs as a result of complying with these regulations, this would largely reflect a lack of adequate investment previously.

Either way, it is not considered that these regulations will lead to an increase in average rents in the PRS as a result of landlords passing on costs to contract-holders given that the majority of landlords are already in compliance. It is also possible that, over time, these regulations could potentially lead to savings to local authorities if fewer renters are leaving the PRS and seeking social housing because of poor conditions.

The primary purpose of these regulations is to seek to ensure that all landlords are meeting their responsibilities with regards to property standards and safety. The Welsh Government's aim in making these regulations is to support the

¹⁷ <https://gov.wales/sites/default/files/publications/2019-04/health-and-safety-rating-system-operationalguidance.pdf>

majority of good landlords who provide decent and well-maintained homes, and compel those landlords who do not maintain safe properties to improve their practice or leave the market.

8. Consultation

These regulations were subject to a public consultation from October 2017 - January 2018. The Welsh Government received 420 responses to the consultation. The vast majority of responses were from private landlords or letting agents (364). 15 housing associations and 10 local authorities responded, as well as a range of other types of other organisations. Only one response was received from a tenant.

Generally, the overall approach underpinning the regulations was welcomed by each class of respondent. Similarly, the main features of the proposals received a positive response across all types of respondents

64% of respondents agreed with the specific requirements placed on landlords by the regulations:

- the presence of a working carbon monoxide alarm;
- the presence of working smoke alarm; and
- periodic electrical safety testing at least every five years.

Views were more mixed on whether there needed to be any additional requirements for smoke alarms. 53% agreed there should be additional requirements. Of the various options discussed, 57% of those who answered the question indicated interlinked hard-wired smoke alarms as their preferred option.

Overall, the requirement for electrical safety testing was endorsed by 83% of respondents, and requiring a test at least every five years was supported by 64% of respondents.

71% of respondents indicated that the requirements relating to smoke alarms, carbon monoxide alarms and electrical safety testing addressed their main health and safety concerns. However, some local authorities were of the opinion that additional obligations should be placed upon landlords, specifically relating to gas safety and the presence of damp and mould.

70% of respondents agreed that the guidance adequately explains the nature of the 29 matters and circumstances underpinning FFHH. Some responses suggested the proposed accompanying guidance needed to be more detailed or specific, in order to determine definitively whether a property is FFHH.

A summary of the consultation responses is available on the Welsh

Government website¹⁸.

9. Competition Assessment

The changes these regulations will introduce will apply to all landlords. The broad application of the proposals means that no changes to the overall structure or size of the rental market is expected. Nor is any change expected in terms of competitiveness for businesses, the voluntary sector and charities. There is therefore no risk of a detrimental effect on competition. Indeed, the fact that a minority of landlords are currently providing poor quality or unsafe accommodation is damaging to the operation of an effective and competitive rental market where all landlords operate on an equal footing. These regulations will ensure that unscrupulous landlords are no longer able to undercut competitors, who are providing decent quality accommodation, by avoiding maintenance and repair costs.

10. Post-implementation review

The impact of the implementation of these regulations on the quality of housing stock over time will be undertaken as part of any future Welsh Housing condition surveys.

The guidance for landlords and contract-holders that will be published to support implementation will also be reviewed after a period of three years to ensure it is as helpful as possible.

¹⁸ <https://gov.wales/sites/default/files/consultations/2021-03/summary-of-responses.pdf>