



Llywodraeth Cymru  
Welsh Government

GUIDANCE, DOCUMENT

# Fitness for human habitation: guidance for tenants (contract holders)

Information for contract holders explaining what landlords must do from 1 December 2022 to ensure rented homes in Wales are fit for human habitation.

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# Introduction

The Renting Homes (Wales) Act 2016 (the Act) will come into force in Wales on 1 December 2022. It will change the way people rent their homes, providing better protection from eviction as well as many other improvements. For more information on the Act, visit [Renting Homes Wales](#).

As part of these changes, everyone who rents their home (called ‘contract-holders’ under the Act), will be given an occupation contract by their landlord. Amongst other things, this contract requires the landlord to make the home ‘fit for human habitation’ (FFHH). This new right is in addition to the right to have repairs carried out by the landlord<sup>[footnote 1]</sup>. This guidance explains how the FFHH right works.

The Act requires the Welsh Government to set out in law (called ‘regulations’) the rules that must be followed by a landlord in deciding whether a rented home is FFHH. This guidance gives contract-holders advice on what FFHH means for them, what they should expect from their landlord and what action they can take if they think their home is not FFHH. It may also be helpful to look at the guidance for landlords on FFHH, which suggests actions a landlord could take to help ensure a home is FFHH. Read [Fitness of homes for human habitation: guidance for landlords | GOV.WALES](#)

[1] The repairing duty, and the new fitness duty, do not apply to fixed term contracts of 7 years or more.

## Landlord’s obligation to ensure a dwelling is FFHH

Section 91 of the Act requires a landlord to make sure the dwelling they rent is

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FFHH when the contract-holder moves in (*the occupation date*) and during the time the dwelling is rented to the contract-holder. The landlord cannot ask the contract-holder to do something to make the dwelling FFHH where a problem is not the fault of the contract-holder.

The regulations about FFHH made by the Welsh Government are in two Parts. Part 1 lists the things to think about in deciding if a home is FFHH. Part 2 sets out things a landlord must do for a home to be FFHH. Read [SL\(6\)129 - The Renting Homes \(Fitness for Human Habitation\) \(Wales\) Regulations 2022 \(on senedd.wales\)](#)

## Part 1: 29 matters and circumstances

Part 1 requires a landlord to 'have regard to 29 matters and circumstances'. This means that a landlord must ensure none of these 29 things make the dwelling unfit for human habitation. The 29 matters and circumstances are listed in Annex A, and the guidance for landlords suggests what a landlord may need to do to address any issues.

Some of the 29 matters and circumstances will not arise very often, whilst others will be more common. For example, Matter 1 – Damp and mould growth, Matter 2 – Cold, and Matter 3 – Heat are more common problems than Matter 27 – Explosions, and Matter 29 - Structural collapse. However, landlords must consider all 29 matters and circumstances in determining whether the dwelling is FFHH.

It may be easy for the contract-holder to identify if one of the 29 matters and circumstances is causing a problem in the dwelling, for example where significant mould is present in bedroom due to damp coming through the walls, or the boiler is unable to produce sufficient heat in the winter months. However, there may be times where a contract-holder is unsure whether a particular

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problem means their home is unfit for human habitation. In all cases, a contract-holder should raise these concerns with the landlord first. If the landlord agrees, they should take action to solve the problem.

## Part 2: landlord requirements

Part 2 of the regulations sets out 3 things a landlord must do to ensure a home is FFHH:

- Install smoke alarms;
- Carry out an electrical safety test at least every 5 years; and
- Install carbon monoxide alarms where a gas, oil or solid fuel appliance is present.

Where a landlord fails to do any of the above, in the times allowed, the dwelling will be unfit for human habitation. More information on each of these requirements is set out below.

### Smoke Alarms

The presence of smoke alarms is intended to reduce the risk of fire. Without a smoke alarm fitted an occupier is at least 4 times more likely to die because of fire. The FFHH Regulations require a landlord to fit a working smoke alarm on every storey of a dwelling. The alarm must also be connected to the electrical supply and be linked to any other smoke alarms that have to be fitted under the regulations. Smoke alarms should be fitted where they can be heard by the occupier when asleep, usually a hall or landing area.

More than one smoke alarm may be fitted on each storey. If so, it is good to have all alarms inter-linked and hard-wired into the electrical supply. However, if

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the landlord has met the minimum requirement of one hard-wired and inter-linked smoke alarm on each storey, any additional alarms do not have to be inter-linked and can be battery powered.

Smoke alarms must be present from the occupation date, that is the date the contract-holder moves in. Where the contract-holder is already living in the property when the Act comes into force on 1 December 2022, the landlord must provide smoke alarms no later than 1 December 2023.

While it remains the landlord's responsibility to install smoke alarms, the fire service can provide advice and guidance on should it be required. More information is available at:

**Request a Safe and Well visit** - North Wales Fire and Rescue Service.

**Request a home safety visit** by South Wales Fire and Rescue Service.

**Request a Safe and Well visit** from Mid and West Wales Fire and Rescue Service.

## Carbon Monoxide Alarms

Carbon monoxide (CO) is a gas, produced when carbon-based fuel, such as coal, wood, oil or natural gas, is burnt without enough oxygen. You cannot see, smell or taste it but it can injure and kill quickly. Not only is CO responsible for many deaths and poisonings each year, but many people are also likely to be affected by CO without realising it.

Alarms are essential in providing perhaps the only warning an occupier will have of the presence of CO, which is a 'silent killer' and almost every fatality results from the lack of early warning to its presence.

Oil and gas boilers, gas and open fires, and heaters and stoves fuelled by solid

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fuel, oil or gas, all have the potential to cause CO poisoning if they are poorly installed, poorly maintained or incorrectly used. This is more often because there is no proper ventilation for these appliances, or the flues or chimneys required to take the CO away are not fitted properly or are blocked.

The FFHH Regulations require a landlord to ensure that a CO alarm is present in any room which has a gas, oil or solid fuel burning appliance installed by the landlord. A landlord is not required to install a CO alarm in any room which only contains an appliance installed by the contract-holder. However, the landlord and contract-holder can agree for the landlord to provide an alarm in such instances.

Additional information on the causes and effects of carbon monoxide can be found at the [Public Health Wales website](#).

The placement of CO alarms should be considered carefully. Smoke alarms are normally placed on the ceiling because heat and smoke rise, but this is not always the best place to install CO detectors. Since the concentration of CO could reach dangerous levels before reaching ceiling height, CO alarms are sometimes installed lower than smoke alarms. The guidance accompanying carbon monoxide alarms should always be followed carefully, including noting the expiry date of the alarm. CO sensors are usually more fragile than those within smoke alarms and so CO alarms generally need to be replaced more regularly.

If a CO alarm is required, it must be present from the occupation date or from 1 December 2022, where the contract-holder is already living in the property.

## **Inspection and testing of the electrical installation**

Although fires in the home are reducing overall, the proportion of domestic fires caused by electricity is steadily increasing. To prevent electrical fires and shocks

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a landlord must test the electrics in your home at least every 5 years. This test is known as 'periodic inspection and testing' (PIT).

PIT is carried out on wiring and fixed electrical equipment to check that they are safe. The test will:

- Reveal if any of your electrical circuits or equipment is overloaded;
- Find any potential electric shock risks and fire hazards;
- Identify any defective electrical work and
- Highlight any lack of earthing or bonding.

A landlord must ensure the PIT is carried out at least every 5 years. The PIT must be done by someone qualified to do so - a 'competent person'.

Competence means the electrician can undertake the PIT safely and accurately in accordance with the UK standard for the safety of electrical installations, BS 7671 – Requirements for Electrical Installations (IET Wiring Regulations). If a contract-holder has concerns about the competency of the person carrying out the test they should ask their landlord what checks they have carried out to ensure the person is competent. A contract-holder can also ask the electrician what qualifications or accreditation they hold.

The following links provide more information on what competence means and how to find a competent electrician in your area:

<http://www.electricalcompetentperson.co.uk/>

<http://www.electricalsafetyfirst.org.uk/find-an-electrician>

Once the PIT has been completed an Electrical Installation Condition Report (EICR) will be produced by the electrician. This report contains the results from the test and highlight any issues that need fixing. If no such issues are found the EICR will confirm the electrical installation is safe for continued use.

A copy of the EICR must be made available to the contract-holder within 14 days

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of the occupation date. If the test is carried out after the occupation date a copy of the EICR must be provided within 14 days of the inspection date. A contract-holder may be provided an EICR directly by the electrician upon completion of the test.

A landlord is required to have the electrical installation of the dwelling tested every 5 years. However, where there are concerns the electrician may recommend that this test is carried out at shorter intervals. Where a shorter interval is recommended the 5-year period will no longer apply and a landlord must ensure that a future test is undertaken at the recommended interval. Failure to do so will mean the dwelling is considered unfit for human habitation.

There may be instances when the electrical installation has failed the test and the EICR requires repairs to be undertaken or future investigation by an electrician is required. In such instances it is likely the landlord is failing in their duty to keep the electrical installation in good repair (required by section 92 of the Act - see later in this guidance) and they will be required to carry out these repairs or further investigation. Where this additional work is required by an EICR, a landlord must provide the contract-holder with written confirmation of any repairs or investigatory work carried out on the electrical installation. This confirmation will provide the contract-holder with an assurance that the electrical installation is safe for continued use following a failed inspection.

Written confirmation of this additional work must be provided to the contract-holder within 14 days of the landlord receiving confirmation of the completed work. Where repairs have been undertaken prior to the occupation date, this written confirmation must be provided to the contract-holder, alongside the EICR, within 14 days of the occupation date.

An EICR is valid for up to 5 years so it is possible that a valid report will already be in place when the contract-holder moves in and may not expire before the contract-holder leaves.

The requirements as set out above will apply from the 1 December 2022 to any occupation contract starting on or after this date. However, where a contract-holder is resident when the Act comes into force on the 1 December 2022, these requirements will not apply until 1 December 2023 (this would mean a landlord must ensure a PIT is carried out by 1 December 2023 and a copy of the EICR is provided to the contract-holder within 14 days).

## Contract-holder actions

In many instances a landlord and a contract-holder will be able to agree where a dwelling is obviously unfit for human habitation, for example where no smoke alarm is present, no PIT has been carried out or possibly where there is significant mould present due to damp. However, there will be instances where the landlord disagrees with the contract-holder over the condition of the dwelling and no agreement can be reached. It may also be the case that the landlord believes the dwelling is unfit for human habitation for one of the following reasons:

- The contract-holder was responsible for the dwelling becoming unfit for human habitation, for example by removing smoke alarms or through the damage they have caused to the dwelling.
- The dwelling is unfit for human habitation because of fire, storm, flood or other inevitable accident.
- The dwelling cannot be made FFHH at a reasonable expense. This means that although the dwelling is unfit for human habitation the required repairs would be too expensive for the landlord to carry out. If the contract-holder and landlord do not agree on this, the contract-holder can ask the court to decide the matter.

Where there is disagreement, the contract-holder can seek advice from Citizens Advice or Shelter Cymru or possibly their local council. These bodies would be

able to contact the landlord on your behalf to discuss the issue.

In addition, the following actions are available to a contract-holder who considers their dwelling is unfit for human habitation.

## Withholding rent

Occupation contracts will usually contain a term which states that a contract-holder is *not required to pay rent in respect of any day or part day during which the dwelling is unfit for human habitation*<sup>[footnote 2]</sup>.

A contract-holder should consider carefully whether withholding rent is the right thing to do. A landlord and ultimately a court may not agree the property is unfit for human habitation. Consequently, the contract-holder may find themselves in rent arrears and possibly subject to possession proceedings. Where a contract-holder considers the withholding of rent the right thing to do, it would be advisable to set the rent aside until the issue has been resolved, either through agreement with the landlord or through the court.

If a contract-holder (tenant) is in receipt of Housing Benefit or the housing element of Universal Credit, they should seek advice on the potential impact of choosing not to pay rent on the benefit they receive, as this may affect benefit payments. Your benefit office, **Shelter Cymru** and **Citizens Advice** can provide assistance with housing issues, and **Money Helper** can provide free and impartial help with money.

## Court action

A contract-holder may ask the court to decide whether the dwelling is FFHH. This may require the contract-holder to provide evidence to the court, possibly in the form of an expert such as a builder or surveyor to confirm the dwelling is

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unfit for human habitation. Again, advice from a local authority, Citizens Advice or Shelter Cymru will be beneficial here. Your local county court will also be able to provide advice on the correct process to follow.

If the court agrees the dwelling is unfit for human habitation, they will be able to order the landlord to repair or correct the cause of the problem. In addition, section 99 of the Act, allows a contract-holder to apply for damages or for any injury caused by the problem.

[2] the term is a 'supplementary term', which can be varied (changed) or left out of an occupation contract but only if the landlord and contract-holder agree.

## Landlord's obligation to keep the dwelling in repair

In addition to a landlord's requirement to keep a home FHH, section 92 of the Act requires a landlord to keep the dwelling in repair. This includes:

- the structure and exterior of the dwelling (including drains, gutters and external pipes), and
- the service installations in the dwelling, such as those for:
  - the supply of water, gas or electricity,
  - for sanitation, and
  - for space heating or for heating water.

A landlord must always keep the dwelling in repair, but this may require the contract-holder to inform the landlord of any issues of disrepair that arise. Once the landlord is aware of the need for repairs, they must be carried out in a *reasonable time* and to a reasonable standard. This includes a requirement to make good any damage resulting from the repairs. The landlord cannot ask the contract-holder to pay for or carry out any repair where it is not the fault of the

contract-holder.

What is a reasonable time will vary depending on the issue of disrepair, for example it would be reasonable for a contract-holder to expect a burst pipe or broken boiler to be considered an urgent repair and dealt with quickly, but a dripping tap to be considered less urgent. It is beneficial for both the contract-holder and landlord that issues of disrepair are reported and dealt with as quickly as possible, as this will prevent the problem getting worse and causing greater problems.

## **Annex A: the 29 matters and circumstances**

### **1. Damp, mites and mould or fungal growth**

Exposure to house dust mites, damp, mould or fungal growths.

### **2. Cold**

Exposure to excessively low temperatures.

### **3. Heat**

Exposure to excessively high temperatures.

### **4. Asbestos and manufactured mineral fibres**

Exposure to asbestos fibres or manufactured mineral fibres.

### **5. Biocides**

Exposure to chemicals used to treat timber or mould growth.

## **6. Carbon monoxide and fuel combustion products**

Exposure to:

1. carbon monoxide;
2. nitrogen dioxide;
3. sulphur dioxide and smoke.

## **7. Lead**

The ingestion of lead.

## **8. Radiation**

Exposure to radiation.

## **9. Uncombusted fuel gas**

Exposure to uncombusted fuel gas.

## **10. Volatile organic compounds**

Exposure to volatile organic compounds.

## **11. Crowding and space**

A lack of adequate space for living and sleeping.

## **12. Entry by intruders**

Difficulties in keeping the dwelling secure against unauthorised entry.

## **13. Lighting**

A lack of adequate lighting.

## **14. Noise**

Exposure to noise.

## **15. Domestic hygiene, pests and refuse**

1. Poor design, layout or construction such that the dwelling cannot readily be kept clean.
2. Exposure to pests.
3. An inadequate provision for the hygienic storage and disposal of household waste.

## **16. Food safety**

An inadequate provision of facilities for the storage, preparation and cooking of food.

## **17. Personal hygiene, sanitation and drainage**

An inadequate provision of:

1. facilities for maintaining good personal hygiene;
2. sanitation and drainage.

## **18. Water supply**

An inadequate supply of water free from contamination, for drinking and other domestic purposes.

## **19. Falls associated with baths etc.**

Falls associated with toilets, baths, showers or other washing facilities.

## **20. Falling on surfaces**

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Falling on a surface.

### **21. Falling on stairs etc.**

Falling on stairs, steps or ramps.

### **22. Falling between surfaces**

Falling from one surface to another (including falling from height).

### **23. Electrical hazards**

Exposure to electricity.

### **24. Fire**

Exposure to uncontrolled fire and associated smoke.

### **25. Flames, hot surfaces etc.**

Contact with:

1. controlled fire or flames;
2. hot objects, liquid or vapours.

### **26. Collision and entrapment**

Collision with, or entrapment of body parts in, doors, windows or other architectural features.

### **27. Explosions**

An explosion at the dwelling.

### **28. Position and operability of amenities etc.**



The position, location and operability of amenities, fittings and equipment.

## **29. Structural collapse and falling elements**

The collapse of the whole or part of the dwelling including falling elements.

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