

Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill

A Bill to amend the Landlord and Tenant Act 1985 to require that residential rented accommodation is provided and maintained in a state of fitness for human habitation; to amend the Building Act 1984 to make provision about the liability for works on residential accommodation that do not comply with Building Regulations; and for connected purposes

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows

1. Amendments to Landlord and Tenant Act 1985

(1) The Landlord and Tenant Act 1985 is amended as follows

(2) Delete section 8 and substitute the following

“Fitness for human habitation

8. (1) This section applies to any lease under which a dwelling

- (a) is let wholly or mainly for human habitation; and,
- (b) is a lease to which section 13 applies; and,
- (c) is not exempted by section 14.

(2) For the purposes of subsection (1) it is immaterial-

- (a) whether the dwelling is or is to be occupied under the lease or under an inferior lease derived out of it; or,
- (b) that the lease also demises other property (which may consist of or include one or more other dwelling-houses).

(3) In a lease to which this section applies there is implied a covenant by the lessor-

- (a) that the dwelling is fit for human habitation at the time of the grant; and,
- (b) that the lessor will thereafter keep it fit for human habitation.

(4) The implied covenant shall not be taken to require the lessor-

- (a) to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part,
- (b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident,
- (c) to keep in repair or maintain anything which the lessee is entitled to remove from the dwelling-house,
- (d) to carry out works or repairs which, if carried out, would put the lessor in breach of any obligation imposed by statute or subordinate legislation;
- (e) to carry out works or repairs which require the consent of a superior landlord and which consent has been refused (whether reasonably or otherwise).

(5) The implied covenant shall also not be taken to impose on the lessor any liability in respect of the dwelling being unfit for human habitation if that unfitness is wholly or mainly attributable to-

- (a) the lessee's own breach of covenant; or,
- (b) disrepair which the lessor is not obliged to make good because of an exclusion or modification under section 12 of this Act.

- (6) Any provision of a lease or agreement relating to a lease (whether made before or after the grant of the lease) is void insofar as it purports
- (a) to exclude or limit the obligations of the lessor under this section; or
 - (b) to authorise any forfeiture or impose on the lessee any penalty, disability or obligation in the event of his enforcing or relying upon these obligations.”
- (7) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then the covenant implied by subsection (3) shall have effect as if the reference in that subsection to the dwelling included a reference to any part of the building in which the lessor has an estate or interest.

- (3) In section 9, Landlord and Tenant Act 1985, delete “condition and undertaking” in sub-paragraph (a) in subsection (1) and replace with “covenants”
- (4) Amend section 10, Landlord and Tenant Act 1985 as follows:
- (a) At “whether a house is unfit for human habitation”, delete “a house” and replace with “a dwelling”.
 - (b) after “facilities for preparation and cooking of food and for the disposal of waste water” insert “any other matter or matters that may amount to a Category 1 hazard under section 2 Housing Act 2004”.
 - (c) At “and the house shall be regarded as unfit” delete “a house” and replace with “a dwelling”.

2. Amendment to Building Act 1984

- (1) The Building Act 1984 is amended as follows:
- (2) Amend section 38, Building Act 1984 as follows:
- (a) after subsection (4), insert:
 - “(5) The Secretary of State must, within 12 months of the relevant date, make regulations under subsection (1) which provide for owners and occupiers of residential properties to be afforded the remedies provided for in that subsection.
 - “(6) The relevant date is 12 months after the Homes (Enforcement of Housing Standards and Liability for Housing Standards) receives Royal Assent.”

3. Short title, commencement and extent.

- (1) This Act may be cited as Homes (Fitness for Human Habitation and Liability for Housing Standards) Act 2017
- (2) This Act shall come into force in England at the end of the period of three months after it receives Royal Assent and section 1 shall apply to all leases and agreements for leases made on or after that date. It shall come into force in Wales on a date to be appointed by the Welsh Ministers.
- (3) This Act extends to England and Wales.

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Explanatory Notes / Briefing Paper

Background

As long ago as 1885, Parliament first decided that rented residential accommodation should be “fit for human habitation” (s.12, Housing of the Working Classes Act 1885). That concept continued through into subsequent housing/landlord and tenant statutes, culminating in s.8, Landlord and Tenant Act 1985.

The great weakness of those provisions was that they tied the repairing obligation to rent-limits and, over time, inflation has stripped the provisions of any effect. The present rent limits are set out below.

Date of making of contract

On or after 31st July 1923 and before 6th July 1957.

Rent limit

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 limits have caused this provision to fall into disuse and the law to fall into disrepute. In addition to various academic writings on the point, Parliament has been called upon to remedy this matter by both the Law Commission and the Court of Appeal.

(a) In 1996, the Law Commission recommended abolishing the rent caps in s.8, 1985 Act, as part of an overhaul of the law on landlord/tenant repairing obligations (*Landlord and Tenant: Responsibility for State and Condition of Property*, Law Com paper 238).

(b) The Court of Appeal has given its approval to the Law Commission report, remarking 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).

There are other statutory provisions which impinge on housing standards, but, for various reasons, they are all insufficient for ensuring that properties are fit for human habitation:

(a) The primary repairing obligation imposed on landlords is s.11, Landlord and Tenant Act 1985. This requires the structure and exterior of the property to be maintained, as well as any equipment for *e.g.* supply of heating or hot water. The difficulty with this is that it does not assist where a property is uninhabitable due to a design defect, so long as the structure is sound.

(b) The provisions of Part 1, Housing Act 2004 allow local authorities to serve notices on landlords which, if appropriate, can require remedial works to be carried out. This remedy is insufficient, however, since it is dependent on a properly resourced enforcement regime in each local authority area and, in any event, cannot be used where the local authority is itself the landlord.

(c) The possibility exists of a tenant bringing a private prosecution for a statutory nuisance under the Environmental Protection Act 1990. The unreality of leaving a tenant to prosecute his landlord is obvious.

Clause 1

This repeals the current s.8 and replaces it with an updated formulation adapted from cl.5 of the Draft Bill prepared by the Law Commission in 1996. The rent limits are abolished, thus removing the problem that has undermined s.8, Landlord and Tenant Act 1985. This change necessitates a small consequential amendment to s.9, which is done by cl.1(3). The new s.8(7) was not found in the Draft Bill prepared by the Law Commission but is adapted from s.11(1A), Landlord and Tenant Act 1985. The effect is to require landlords to maintain not just the flat but any other part of the building over which they have an interest.

The position of landlords is protected. Subsection (4) 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. Subsection 4(d) provides that a landlord cannot be required to carry out works which would put him in breach of any other legal obligation (*e.g.* works contrary to building regulations) and subsection 4(e) ensures that a landlord cannot be liable under this provision where the works would necessitate consent being obtained from a superior landlord and that superior landlord has refused to give such consent.

Subsection (5) again prevents a tenant relying on his own damage as well as preventing a tenant from circumventing any agreement reached under s.12, Landlord and Tenant Act 1985 (power to "contract out" of certain repairing obligations).

Section 10, Landlord and Tenant Act 1985, lists the matters which will determine whether a property is or is not fit for human habitation. The amendment adds "Category 1" hazards (under the Housing Act 2004) to the list of factors and, in substance, ensures that the list in s.10 remains up-to-date. For example, carbon monoxide poisoning is capable of being a category 1 hazard, but is not presently within the scope of s.10.

Clause 2

The Building Act 1984 provides for that a person who suffers death or injury as a result of a breach of the Building Regulations to be able to sue for damages (s.38). The nature of the claim, and any potential defences, is to be set out in regulations made by the Secretary of State. No such regulations have ever been made so that, as the law stands, there is no right to sue for damage caused by poor quality building works; anyone suffering loss or injury has to come within other forms of action (*e.g.* common law negligence). Clause 2 places the Secretary of State under a duty to make regulations allowing for residential owners and occupiers to sue for damages where they have been injured or killed as a result of works which do not comply with the Building Regulations. The Secretary of State is given 12 months to comply with this duty so as to permit a proper consultation on draft regulations.

Clause 3

This provides for the short title, coming into force and territorial extent. It makes clear that the extended repairing obligations in this Act will only arise for tenancies granted once the Act has come into force.