

FACT SHEET



MARCH 2019

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MORE INFO

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Housing Act 2004
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Housing Health and Safety Rating System Operating Guidance
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Homes (Fitness For Human Habitation) Act 2018

CONTEXT

The Homes (Fitness for Human Habitation) Act 2018, known as the Homes Act, replaces Section 8 of the Landlord and Tenant Act 1985 (LTA 1985) in England, with the purpose of improving living standards in the private and social rented sectors.

PREVIOUS RULES

Under the Housing Act 2004, landlords and agents were not required to ensure their rental properties were free of potentially harmful hazards. Consequently, an offence was only committed where the landlord or agent had failed to comply with an Improvement Notice issued by the local authority.

The tenant could not take their landlord or agent directly to Court and had to rely on the action of the local authority. Consequently, landlords and agents could legally rent out defective properties, and unless this was addressed by the local authority, they had no requirement to rectify any hazards.

THE CHANGES

Under the Homes Act 2018, landlords and letting agents acting on their behalf must ensure properties, including common parts where they have an estate or interest, are fit for human habitation at the beginning and throughout the duration of a tenancy.

Tenants will now be able to take direct legal action if their agent or landlord does not comply with the Act.

NB: Agents should be aware that property checks will no longer be needed by local authority enforcement officers before being taken to Court by a tenant.

ELIGIBILITY

The new rules apply to all domestic tenancies granted or renewed on or after 20 March 2019 and effect tenancies in England only.

NB: The Act also applies to leases used wholly or mainly for human habitation not exceeding a period of seven years (or longer tenancies that can be cancelled before seven years).

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TENANCIES

The Homes Act amends section 9 of the LTA 1985 to introduce new sections 9A, 9B and 9C affecting tenancies in England.

NB: Section 8 of the LTA 1985 now only applies to tenancies in Wales.

The new section 9C applies to Agricultural Tenancies, substituting 'house' with 'dwelling'. This ensures other dwellings such as flats and maisonettes under these tenancies are also included within the scope of the Act.

The Act does not cover those with 'Licences to Occupy'. This includes, but is not limited to lodgers, those living in temporary accommodation and some Property Guardians.

TRANSITIONAL PROVISIONS

Existing Fixed-Term Tenancies will fall under the requirements of the Act when they are renewed or become Periodic.

NB: Existing tenancies that have changed significantly, such as having a Change of Sharer (including through use of an addendum) on or after 20 March 2019, will also have to comply with the new rules.

Periodic Tenancies that commenced before 20 March 2019, will come under the scope of the legislation 12 months after commencement on 20 March 2020.

FITNESS FOR HUMAN HABITATION

Fitness for human habitation is defined in the LTA 1985. The Homes Act amends this definition to include other dwellings alongside houses. A property unfit for human habitation is 'so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition.'

'Matters' refers to: Repair; Stability; Freedom from damp; Internal arrangement; Natural lighting; Facilities for preparation and cooking of food; Water supply; Drainage and sanitary conveniences; Ventilation; and facilities for the disposal of waste water.

NB: The Homes Act adds to this list 'any prescribed hazard.'

PRESCRIBED HAZARDS

The Housing Act 2004 defines a 'hazard' as 'any risk of harm to the health or safety of an actual occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO'. The hazards used in the Homes Act, are the 29 as listed in the Housing Health and Safety Rating System (HHSRS).

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The 29 HHSRS hazards are: Damp and mould growth; Excess cold; Excess heat; Asbestos and Manufactured Mineral Fibres; Biocides; Carbon monoxide and fuel combustion products; Lead; Radiation; Uncombusted fuel gas; Volatile organic compounds; Crowding and space; Entry by intruders; Lighting; Noise; Domestic hygiene, pests and refuse; Food safety; Sanitation and drainage problems; Water supply; Falls associated with baths; Falls on level surfaces; Falls associated with stairs and ramps; Falls between levels; Electrical hazards; Fire; Flames, hot surfaces and materials; Collision and entrapment; Explosions; Ergonomics; and Structural collapse and falling elements.

WHAT YOU NEED TO DO

Letting agents and landlords should be aware that through an implied covenant, the Act places responsibility on them to ensure that the property is fit for human habitation before the tenancy commences and for its duration.

NB: The implied covenant cannot be excluded from the tenancy agreement by contract, or to place any financial requirement on the tenant because of it.

Before the tenancy

It is recommended that agents ensure that the hazards identified in the HHSRS are integrated into all inventory check-in reports.

NB: Any hazards that are identified must be remedied before the tenancy begins.

The Homes Act removes the requirement for fitness for human habitation to apply for 'potential occupants', as the rules apply to the start and duration of a tenancy only. This allows time to remedy any identified hazards before the commencement of a tenancy.

During the tenancy

The tenant may notify their agent or landlord if they have identified a hazard, but property managers may wish to administer checks as a preventative measure.

To monitor fitness for human habitation, the landlord or someone who has written authorisation by the landlord, such as a letting agent, is allowed entry to the property and communal areas to view its condition and state of repair.

Entry to the dwelling is only permitted at reasonable times of the day and by giving the tenant at least 24 hours' notice in writing. In an emergency, the agent or landlord may be entitled to enter the property on shorter notice.

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NB: Other factors taken into consideration for reasonableness are unique factors to the tenant, such as working night shifts or caring responsibilities.

If the tenant will not allow access, agents should seek legal advice and keep a record of attempts made to contact the tenant including the date and time.

Rectifying problems

Once notified of identified hazards, the landlord or agent is responsible for remedying a hazard and will have a reasonable period of time to rectify the issues.

NB: Circumstances will decide what is a reasonable amount of time to remedy a hazard, such as the severity of the issue.

Agents and landlords should seek to rectify any hazards they are responsible for as soon as they possibly can. It is advisable to retain documentation for any repairs and maintenance work that has taken place before and during the tenancy.

NB: Tenants should be given at least 24 hours' notice for a visit within reasonable hours for the hazard to be fixed.

If the agent or landlord has been made aware of a hazard, and are not actively trying to remedy it, the tenant then has the right to take them to Court. It is then up to the Courts to decide if the agent or landlord dealt with the hazard in a reasonable time.

NB: Evidence should be provided to the tenant that the hazard has been rectified, such as a report from a tradesperson.

EXEMPTIONS

The Act clarifies exemptions where the landlord (or letting agent acting on their behalf), is not liable for the unfitness in and around the property.

Tenant-like manner

It is not the responsibility of the landlord or agent to carry out works or repairs where unfitness has arisen from the tenant not using the home in a 'tenant-like manner'.

Behaving in a tenant-like manner includes: unblocking sinks, toilets, and drains; Changing light bulbs and fuses; Keeping both the interior and exterior clean (including windows); Maintaining level boiler pressure by re-pressuring when necessary; Bleeding radiators; Changing batteries in smoke and carbon monoxide detectors; General garden maintenance, such as mowing the lawn and sweeping up leaves; Keeping windows free from condensation; and Ensuring the property is kept free from pests.

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For example: A tenant has purposely blocked air vents in a bathroom with no windows, the lack of ventilation has resulted in the formation of damp and mould. By not correctly ventilating the bathroom, the tenant has not behaved in a tenant-like manner, therefore the landlord or agent is not liable for this hazard.

Natural disaster etc.

Landlords or agents will not be held liable for unfitness where it has arisen from a natural disaster, caused by fire, storm, flood or any other inevitable accident.

For example: Due to extreme weather conditions the ground floor of a house has become flooded, whilst this makes the home unfit for human habitation, the landlord or agent cannot be held liable for this hazard.

Tenant's belongings

Where unfitness is found in moveable property belonging to the tenant, the landlord or agent is not required to repair or maintain this item.

For example: A microwave owned by the tenant is found to have exposed metal in the interior, which is a fire hazard, but it was not supplied by the landlord and is therefore the responsibility of the tenant to maintain.

Landlord's breach of obligations

If remedying unfitness would breach an obligation to the landlord by other legislation, the landlord or agent will not have to resolve the issue.

For example: If a property is a listed building and resolving unfitness would breach the terms of listed building consent, the agent cannot be held liable.

NB: Making unauthorised changes to a listed building is a criminal offence under the Planning (Listed Buildings & Conservation Areas) Act 1990.

Third-party consent not obtained

Where consent from a third party is needed to remedy a hazard, and consent has not been obtained despite all reasonable attempt to do so, the landlord or agent will not be held liable.

For example: An agent managing a leasehold flat must ask the freeholder (or superior landlord) to fix loose tiles in the entrance to the building, but the freeholder is absent and there is no managing agent, and the hazard cannot be fixed without their permission. The agent is not liable for the hazard as they have made all possible efforts for it to be rectified.

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NB: Under the Act, landlords or agents must ensure that common parts of the building are free from hazards. Where common parts are the responsibility of a superior landlord, the landlord or agent must take all reasonable steps for the hazard to be remedied by the superior landlord, keeping a paper-trail to ensure they are not held liable for the breach.

Tenant's own breach

If a hazard has been created through a tenant's own breach of the implied covenant to keep the property fit for human habitation, the landlord or agent is not liable for the unfitness.

For example: The tenant has blocked their drainage system by flushing baby wipes. On identification, the agent is not responsible for repairing the plumbing as the hazard has been created by the tenant.

County Court exclusions

The landlord or agent is not required to remedy disrepair that as per Section 11 of the LTA 1985 (Repairing Obligations) has been exempted by an order made by the County Court.

For example: A tenant raises a hazard that has been addressed with a previous tenant. However, the County Court made an order exempting the requirement for the agent to remedy this hazard.

ENFORCEMENT

Where a landlord or letting agent fails to rectify a hazard within a reasonable amount of time, the tenant has a right to take action in the courts for a breach of contract on the grounds that the property is not fit for human habitation.

If the Court identifies that the agent or landlord has breached their obligation to keep the property fit for human habitation, the Court can order two things:

1. That the agent or landlord must make the property fit for human habitation.
2. And/or that the agent or landlord must pay compensation to the tenant.

Where a tenant seeks redress under this Act through the Courts, this does not exempt the agent or landlord from Local Authority enforcement. This includes powers to tackle poor practice from agents and landlords, including when necessary repairs are not carried out.

NB: The Court may make its decision without expert advice. An example of this being if a property has no plumbed sanitary conveniences, which would not require an expert opinion as the property is evidently unfit for habitation.