



BRIEFING PAPER

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Homes (Fitness for Human Habitation) Bill [Bill 15 of 2015-16]

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Summary

The private rented sector now houses more households in England than the social rented sector but has some of the poorest property standards. The [2013/14 English Housing Survey](#) found that the private rented sector (PRS) had the highest proportion of non-decent homes (30%) in 2013. Dwellings in the PRS were identified as more than twice as likely to fail the decent home standard due to poor thermal comfort and to have a higher rate of disrepair.

There are statutory obligations on most private landlords to keep in repair the structure and exterior of their properties, and to repair installations for the supply of water, heating and sanitation. However, provisions requiring landlords to ensure that their properties are fit for human habitation have ceased to have effect as a result of annual rent limits (£52 or less, or £80 or less in London).

Karen Buck secured ninth place in the Private Members' Bill Ballot on 4 June 2015. She subsequently presented the [Homes \(Fitness for Human Habitation\) Bill](#) on 24 June. The purpose of the Bill is "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; and for connected purposes."

The Second Reading debate for the Bill is scheduled to take place on 16 October 2015.

This briefing sets out the law in relation to landlords' obligations to maintain properties at a standard fit for human habitation. It looks at the current rules set out in the *Landlord and Tenant Act 1985*, as well as how the Bill seeks to amend these. The briefing also examines additional powers in place for local authorities to enforce property standards.

As housing is a devolved matter, this briefing refers to England only, unless otherwise specified.

1. Background

1.1 Property standards in the private rented sector

The Chartered Institute of Housing's (CIH) 2014 UK Housing Review calculated that 33% of private rented housing in England would fail the Government's decent homes standard for social housing, compared to 15% of social rented housing.¹

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Poor standards of maintenance and repair of some properties in the private rented sector are often cited as a downside of this tenure. A 2013 report on the private rented sector (PRS) by the Communities and Local Government (CLG) Select Committee said:

Although we received some evidence suggesting that standards in the private rented sector had risen in recent years, we heard concerns from a number of people about the physical standards of property in some parts of the sector, and the way in which some landlords carried out their management responsibilities.²

The Residential Landlords Association's (RLA) evidence to the Committee's inquiry into the PRS agreed that substandard accommodation was unacceptable, but highlighted an 85% satisfaction rate with landlords amongst private tenants compared to 81% amongst social tenants.³

In its response to recommendations in the CLG Committee report, the Government announced it would consult on measures to improve standards, including a review of the Housing Health and Safety Rating System (HHSRS - see section 1.3), and the extension of Rent Repayment Orders to apply to landlords who rent out properties containing serious hazards.⁴

The Department for Communities and Local Government (DCLG) published its response to the consultation in March 2015. The response highlighted recent Government publications advising tenants on identifying health and safety hazards, as well as higher magistrates' fines brought in by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, which could be applied to landlords found to be in breach of their statutory obligations (including repairing obligations).

While the DCLG response noted the importance of improving standards in the private rented sector, it also cited the importance of not burdening the sector with regulation. The Government decided against making changes to the HHSRS, the *Landlord and Tenant Act 1985* or to the scope of Rent Repayment Orders.⁵

¹ CIH, ['Millions of private renters putting up with substandard homes'](#), 14 April 2014

² CLG Committee, [The Private Rented Sector](#), 8 July 2013, HC 50 2013-14, para 26

³ CLG Committee, [The Private Rented Sector](#), 8 July 2013, HC 50-II 2013-14, Ev 152

⁴ DCLG, [Government Response to the Communities and Local Government Select Committee Report](#), Cm 8370, October 2013

⁵ DCLG, [Review of Property Conditions in the Private Rented Sector: Government Response](#), March 2015

Shelter's 2014 report, [Safe and decent homes](#), set out its recommendations for improving property standards in the private rented sector:

- local housing authorities should offer improved access to mediation services between landlords and tenants;
- Government should enable renters to take legal action to ensure that homes are fit for habitation (through amendments to the *Landlord and Tenant Act 1985*);
- legal aid should be reinstated for disrepair cases; and
- Government should consider whether some housing cases could be transferred to a specialist private rented sector tribunal.⁶

1.2 Fitness for human habitation

The term "fitness for human habitation" is defined in the *Landlord and Tenant Act 1985*. According to the 1985 Act, a property is to be regarded as unfit for human habitation if it is "so far defective in one or more of those matters (*set out below*) that it is not reasonably suitable for occupation in that condition."

The relevant matters are:

Repair

Stability

Freedom from damp

Internal arrangement

Natural lighting

Ventilation

Water supply

Drainage and sanitary conveniences

Facilities for preparation and cooking of food and for the disposal of waste water.⁷

The 1985 Act sets out implied terms in a letting agreement, regardless of any stipulation to the contrary written into the contract (tenancy agreement), that require landlords to let properties which are fit for human habitation at commencement and throughout a tenancy's existence. However, over time these implied terms have ceased to have effect as they only apply to homes where the annual rent is £52 or less (or £80 in London).⁸

Karen Buck's Bill would apply the implied terms set out above to all tenancies, and would also include an additional relevant matter, the presence of category 1 hazards. Category 1 hazards, identified under the Housing Health and Safety Rating System (see section 1.3) are issues

'Fitness for human habitation' - Where a dwelling is deemed "reasonably suitable for occupation" in regard to a number of maintenance matters

⁶ Shelter, [Safe and Decent Homes: Solutions for a better private rented sector](#), 9 December 2014, pp40-41

⁷ Section 10, [Landlord and Tenant Act 1985](#)

⁸ Section 8, [Landlord and Tenant Act 1985](#)

within a property which represent a severe threat to the health and safety of a resident.

The inclusion of category 1 hazards in the implied terms would see a strengthening of requirements in comparison to the old Housing Fitness Standard (see section 1.3).

There are also some longstanding common law provisions in place regarding fitness for human habitation in furnished or newly constructed rental properties. These are summarised on the Residential Landlords Association (RLA) website:

There are two cases in which, at common law, a landlord undertakes an obligation about the fitness for human habitation of residential property which he lets:

(a) There is an implied condition that furnished premises are let in a state reasonably fit for human habitation. This does not impose a duty on the landlord to keep them in that condition, and does not affect unfurnished lettings. If it is unfit at the outset of the tenancy the tenant can repudiate the tenancy and walk away. It will include things such as drainage defects and the presence of vermin.

(b) When a landlord agrees to let a house which is in the course of erection, there is an implied undertaking that, at the date of completion, the house should be in a fit state for human habitation. This does not apply where the tenancy is entered into after the house is finished.⁹

Apart from these common law exceptions, there is no general obligation implied in a tenancy agreement for a landlord to maintain their property at a level fit for human habitation, which would allow tenants a civil remedy if a property was deemed to be unfit.

“There is no general obligation implied in a tenancy agreement for a landlord to maintain their property at a level fit for human habitation”

1.3 The Housing Health and Safety Rating System (HHSRS)

Although there is no general obligation on landlords to ensure properties are ‘fit for human habitation’ (see section 1.2) local authorities have powers to compel landlords to tackle serious hazards.

The HHSRS, introduced by the *Housing Act 2004* and in force since 2006, allows local authorities to inspect and identify hazards. Where they identify the most serious (‘category 1’) hazards, they are required to take action, however they can also choose to take action in regard to less serious (‘category 2’) hazards. The HHSRS involves a risk assessment approach to property standards; it is not a pass or fail test of housing fitness.

More information can be found in the Commons Library briefing paper, [Housing Health and Safety Rating System \(HHSRS\)](#).¹⁰

⁹ RLA, [Landlord guides - repairs](#) (last accessed 28 September 2015)

¹⁰ [Housing Health and Safety Rating System \(HHSRS\)](#), Commons Library briefing paper 01917, 27 March 2015

The 'old' Housing Fitness Standard

Prior to the introduction of the HHSRS housing fitness was governed by section 604 of the *1985 Housing Act*. Section 604 embodied a pass or fail test of housing fitness based on similar considerations to those set out in section 10 of the *Landlord and Tenant Act 1985*. Where a local authority identified a property as unfit it had a duty to take action; it was left to the authority to decide upon the most appropriate course of action.

A number of problems were identified with the Housing Fitness Standard. Some of the most serious health and safety hazards, including fire hazards and fall hazards, were not covered by the standard. In addition, it was seen by some as a blunt instrument that could only pass or fail a house, and therefore sometimes did not distinguish between defective dwellings and genuine health and safety hazards.

The *Homes (Fitness for Human Habitation) Bill* would reintroduce a similar test to the Housing Fitness Standard, but the result would be a civil remedy for the tenant, rather than an obligation on the local authority to act. In addition, as mentioned above, the Bill would introduce another consideration, presence of category 1 hazards, which would cover fire, falls and other matters not set out in the *1985 Landlord and Tenant Act*.

Were the Bill to be passed, the obligation on the local authority to act through the HHSRS would remain. The rationale for the Bill was set out in the *West End Extra*:

Ms Buck said council environmental health officers, who she described as “unsung heroes”, did “fantastic” work, but added: “The truth is, the resources going into environmental health are very limited and the quality of enforcement varies hugely across the country. What I wanted to do was give tenants an ability to take action against their landlords without having to rely on local authorities.”¹¹

1.4 Tenants' right of repair

Section 11 of the *Landlord and Tenant Act 1985* sets out an implied covenant for repairs in tenancies of less than seven years. Although more limited in scope than the implied covenant in the Bill, which would extend the scope of the more general fitness for human habitation test, under section 11 landlords are required to carry out repairs to:

- The structure and exterior of the dwelling
- Basins, sinks, baths and other sanitary installations in the dwelling, and
- Heating and hot water installations.¹²

“Landlords are legally required to carry out repairs to the structure and exterior... sanitary installations... and heating and hot water installations”

¹¹ *West End Extra*, ‘[MP Buck’s Bill could give renters new powers to force landlords to make repairs](#)’, 26 June 2015

¹² Communities and Local Government, [Repairs: a guide for landlords and tenants](#), 2011, p3

The repair must be reported for a landlord's duty under section 11 to arise. DCLG provides the following advice on getting a landlord to carry out repairs:

The tenancy agreement will normally set out the rights and liabilities of the parties and may cover the procedure for getting repairs done. If the landlord fails to get repairs done after being told about them:

- The tenant can sue the landlord in court. The court can award damages, and order repairs to be done. Get advice before taking court action
- Where the landlord has been told about the need for repairs, and failed to do them, a tenant can contact their local council who have new powers, under Part 1 of the *Housing Act 2004*, to carry out an assessment of the property using the new Housing, Health and Safety Rating System (HHSRS).¹³

Retaliatory eviction

It has been argued by organisations such as Shelter that tenants seeking repairs could be at risk of retaliatory eviction. This is where a private landlord serves a section 21 notice on an assured shorthold tenant (seeking to terminate the tenancy) in response to the tenant's request for repairs, or where they have sought assistance from the local authority's environmental health department.

Retaliatory eviction is said to be a by-product of the fact that private landlords can evict assured shorthold tenants without having to establish any 'fault' on the part of the tenant.

The extent of retaliatory eviction is disputed but following an unsuccessful attempt by Sarah Teather to protect tenants against it through a Private Members' Bill, the *Tenancies (Reform) Bill*, similar measures were subsequently added to the *Deregulation Act 2015*. These measures came into force on 1 October 2015.

Measures outlawing retaliatory eviction came into force on 1 October 2015

Section 33 of the *Deregulation Act 2015* prevents landlords from issuing a section 21 eviction notice within 6 months of having been issued an improvement notice in relation to category 1 or category 2 hazards.

More information can be found in the Commons Library briefing, [Retaliatory eviction in the private sector](#).

1.5 Law Commission report (1996)

A 1996 report by the Law Commission, [Landlord and tenant: responsibility for state and condition of the property](#), examined the rent limits set out in the *Landlord and Tenant Act 1985*.

The report criticised the fact that the right of civil remedy for tenants against their landlords in cases of unfitness had been allowed to "wither on the vine" as the rent limits had remained unchanged for 40 years.¹⁴

¹³ Ibid., p8

¹⁴ Law Commission, [Landlord and tenant: responsibility for state and condition of the property](#), 19 March 1996, Law Com 238, para 8.11

The Law Commission considered simply raising the rent limits but thought that a similar fate could befall any new rent levels if no automatic mechanism for uprating was included in the amended legislation. As a result, the Commission concluded instead, that removing the rent limits would be the preferred way to give tenants a civil remedy.

“The report concluded instead, that removing the rent limits would be the preferred way to give tenants a civil remedy”

The report also provided a draft amendment to the 1985 Act, which included a number of exceptions to the expanded civil remedy. The implied contract terms would not apply for:

- Tenancies of over seven years.
- Repairs caused by the tenant taking improper care of the property.
- Rebuilding required following fire, tempest, flood or other inevitable accident.
- Maintaining any tenants’ fixtures.
- Tenancies for agricultural holdings and farm business tenancies.¹⁵

The Law Commission report was quoted in a 2014 Westminster Hall debate on housing in London:

Teresa Pearce: Private properties should be assessed by local authorities to determine whether they are fit for human habitation before they are rented. The Law Commission has called for every tenancy to include the implied term that the dwelling should be fit for human habitation. I support that call. We must grant greater powers to local authorities to root out and strike off rogue landlords. There are many good and reputable professional landlords, but the rogue element shames the whole sector.¹⁶

Karen Buck also attended and spoke during the Westminster Hall debate.

¹⁵ *Ibid.*, para 8.36-8.43

¹⁶ [HC Deb 5 February 2015 c75WH](#)

2. The Bill

The *Homes (Fitness for Human Habitation) Bill* proposes to amend the *Landlord and Tenant Act 1985* by extending its obligations to cover almost all landlords and strengthening the fitness for habitation test. Because of rent limits in the Act that have remained unchanged since the 1950s, it currently has almost no effect (see section 1.2).

Karen Buck's rationale for presenting the Bill was set out in the *West End Extra*:

Ms Buck said: "My Bill is a means of strengthening the rights of tenants to enforce decent standards in relation to things like damp. Now we know there are about a million properties that are affected by damp, just as one example, so it's a very big problem."

She said the issue of sub-standard housing was "hugely relevant" in London, adding: "In North Westminster, 70 per cent of all households are renters, so we have more or less the highest proportion of people renting their homes in the whole country. Now, obviously, many of those are a very good standard and I'm not arguing that everybody who is renting is -living in sub-standard property, but we know there is a very serious problem at the sub-standard end of the sector."¹⁷

The Bill is not the first time that calls for changes to the scope of the 1985 Act have been made. The Law Commission made the case for change in a 1996 report (see section 1.5), and more recently Shelter made a similar call in its 2014 report, *Safe and decent homes*.¹⁸

2.1 Amending the *Landlord and Tenant Act 1985* (clause 1)

Clause 1 would delete the existing section 8 from the 1985 Act and substitutes it with new text. This would remove the rent limits as well as a measure giving a landlord the right to enter a property to inspect it on 24 hours' notice. The Bill would insert a new section 8 entitled *Fitness for human habitation*, based on the Law Commission's 1996 draft bill.

Fitness for human habitation

The new section 8 would include the following measures:

Subsection 1 of the new section 8 text would apply the section to all tenancies under 7 years in duration, barring some exceptions including agricultural and farm business tenancies.

The existing section 8 applies to tenancies under 3 years' duration. This change would bring the time limit into line with tenancies under which landlords have statutory repairing obligations under section 11 of the *1985 Landlord and Tenant Act*.

¹⁷ *West End Extra*, 'MP Buck's Bill could give renters new powers to force landlords to make repairs', 26 June 2015

¹⁸ Shelter, *Safe and Decent Homes*, 9 December 2014, p41

Subsection 2 would apply section 8 to all properties let for human habitation, regardless of the type of lease they are let under.

Subsection 3 broadly maintains the existing implied requirement to keep a property fit for human habitation at the commencement of the tenancy and throughout.

As per the Law Commission's draft bill, the implied undertaking and implied condition are changed to an implied covenant. This has little practical effect, but provides consistency with the landlord's implied repairing obligations under section 11.

Subsection 4 would excuse a landlord of their repairing obligations where the need for the repair arises through the fault of the tenant, or through natural disaster. It would also relieve the landlord of any liability to repair property or possessions belonging to the tenant.

This would bring landlords' exceptions to carry out repairs in line with section 11.

Paragraphs (d) and (e) of subsection 4 would also introduce new, 'impossibility' clauses. These would relieve the landlord of their repairing liabilities should carrying out the repairs put the landlord in breach of other legal obligations, or should permission to carry out repairs be refused by a superior landlord.

Subsection 5 would excuse a landlord from repairing hazards caused by a tenant's breach of covenant.

It would also allow landlords to include an agreement in the tenancy to excuse themselves of certain repairing obligations if these are agreed as reasonable by the county court.

Subsection 6 would void any clause in the tenancy attempting to exclude or limit the landlord's repairing liability under this section, as well as any clause in the tenancy that would charge or impose any penalty on the tenant as a result of them enforcing the implied covenant (if these are not permitted by the county court).

Category 1 hazards

Subsection 1(4) of the Bill would amend the definition of 'fitness for human habitation' set out in section 10 of the 1985 Act, by including an additional measure, i.e. the presence of category 1 hazards under the HHSRS.

This would cover things like carbon monoxide or fall hazards that are not included in the current definition of fitness for human habitation.

2.2 Commencement (clause 2)

Clause 2 would bring the Bill into force in England three months after it received Royal Assent, and would therefore apply to all leases made on or after that date.

The Bill extends to Wales; however, it would be up to Welsh Ministers to decide if, and when, the Bill would come into force in Wales.

Wales

The Welsh Government is currently introducing measures to improve property standards in the private rented sector in a similar way to the *Housing (Fitness for Human Habitation) Bill*. Therefore, should the Bill become law, it is unlikely Welsh Ministers would implement it in Wales.

Clause 91 of the [Renting Homes \(Wales\) Bill](#) would introduce an obligation on all landlords of secure, periodic or fixed term (for less than seven years) tenancies to maintain a property at a level fit for human habitation. The definition of fitness for human habitation is to be determined by subsequent regulations should the Bill pass, although clause 94 suggests these will include references to category 1 and 2 hazards under the HHSRS.

In addition, part 1 of the [Housing \(Wales\) Act 2014](#), when it comes into force, will require all private landlords to be licensed in order to let property. Section 40 gives the Welsh Government the power to draw up a code of guidance, which must be adhered to in order to maintain a licence.

A draft code of guidance was published for consultation in March 2015. The statutory requirements with regards to property conditions included:

- To maintain properties so as to be safe and without risk to health.
- To rectify category 1 hazards, as well as high value category 2 hazards wherever possible.
- To keep the structure and exterior of the property in repair.
- To keep electrical fixtures, wiring, space and water heating installations, drainage, and gas, electric and water installations in proper working order.
- To maintain paths, driveways, car parking areas so they are safe to use.
- To repair and maintain gutters, downpipes, drains and gullies.
- To ensure contractors have appropriate insurance and qualifications.
- To install carbon monoxide alarms when a new solid fuel burning appliance is installed.¹⁹

Should these requirements be breached, the landlord could lose their license. The draft guidance also included additional, best practice guidance on property conditions, although this would carry no statutory penalty if not adhered to.

The consultation closed on 22 May 2015; the final, statutory code of guidance is currently awaiting publication.

¹⁹ Welsh Government, [Consultation on a Private Rented Sector Code of Practice for Landlords and Agents](#), 22 May 2015, p11-12

3. Reaction

Prior to Second Reading, there has so far been limited comment on the *Homes (Fitness for Human Habitation) Bill*.

3.1 Generation Rent

The presentation of the Bill was welcomed by Generation Rent, an organisation which campaigns on behalf of private renters:

We think this is a huge opportunity to give tenants the protection they need from unscrupulous landlords and agents - and finally bring renting into the 21st century. Karen (Buck) is a longtime campaigner on housing so we'll work hard to support her as she takes the Bill through Parliament.²⁰

3.2 Shelter

Shelter noted that it tried to get similar amendments to the 1985 Act through as part of the unsuccessful 2014-15 Private Members Bill, the *Tenancies (Reform) Bill*.

On the Shelter blog, Caroline Aliwell reiterated the organisation's support for the amendment:

This Private Member's Bill provides a great opportunity for MPs to change the law. There is absolutely no reason in the 21st century why any accommodation, whatever the level of the rent, should be unfit for human habitation.²¹

²⁰ Generation Rent, '[Bills announced to reform private renting](#)', 24 June 2015

²¹ Shelter, '[A not-so 21st century approach: why homes don't have to be suitable for humans to live in them](#)', 9 October 2015

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