

Homes (Fitness for Human Habitation) Act 2018

(England only)

January 2019

Landlords in England¹ will soon be subject to new legislation which aims to boost the standard of rented homes for the health, safety and welfare of tenants. It means that tenants have a new route to request improvements to sub-standard rented houses and are less reliant on local authorities, whose resource for this type of work is variable.

The Homes (Fitness for Human Habitation) Act received Royal Assent in December 2018 and comes into effect on 20 March 2019.

The Act revives a clause which already exists in the Landlord and Tenant Act 1985, by inserting an implied covenant requiring all rented homes to be 'fit for human habitation' at the start of the tenancy and to remain so throughout. It also applies to communal areas.

The clause had become defunct as it only applied to properties let on what have become outdated rent levels (i.e. less than £80/year in London and £52/year elsewhere).

What does fit for human habitation mean?

The Act uses the 29 hazards² listed in the Housing Health and Safety Rating System (HHSRS) to determine whether a house is "fit for human habitation". The rating system was created to enable local authorities to enforce living standards across the private rented sector³. The hazards include:

- condensation, damp and mould growth
- excessive cold or heat
- security
- fire, gas and electrical safety
- natural lighting
- water supply
- sanitation
- facilities for preparing and cooking food
- hazards posed by the internal arrangement
- state of repair

A house will be ruled to be unfit "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."

Where a landlord fails to ensure the standards are met, the tenant will have the right to take legal action in the courts for breach of contract and force the landlord to take remedial action to resolve the issues. Tenants could also take action against letting agents if a house they are providing 'full management services for' does not meet the required standards. The Act does not require a landlord to do any works for which a tenant is liable under a lease.

¹ Although the Act technically extends to England and Wales, it will only apply to tenancies in England. This is as the Welsh Government has already included similar provisions in relation to housing fitness in the Renting Homes (Wales) Act 2016, which are currently under consultation and not yet in force.

² See the annex for the list of the 29 prescribed hazards.

³ The Government has also said it will review the HHSRS in 2019 to further strengthen protection for tenants against unfit or unsafe living conditions.



What types of tenancy are covered?

The new rules apply to any dwelling let for human habitation on or after 20 March 2019 for a term of less than 7 years. This includes renewals of a fixed-term lease where the renewal takes place on or after 20 March 2019.

Periodic or secure tenancies in existence on 20 March 2019 will be covered by the provisions of the Act from 20 March 2020 onwards.

In terms of dwellings on farms, the new provisions apply to the following tenancies if they include a dwelling:

- Farm Business Tenancies of less than 7 years let after 20 March 2019 for both new agreements and renewals. The provisions will not apply to existing FBTs that continue after their fixed term expires.
- Agricultural Holdings Act tenancies that are surrendered and re-granted after 20 March 2019. From 20 March 2020, the provisions will also apply to AHA tenancies that run from year-to-year.
- Dwellings let after 20 March 2019 to agricultural workers as part of their package, whether rent is paid or not. From 20 March 2020, the provisions will also apply to existing periodic tenancies⁴.
- Other mixed use premises.

What types of tenancy are not covered?

The new provisions do not appear to cover:

- Existing fixed-term residential tenancies. When they expire, these are either terminated or converted, by statute, to a new periodic tenancy, and this new tenancy will be covered by the Act from 20 March 2020 onwards.
- Existing FBTs. As stated above, once the initial fixed term ends, these tenancies 'continue', rather than becoming statutory periodic tenancies, and so are not covered.
- New fixed term tenancies of 7 years or more (except for secure tenancies and those granted by a registered social housing provider).

Implications for landlords?

The Act makes existing standards, under the HHSRS, more widely applicable to all landlords and rented properties. Previously, there were issues over the application of the HHSRS to local authority and some social landlords.

Most landlords should have nothing to fear from the legislation as a reasonably maintained property should not be deemed unfit and they will not be liable where the 'unfitness' has been caused by the action of tenants. However, although the standards have not changed, it is another piece of legislation that landlords must demonstrate they comply with.

There will inevitably be some anomalies in the realm of let agricultural holdings.

Consider, for example, the letting of a farm on an FBT of over 7 years under which the Head Tenant lets a cottage to a farm worker, or grants (with Landlord's consent) an AST of the cottage for a term of less than 7 years.

It appears that, while the head tenancy is not subject to The Act, the subletting is, and that it is the *immediate* landlord (ie the farm tenant) who is responsible for compliance. If he holds under a full repairing lease, he will be entirely responsible. If (much more usually) there is a split repairing liability, then the Head Landlord may nevertheless have some or all of the responsibility for making good the unfit element under the terms of the head lease.

If, however, the unfit element is not a product of disrepair but something like, for instance, an overly steep set of steps, the Head Landlord may not be liable because there is no disrepair as such! In such a case, the Head Tenant might have the statutory

⁴ This will include Housing Act 1988, Rent Act 1977 and Rent (Agriculture) Act 1976 tenancies.



responsibility, but he might be contractually barred from doing anything about it as he may be prohibited in his FBT from making alterations to the Holding without prior written Landlord's consent!

Dialogue and good sense will be required in such situations.

The Government has undertaken to publish some guidance for tenants and landlords before the provisions come into effect, although this is still awaited.

If you would like to know more about the Act and its implications for your rental properties contact [Rob Malden](#).

Annex

The Housing Health and Safety Rating System (HHSRS)

The rating system is used to assess if there are risks to an occupant's health and safety due to the housing. Risks under each of the 29 categories can be assessed as either a category 1 hazard, which poses a serious threat to people living in or visiting the home, or a category 2 hazard.

1. Damp and mould growth
2. Excess cold
3. Excess heat
4. Asbestos and Manufactured Mineral Fibres (MMF)
5. Presence of biocides
6. Carbon monoxide and fuel combustion products
7. Presence of lead
8. Presence of radiation
9. Uncombusted fuel gas
10. Volatile organic compounds
11. Crowding and space
12. Entry by intruders
13. Inadequate natural lighting
14. Excessive exposure to noise
15. Domestic hygiene, pests and refuse
16. Food safety
17. Sanitation and drainage problems
18. Water supply
19. Falls associated with baths
20. Falls on level surfaces
21. Falls associated with stairs and ramps
22. Falls between levels
23. Electrical hazards
24. Uncontrolled fire
25. Flames, hot surfaces and materials
26. Collision and entrapment
27. Explosions
28. Poor ergonomics
29. Structural collapse and falling elements

Private, housing association or council tenants can complain to their council's environmental health team and ask them to carry out an assessment of their home. The council will decide what action to take against the landlord if repairs or essential works are needed: serving a hazard awareness notice; an improvement notice; an emergency remedial action notice; a prohibition order or a demolition order, as appropriate. A criticism of the approach under HHSRS is that some councils are active in following up complaints from tenants, while others are not, and so there was a postcode lottery for tenants.