

HEALTH & SAFETY

SUMMARY

- This advisory note summarises the main Health & Safety regulations that apply to blocks of flats. There are many others.
- Blocks of flats include houses that have been converted into flats, even if there are only two flats in the house.
- The duty to comply with the regulations falls on the landlord or person responsible for management which could be an agent, a residents' management company or a right to manage company. Where the word landlord is used in this note it also includes residents' management companies and right to manage companies.
- Health & Safety should never be ignored or dismissed because it requires additional expenditure.
- The cost of failing to comply if there is an accident or injury may be far greater to the landlord and directors of residents' management companies.

RISK ASSESSMENT OF COMMON AREAS

All blocks of flats must have a risk assessment carried out of the health and safety of any common areas. It is a requirement of the Management of Health and Safety at Work Regulations 1999. You may argue common areas are not "at work" but if any cleaner, gardener, managing agent or repair contractors enter them, then a risk assessment must be made. The courts and the Health and Safety Executive (HSE) do consider common parts of blocks of flats as included in health and safety regulations. The common parts do not just include only internal areas; they also include the roof and structure and external areas. Remember to include all areas including gardens, grounds, plant rooms, meter cupboards and lift motor rooms.

If there are no employees of the landlord working at the block there is no requirement to record the risk assessment but it would be foolish not to do so. If there were to be an accident and you had no proof of a risk assessment being carried out, you are much more likely to be prosecuted

and/or sued for negligence. The risk assessment should be reviewed at least annually.

FIRE SAFETY

Every block of flats also requires a fire safety risk assessment. Again this applies to common parts, not to the inside of any flats and is an obligation on the landlord.

Fire Officers are able to enter any block of flats to inspect, ask to see the risk assessment and issue enforcement notices to improve fire safety should the need arise. Failures may also lead to prosecution in the courts.

WORKING AT HEIGHTS

Working at heights can be at any height if a person could be injured falling from it, even if below ground level. If window cleaners or other contractors visit a block of flats, then an assessment of the risk from working at heights is required. Part of the duty to assess risk will obviously fall on, say, the window cleaner, but the landlord or his agent once again also has a duty.

The principle is that any work at height should be avoided if it is practical to do it in another way. If it cannot be avoided, then the work must be assessed and planned to be done with the least risk. Work at height can include changing light bulbs, generally cleaning, testing smoke detectors and cleaning gutters.

If a ladder or steps are supplied by the landlord for changing light bulbs or checking smoke detectors, they should be checked regularly and a notice stuck on them with safety precautions for their use.

ELECTRICAL EQUIPMENT SAFETY

If electrical equipment is supplied by the landlord or agent to say a cleaner, then it must be regularly tested and properly maintained. A visual inspection and a more formal test should be carried out at the intervals recommended by the Electrical Safety Council. See further information below.

LEGIONELLA

Legionella is a bacterium common in water systems which can result in Legionnaires' disease. Once again the landlord or agent of a block of flats has a duty to control the risk of legionella in any pipes, tanks and taps in common parts (including a cleaner's cupboard). Cold water tanks, taps and showers within lessees' flats are the responsibility of the lessee, unless the lease puts repairing responsibility for them on the landlord.

The starting point is a risk assessment usually carried out by an expert, and if there are risks then a written action plan should be produced to reduce the risks. An annual review of the risk assessment should be made.

COSHH

COSHH is the control of substances hazardous to health. The most usual relevant substances found in blocks of flats in common parts are cleaning materials and possibly gardening chemicals.

Once again the duty is on the landlord or agent to assess the risks from any materials stored in the common areas. Most materials carry labels that identify the hazards that they may pose, manufacturers also issue safety sheets on how to handle the materials. It is a duty to decide what instructions must be given to those who may handle the materials to reduce risks, and what protective clothing may be needed.

If a contractor at the block is to supply and use hazardous materials, then it is a duty of the landlord or agent to obtain a COSHH risk statement from the contractor.

RIDDOR

RIDDOR is the reporting of injuries, diseases and dangerous occurrences. The regulations require the reporting of serious work related accidents, diseases and dangerous occurrences. Even if a landlord or agent has

used a self-employed contractor to work at a block of flats, it is the landlord's duty to report an accident to that contractor. The duty also applies if a member of the public is injured at the block. There is a national incident centre to which reports of fatal or major injuries should be made. Other accidents should be reported online.

MANAGING ASBESTOS

Landlords and agents are under a duty to be aware of any asbestos containing material in the structure or common parts of blocks of flats. Remember that this includes the roof and main structure as well.

The duty is specific and it is necessary to identify any asbestos which may involve a survey, to maintain an asbestos register for any block where there are asbestos containing materials, and to have a policy for the management and control of the asbestos.

There is not a duty to remove asbestos, indeed to do so in many cases is far more dangerous than to leave it. What is important is that if any contractors are working in the block near asbestos the landlord or agent must inform them of the presence of the material.

ENFORCEMENT

You may argue that the risks in a block of flats are few and things do not go wrong. However, the consequences if there is a fire, accident or injury at a block can be serious.

The body which enforces most health and safety matters is the HSE Health and Safety Executive. (Some matters are enforced by local authorities and the fire service). The HSE can issue improvement notices to require landlords to take action to reduce risks e.g. install railings or handrails to prevent falls and prohibition notices to cease an activity if there is a risk of serious injury. Failure to action may result in prosecution.

The Corporate Manslaughter Act 2007 has made quite clear that directors of resident management companies can be prosecuted under criminal law for serious breaches of Health & Safety Law.

The Health & Safety Offences Act 2008 raised the maximum fine for offences in lower courts from £5,000 to £20,000. It also increased the number of offences for which an individual could be imprisoned.

Directors of resident's management companies will always retain responsibility for Health & Safety, whether they delegate to agents or not.

There is a cost to blocks of flats in ensuring compliance with Health & Safety regulations but there is a much higher cost if things go wrong because of a failure to comply.