

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 brought from the House of Commons on 29 October 2018 (HL Bill 139).

- These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government with the consent of Lord Best, 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 The purpose of the Bill is to improve 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.
- 2 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

- 3 Landlords are not currently required by implied covenant to ensure that properties they rent out are free of potentially harmful hazards. In the absence of an express term of the lease as to fitness for habitation, an offence is only committed where a landlord fails to comply with a 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 defects and, unless they are formally required by the local authority to rectify them, the landlord cannot be held responsible.
- 4 The purpose of this Bill is to improve 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 draft 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 from 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 by the property which was not fit for human habitation.

Legal background

- 5 The Bill makes amendments to the Landlord and Tenant Act 1985. Those amendments apply only to England.

Territorial extent and application

- 6 The Bill extends to England and Wales; the new sections 9A-9C of the Landlord and Tenant Act 1985 inserted by the Bill will apply to England only. The remaining provisions of the Bill apply to England. Existing section 8 of the Landlord and Tenant Act 1985 will continue to apply to Wales.
- 7 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 and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Fitness for human habitation

- 8 Clause 1(1) provides that the Landlord and Tenant Act 1985 (“LTA 1985”) is amended as follows.
- 9 Clause 1(2) amends section 8 of the LTA 1985 to apply only to Wales.
- 10 Clause 1(3) inserts a new section 9A as described below.

9A Fitness for human habitation of dwellings in England

- 11 Section 9A(1) introduces an implied covenant by the landlord into a lease for the dwelling 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 9A(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 or other third party, provided that such consent was requested but not obtained.

- 13 Section 9A(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 9A(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 9A(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 9A(6) states that the duties of the landlord or the lessor extend to common parts of the building where they have an estate or interest.
- 17 Section 9A(7) clarifies that in a lease property where this section applies, there is an assumed agreement by the lessee. This agreement means that the lessor (or a person authorised by the lessor in writing) may enter the dwelling for the purpose of inspecting its condition and state of repair.
- 18 Section 9A(8) provides that the landlord, or someone on their behalf, may have access to the property to view its state of repair only if notice is given to the tenant and access is sought for a reasonable time of day.
- 19 Section 9A(9) clarifies the definitions of the terms "common parts", "lease", "lessor" and "lessee" for the purposes of the provision.

9B Leases to which section 9A applies

- 20 Section 9B(1) states that the inserted section 9A of the LTA 1985 ("section 9A") 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.
- 21 Section 9B(2) provides that section 9A does not apply to any lease of a type mentioned in section 14 of the LTA 1985.
- 22 Section 9B(3) states that except as specified in section 9B(4), (5) and (6), section 9A 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 an order of the court made before the commencement date.

- 23 Section 9B(4) provides that section 9A 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 to ensure the property is fit for human habitation at the time the lease is granted or when it begins is instead a requirement to ensure that it is fit at the time that begins 12 months after the coming into force of section 9A, 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 9A. This allows time for compliance in relation to existing tenancies.
- 24 Section 9B(5) provides that section 9A applies to a periodic or a secure tenancy that comes into existence after the commencement date on expiry of a lease granted before that commencement date.
- 25 Section 9B(6) 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.
- 26 Section 9B(7) 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.
- 27 Section 9B(8) provides that in determining for the purposes of section 9B(1)(a) 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.
- 28 Section 9B(9) provides definitions to apply in relation to section 9B:
- “the commencement date” means the date on which the Bill comes into force;
 - “secure tenancy” has the meaning given by section 79 of the Housing Act 1985.
- 29 Section 9C restates section 9 of the Landlord and Tenant Act 1985, which will now only apply in relation to Wales.

Remaining provisions

- 30 Clause 1(4) amends section 10 of the LTA 1985. These amendments provide 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.
- 31 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 9A(9)”
- 32 Clause 1(6) notes that in section 302 of the Housing Act 1985 (management and repair of houses acquired under section 300 or retained under section 301), in paragraph (c) – for “section 8” substitute “sections 8 and 9A”, and for “does” substitute “do”.

Commencement

- 33 Clause 2(2) provides that the Bill comes into force three months after it has been passed.

Financial implications of the Bill

- 34 The Bill will not entail additional public expenditure. 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

- 35 A money resolution is not required for the Bill.

Compatibility with the European Convention on Human Rights

- 36 A section 19 Human Rights Act 1998 statement was unnecessary as this is a Private Member’s Bill.
- 37 Nevertheless, compatibility with Convention rights has been considered as part of the Government’s intention to support the Bill. The Government is of the view that the Bill is compatible with the ECHR. The Government have considered whether the provisions engage Convention rights.
- 38 Actionable rights do not apply to those landlords who are local authorities, because they do not have standing to bring a case before the European Court of Human Rights under Article 34 of the ECHR as they are not considered to be a “person, non-governmental organisation or group of individuals” under the case-law of that Court. Consequently, they are not “victims” as set out in section 7(7) of the Human Rights Act 1998 as this definition cross-refers to the ability to bring a case before the Court under Article 34 of the ECHR.

- 39 Landlords who are other legal persons (individuals or entities) are within scope.
- 40 Arguably, as the provisions relate to the terms of leases of dwellings owned and leased by landlords the provisions may engage property rights set out in Article 1 Protocol 1 of the ECHR. However, the provisions do not interfere with the ownership of that property (the dwelling and common parts), or amend any legal entitlements in the manner in which it is owned, or affect its value. Rather, the provisions may require landlords to take steps to remedy certain defects in those dwellings and common parts. The Government takes the view that this falls short of an interference with property rights. Even if it were to be considered an interference, the measures aim to improve the conditions of dwellings and common parts in the private and social rented sectors to address hazards from which risks arise to the health or safety of occupiers. The Government takes the view that the measures are in pursuance of a legitimate public interest, and the benefits to occupiers of these measures outweigh any possible interference with property rights, and are therefore justified.

Related documents

None

Annex A: Territorial extent and application in the United Kingdom

Section 8 of the Landlord and Tenant Act 1985 is amended to only apply to Wales. Sections 9A and 9B are only applicable to England.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales? ²	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: amendment to Section 8 of LTA 1985	No	Yes	No No	No No	N/A N/A	N/A N/A	N/A N/A	No No
Clause 1: Sections 9A to 9C of LTA 1985	Yes Yes	No No	No No	No No	N/A N/A	N/A N/A	N/A N/A	No No
Clause 2: Extent, commencement and short title	Yes	Yes	No	No	N/A	N/A	N/A	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

² The existing section 8 will be amended and will only apply in Wales when the new section 9, which applies only to England, comes into force.

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