

Local Government Association briefing Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill Second Reading, House of Commons 19 January 2018



Key messages

- We support the intentions behind the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill. Councils want their residents to live in homes that are decent, safe and secure, and councils' housing teams work hard to ensure homes are fit for purpose. Recent surveys show that standards in the private rented sector are an area of particular concern for tenants.
- Council and social housing tenants have a range of existing mechanisms to raise complaints. Local authorities are keen to work with the Government to strengthen these and clarify the statutory powers of the Housing Ombudsman. The Housing Health and Safety Rating System (HHSRS) must also be reviewed and simplified, with a proper focus on safety.
- Taking court action against a landlord would be a significant cost to some tenants, and bringing a successful case under the legislation may require substantial financial support to be provided. A lack of time and resource could leave all but the most financially secure tenants unable to fully exercise their right to legal challenge.
- Local authorities are calling for stronger powers to enhance standards in the private rented sector. Councils already have powers to introduce discretionary licensing schemes for private landlords, but the Government should provide greater flexibility to extend these schemes.
- Local government faces considerable financial challenges, including a funding gap of at least £5.8 billion by 2019/20. The Government could help councils by removing some of the financial burden from interventions such as discretionary licensing, and by ensuring that councils are able to reclaim the full costs for prosecutions.
- The majority of private renters are satisfied with their accommodation, but in 2015, 28 per cent of homes in the private rented sector were non-decent.ⁱ By contrast, 14.8 per cent of local authority-owned homes were non-decent.
- To enable councils to improve the quality of their housing stock, the Government should provide greater control over long-term financial planning. This should include lifting the housing borrowing cap and removing restrictions on using Right to Buy receipts to build homes.

Briefing

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Background information

The Bill

The Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill would 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.ⁱⁱ

This is a Private Member's Bill which is being sponsored by Karen Buck MP. The purpose of the Bill is to help drive up 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 LGA supports the intentions behind the Bill. Councils want all of their residents to live in homes that are decent, safe and secure, and councils' housing teams work hard to ensure homes are fit for purpose. Recent surveys show that standards in the private rented sector are an area of particular concern for tenants. However, there are a range of existing and further non-legislative measures which councils would like to see brought forward.

The need to raise housing standards

In 2015/2016 there were 4.5 million households in the private rented sector, 20 per cent of the households in England. The private rented sector has grown significantly in the last 10 years with more young people and families renting privately than before.

The majority of private tenants (82 per cent) are satisfied with the quality of their accommodation. However, privately rented homes tend to perform less well against established measures of housing quality than owner-occupied homes or social housing. Over a quarter of privately rented homes failed to meet the decent homes standard in 2015 (28 per cent) and 17 per cent had at least one hazard rated most seriously by the HHSRS.ⁱⁱⁱ These statistics are partly explained by the type of stock in the private rented sector, which is generally older and less well insulated.^{iv} This is further illustrated by the fact that 9 per cent of private rented dwellings had some type of damp problem.^v

The proportion of non-decent homes has improved over recent years in the private rented sector, but the total number has grown to 1.35 million dwellings. In the local authority sector, 14.8 per cent of homes are non-decent, and the figure is 11.8 per cent for housing association homes.^{vi}

While councils are required to keep the standards of their homes under review, there is no general obligation for private landlords to ensure properties are fit for human habitation. The growth in the private rented sector has not been matched by resources for environmental health teams. Local housing and trading standards teams are under severe pressure, and while measures such as the introduction of civil penalties are welcome, funding is not available for proactive work that does not lead to a civil penalty being issued.

The existing mechanisms for council and social tenants

Enforcement action varies between different councils. This is due to the considerably varied nature of the private housing markets between areas.

Councils generally rely on complaints by tenants to identify problems. However, tenants can often be deterred from raising or pursuing complaints through fear that they will be evicted.

Council tenants can use the following mechanisms to raise complaints about the condition of their properties:

- requesting a repair or contacting the landlord's maintenance department
- following the landlord's complaint procedure
- contacting a "designated person" (an MP, local councillor or registered tenant panel) for support, if a complaint is unresolved
- calling on the Housing Ombudsman to investigate complaints about repairs and the condition of a property when let. It can also investigate the handling of a complaint by a landlord.

The Regulator of Social Housing (formerly the Homes and Communities Agency) has regulatory and enforcement powers for social landlords, covering health and safety. While this can drive up standards across the board, the Regulator does not normally respond to individual complaints.

The Housing Act 2004 introduced the HHSRS. This tool allows councils to assess the level of risks present in a property and requires that action is taken to address the most serious hazards (rated as Category One hazards). However, much of the information that supports councils in applying HHSRS to real life situations is out of date, and urgently needs to be updated. Data on the national average condition of properties has not been updated 2006.

Research by the Chartered Institute of Environmental Health found that 97 per cent of environmental health professionals working in housing want to see an update to HHSRS, with 53 per cent reporting that they encounter hazards that are not currently addressed by the rating system.^{vii} We strongly recommend that the evidence base and guidance which underpin HHSRS are updated to reflect the current state of the market, and to allow councils to use it effectively to protect tenants.

Strengthening standards in the private rented sector

Under the Landlord and Tenant Act 1985, tenants in the private rented sector can request that their landlords carry out repairs for issues such as structural faults, lack of heating, and substandard sanitary installations.^{viii} If a landlord fails to carry out the repair work successfully, tenants can seek intervention from their council to carry out an assessment under HHSRS. This is often unsatisfactory for both the tenant and the council, as many of the criteria within HHSRS are out of date.^{ix} Updating and streamlining the HHSRS would better enable councils to assist tenants in securing repairs.

Local authorities already have a range of existing mechanisms for enforcing housing standards on behalf of tenants, and holding rogue landlords to account. While these provide tenants with some protection and means of redress, councils are working with the Government to introduce a number of further powers which would bring about higher standards, without requiring legislation.

Landlord licensing schemes can have significant benefits for both landlords and tenants. In a licensed property, the landlord must meet standards for property management, and the tenant can expect to be given an emergency contact number for the landlord and provided with fire safety advice. Crucially, the landlord must also provide evidence to the council that they are a "fit and proper person" to hold a license.

Discretionary licensing powers would allow councils to provide greater protection for tenants, by requiring landlords to comply with management standards, and to provide a written tenancy agreement. A section 21 (“no fault”) eviction can be overturned if a landlord has failed to license a property, providing a clear incentive for landlords to be registered.

The process of introducing discretionary licensing needs to be streamlined. There is a high up-front cost that falls on councils, and since 2015 councils have been required to seek Secretary of State approval for licensing schemes that cover more than 20 per cent of the area, or 20 per cent of privately rented homes.

Any potential fines from court need to be an effective deterrent to rogue landlords. The Government could support this through the introduction of clear sentencing guidelines. Currently, court fines are often considerably lower than the £30,000 maximum fines available to councils to levy through a civil penalty.

ⁱ DCLG, English Housing Survey, 2015-16

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/658478/2015-16_EHS_Headline_Report.pdf)

ⁱⁱ Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017-19, Bill documents

(<https://services.parliament.uk/bills/2017-19/homesfitnessforhumanhabitationandliabilityforhousingstandards/documents.html>)

ⁱⁱⁱ DCLG, English Housing Survey, 2015-16

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^v DCLG, English Housing Survey, 2015-16

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^{vi} DCLG, English Housing Survey, 2015-16

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/658478/2015-16_EHS_Headline_Report.pdf)

^{vii} Chartered Institute of Environmental Health, *HHSRS: 11 years on*, December 2017

(<http://www.cieh.org/Templates2016/2col.aspx?id=63182>)

^{viii} House of Commons Briefing Paper CBP08185, *Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017-19, January 2018* (<http://researchbriefings.files.parliament.uk/documents/CBP-8185/CBP-8185.pdf>)

^{ix} Chartered Institute of Environmental Health, *HHSRS: 11 years on*, December 2017

(<http://www.cieh.org/Templates2016/2col.aspx?id=63182>)