

HOMES (FITNESS FOR HUMAN HABITATION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Homes (Fitness for Human Habitation) Bill as introduced in the House of Commons on 24 June 2015 (Bill 15).

- These Explanatory Notes have been produced by Karen Buck in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

Overview of the Bill

- 1 This Bill seeks to amend the law to place an effective and justiciable duty on landlords to keep the residential properties they let fit for human habitation. As the Law Commission made clear in 1996, there is a "statutory obligation imposed upon landlords to keep dwellings let at modest rents reasonably fit for human habitation ... section 8 of the Landlord and Tenant Act 1985 ... though it has come to have little if any application because it is tied to rent limits that have remained virtually unchanged since 1957". This remains the case today.

Policy background

- 2 The Law Commission's report on "Landlord and tenant responsibility for state and condition of property", quoted above, identified the problem and published draft statutory provisions aimed at providing a remedy (see [LAW COM No. 238, Item 5 of the Sixth Programme of Law Reform: Landlord and Tenant, published on 19 March 1996, HC 236 of Session 1995-96](#)).
- 3 Parliament first decided that rented residential accommodation should be "fit for human habitation" in section 12 of the Housing of the Working Classes Act 1885. That provision was developed through subsequent housing, landlord and tenant statutes, culminating in the Landlord and Tenant Act 1985.
- 4 These provisions created an obligation to effect repairs which was tied to rent-limits. As the Law Commission concluded, over time inflation has stripped the measures of any effect. The present rent limits are set out below.

Date of making of contract

Rent limit

On or after 31st July 1923 (before 6th July 1957)

In London: £40 p.a.

Elsewhere: £26 p.a.

On or after 6th July 1957

In London: £80 p.a.

Elsewhere: £52. p.a.

These static rent limits have caused this provision to fall into disuse and this area of law into disrepute. Parliament has been called upon to remedy this matter by the Court of Appeal as well as the Law Commission. In 1997 the Court remarked on the unsatisfactory state of the law when tenants are "...wholly without remedy in the civil courts against their landlords, however grievously their health may have suffered because they are living in damp, unfit conditions..." (*Issa v Hackney London Borough Council* (1997) 29 H.L.R. 640).

- 5 There are other statutory provisions which impinge on housing standards, but, for various reasons, they are not sufficient for ensuring that properties are fit for human habitation.
 - (a) Section 11 of the Landlord and Tenant Act 1985 requires the structure and exterior of a rented residential property to be maintained, as well as equipment relating to, for example, the supply of heating or hot water. However, this does not provide for redress where a property is uninhabitable due to a design defect causing, for example, condensation and other forms of damp.
 - (b) Provisions within Part 1 of the Housing Act 2004 allow local authorities to serve notices on

landlords which can require appropriate remedial works to be carried out. This remedy is, however, dependent on a properly resourced enforcement regime in each local authority area and, in any event, is not effective where the local authority is itself the landlord.

(c) The potential exists for a tenant to bring a private prosecution for a statutory nuisance under the Environmental Protection Act 1990. But this is unsatisfactory for a number of reasons of which the likely cost is not the least.

- 6 The most recent ministerial policy statement was provided by the then Government in 2011 that -- although the law was "unsatisfactory as there is no acceptable standard which has to be met by leased premise, there is no legal requirement that the responsibility for the repair of the property should be specifically allocated, and the remedies for the enforcement of repairing obligations were not always effective to ensure that the necessary repairs were carried out" ... -- the "Government does not consider that the problems with the law in this area are sufficient to require legislative intervention. There are no current plans, therefore, to implement the proposals contained within [the Law Commission's] report."

[\(Report on the implementation of Law Commission proposals, Ministry of Justice, 24 January 2011\)](#)

Legal Background

- 7 The legal background, and analyses, provided by the Law Commission in its 1996 report remain apposite, applicable and relevant.

Territorial extent and application

- 8 This Bill would extend to England and Wales.

Commentary on provisions of the Bill

Clause 1

Subsections 1 to 3

- 9 These provisions repeal section 8 of the Landlord and Tenant Act 1985 and replace it with an updated formulation adapted from Clause 1.5 of the [Draft Bill prepared by the Law Commission in 1996](#) (see Appendix A of that report). The rent limits are abolished thus removing the problem undermining the original section 8 measure. This change necessitates a small consequential amendment to section 9 which is accomplished by subsection (3) of the Bill.
- 10 Within the text inserted by subsection (2) of the Bill, the position of landlords is protected in two ways.
- 11 Inserted subsection (4) of the substitute section 8, prevents liability arising where the unfitness is caused by either the tenant's behaviour or a natural disaster, as well as making clear that the landlord is not obliged to maintain property which belongs to the tenant.
- 12 Inserted paragraph (d) of the new subsection 4, provides that a landlord cannot be required to carry out works which would put him in breach of any other legal obligation (for example, works contrary to building regulations) and paragraph (e) ensures that a landlord cannot be liable under this provision where the works would necessitate consent being obtained from a

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superior landlord and that superior landlord has refused to give such consent.

- 13 New subsection (5) of the Bill's substitute section 8, prevents liability arising where the unfitness is caused by a tenant and stops a tenant from using this measure to circumvent any prior agreement reached under section 12 of the Landlord and Tenant Act 1985 (power to "contract out" of certain repairing obligations).

Clause 1

Subsection 4

- 14 Section 10 of the Landlord and Tenant Act 1985 lists the matters which will determine whether a property is or is not fit for human habitation. Subsection 1(4) of the Bill adds "Category 1" hazards (determined under the Housing Act 2004) to this list of matters with the aim of ensuring that the list in section 10 of the 1985 Act can remain up-to-date. For example, carbon monoxide emissions may constitute a Category 1 hazard but are not presently capable of being brought within the scope of the current section 10 of the Landlord and Tenant Act.

Clause 2

- 15 This clause covers the short title, commencement and extent of the Bill and is self-explanatory (and see paragraphs 16 and 17 below).

Commencement

- 16 In England, this Act shall come into force three months after it receives Royal Assent, applying to all leases and agreements for leases made on or after that date.
- 17 In Wales, the commencement date is delegated to Welsh Ministers to appoint.

Financial implications of the Bill

- 18 This Bill could have indirect implications for local government spending, depending on local authorities' responses to the strengthening of the capacity of tenants, including those in council housing, to require landlords to remediate residential properties they rent to higher standards of fitness for human habitation.

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