

HOMES (FITNESS FOR HUMAN HABITATION) ACT 2018

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Homes (Fitness for Human Habitation) Act 2018 (c. 34) which received Royal Assent on 20 December 2018.

- These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government with the consent of The Honourable Karen Buck MP, the member in charge of the Act, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The purpose of the Act 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 Act is made up of 2 sections 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 the 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 Act 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 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 Act makes amendments to the Landlord and Tenant Act 1985. Those amendments apply only to England.

Territorial extent and application

- 6 The Act extends to England and Wales; the new sections 9A-9C of the Landlord and Tenant Act 1985 inserted by the Act will apply to England only. The remaining provisions of the Act apply to England. The 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.

Commentary on provisions of Act

Section 1: Fitness for human habitation

- 8 Section 1(1) provides that the Landlord and Tenant Act 1985 (“LTA 1985”) is amended as follows.
- 9 Section 1(2) amends section 8 of the LTA 1985 to apply only to Wales.
- 10 Section 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 of property to which section 9A applies, there is an assumed agreement by the lessee allowing the lessor (or a person authorised by the lessor in writing) to 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 Act 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 Section 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 Section 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 Section 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 Section 2(2) provides that the Act comes into force three months after it has been passed.

Annex A - Territorial extent and application in the United Kingdom

34 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.

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?
Section 1: amendment to Section 8 of LTA 1985	No	Yes	No No	No No
Section 1: Sections 9A to 9C of LTA 1985	Yes Yes	No No	No No	No No
Section 2: Extent, commencement and short title	Yes	Yes	No	No

¹ The existing section 8 will be amended and will only apply in Wales when the new sections 9A – 9C, which apply only to England, come into force.

Annex B – Hansard References

35 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
1st reading: House of Commons	19 July 2017	Vol. 627 Col. 873
2nd reading: House of Commons	19 January 2018	Vol. 634 Col. 1169
Committee Debate: House of Commons	20 June 2018	Col. 1 (2)
Report stage: House of Commons	26 October 2018	Vol. 648 Col. 536
3rd reading: House of Commons	26 October 2018	Vol. 648 Col. 536
<i>House of Lords</i>		
1st reading: House of Lords	29 October 2018	Vol. 793
2nd reading: House of Lords	23 November 2018	Vol. 794 Col. 450
Order of Commitment discharged: House of Lords	12 December 2018	Vol. 794
3rd reading: House of Lords	19 December 2018	Vol. 794

Bill	Date	Weblink
Bill 10 2017-19 (as introduced)	11 January 2018	https://services.parliament.uk/Bills/2017-19/homesfitnessforhumanhabitation/documents.html
Bill 234 2017-19 (as amended in Committee)	20 June 2018	
HL Bill 139 (as introduced)	29 October 2018	

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