

# AWAAB'S LAW CONSULTATION

29 February 2024

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Anthony Collins Solicitors LLP



## **AWAAB'S LAW CONSULTATION**

### **DEMOGRAPHIC QUESTIONS**

**Question 1. In which capacity are you completing these questions?**

Other –a social purpose law firm specialising in Housing Sector work.

**Question 2. If responding on behalf of an organisation, please specify which organisation.**

Anthony Collins Solicitors LLP

**Question 3. Social landlords only: where are the properties you manage primarily based?**

N/A

**Question 4. Social landlords only: how many rental properties do you manage?**

N/A

### **SCOPE OF AWAAB'S LAW: HAZARDS**

**Question 1. Do you agree that Awaab's Law should apply to all HHSRS hazards, not just damp and mould? (Y/N)**

No.

**Question 2. Do you agree the right threshold for hazards in scope of Awaab's Law are those that could pose a significant risk to the health or safety of the resident? (Y/N)**

Yes

**Question 3. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text).**

The starting point of this response is that Awaab's Law, in the guise in which it was expected (covering Damp Mould and Condensation (**DMC**)), is welcomed by the sector and is, with some stretch (e.g. recruitment of additional resource), achievable

The consultation however proposes that Awaab's Law should not be limited to DMC as previously envisaged but should instead be widened to include the 28 other Housing Health and Safety Rating System Hazards (**HHSRS**).

The HHSRS is a risk-based evaluation tool to help residential landlords (including Registered Providers) identify and protect against potential risks and hazards. It applies to all residential properties in England and Wales.

HHSRS enforcement options lie with local authorities and the action they can take can include:

- Service of an improvement notice,
- Service of a prohibition order,
- emergency action,
- service of a hazard awareness notice,
- service of a demolition order,
- clearance.

HHSRS hazards are split into two categories. Category 1 are a “*serious hazard and immediate risk to a person's health*” and Category 2 are a “*less serious or urgent hazard*”.

It is this widening of the scope of Awaab's Law and its inter-relationship with the following other factors set out below, which causes our concern as to whether the proposals are practically workable and are aligned with the Government's stated objectives.

Awaab's Law as proposed, does not distinguish between category 1 or 2 hazards – it simply defines a hazard as one that “***poses a significant risk to the health or safety of the actual resident of the dwelling***”. This is a new definition and takes account of the individual health of the resident. This is absolutely aligned with the Government's objectives when related to DMC and to incorporate the health of an individual resident where they may have, for example, a susceptibility to mould spores.

However, applying this to all the other 28 HHSRS hazards and their potential physical and mental health impacts, means undertaking subjective tests on whether any of the HHSRS hazards could require a RP to consider and process a complaint in accordance with Awaab's Law and the associated short time deadlines. This could potentially require all reports of disrepair to be dealt with by landlords under Awaab's Law timescales due to the potential health impact that the disrepair could have on that individual resident.

If Awaab's Law was implemented at this stage solely relating to DMC matters then there is already in place a robust and widely understood framework for the remaining HHSRS hazards which relies on their objective assessment, as opposed to subjective assessments based on medical self-reporting by residents.

Under the HHSRS, if a category 1 hazard exists then it is an automatic breach of the Decent Homes Standard. In turn, that is then an automatic breach of the Regulator of Social

Housing (**RSH**) Consumer Standards. Direct enforcement powers for breach also fall within the purview of local authorities as outlined above.

To follow the argument further, even if a report is not a Category 1 hazard, a finding of a breach of HHSRS is a breach of '*relevant legislation in relation to the safety of residents*' which is also then a breach of the Consumer Standards. RPs currently have to decide if the current serious detriment test is breached and then potentially self-refer to the RSH under the co-regulatory arrangements.

The above connections with local authority enforcement powers, the Decent Homes Standard and the RSH current Consumer Standards demonstrate there is already a clear and thought-through approach in place for RPs to deal with non-DMC HHSRS hazards. Once proactive consumer regulation by the RSH is introduced pursuant to the Social Housing (Regulation) Act 2023 and the withdrawal of the serious detriment test, the RSH will be able to exercise additional regulatory powers as set out in the Housing and Regeneration Act 2008 (as amended).

The concern and possible practical outcome are that the number of complaints about non-DMC issues will significantly reduce the ability of the RP to respond to DMC or Category 1 hazards in a timely manner. There is a risk this may in fact lead to the opposite outcome to that intended. DMC reports may be dealt with more slowly as landlords are overwhelmed by the volume of reports on other issues.

Our view is that including non-DMC hazards under Awaab's Law not only complicates the situation and increases uncertainty as to what circumstances give rise to a hazard under Awaab's Law. It also creates a material additional burden where RPs will need to react within very tight timescales for potential hazards that are already adequately addressed under HHSRS. Furthermore, in our view the proposals conflict with the "Good Law Initiative" confusing tenants as to which body is responsible for enforcement.

## **PROPOSAL 1: INITIAL INVESTIGATIONS OF POTENTIAL HAZARDS**

**Question 4. Do you agree with the proposal that social landlords should have 14 calendar days to investigate hazards? (Y/N)**

No

**Question 5. Do you agree that medical evidence should not be required for an investigation? (Y/N)**

No

**Question 6. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)**

The Consultation suggests a time for investigation of 14 calendar days. We have discussed this requirement with our clients. In light of those discussions, we consider this may be an

appropriate timescale if the proposals are limited to DMC matters. It would, however, be wholly impractical and extremely resource intensive to expect RPs to introduce repairs arrangements where it is likely they would need to treat all reports of disrepair as potentially under Awaab's Law. Please note, with the changes to subjective assessments of residents' health conditions when relating to DMC, we consider the costs of such operational changes could still be material for RPs, even when only dealing with reports of DMC.

In addition, if Awaab's Law proposals are extended to all 29 HHSRS hazards then we are concerned about the requirement that the person carrying out the inspection must have the "*right skill set to be able to carry out the determination*". If Awaab's Law is limited to DMC, then the skills required for such inspections are predictable and inspectors with requisite building surveying or similar skills can attend. If, however Awaab's Law is widened in scope, the person who could best determine DMC is unlikely to be the same person who could best determine noise nuisance, overcrowding or pest control. This would directly impact on the feasibility of RP's being able to meet the 14 calendar day timeframe and the wider skills needed may result in RPs being unable to identify sufficiently qualified inspectors to attend properties.

Including all 29 HHSRS hazards could involve up to 29 different "*experts*" and multiple different "*contractors*" – all needing to work within the 14 day very tight deadline. For larger RPs, this could result in them being subject to technical, lengthy and potentially costly procurement variations to their existing contracts.

Given the proposals are that hazards are all personalised to a resident's health condition, this would have a major impact on numerous different disciplines within an RP both in terms of their readiness and the time limits as well as affecting other budget areas other than repairs budgets.

The proposals also suggest that RPs must book inspections around the specific needs of the resident. There might then be a demand for more out of hours working to facilitate the investigation. Out of hours appointments are difficult to accommodate in any volume within the discipline of DMC matters but would have even more material budget implications if extended to all 29 HHSRS hazards. Landlords and their contractors do not provide an out of hours service save for emergencies. The Awaab's Law timescales are not limited to emergencies.

In certain areas such as Fire Safety, there is already a recognised shortage in available expertise, often extending to several months wait for experts.

As Awaab's Law includes physical and mental harm, this could open up RPs to increased risks of additional claims for damages for personal injury. RPs insurers deal with personal injury claims. This will concern insurers as Awaab's Law makes it clear that medical evidence will not be required to validate "*injury*", so a self-diagnosis by the resident would suffice. That is contrary to all current evidential requirements for personal injury claims where expert medical evidence has always been required. This requirement for medical evidence prevents fraud and abuse, so where medical evidence is provided evidencing a genuine issue, insurers can admit liability at a very early stage and move onto prompt settlement. Awaab's

Law, as currently drafted does not have this safeguard for medical evidence, as no medical evidence is needed. This presents a high risk of abuse and will make it impossible for landlords or their insurers to assess the credibility of claims.

## **PROPOSAL 2: WRITTEN SUMMARIES OF INVESTIGATION FINDINGS**

**Question 7. Do you agree with the proposal for registered providers to provide a written summary to residents of the investigation findings? (Y/N)**

Yes – subject to comments in question 10 below

**Question 8. Do you agree with the minimum requirements for information to be contained in the written report? (Y/N)**

Yes subject to comments in Question 10 below.

**Question 9. Do you agree registered providers should have 48 hours to issue the written summary? (Y/N)**

No.

**Question 10. If you have answered ‘no’ to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)**

Practically, the preparation of a written report within 48 hours, to include all the items that the Consultation proposes, is likely to be a significant challenge if the proposals are not limited to just DMC matters.

If an inspection took place at 3pm on a Friday, the report would need to be collated over the weekend in order to comply with the deadline.

It would also be difficult to obtain details from external contractors of their availability over such a short period of time, and could be impossible if that period included a weekend.

We recommend a more practicable period would be **at least 2 working days** if the arrangements are limited to DMC matters alone.

Due to the varying different nature and ways in which these hazards might need to be addressed, if it is the health of the residents that is affected, we do not foresee how these timescales could be adopted if they were to cover all 29 HHSRS hazards.

Within the report itself, it should be permissible for the landlord to make clear (for litigation reasons) that the content of the report is not an admission of liability as no consideration has been given to the other issues that can give rise to a claim for damages such as whether there has been prior notification or causation (e.g. potential tenant damage). This, of course, is relevant to any disrepair claim, but it is currently unclear as to whether a report that finds a

hazard under the wider scope of Awaab's Law would be interpreted as an admission of liability generally.

### PROPOSAL 3: BEGINNING REPAIR WORKS

**Question 11. Do you agree with the proposal that if an investigation finds a hazard that poses significant risk to the health or safety of the resident, the registered provider must begin to repair the hazard within 7 days of the report concluding? (Y/N)**

No

**Question 12. Do you agree that in instances of damp and mould, the registered provider should take action to remove the mould spores as soon as possible? (Y/N)**

Yes

**Question 13. Do you agree with the proposed interpretation of 'begin' repair works? (Y/N)**

No

**Question 14. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)**

We consider it is appropriate for work to **begin** on Category 1 hazards within 7 days, whether temporary repairs or ones which permanently resolve the issue. This should be the case whether Awaab's Law solely relates to DMC matters or more widely.

For issues that fall outside the DMC remit however, it is unclear how in practice this work could be **completed** where the works to be done might not be straightforward.

Bearing in mind Awaab's Law does not distinguish between Category 1 and 2 hazards, all works would need to be started within 7 days where there was concern (without any supporting medical evidence) of "*significant risk to the health and safety of the resident*". This should be workable where Awaab's Law relates to DMC matters but not otherwise.

As further examples of the uncertainty that Awaab's Law would introduce if implemented for all 29 HHSRS matters, it is unclear to what extent RPs would have exercised all reasonable steps to comply with Awaab's Law if there was significant risk to the mental health of residents caused by different circumstances. For example, due to reports of noise (dogs barking, noisy road, anti-social behaviour of neighbours), works to resolve leaks from a property above not owned by the RP, replacing lead pipes, works to adapt surface heights for a wheelchair user. These issues would need detailed and thought through guidance if substantial litigation was to be avoided (or to avoid the risk of landlords using more of their stock for expensive temporary accommodation).

There is also the concern that, in having to start works within the 7-day period across all the proposed Awaab's Law hazards, the costs would escalate to disproportionate levels and disrupt residents as so much work may need to be started (as it was all alleged without medical evidence) to be detrimentally affecting the health of residents.

With the increased demand on external resources (surveyors and contractors) if Awaab's Law covered all HHSRS hazards, this would require a wide range of works to be done quickly which would no doubt place unsustainable inflationary pressures on RPs and undermine the delivery of value for money (considering the VFM and GFV Standards).

## **PROPOSAL 4: COMPLETING REPAIR WORKS**

**Question 15. Do you agree that the registered provider must satisfactorily complete repair works within a reasonable time period, and that the resident should be informed of this time period and their needs considered? (Y/N)**

Yes

**Question 16. If you have answered 'no' to the question in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)**

N/A

## **PROPOSAL 5: TIMESCALES FOR EMERGENCY REPAIRS**

**Question 17. Do you agree that timescales for emergency repairs should be set out in legislation? (Y/N)**

No.

**Question 18. Do you agree that social landlords should be required by law to action emergency repairs as soon as practicable and, in any event, within 24 hours? (Y/N)**

No

**Question 19. If you have answered 'no' to any of the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)**

The consultation suggests the maximum period for emergency repairs should be 24 hours.

Whilst that is more than reasonable for gas leaks and boilers and would be the timescale applied by most RPs already for works, they have defined as "*urgent*", it is less straightforward for cases where it is the uncertain state of health of the resident that causes the repair to be classed as an emergency.



Again, this will be much more challenging to set out if Awaab's Law covers all 29 HHSRS hazards RPs already operate out of hours repairs services but only for emergencies. The widening definition of urgent or an emergency could hugely increase costs for employees/contractors to work weekends at higher rates.

Widening the scope to include "exposed wiring" which could include a cracked plug, "*significant leaks*" and "*broken external doors and windows*" probably makes the obligation too onerous and risk delaying what should be actioned as the most urgent work.

Proposal 5 about emergency repair time periods being incorporated into legislation does not specify which court will be responsible for enforcing this requirement. Is it the Magistrates or County Court? If the Magistrates, this would involve a criminal element, clog up the already backlogged criminal justice system and could be a regulatory issue if an RP found to be in breach. It is unrealistic to think tenants will not seek enforcement of Awaab's Law. It is a civil claim, then arguably there is already sufficient causes of action already available to tenants and occupiers through the civil courts. Whether this would be a civil or criminal enforcement route needs clarifying in the consultation.

## **PROPOSAL 6: DECANTING IF THE PROPERTY CANNOT BE MADE SAFE IMMEDIATELY**

**Question 20. Do you agree that landlords should arrange for residents to stay in temporary accommodation (at the Landlord's expense) if the property cannot be made safe within the specified timescales (Y/N).**

No

**Question 21 If you have answered 'no' to the question in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text).**

The reason we have said no above, is because it would not be possible to make many of the non-DMC HHSRS hazards safe on a temporary basis, e.g. noise, overcrowding, lead pipes, kitchen surface heights. The effect of this is that if, for example, the challenge is there is a significant risk that the mental health of a resident is affected, a decant may be required.

The Government suggests that this will be at no or only a small additional cost to the RP. The reality is that the decant would need to either be to a void property (for which the RP receives no rental income and reduces the availability of homes for letting to those waiting for social housing) or to a hotel which will need paying for.

With every decant, there are also additional costs such as moving expenses and depending on location and availability more significant expenses such as kennels, taxis to work/school etc. This also assumes RPs have large numbers of readily available void properties which can be utilised which we are aware is often not the case.

Whilst treating DMC may be a quick process, the requirement to decant for a wide range of the other HHSRS hazards would be unclear and, in order to avoid expensive litigation, it would be important to work up guidance covering all the different scenarios. For example, would a decant be needed where a residents' teenage child's health is affected because they have to share a bedroom with a sibling of a different gender?

## **PROPOSAL 7- RECORD KEEPING**

**Question 22. Do you agree that Awaab's Law regulations should include provisions for a defence if landlords have taken all reasonable steps to comply with timeframes, but it has not been possible for reasons beyond their control? (Y/N)**

No

**Question 23. If you have answered 'no' to the questions in this section, please provide an explanation (with evidence where possible) and/or an alternative suggestion (free text)**

The reason we have said no above is because the suggested defence for RP's is that they have taken "all reasonable steps", which means everything they can do. This is too high a burden and does not take into account reasonable costs expended. Would that require the landlord to have always applied for an access injunction? Or to have taken possession if an access injunction is not made in wide enough terms?

"Reasonable steps" would be preferable.

## **IMPACT ASSESSMENT – ASSESSING THE COSTS AND BENEFITS OF AWAAB'S LAW**

**Question 24 Do you agree with the assessment that proposals 1, 3, 4, 5, 6 and 7 will create small net additional costs to the sector? (Y/N)**

No

**Question 25. If not, please can you provide additional information? (Free text)**

The cost to the sector will be very significant if the scope of Awaab's law is extended from DMC to all 29 HHSRS hazards.

The sector is already struggling to recruit and source resources adequately to respond appropriately to DMC issues, but they have at least been working on this for 18 months already. The short timescales that are proposed will be significantly challenging for most landlords, if this is expanded to cover all 29 HHSRS hazards. The scope for this to significantly increase the costs of these resources of the landlords such as to make them practically unaffordable is substantial. Coupled with the financial penalties of non-compliance (in the form of the cost of legal claims from tenants, with their attendant very significant

Claimant lawyer legal costs) could result in potentially huge costs to the sector. that will mean landlords cannot use the same funds to invest in preventative repairs and maintenance of their stock. Instead diverting large funds to addressing remedial action (which could be delivered more cost effectively if the scope of Awaab's Law remains as originally envisaged being DMC).

It would not be possible to make many of the non-DMC HHSRS hazards safe on a temporary basis, e.g. noise, overcrowding, lead pipes, kitchen surface heights. The effect of this is that if, for example, the challenge is there is a significant risk that the mental health of a resident is affected, a decant may be required.

The Government suggests that this will be at no or only a small additional cost to the RP. The reality is that the decant would need to either be to a decant property (for which the RP receives no rental income and reduces the availability of homes for letting those waiting for social housing) or to a hotel which will need paying for.

With every decant, there are also additional costs such as moving expenses and depending on location and availability more significant expenses such as kennels, taxis to work/school etc. This also assumes RPs have readily available void properties which can be utilities which we are aware is often not the case.

Whilst treating DMC may be a quick process, the requirement to decant for a wide range of the other HHSRS hazards would be unclear and, to avoid expensive litigation, it would be important to work up guidance covering all the different scenarios. For example, would a decant be needed where the health is affected of a residents' teenage child's health is affected because they have to share a bedroom with a sibling of a different gender?

**Question 26. Do you agree with the assessment of the net additional costs of proposal 2? (Y/N)**

No

**Question 27. If not, please can you provide additional information? (Free text)**

We think it will be significantly more. A typical report will likely run to some [18] pages of free text, potentially more.

There will then need to be either an investment in IT so reports can be quickly electronically created, or investment in additional staff if the reports are to be typed in the traditional way.

If reports need to be created and sent in a 48 hour period there is a manpower additional cost particularly if this is required to be over weekends and public holidays. Where external consultants are required to produce reports urgently, the costs of such reports are likely to attract a significant premium over current market rates.

**Question 28. Do you agree with the assumptions we have made to reach these estimates? (Y/N)**

No.

**Question 29. If not, please can you provide additional information? (Free text)**

The assumptions ignore legal costs and from our knowledge of disrepair cases we know those are significant.

Anthony Collins Solicitors LLP

Date: 29 February 2024

Our Ref: Suzanne Gregson