



Housing and Planning Bill 2015: Making Homes Fit for Human Habitation

WHY IS CHANGE NEEDED?

- **The Housing and Planning Bill 2015 is an opportunity to help millions of renters living in properties with poor conditions take action against landlords that let out properties in an unfit condition.** Reforming the law would require all privately rented properties to be fit for human habitation at the start of, and throughout, the tenancy.
- **Changing the law will empower renters to take action to improve conditions and free up under-resourced councils to tackle the very worst conditions in the sector.** Under the current system, if a tenant reports a problem to their landlord who then refuses to rectify it, they cannot take legal action without getting expert evidence about the cause of the problem from a surveyor or other specialist.

WHAT DOES THE NEW CLAUSE DO?

- **It revives an out-dated law requiring rented homes to be fit for human habitation.** Private renters would be protected through their contract if a landlord let accommodation that is unfit.
- **It helps the private rental market work more effectively through empowering tenants as consumers.** In a case where a landlord lets accommodation that is unfit, a renter will be able to obtain an injunction from the county court requiring the landlord to carry out any necessary works. Tenants will be able to bring their own evidence in court to show that a property is not fit to live in.
- **It protects responsible landlords.** Introducing this law will not affect landlords who are already taking good care of their rental properties or create any additional costs for them.

WHAT IS THE CURRENT SITUATION?

In England, there are now 11 million private renters and 1 in 4 families rely on private renting to provide them with a safe and decent home. Nearly 30% of private rented properties in England would fail the government's *Decent Homes Standard*, compared to only 19% of owner-occupied homes and 15% of social rented homes. Just under half of all private renters (49%) say they have had problems with poor conditions or disrepair in the last year.

WHY IS CHANGE NEEDED?

In practice, a tenant cannot take legal action if their property is in a poor condition without their local authority carrying out an assessment of the property. This is because the main regulations around poor conditions – the Housing Health and Safety Rating System (HHSRS) – are geared towards helping local authorities target rogue landlords, **rather than empowering renters to seek improvements themselves.** There

is an obligation on landlords in the Landlord and Tenant Act 1985 to carry out repairs, however, to take action a renter will require a local council or surveyor to provide expert evidence.

Relying so heavily on local authorities to tackle poor conditions is problematic.

Under-resourced local authorities are already struggling to keep up with the increase of properties in the private rented sector and **budgetary pressures** mean that the environmental health teams, which are responsible for carrying out the HHSRS assessments, are being cut back. We also know that **tenants living in the worst conditions** (those on housing benefit, for example) are more reluctant to come forward and make a complaint about their landlord, **fearing eviction or rent increases**. With renters empowered to challenge poor conditions without relying on the local authority, **councils will be able to focus on the worst conditions** at the lower end of the market.

WHAT DOES THE NEW CLAUSE DO?

The clause revives an out-dated law so that rented homes are required to be fit for human habitation.

Updating the existing law, through this new clause to the Housing & Planning Bill, would require rented homes to be fit for human habitation. Section 8 of the Landlord and Tenant Act 1985 states that homes should be fit for human habitation at the start of, and throughout, the tenancy. However, the clause only comes into effect where the annual London rent on the property is less than **£80 a year and £52 elsewhere**. The **weekly** average rent in London is now **£362**, meaning the provisions for fitness for human habitation in the Act cannot be enforced.

The amendment to existing law that we are proposing would **remove this outdated rent limit**, bringing the **existing law back to life**. All rented properties would need to meet a set of **basic standards** (such as having a working boiler) at the start of, and throughout, the tenancy.

Private renters would have contractual protection if a landlord let accommodation that is unfit.

In a case where a landlord lets accommodation that is unfit, a tenant will be able to evidence poor conditions themselves and **obtain an injunction** from the county court requiring the landlord to carry out any necessary works.

It will be possible for judges to decide from the renter's own evidence that a property is not fit to live in.

This is unlike 'disrepair' cases where the tenant has to depend on the landlord's repairing obligation, which often depend on specialist expertise. **Photographs, tenants' witness statements, and reports from local authorities' environmental health departments would be acceptable as evidence in court**. This would often allow judges to easily come to a conclusion on the basis of the renter's own personal evidence.

HOW DOES THIS NEW CLAUSE PROTECT LANDLORDS?

Introducing this law will not affect landlords who are already taking good care of their rental properties, or create any additional costs for them. These changes will enhance the reputation of the private rented sector.

The new clause protects landlords' interests in the following ways:

- Landlords will not have to carry out work to rectify bad conditions that have been caused by the tenant
- Landlords will not have to carry out work on damage caused by natural disaster
- Landlords will not have to carry out work which might put them in breach of another legal obligation

CASE STUDY

Leslie rented flat with her young son in south London:

“The landlady told me [that the flat] had been newly decorated and refurbished, and I took her at her word. The first thing I noticed was that the whole flat was infested with fleas. My four-month-old son was absolutely covered in flea bites.

As winter came it became obvious that each of the external walls had a really bad mould problem. I'm in the top floor flat and there was absolutely no insulation in the roof. There was one month when I paid over £100 in gas fees trying to keep the house warm enough for my son to sleep through the night. It's not even got proper double glazing, it's the old style. My landlady left me without a boiler for 6 months...I had no hot water or heating.”

With the contractual protection from an updated fitness for human habitation clause, Leslie could have obtained an injunction in a county court that required her landlady to tackle the poor conditions in her home.

For more information, contact Zorana Halpin on [Zorana Halpin@shelter.org.uk](mailto:Zorana_Halpin@shelter.org.uk), 0344 515 2055.

Sources: English Housing Survey, DCLG, 2013/14; YouGov survey of 3792 private tenants, England, weighted, online, July 2015.

Suggested New Clause Wording

Placing a duty on landlords to ensure that their properties are fit for habitation when let and remain fit during the course of the tenancy

“[] Implied term of fitness for human habitation in residential lettings

- (1) Section 8 of the Landlord and Tenant Act 1985 (c.70) is amended as follows:
- (2) Omit subsection (3) and substitute:
 - "(3) Subject to subsection (7), this section applies to any tenancy or licence under which a dwelling house is let wholly or mainly for human habitation."
- (3) Subsections (4) to (6) are omitted.
- (4) After subsection (3), substitute:
 - "(4) Subsection 1 does not apply where the condition of the dwelling-house or common parts is due to -
 - (a) a breach by the tenant of the duty to use the dwelling-house in a tenant-like manner, or often express term of the tenancy to the same effect; or
 - (b) damage by fire, flood, tempest or other natural cause or inevitable accident.
 - (5) Subsection 1 shall not require the landlord or licensor of the dwelling house to carry out works -
 - (a) which would contravene any statutory obligation or restriction; or
 - (b) which require the consent of a superior landlord, provided that such consent has been refused and the landlord or licensor has no right of action on the basis that such refusal of consent is unreasonable.
 - (6) Any provision of or relating to a tenancy or licence is void insofar as it purports -
 - (a) to exclude or limit the obligations of the landlord or licensor under this section; or
 - (b) to permit any forfeiture or impose on the tenant or licensee any penalty or disadvantage in the event of his seeking to enforce the obligation under subsection (1).
 - (7) Regulations may make provision for the exclusion of certain classes of letting from subsection (1).
 - (8) In this section "*house*" has the same meaning as "*dwelling house*" and includes—
 - (a) a part of a house, and
 - (b) any yard, garden, outhouses and appurtenances belonging to the house or usually enjoyed with it."
- (5) In section 10 of the Landlord and Tenant Act 1985, after "facilities for preparation and cooking of food and for the disposal of waste water", insert "any other matter or thing that may amount, singly or cumulatively, to a Category 1 hazard within the meaning of section 2 of the Housing Act 2004".
- (6) Regulations may make provision for guidance as to the operation of the matters set out in section 10 which are relevant to the assessment of fitness for human habitation.
- (7) This section shall come into force –
 - (a) In England at the end of the period of three months of the date on which this Act receives Royal Assent and shall apply to all tenancies licences and agreements for letting made on or after that date; and
 - (b) In Wales on a date to be appointed by the Welsh Ministers."