

HOMES (FITNESS FOR HUMAN HABITATION AND LIABILITY FOR HOUSING STANDARDS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill as introduced in the House of Commons on 19 July 2017 (Bill 10).

- These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government with the consent of Ms Karen Buck MP the member in charge of this Bill 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.

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Overview of the Bill

1. This is a Private Member's Bill which is being sponsored by Ms Karen Buck MP – the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill.
2. The purpose of the Bill is to help drive up standards in the private and social rented sectors by putting an obligation on landlords to keep their property in good condition and giving tenants the right to take legal action where their landlord fails to do so.
3. The Bill is made up of 2 clauses and provides that:
 - There is to be an implied covenant in a lease that a landlord must ensure that their property is fit for human habitation at the beginning of the tenancy and for the duration of the tenancy; and
 - Where a landlord fails to do so, the tenant has the right to take action in the courts for breach of contract on the grounds that the property is unfit for human habitation.

Policy background

4. Landlords are not currently required by implied covenant to ensure that properties they rent out are free of potentially harmful hazards. An offence is only committed where a landlord fails to comply with the local authority's enforcement notice under the Housing Act 2004. The tenant is unable to take direct legal action to require the landlord to take action for a defective property – they are entirely reliant on the local authority doing so. As a result, it is possible for a landlord to rent out a property which potentially contains a range of hazards caused by the defects and, unless they are formally required by the local authority to rectify them, the landlord cannot be held responsible.
5. This Bill will help drive up standards in the private and social rented sectors by putting an obligation on landlords to keep their property in good condition and giving tenants the right to take legal action where their landlord fails to do so. The legislation will provide:
 - An implied covenant in the lease that all landlords must ensure that their property is fit for human habitation at the beginning of the tenancy and throughout. They should do this by ensuring that their property is free from hazards which a risk of harm may arise to the health or safety of the tenant or another occupier of the property at the start of the tenancy and keeping it in that condition for the duration of the tenancy; and
 - Where a landlord fails to do so, the tenant has the right to take legal action for breach of contract (covenant) on the grounds that the property is unfit for human habitation. The remedies available to the tenant include an order by the court requiring the landlord to take action to reduce or remove the hazard and/or damages to compensate them for the harm caused from the property which was not fit for human habitation.

Legal background

6. The Bill replaces section 8 of the Landlord and Tenant Act 1985, which has fallen into disuse owing to the qualifying limit on rent levels.

Territorial extent and application

7. The Bill extends to England and Wales and the new section 8 of the Landlord and Tenant Act 1985 substituted by the Bill will apply in England only.
8. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions of Bill

Clause 1: Fitness for human habitation

9. Clause 1(1) provides that the Landlord and Tenant Act 1985 (“LTA 1985”) is amended as follows.
10. Clause 1(2): repeals section 8 of the LTA 1985 and substitutes that section with a new section 8 as described below.
11. Section 8(1) introduces an implied covenant by the landlord into a lease that the dwelling:
 - a. is fit for human habitation at the time the lease was granted;
 - b. will be kept fit for human habitation during the term of the lease.
12. Section 8(2) sets out certain exceptions to the application of the implied covenant, in that it does not require the landlord to:
 - a. carry out works or repairs for which the tenant is liable because of:
 - i. the duty of the tenant to use the dwelling in a tenant-like manner, or
 - ii. because there is an express covenant in the lease which requires the tenant to use the dwelling in a tenant-like manner.
 - b. rebuild or reinstate the dwelling where it has been destroyed or damaged by fire, storm, flood or other natural occurrence;
 - c. keep in repair or maintain anything which the tenant is entitled to remove from the dwelling;
 - d. carry out any works or repairs to the property which would result in the landlord breaching any of their statutory obligations under other provisions;
 - e. carry out works or repairs to the property which would require the consent of a superior landlord, provided that such consent was requested but not obtained.
13. Section 8(3) provides that, in addition, the implied covenant does not impose on the landlord any liability where the property is unfit for human habitation where the unfitness is wholly or mainly because of:
 - a. the tenant’s own breach of the implied covenant, or
 - b. disrepair which the landlord is not required to make good because of an order made by the county court.

14. Section 8(4) states that any provision of a lease or any agreement relating to a lease is void where that provision attempts to:
 - a. exclude or limit the obligations of the landlord under the implied covenant, or
 - b. authorises any forfeiture or imposes on the tenant any penalty, disability or obligation in the event of the tenant enforcing their rights under the implied covenant introduced through this section.
15. Section 8(5) clarifies that where in any court proceedings, it is alleged that a landlord is in breach of their obligation to keep the property fit for human habitation, at the start of and throughout the tenancy, the courts may order specific performance of that obligation.
16. Section 8(6) provides that the landlord, or someone on their behalf, may have access to the property to view its state of repair.
17. This may only be exercised if, in accordance with section 8(7), notice is given to the tenant and access is sought for a reasonable time of day.
18. Section 8(8) clarifies the definitions of the terms lease, lessor and lessee for the purposes of the provision.

8A Leases to which section 8 applies

19. Section 8A(1) states that the inserted section 8 of the LTA 1985 (“section 8”) applies to a lease under which a dwelling is rented out wholly or mainly for human habitation and:
 - a. The term of the lease is less than 7 years, or
 - b. The lease is for a secure, assured or introductory tenancy for a fixed term of 7 years or more.
20. Section 8A(2) provides that section 8 does not apply to any lease of a type referred to in section 11 of the LTA 1985. These are new leases granted to an existing tenant or to a previous tenant still in possession.
21. Section 8A(3) states that except as specified in section 8A(4) and (5), section 8 does not apply to a lease granted:
 - a. Before the commencement date of that section, or
 - b. On or after that date, where the agreement was entered into, or was following an order of the court, before the commencement date.
22. Section 8A(4) provides that section 8 makes provision in relation to a periodic or secure tenancy that is in existence on the commencement date and provides that for such tenancies
 - a. the requirement that the property is fit for human habitation at the start of the tenancy does not apply, and

- b. imposes the covenant to ensure the property is kept fit for human habitation only from 12 months after the coming into force of section 8. This allows time for compliance in relation to existing tenancies.

23. Section 8A(5) provides that where a lease for a fixed term:

- a. Is granted or renewed before the commencement date of this legislation, and
- b. Is renewed for a further fixed term after that date,

the renewal referred to in paragraph (b) is to be treated as a grant of the lease after that date, at which point the covenant will apply.

24. Section 8A(6) makes clear that for the purposes of the requirement that a property is fit for human habitation at the start of the tenancy and throughout, it is immaterial:

- a. Whether the dwelling is to be occupied under the lease or under an inferior lease derived out of it, or
- b. That the lease also includes other property, which may consist of or include one or more other dwellings.

25. Section 8A(7) provides that in determining for the purposes of clause 8(A)(1) whether a lease is for a term of less than 7 years:

- a. The lease is to be treated as a lease for a term commencing with the grant of the lease;
- b. A lease which can be terminated at the option of the landlord before the expiry of 7 years is to be treated as a lease for less than 7 years;
- c. A lease other than one to which paragraph (b) applies is not to be treated as a lease for a term of less than 7 years if it confers on the tenant an option for renewal for a term which, together with the original term, amounts to 7 years or more.

26. Section 8A(8) provides definitions to apply in relation to section 8:

- a. “the commencement date” means the date on which the Homes (Fitness for Human Habitation) Act 2018 comes into force;
- b. “secure tenancy” has the meaning given by section 79 of the Housing Act 1985.

Remaining provisions

27. Clause 1(3) provides that in section 9 of the LTA 1985:

- a. For “house”, in each place where it occurs, substitute “dwelling”, so as to include other types of dwelling, such as flats, within the scope of these provisions.
- b. For “houses” (in the heading) substitute “dwelling”
- c. Omit subsection (3)

28. Clause 1(4) provides that in section 10 of the LTA 1985:

- a. For “house”, in both places where it occurs, substitute “dwelling”
- b. After “facilities for the preparation of food and for the disposal of waste water” insert:
“any other hazard;”
- c. after that subsection insert—

“(2) In subsection (1) “hazard” means any matter or circumstance amounting to a hazard for the time being prescribed in regulations made by the Secretary of State under section 2 of the Housing Act 2004.

(3) The definition of “hazard” in section 2(1) of the Housing Act 2004 applies for the purposes of this section, but as if the reference in that definition to a potential occupier were omitted.”

29. This provides that whether a dwelling is unfit for human habitation is to be determined with regard to a hazard, meaning any matter or circumstance as prescribed in regulations under section 2 of the Housing Act 2004, and that hazard is defined as in section 2(1) of that Act, omitting reference to a “potential occupier”. By virtue of the surrounding provisions of section 10, the dwelling shall be regarded as unfit for human habitation if, and only if, it is so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition.
30. Clause 1(5) notes that in section 39 (index of defined expressions), after the entry in the list for “lease, lessee and lessor (generally)” insert:

“(in the provisions relating to fitness for human habitation) – section 8(8)”

Commencement

31. Clause 2(2) provides that the Act comes into force three months after it has been passed.

Financial implications of the Bill

32. The Bill will not entail additional public expenditure, local authorities already have strong enforcement powers to tackle poor property. The aim of this bill is to enable tenants to pursue their landlord without recourse to their local authority

Parliamentary approval for financial costs or for charges imposed

33. A money resolution is not required for the Bill.

Compatibility with the European Convention on Human Rights

34. The Bill is considered to be compatible with the European Convention on Human Rights.

Related documents

None

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales? ¹	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	N/A	N/A	N/A	No
Clause 2	Yes	No	No	No	N/A	N/A	N/A	No

¹ The existing section 8 will be repealed in Wales when the new section 8, which applies only to England, comes into force.

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