

Landlords & Letting Agencies

H&S Alert

Landlords who provide residential accommodation, as the person in control of the premises or responsible for the water systems in their premises, have a legal duty to ensure that the risk of exposure of tenants to legionella is properly assessed and controlled. This duty extends to residents, guests, tenants and customers. The first step is a Risk Assessment.

The legal framework:

Excerpt from the Approved Code of Practice L8

Identification and assessment of the risk

COSHH, regulation 6; Management Regulations, regulation 3; HSW Act, sections 2, 3 and 4.

Summary

These Regulations require employers to make a suitable and sufficient assessment of the risks from any work liable to expose employees to any substance hazardous to health, before that work is carried out. Employers are also required to make an assessment of the risks to other people not in their employment who may be affected by the work activity. They are also required to regularly review the risk assessment, and make any necessary changes as a result of the review.

Excerpt from the guidance of HSG

Where a managing (or letting) agent is used, the management contract should clearly specify who has responsibility for maintenance and safety checks, including managing the risk from legionella. Where there is no contract or agreement in place or it does not specify who has responsibility, the duty is placed on whoever has control of the premises and the water system in it, and in most cases, this will be the landlord themselves.

All water systems require a risk assessment

At Eplus Global Ltd we can help you satisfy the law by keeping you legal and ensuring your insurance is not compromised. Yes, your not insured if you haven't risk assessed.

Please read the following excerpt taken from the Health & Safety Guidance document 274 Part 2 that explains fully your legal requirement. Pick up the phone and we can help you in a cost effective way. Stay Legal ring to day.

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Residential accommodation: Landlords and shared premises

Residential accommodation: Landlords

2.138 Landlords who provide residential accommodation, as the person in control of the premises or responsible for the water systems in their premises, have a legal duty to ensure that the risk of exposure of tenants to legionella is properly assessed and controlled. This duty extends to residents, guests, tenants and customers. They can carry out a risk assessment themselves if they are competent, or employ somebody who is.

2.139 Where a managing (or letting) agent is used, the management contract should clearly specify who has responsibility for maintenance and safety checks, including managing the risk from legionella. Where there is no contract or agreement in place or it does not specify who has responsibility, the duty is placed on whoever has control of the premises and the water system in it, and in most cases, this will be the landlord themselves.

2.140 All water systems require a risk assessment but not all systems require elaborate control measures. A *simple* risk assessment may show that there are no real risks from legionella, but if there are, implementing appropriate measures will prevent or control these risks. The law requires simple, proportionate and practical actions to be taken, including identifying and assessing sources of risk, managing the risk, preventing or controlling the risk; and periodically checking that any control measures are effective.

2.141 For most residential settings, the risk assessment may show the risks are low, in which case no further action may be necessary, eg housing units with small domestic-type water systems where water turnover is high. If the assessment shows the risks are insignificant and are being properly managed to comply with the law, no further action may be required, but it is important to review the assessment periodically in case anything changes in the system. However, the frequency of inspection and maintenance will depend on the system and the risks it presents.

2.142 Simple control measures can help manage the risk of exposure to legionella and should be maintained, such as:

- flushing out the system before letting the property;
- avoiding debris getting into the system (eg ensure the cold water tanks, where fitted, have a tight-fitting lid);
- setting control parameters (eg setting the temperature of the calorifier to ensure water is stored at 60 °C);
- making sure any redundant pipework identified is removed;
- advising tenants to regularly clean and disinfect showerheads.

2.143 Landlords should inform tenants of the potential risk of exposure to legionella and its consequences and advise on any actions arising from the findings of the risk assessment, where appropriate. Tenants should be advised to inform the landlord if the hot water is not heating properly or if there are any other problems with the system, so that appropriate action can be taken.

2.144 The risk may increase where the property is unoccupied for a short period. It is important that water is not allowed to stagnate within the water system and so

dwellings that are vacant for extended periods should be managed carefully. As a general principle, outlets on hot and cold water systems should be used at least once a week to maintain a degree of water flow and minimise the chances of stagnation. To manage the risks during non-occupancy, consider implementing a suitable flushing regime or other measures, such as draining the system if the dwelling is to remain vacant for long periods.

2.145 Where there are difficulties gaining access to occupied housing units, appropriate checks can be made by carrying out inspections of the water system, eg when undertaking mandatory visits such as gas safety checks or routine maintenance visits.

2.146 It may be impractical to risk assess every individual residential unit, eg where there are a significant number of units under the control of the landlord, such as Housing Associations or Councils. In such cases, a representative proportion of the premises for which they have responsibility should initially be assessed, on the basis of similar design, size, age and water supply, with the entire estate eventually assessed on a rolling programme of work.

Shared premises

2.147 Those who have, to any extent, control of premises for work-related activities or the water systems in the building, have a responsibility to those who are not their employees, but who use those premises. A suitable and sufficient assessment must be carried out to identify, assess and properly control the risk of exposure to legionella bacteria from work activities and the water systems on the premises.

2.148 In estate management, it is increasingly common for there to be several dutyholders in one building. In such cases, duties may arise where persons or organisations have clear responsibility through an explicit agreement, such as a contract or tenancy agreement.

2.149 The extent of the duty will depend on the nature of that agreement. For example, in a building occupied by one leaseholder, the agreement may be for the owner or leaseholder to take on the full duty for the whole building or to share the duty. In a multi-occupancy building, the agreement may be that the owner takes on the full duty for the whole building. Alternatively, it might be that the duty is shared where, eg the owner takes responsibility for the common parts while the leaseholders take responsibility for the parts they occupy. In other cases, there may be an agreement to pass the responsibilities to a managing agent. Where a managing agent is used, the management contract should clearly specify who has responsibility for maintenance and safety checks, including managing the risk from legionella.

2.150 Where there is no contract or tenancy agreement in place or it does not specify who has responsibility, the duty is placed on whoever has control of the premises, or part of the premises.

Info box 2.8: Example of shared premises and responsibilities

A managing agent looks after a commercial building and provides mains hot and cold water services to three tenanted areas. By contract, the managing agent has a responsibility to risk assess and ensure the safety of the water from the incoming mains up to where the water enters the part of the building the tenant occupies. The tenants have the responsibility to do the same from the point at which it enters their premises. All parties should take steps to ensure that each is fulfilling the legal responsibilities for the parts of the building over which they have control. The managing agent should take steps, eg by contractual arrangements, to ensure that tenants are complying with their duties because if the tenant's water system becomes contaminated with legionella bacteria it may act as a reservoir, seeding it back down into the systems for which the managing agent has responsibility.

2.151 Where employers share premises or workplaces, the Management of Health and Safety at Work Regulations 1999, regulation 11 (see www.hse.gov.uk/risk for more information) requires that they cooperate with each other to ensure their respective obligations are met. For example, with regard to the management of the water systems in the building, routine monitoring by any party may indicate possible problems within the building water system. This information should be communicated to enable cooperation and coordination, particularly where another party may be able to help or are contributing to the risk. In such cases, a joint plan can be formulated and appropriate remedial action taken.