



BRIEFING PAPER

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Homes (Fitness for Human Habitation) Bill 2017-19

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Summary

The purpose of the Bill

Karen Buck's [Homes \(Fitness for Human Habitation\) Bill 2017-19](#) is seeking to amend relevant sections of the *Landlord and Tenant Act 1985* by extending its obligations to cover almost all landlords and to modernise the fitness for habitation test. As a result of rent limits which have remained unchanged since the 1950s, the current requirement for fitness in section 8 of the 1985 Act has ceased, for the most part, to have effect. Where a landlord fails to let and maintain a property that is fit for human habitation, the Bill would give tenants a right to take action in the courts. The Bill has cross-party support.

The Bill extends to England and Wales but will only apply to tenancies in England. The Welsh Government has already included similar provisions in relation to housing fitness in the *Renting Homes (Wales) Act 2016*.

The Bill had its First Reading in the House of Commons on 19 July 2017 and its Second Reading on 19 January 2018. The Public Bill Committee met on 20 June 2018. The Committee agreed to 16 amendments without division. The Bill's Report stage in the House of Commons is scheduled to take place on 26 October 2018. This Commons Library paper provides background to the Bill and explains its provisions and amendments made at Committee stage.

Housing standards in England

There have been longstanding concerns about property standards in the private rented sector (PRS). The PRS houses more households in England than the social rented sector but has some of the poorest property standards. The [2016/17 English Housing Survey](#) (EHS) found that the PRS had the highest proportion of homes with at least one indicator of poor housing (38%).

The EHS 2016/17 records that 27% of PRS homes failed the decent home standard in 2016. The comparative figures for the owner-occupied and social housing sectors were 20% and 13% respectively. Whilst the proportion of non-decent homes in the PRS has fallen from 47% in 2006 to 27% in 2016, the number of dwellings in this tenure failing the Standard has remained fairly constant; 1.2 million in 2006 and 1.3 million in 2016.

More broadly, the EHS 2016/17 records that, across all tenures, the proportion of non-decent homes declined steadily from 2006, with year-on-year improvements until 2014, since when the proportion has remained stable. The Grenfell Tower fire has focused attention on housing standards in the social rented stock, and also in privately owned blocks of flats.

Why is the Bill needed?

There are statutory obligations on most 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 because of annual rent limits (£52 or less, and £80 or less in London).

The Housing, Health and Safety Rating System (HHSRS) was introduced by the *Housing Act 2004*. The HHSRS is a risk-based approach used to assess risks to health and safety in the home by looking at the likelihood of particular faults or deficiencies, which could cause injury, ill health or impact on the wellbeing of those living in the dwelling. While this

risk-based approach is felt to offer benefits over a pass/fail standard of housing fitness, the HHSRS is widely viewed as complex and to suffer from inconsistent application and enforcement by local authorities. The operating guidance has not been updated since 2006. Reports published by several bodies, including the [Communities and Local Government Select Committee](#) in 2013, and [Shelter](#) in 2014, have recommended a review of the HHSRS.

Tenants face particular issues when seeking to improve housing conditions. Local authorities cannot take enforcement action against themselves – this can leave council tenants at a relative disadvantage if their landlord does not respond to the presence of health and safety hazards in their homes. Landlords of private tenants may respond to requests for repairs by beginning eviction procedures, this is referred to as retaliatory eviction. Commentators also highlight the lack of legal aid for disrepair cases as a barrier to tenants seeking to improve their housing conditions.

A joint report commissioned by Shelter from the universities of Bristol and Kent (2017) concluded:

The law relating to health and safety in people's homes is piecemeal, out-dated, complex, dependent on tenure, and patchily enforced. It makes obscure distinctions, which have little relationship with everyday experiences of poor conditions.

Recent attempts to amend the law

Karen Buck presented the [Homes \(Fitness for Human Habitation\) Bill](#) on 24 June 2015. The purpose of the Bill was "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](#) on the Bill took place on 16 October 2015. The debate was adjourned and the Bill failed to make progress.

During the [Committee Stage](#) of the *Housing and Planning Bill 2015-16*, Shadow Housing Minister, Teresa Pearce, attempted to amend the Bill to introduce Karen Buck's fitness for human habitation proposals. In response, the then Housing Minister, Brandon Lewis, said that the Bill's proposals on rogue landlords were a better way to improve standards without imposing "unnecessary regulation" on landlords. The Minister argued that the HHSRS was in place to keep properties in a decent state of repair, and that it was up to local authorities to enforce this properly. The amendment was withdrawn but further attempts to amend the Bill in respect of fitness for human habitation were made on Report in the Commons and during the Committee stages in the House of Lords. On both occasions the amendment was defeated.

Reaction to the Bill

The [Shelter briefing on the Bill](#) called on the Government to:

...adopt this Bill as part of a cross-party, national, response to the Grenfell tragedy so that future tenants are not ignored and their safety put at risk.

Both the Residential Landlords Association (RLA) and National Landlords Association (NLA) have expressed support for the Bill. Policy Director at the RLA, David Smith, said:

Tenants have a right to expect that homes are fit for habitation, and the vast majority of good landlords already provide this. This Bill therefore reinforces what landlords should already be doing.

The joint report by the universities of Bristol and Kent, [Closing the Gaps: Health and Safety at Home](#) (2017) also expressed support for the Bill's provisions:

This Bill addresses and provides redress for the gaps which currently exist in the private law of landlord and tenant regarding the state and condition of the property; the restrictions on a landlord's repairing obligations; and updating the criteria for determining fitness.

1. Property standards: background

Housing policy is devolved. The following sections outline the position in England, section 1.5 explains the equivalent position in Scotland, Wales and Northern Ireland.

1.1 Property standards – the evidence

The [2016/17 English Housing Survey](#) (EHS) found that 38% of private renters lived in poor housing (defined as a home that has serious damp or mould, a Category 1 HHSRS hazard, is non-decent, or has substantial disrepair), compared to 24% of owner occupiers and 22% of social renters.¹

The EHS 2016/17 records that 27% of PRS homes failed the decent home standard² in 2016. The comparative figures for the owner-occupied and social housing sectors were 20% and 13% respectively.³ The PRS has always performed less well than other tenures against this measure.

The level of non-decent homes in the PRS reduced between 2006 and 2016 from 47% to 27%. However, although the proportion of non-decent private rented homes has fallen over time, largely due to the increase in the size of the sector, the number of dwellings in this tenure failing the Standard has remained fairly constant; 1.2 million in 2006 and 1.3 million in 2016.⁴

Poor standards of maintenance and repair of some properties in the PRS are often cited as a downside of this tenure. A 2013 report on the 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.⁵

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.⁶ The EHS 2016/17 records an 84% satisfaction rate amongst private renters.⁷

¹ [English Housing Survey 2016: stock condition](#), 12 July 2018, p4

² This is a non-statutory standard. Briefly, a dwelling meets the decent home standard if it has no Category 1 hazards, is in a reasonable state of repair, has reasonably modern facilities and services; and provides a reasonable degree of thermal comfort.

³ [EHS 2016 to 2017: Private Rented Sector](#), 12 July 2018, para 4.9

⁴ *Ibid.*, para 4.10

⁵ CLG Committee, [The Private Rented Sector](#), 8 July 2013, HC 50 2013-14, para 26

⁶ CLG Committee, [The Private Rented Sector](#), 8 July 2013, HC 50-II 2013-14, Ev 152

⁷ [EHS 2016 to 2017: Private Rented Sector](#), 12 July 2018, para 1.33

Across all tenures, the prevalence of Category 1 health and safety hazards in England, as measured by the Housing, Health and Safety Rating System, reduced from 23% in 2008 to 12% in 2016.⁸ The EHS 2016/17 reports that in 2016 about one million homes (4%) had damp problems, a reduction from 2.6 million (13%) in 1996.⁹

Overall, the EHS 2016/17 records that “Across all tenures, the proportion of non-decent homes declined steadily between 2006 and 2016, with year-on-year improvements until 2014, after which the proportion has remained stable”.¹⁰

1.2 Measuring property standards

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.¹¹

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

‘Fitness for human habitation’ - Where a dwelling is deemed “reasonably suitable for occupation” in regard to a number of maintenance matters

This test has ceased to have effect as it only applies to properties with an **annual rent** of £52 or less outside of London and £80 or less in London. These rent limits have remained unchanged since the Housing Act 1957.

⁸ [English Housing Survey 2016: stock condition](#), 12 July 2018, para 2.11

⁹ [English Housing Survey 2016: stock condition](#), 12 July 2018, para 2.18

¹⁰ [English Housing Survey 2016: stock condition](#), 12 July 2018, p4

¹¹ Section 10, [Landlord and Tenant Act 1985](#)

effect as they only apply to homes where the annual rent is £52 or less (or £80 in London).¹²

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.¹³

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

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 is deemed to be unfit.

The Housing, Health and Safety Rating System (HHSRS)

Although there is no general obligation on landlords to ensure properties are fit for human habitation, authorities are required to keep housing in their areas under review with a view to identifying any necessary enforcement action. Local authorities have powers to compel landlords to tackle serious hazards in residential premises.

The HHSRS, introduced by the *Housing Act 2004* and in force since 2006, provides for local authorities to inspect and identify hazards in residential dwellings. Inspections usually take place where a ‘complaint’ is triggered by an occupier. Where they identify the most serious (‘Category 1’) hazards, authorities 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.

There is no pass or fail test of housing fitness in England.

The HHSRS is tenure neutral; however, local authorities may not take enforcement action against themselves.¹⁴

More information can be found in the Commons Library briefing paper, [Housing Health and Safety Rating System \(HHSRS\)](#).¹⁵

¹² Section 8, [Landlord and Tenant Act 1985](#)

¹³ RLA, [Landlord guides - repairs](#) (last accessed 18 December 2017)

¹⁴ *R v Cardiff CC ex p Cross* (1983) 6 HLR 1, 11

¹⁵ [Housing Health and Safety Rating System \(HHSRS\)](#), Commons Library briefing paper 01917, 24 May 2016

The decent home standard

The Labour Government adopted a Public Service Agreement target in 2000 (PSA 7) to bring all social housing up to a decent standard by 2010. A decent home is defined as one which meets all of the following four criteria:

- it is free from Category 1 hazards as assessed by the HHSRS;
- is in a reasonable state of repair;
- has reasonably modern facilities and services; and
- provides a reasonable degree of thermal comfort.¹⁶

Although widely referred to, including in the English Housing Survey, the decent home standard is a non-statutory measure of housing standards. In 2003-04 the ODPM: Housing, Planning, Local Government and the Regions Select Committee carried out an inquiry into the decent home standard and concluded that it had been set “at too basic a level” and would be out of step with “reasonable tenant expectations” by 2010.¹⁷

The decent home standard is a non-statutory measure of housing standards.

1.3 Housing repairs and standards – an overview of the legal framework

Building Regulations and fire safety

Building standards are governed by the *Building Regulations Act 1984* and regulations (Building Regulations) made under this Act. The regulations are aimed at securing the health, safety, welfare and convenience of people using or affected by a building, and of conserving water and energy and reducing waste. The Building Regulations represent minimum standards - the [Callcutt Review of Housebuilding Delivery](#) (2007) said that compliance was “necessary but not sufficient, to ensure good quality.”¹⁸

All newly built and significantly modified housing has to comply with Building Regulations and must receive building control approval. Local authorities are responsible for enforcing building regulation. Approval can come directly from local authority run building control services, or through private approved inspectors (PAIs). The Building Regulations should ensure that fire safety is built into new or significantly modified dwellings. On 28 July 2017, following the Grenfell Tower fire, the Government announced an independent review of Building Regulations and fire safety. The final report of the review was published on 17 May 2018: [Independent Review of Building Regulations and Fire Safety](#). The report set out over 50 recommendations for Government on how to deliver a more robust regulatory system. The Government published a [response to the report](#) on the same day.¹⁹ On 19 July 2018 the Secretary of State for Housing, Communities and Local Government,

¹⁶ DCLG, [A Decent Home: the definition and guidance for implementation](#), June 2006

¹⁷ ODPM: Housing, Planning, Local Government and the Regions Select Committee, [Decent Homes](#), Fifth Report of Session 2003-04, HC 46-I

¹⁸ [Callcutt Review of Housebuilding Delivery](#), 2007, p71

¹⁹ MHCLG, [Government commits to major building safety reforms](#), 17 May 2018

James Brokenshire, announced a package of measures intended to strengthen building safety, including a consultation on revisions to the building regulations fire safety guidance.²⁰ The *Regulatory Reform (Fire Safety Order) 2005* applies to all non-domestic premises, including the communal areas of apartment blocks. The Order designates those in control of premises as the responsible person for fire safety in communal areas. In the case of apartment blocks, this duty falls on landlords and building owners. They have a duty to ensure that a risk assessment is carried out to identify hazards and risks and remove and reduce these as far as possible.

Enforcement of the Fire Safety Order falls to the Fire Safety Authority, using a risk-based approach.

Defective premises

Section 4 of the *Defective Premises Act 1972* places a duty on landlords who are contractually obliged to maintain or repair premises, to take reasonable care in the circumstances to ensure that anyone likely to be affected by defects in the premises are reasonably safe from personal injury, or from damage to property caused by a relevant defect.

The fact that the duty is framed with reference to an existing duty to repair, means that it cannot be used where a property may be dangerous but not in disrepair, e.g. in the case of a fall (even a fall causing the death of the tenant) caused by a dangerous staircase without a handrail.

Landlords' repairing duties

Section 11 of the *Landlord and Tenant Act 1985* sets out an implied covenant for repairs in tenancies of less than seven years,²¹ under which 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;
- heating and hot water installations.²²

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:

1. 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
2. Where the landlord has been told about the need for repairs, and failed to do them, a tenant can contact their

²⁰ MHCLG, [Brokenshire moves to review building regulations fire safety guidance](#), 19 July 2018

²¹ This includes contractual periodic tenancies in the social rented sector.

²² Communities and Local Government, [Repairs: a guide for landlords and tenants](#), 2011, p3

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).²³

Houses in multiple occupation (HMOs)

Larger HMOs, with at least 3 storeys and housing 5 or more occupants who do not form a single household, have been identified as posing a more significant health and safety risk than other rented dwellings. There is a requirement that these properties are licensed by the local authority under the *Housing Act 2004*.

In 2016 the Government consulted on proposals to extend the mandatory licensing of HMOs, to raise standards in the management and condition of HMOs. The [Government's consultation response](#), published on 28 December 2017, confirmed that it would extend the scope of mandatory HMO licensing as follows:

- It will apply where certain HMOs are occupied by five persons or more in two or more households, regardless of the number of storeys.
- This includes any HMO which is a building or a converted flat where such householders lack or share basic amenities such as a toilet, personal washing facilities or cooking facilities.
- It also applies to purpose-built flats where there are up to two flats in the block and one or both are occupied as an HMO.
- Mandatory conditions will be included in HMO licences to regulate the size and use of rooms as sleeping accommodation.
- A mandatory condition will be included in HMO licences requiring the licence holder to comply with their local authority scheme (if any) for the provision of facilities for the proper disposal and storage of domestic refuse.²⁴

The reforms have been enacted through [The Licensing of Houses in Multiple Occupation \(Prescribed Description\) \(England\) Order 2018](#) (S.I. 2018/221) and [The Licensing of Houses in Multiple Occupation \(Mandatory Conditions of Licences\) \(England\) Regulations 2018](#) (S.I. 2018/616) which comes into force on 1 October 2018.

Local authorities are able to grant or refuse a licence based on whether the property in question is reasonably suitable for occupation by the number of persons or households specified in the application,²⁵ whether the proposed licence holder is a 'fit and proper' person, whether the proposed manager of the HMO or an agent or employee of that person

²³ Ibid., p8

²⁴ MHCLG, [Houses in multiple occupation and residential property licensing reforms: government response](#), 28 December 2017

²⁵ The amenity standards on which this decision is based are set out in *The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Order 2006* (SI 2006/373) – local authorities can adopt their own amenity standards which may not be lower than the minimum prescribed standards.

is a 'fit and proper' person, and whether the proposed management arrangements are satisfactory.²⁶

Specific regulations also apply in relation to smaller HMOs which are currently not subject to mandatory licensing.²⁷

Specific requirements in rented dwellings

Landlords are required to adhere to several maintenance and repair duties in addition to the general duties set out above. Although not an exhaustive list, some of the major obligations, including changes due to be introduced, are listed below:

Gas safety

Under the *Gas Safety (Installation and Use) Regulations 1998*, landlords are responsible for the maintenance and repair of gas fittings, appliances and flues.

These installations must be checked annually by a Gas Safe registered engineer, and a record of this safety check must be provided to the tenant(s). More information can be found on the Health and Safety Executive's (HSE) [Gas safety – landlords and letting agents](#) page.

Electrical safety

Currently there are no specific regulations relating to electrical safety. Instead this is covered more generally by the HHSRS.

However, section 122 of the *Housing and Planning Act 2016* allows for the introduction of mandatory electrical safety checks. Lord Bourne of Aberystwyth responded to a PQ on progress in implementing section 122 on 6 December 2017:

An independent working group has recommended mandating five-yearly electrical installation checks. We welcome its report and will consult on its recommendations in the new year. However, following the Grenfell tragedy, we must take account of the conclusions of the Hackitt review of building regulations and fire safety, which are expected in spring next year.²⁸

Although not yet in force, these will likely be on a similar basis to gas safety checks, with the obligation for regular checks by a certified engineer and the threat of financial penalties for non-compliance.

The Government [consulted](#) on the recommendations made by the Private Rented Sector Electrical Safety Working Group from 17 February to 16 April 2018.²⁹ The outcome of the consultation has not yet been published. However, on 19 July 2018 the Secretary of State for Housing, Communities and Local Government Housing, James Brokenshire, confirmed that the Government intends to proceed with introducing a

²⁶ In deciding whether the management arrangements are satisfactory the authority will consider whether any person involved in the management of the property is sufficiently competent; whether they are a fit and proper person; and whether the proposed management structures and funding arrangements are satisfactory. The duties on managers of HMOs are set out in *The Management of Houses in Multiple Occupation (England) Regulations 2006* (SI 2006/372)

²⁷ *Management of Houses in Multiple Occupation (England) Regulations 2006* (SI 2006/372)

²⁸ [HL Deb 6 December 2017 c1052](#)

²⁹ MHCLG, [Electrical safety in the private rented sector](#), 17 February 2018

mandatory requirement on landlords in the private rented sector to ensure electrical installations in their property are inspected every 5 years. No timetable has been announced.³⁰

Smoke and carbon monoxide alarms

As of 1 October 2015, all private landlords have been required to install a smoke alarm on every storey of the property used as rental accommodation, and a carbon monoxide alarm in any room used as living accommodation with a burning appliance for solid fuel (such as coal or wood).

Landlords must also check that these alarms are working at the start of any new tenancy.

Where these requirements are not met, local authorities can issue a remedial notice requiring the installation of the relevant alarms within 28 days. Should the issue then remain unresolved, landlords can face a civil penalty of up to £5,000.

Exposure to Legionella

Legionella are bacteria present in water systems which, when inhaled, can cause Legionnaires' disease, a potentially fatal, pneumonia-like disease.

Outbreaks of the illness occur from exposure to Legionella growing in purpose-built systems where water is maintained at a temperature high enough to encourage growth.

As a result, landlords are under a legal duty of care to ensure that the risk of exposure to Legionella for tenants, residents and visitors to their properties is adequately assessed and controlled.

The HSE published an updated Approved Code of Practice in November 2013.³¹

More information can be found in the Commons Library briefing paper, [Smoke Alarms, Carbon Monoxide Detectors and Legionella: Landlords' Responsibilities](#).³²

Thermal efficiency

From 1 April 2018, any properties rented out in the PRS will normally have to a minimum energy performance rating of E on an Energy Performance Certificate (EPC). For new lets and renewals of tenancies this will be in force from 1 April 2018 - existing tenancies will be covered from 1 April 2020. It will be unlawful to rent a property which breaches the requirement unless there is an applicable exemption. A civil penalty of up to £4,000 will be imposed for breaches.

³⁰ ['Brokenshire moves to review building regulations fire safety guidance'](#), MHCLG Press Release, 19 July 2018

³¹ HSE, [Legionnaire's disease: The control of legionella bacteria in water systems](#), ACOP L8(4th edition), November 2013

³² Commons Library briefing paper CBP07307: [Smoke Alarms, Carbon Monoxide Detectors and Legionella: Landlords' Responsibilities](#), 24 September 2015

Statutory nuisance

Where conditions in a property amount to a situation which is prejudicial to health, this can be assessed by local authority environmental health officers, who, where certain conditions are met, can deem the matter to be a statutory nuisance.³³

Where a statutory nuisance is declared, the local authority must serve an abatement notice to require the removal of the nuisance. Common causes of statutory nuisance include the presence of dampness, mould or asbestos.

The option of pursuing a statutory nuisance claim through the local authority is only available to private sector or housing association tenants, as a local authority cannot serve an abatement notice on itself.

Local authority tenants can, however, seek an independent assessment of statutory nuisance and can take private action in a magistrate's court under section 82 of the *Environmental Protection Act 1990*.

Blocks of leasehold flats

Owners of long leasehold³⁴ properties do not necessarily appreciate that, although they are owner-occupiers, they are in a landlord and tenant relationship with the freeholder. The rights and obligations of the respective parties are governed by the terms of the lease agreement, which is supplemented by statutory provisions. The freeholder (landlord) retains ownership of the land on which the property is built. Essentially, long leaseholders buy the right to live in the property for a given period of time.

The day-to-day management and maintenance of blocks of flats is usually the responsibility of the freeholder. This responsibility can be contracted out to an agent on the freeholder's behalf. The cost of the work is usually recoverable from long leaseholders, as a condition of their lease agreements, via a service charge. The freeholder will usually be responsible for the upkeep of the structure and exterior of the building, as well as any common parts, while the leaseholder will be responsible for repairs and maintenance in their own homes.

Responsibility for risk assessments under the *Regulatory Reform (Fire Safety Order) 2005* in the communal areas of apartment blocks, and tackling any identified risks, falls to the controller of the premises (landlords/building owners).

1.4 A piecemeal and out-of-date framework?

The following sections consider specific problems and issues identified with the current legal framework.

No requirement of fitness for human habitation

As noted in section 1.2, there is no duty on landlords to ensure that a rented dwelling is let or maintained in a condition that is fit for human habitation. Commentators make the point that there are a number of

³³ Section 79 of the *Environmental Protection Act 1990*

³⁴ A long lease is one that has at least 21 years to run when originally granted.

issues which tenants struggle to address by using the existing remedies. For example, a landlord's repairing duty under section 11 of the *Landlord and Tenant Act 1985* "does not cover things like fire safety, or inadequate heating, or poor ventilation causing condensation and mould growth."³⁵

The impact of rent limits contained in section 8 of the 1985 Act was considered in a 1996 report by the Law Commission, [Landlord and tenant: responsibility for state and condition of the property](#). The Commission 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.³⁶

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 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.³⁷

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.³⁸

The Court of Appeal has also supported calls for a modernised approach to section 8. In *Issa v Hackney London Borough Council* it noted that the failure to update the rent levels left tenants:

...wholly without remedy in the civil courts against their landlords, however grievously their health may have suffered because they are living in damp, unfit conditions...³⁹

"The [Law Commission] report concluded instead, that removing the rent limits would be the preferred way to give tenants a civil remedy"

³⁵ [Nearllylegal.co.uk, Fitness Bill Briefing](#) [accessed on 20 December 2017]

³⁶ Law Commission, [Landlord and tenant: responsibility for state and condition of the property](#), 19 March 1996, Law Com 238, para 8.11

³⁷ *Ibid.*, para 8.36-8.43

³⁸ [HC Deb 5 February 2015 c75WH](#)

³⁹ (1997) 29 H.L.R. 640

Likewise, in *Habinteg Housing Association v James* the Court expressed support for the Law Commission proposals:

We are told that the Law Commission has been considering such a problem. It is to be hoped that they will recommend a solution. What is more, it is hoped that if they do, Parliament will carry it out. Judges and lawyers are sometimes reproached when the law does not produce the right result. There are occasions when the reproach should be directed elsewhere.⁴⁰

The limits of section 11 duties

Section 11 of the 1985 Act attracts criticism on the basis that it provides a potential remedy only where there is disrepair. A dwelling can lack basic standards, but section 11 may not assist tenants who are seeking improvements. Indeed, particular problems can arise where a tenant complains about disrepair (e.g. dampness) which arises from an inherent defect in a property, such as inadequate ventilation, as opposed to an identifiable item/area of physical disrepair. A good deal of case law has developed around section 11, e.g. in relation to whether doors/windows/internal plaster constitute the structure of the dwelling.

Section 11 does not provide a remedy where the issue arises from an inherent defect as opposed to disrepair.

A recurring theme in reports on the adequacy of remedies available to tackle housing standards, particularly in the private rented sector, is the degree to which achieving a successful outcome relies on tenants' complaints. The section 11 duty does not arise until the landlord/agent is notified of the disrepair. In research commissioned by Shelter, [Closing the Gaps: Health and Safety at Home](#) (2017) the authors note:

...there is a limit on what can be achieved by individual tenants. Actions under private law require stamina. Many tenants are vulnerable, or have too many other things going on in their lives to prioritise legal action. Moreover, legal action is particularly problematic when we suffer from an acute shortage of affordable housing.⁴¹

The risk of retaliatory eviction

Retaliatory eviction occurs 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 argued 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.⁴²

It is argued that the threat of 'no fault' eviction undermines tenants' rights to secure repairs to their homes.

Measures were added to the *Deregulation Act 2015* to provide some protection for tenants against retaliatory eviction. The measures came into force on 1 October 2015 and apply to new tenancies started on or after this date. DCLG published a [guidance note on the changes](#) which has further information.⁴³

⁴⁰ (1994) 27 HLR 299

⁴¹ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p14

⁴² See for example Citizens Advice Bureau, [The tenant's dilemma](#), June 2007

⁴³ DCLG, [Retaliatory Eviction and the Deregulation Act 2015: guidance note](#), 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 with an improvement notice by a local authority in relation to Category 1 or Category 2 hazards.

Whilst the 2015 Act covers tenants where an improvement notice has been served, it does not cover other rights of repair, including a civil remedy pursued under section 11 of the 1985 Act or an abatement notice served in relation to a statutory nuisance.

In [Closing the Gaps: Health and Safety at Home](#) (2017) the authors refer to tenants' rights to secure repairs as "symbolic":

We also recognise that rights can be symbolic for other reasons, most notably in the private rented sector. This is because of the limited security of tenure of most private rented sector tenants. It is assumed that they are unlikely to exercise their rights, or complain about the state and condition of their property, because they risk being evicted on a no fault basis if they do so. As one of our private rented tenants put it: "Letting agency ignored reports, threatened to not renew lease and leave me homeless again as there were only local agency that accepted housing benefits. I stopped complaining".⁴⁴

Citizens Advice commissioned a YouGov survey of over 700 private renters in England between 10 and 17 March 2017 which found:

- Nearly 3 in 5 (57%) of renters who could get compensation said they didn't want to force the issue with their landlord for fear of being evicted.
- Half of renters (51%) also said another concern was that their landlord would increase their rent if they continued complaining.⁴⁵

The availability of legal aid

Claims for damages based on disrepair fall within the scope of legal aid only if there is a serious risk of harm to health. This is a further issue that led the authors of [Closing the Gaps: Health and Safety at Home](#) to conclude that tenants' rights are, in some key respects, "symbolic". A number of submissions received by the authors of [Closing the Gaps: Health and Safety at Home](#) highlighted restricted access to legal aid as an issue, for example:

The fact that legal aid is now so limited for disrepair cases and often non-existent, means that very many people go without a remedy at all. This is compounded by the fact that the courts are inaccessible to litigants in person, who are unlikely to be able to draft and present their claim in the way the court expects, and by the need to commission and pay for expert reports. Damages claims (except when in the form of a counterclaim) can realistically only be done by CFAs or DBAs, and only a small minority of tenants will be able to find a solicitor to act on this basis.⁴⁶

⁴⁴ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p11

⁴⁵ [Citizens Advice Press Release, 13 July 2017](#)

⁴⁶ *Ibid.*, p11

HHSRS: complexity and enforcement

There have been criticisms of the risk-based nature of the HHSRS and the lack of prescribed minimum standards on the basis that this leaves much up to individual assessors. There is a view that the HHSRS can often be **inconsistently interpreted** between different local authorities.⁴⁷

Concerns have been raised about the **consistency of enforcement** by local authorities. During the Lords Report stage of the *Housing and Planning Bill 2015-16*, Baroness Greender argued this point:

We know from Shelter's survey that more than 10% of renters feel either that their issue is not serious enough to take to the council, or that nothing will change as a result. Bringing back to life this legislation as a means of civil redress for private renters, as this amendment would, would free up local authorities to focus on those who really need help.

This is important because local authorities, as we all know, are struggling to manage the demands on their environmental health officer teams as the private rented sector balloons.⁴⁸

Karen Buck raised the issue of Category 2 enforcement during debates on her 2015-16 Private Member's Bill, which sought to introduce a minimum property standard to operate alongside the HHSRS:

The remedy available (for Category 2 hazards) depends entirely on the choice that local authorities make on their enforcement strategy and, of course, the resources available to them. Overall, local authorities have not used their powers as often, or met their duties as well, as they might, too often acting only after receiving complaints from tenants, rather than proactively.

[...]

The most common way of dealing with hazards that are found when environmental health officers go into a property is informally. It is not clear what that is, but it is extremely hard to monitor and get a national picture for how effective it is.⁴⁹

Respondents to [Closing the Gaps: Health and Safety at Home](#) said:

...the legislative tools are not used as often as they should be, that there is unacceptable delay in taking action once hazards are found in premises, and, probably linked with both of these, local authorities lack sufficient resources to take full advantage of the legislative provisions.⁵⁰

According to a survey of environmental health officers (EHOs) conducted by the Chartered Institute of Environmental Health (CIEH) in April 2017, 97% of the 170 respondents support an update of the HHSRS:

There is overwhelming support among EHPs for an update of the HHSRS in some way. 89% would like to see an update of the operating guidance and 79% of the worked examples, whilst 45% would like to see the enforcement guidance brought up to date. Two-thirds (66%) said

⁴⁷ See for example, HomeLet Direct, [Memorandum to the Communities and Local Government Select Committee](#), January 2013

⁴⁸ [HL Deb 11 April 2016, c93](#)

⁴⁹ [HC Deb 16 October 2015, cc617-8](#)

⁵⁰ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p15

they would prioritise the operating guidance for an update if they had to choose.⁵¹

The HHSRS [operating guidance](#) dates from 2006.⁵² The need to update the guidance was raised during the Communities and Local Government (CLG) Committee's inquiry into the [Private Rented Sector](#), which reported in 2013.⁵³ The CLG Committee recommended consultation on the HHSRS:

The HHSRS may well be a robust tool to enable professionals to assess health and safety risks within properties, but we are concerned that few landlords (and, by implication, tenants) understand how it works. If we are to expect landlords to provide housing of a decent standard, and tenants to complain if it fails to meet this standard, it is important that there is a straightforward way of assessing whether the standard has been met. The HHSRS does not achieve this purpose. There is a strong case for a clear, easy to understand set of standards that landlords should be expected to meet. **We recommend that the Government consult on the future of the housing health and safety rating system and the introduction of a simpler, more straightforward set of quality standards for housing in the sector. The Government should also ensure that planning and building regulations are consistent with standards for the quality and safety of private rented housing.**

In its response to the Committee's recommendations, the Coalition Government announced it would consult on measures to improve standards, including a review of the HHSRS.⁵⁴ The Department for Communities and Local Government (DCLG) published its response to the consultation in March 2015. The response highlighted 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.

DCLG noted the importance of improving standards in the private rented sector but cited the need not to burden the sector with regulation. The Government decided against making changes to the HHSRS at that time.⁵⁵

The CIEH's 2017 survey of professionals with experience of using the HHSRS found that most EHOs supported its risk-based approach while some proposed a hybridised system of minimum standards complemented by a hazard rating system. Those not supportive of the HHSRS's risk-based approach argued "that the HHSRS was overly complicated and not easily understood by tenants or landlords."⁵⁶

There have been several calls for the HHSRS operating guidance to be updated. It was last revised in 2006.

⁵¹ CIEH, [HHSRS – 11 years on](#), December 2017

⁵² Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p16

⁵³ [HC50](#), July 2013, para 14

⁵⁴ DCLG, [Government Response to the Communities and Local Government Select Committee Report](#), Cm 8370, October 2013

⁵⁵ DCLG, [Review of Property Conditions in the Private Rented Sector: Government Response](#), March 2015

⁵⁶ CIEH, [HHSRS – 11 years on](#), December 2017

There is also the issue of **local authorities being unable to carry out enforcement work in respect of stock owned by their employer** – this represents a clear limitation on the ability of council tenants to seek improved conditions using the HHSRS. [Closing the Gaps: Health and Safety at Home](#) identified a desire for individual occupiers to be able to enforce HHSRS standards against their landlords.⁵⁷

The means through which local authorities can take action against landlords and agents who fail to respond to enforcement activity have been strengthened by measures in the *Housing and Planning Act 2016*. Part 2 Chapter 2 of the 2016 Act enables local authorities to seek a Banning Order against landlords/agents who commit certain offences. The [Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#) (S.I. 2018/216), which came into force on 6 April 2018, list a number of 'health and safety' offences, such as fire safety offences and failing to comply with improvement or prohibition notices served by a local authority under the *Housing Act 2004*, as a basis on which a Banning Order may be obtained. In addition, since April 2017, authorities have been able to issue civil penalties of up to £30,000 as an alternative to prosecution for various offences under the 2004 Act.⁵⁸

Statutory nuisance – an anachronism?

As with the HHSRS, local authorities cannot take enforcement action using the statutory nuisance provisions in respect of their own employer's housing stock. However, individuals can take action in the magistrate's court themselves. [Closing the Gaps: Health and Safety at Home](#) makes the point that there is no legal aid for prosecutions under the *Environmental Protection Act* (EPA) and that it is difficult to find a solicitor willing to take a case.

The most serious criticism levelled at the use of statutory nuisance is that it is "anachronistic based in a Victorian understanding of public health". The authors of [Closing the Gaps: Health and Safety at Home](#) recommend the abolition of the housing element of statutory nuisance and its replacement with "suitable replacement mechanisms for tenants to hold landlords to account for letting unsafe and unfit premises".⁵⁹

1.5 Comparisons with Wales, Scotland and Northern Ireland

Scotland

Housing fitness

The Tolerable Standard is the basic statutory minimum standard for all housing in Scotland. It is broadly equivalent to the fitness standard that

⁵⁷ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p23

⁵⁸ MHCLG, [Civil penalties under the Housing and Planning Act 2016](#), last updated 6 April 2018

⁵⁹ *Ibid.*, p17

applied in England and Wales until section 604 of the *Housing Act 1985* was repealed.

Examples of defects that would breach the Tolerable Standard and render a property unfit for habitation include:

- severe damp problems;
- structural problems;
- a lack of adequate ventilation, natural and artificial light or heating;
- an inadequate supply of fresh water;
- no sink with hot and cold water;
- no indoor toilet.

The Tolerable Standard can be found in the *Housing (Scotland) Act 1987*. An overview and background to the origin of the standard is provided on the Scottish Government's [website](#).

Where a dwelling is below the Tolerable Standard, local authorities have a duty to take action to close it, demolish it, or bring it up to the required standard.

Repairs

The Housing (Scotland) Act 2006 (the 2006 Act) outlines the Repairing Standard. This standard applies in addition to the Tolerable Standard discussed above. Private landlords in Scotland are required under the 2006 Act to ensure that a rented house meets the Repairing Standard at the start of a tenancy and throughout the letting.

The Repairing Standard states:

- a private property must be wind and watertight and reasonably fit for tenants to live in;
- structure and exterior must be in a reasonable condition;
- water, gas, electricity, heating and hot water installations must be in good working order (these include external features such as drains);
- fixtures, fittings or appliances provided by the landlord must be in good working order and safe to use;
- furnishings provided by the landlord must be suitable to use;
- it must have suitable smoke detectors; and
- it must have suitable carbon monoxide detectors.

The Scottish Government has issued statutory guidance on a number of elements of the Repairing Standard, including on electrical installations and appliances, the provision of carbon monoxide alarms and smoke detectors. Regard must be had to the guidance in determining whether a house meets the Repairing Standard.

If a tenant believes that their home does not meet the repairing standard, an application can be made to the First-Tier Tribunal for

Scotland has a pass/fail test of housing fitness which is called the Tolerable Standard.

Scotland (Housing and Property Chamber). Since December 2015, local authorities have also been able to apply to the Tribunal. The tenant can decide whether or not to take an active role in the local authority application. The Tribunal can then determine whether or not the landlord has complied with that duty and order the landlord to carry out the necessary repairs. Various enforcement powers apply if the landlord fails to undertake the required works.

The SNP's Manifesto 2016 included the following commitment on private rented sector standards:

We will consult on a national standard for private rented homes to ensure a good basic standard of accommodation, driving out rogue landlords who exploit tenants in sub-standard accommodation.⁶⁰

A [Scottish Government public consultation 'Energy efficiency and condition standards in private rented housing'](#) considered changes to the Repairing Standard. An [analysis of responses](#) was published on 14 November 2017. The Scottish Government has committed to improving energy efficiency standards in the private rented sector, there is also an intention to lay draft regulations in 2018:

The changes will include provisions for: the tolerable standard being included in the repairing standard; a minimum standard for safe kitchens; a fixed heating system; lead free pipes (and where it is not possible to establish if lead pipes are present - water quality testing); safe access and use of common facilities including secure common doors; residual current devices; risk assessment of private water supplies and annual water quality testing; capacity for a fridge/freezer and safety of heating systems using other fuels. We will also provide clarity on whether holiday lets (or certain types of holiday lets) are subject to the repairing standard. A lead in time of at least five years will be proposed for any changes to the repairing standard, along with the use of existing enforcement routes for the proposed new measures.

At this time, we do not intend taking forward proposals for thermostatic mixing valves. Other proposals around asbestos surveys, the provision of cookers, fridges and freezers, sound insulation and food storage space are being considered further. Changes to the repairing standard will not be explicitly linked to wider government milestones on climate change.

A decision has not yet been taken on extending the repairing standard to agricultural tenancies, rented crofts and small holdings. Further considerations will take place on this matter, and will be informed by findings from the Agricultural Housing Condition Surveys.⁶¹

Further information about the Repairing Standard is on the Tribunal's [website](#).

⁶⁰ [SNP Manifesto 2016](#), p35

⁶¹ Scottish Government, [Energy efficiency and condition standards in private rented housing](#), 15 November 2017

Wales

Housing fitness

At present, the provisions on housing fitness in the *Landlord and Tenant Act 1985* and the *Housing Act 2004* apply in Wales as they do in England.

However, when implemented, the *Renting Homes (Wales) Act 2016* (the 2016 Act), will replace most existing tenancies with one of two new types of occupation contract: secure contracts (modelled on the existing secure local authority contract, and standard contracts (modelled on the existing assured shorthold contract).

Under these new contracts, there will be an obligation on landlords to ensure the dwelling let is fit for human habitation.

Fitness for human habitation is not defined in the 2016 Act. However, under section 94 of that Act, Welsh Ministers “must prescribe matters and circumstances to which regard must be had when determining [...] whether a dwelling is fit for human habitation.” The Act states that these may make reference to the Housing Health and Safety Rating System. Welsh Ministers may also make regulations prescribing the requirements with which landlords must comply in order for a dwelling to be fit for human habitation.

The Welsh Government began a [consultation process](#) to seek views on the regulations determining a dwelling’s fitness for human habitation and the accompanying guidance on 11 October 2017.⁶² The approach proposed in the consultation paper is similar to that proposed by this Bill. The consultation closed on 12 January 2018, and the Government is currently analysing the responses.

Repairs

The 2016 Act also imposes an obligation on landlords to keep dwellings in repair. In the case of fixed-term standard contracts, the obligation will only apply where the fixed-term is less than seven years. These repairing provisions are largely a restatement of section 11 of the *Landlord and Tenant Act 1985*.

Northern Ireland

Fitness

The Statutory Fitness Standard in Northern Ireland is similar to the one that currently applies in Scotland and the standard that used to apply in England and Wales. It applies across all tenures and sets the legal threshold for property standards.

In a [consultation](#) (November 2015 to February 2016) issued by the Department for Social Development (now part of the Department for Communities) on the role and regulation of the private rented sector in Northern Ireland, the application of the fitness standard to the PRS, and how it can affect rent levels, was explained:

Wales is introducing a requirement for rented dwellings to be fit for human habitation.

⁶² Welsh Government, [Renting Homes \(Wales\) Act 2016 – Fitness For Human Habitation](#), 11 October 2017

Currently in Northern Ireland all properties built before 1945, where a private tenancy commenced after 1 April 2007, must meet the fitness standard, in order to attract a market rent. A proof of fitness of a private rented home, through the mechanism of a certificate of fitness, must be acquired by qualifying landlords from Environmental Health within the council where the dwelling is located. This process requires a council official to inspect the premises and enforce the requirement for any works necessary to meet the standard. In the absence of a certificate of fitness the dwelling can remain rented out, however there are rent restrictions applied until the dwelling meets the criteria of the standard.

In order to meet the statutory fitness standard, as amended by the *Housing (Northern Ireland) Order 1992*, a property must:

- be structurally stable;
- be free from serious disrepair;
- be free from dampness prejudicial to the health of the occupants (if any);
- have adequate provision for lighting, heating and ventilation;
- have adequate piped supply of wholesome water;
- have satisfactory facilities in the house for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water;
- have a suitably located water closet for the exclusive use of the occupants (if any);
- have, for the exclusive use of the occupants (if any), a suitably located fixed bath or shower and wash-hand basin each of which is provided with a satisfactory supply of hot and cold water; and
- have an effective system for the draining of foul, waste and surface water.

The Department for Social Development's [Housing Strategy](#) 2015 to 2017 committed to review the fitness standard across all tenures and to put in place an enhanced statutory minimum standard. A [discussion paper](#) on the future of the fitness standard in Northern Ireland was issued in March 2016. Further information is available on the Northern Ireland Housing Executive [website](#).

The DfC's January 2017 consultation paper, [Private Rented Sector in Northern Ireland – Proposals for Change](#) included reference to the fact that the housing fitness standard, last updated in 1992, was under review. The paper included the following commitments:

- Introduce legislation as soon as practicable to make it a mandatory requirement for private landlords to provide smoke and carbon monoxide detectors and to carry out periodic electrical checks.
- Amend the Landlord Registration Regulations to incorporate a fitness declaration at the point of registration.

- Introduce legislation around Energy Performance Certificate (EPC) ratings similar to that in England. Consideration should be given to exempting certain types of property where the costs of making sufficient energy efficiency improvements would be prohibitive.
- Amend legislation so that all unfit properties built before 1956 are subject to rent control.⁶³

Responses were invited up to 3 April 2017.

⁶³ DfC, [Private Rented Sector in Northern Ireland – Proposals for Change](#), January 2017, p52

2. What is the Bill seeking to do?

The *Homes (Fitness for Human Habitation) Bill* would amend the *Landlord and Tenant Act 1985* by extending its obligations to cover almost all landlords and strengthen the fitness for habitation test. Section 1.2 of this paper explains that, as a result of rent limits which have remained unchanged since the 1950s, the current requirement for fitness in section 8 of the 1985 Act has ceased, for the most part, to have effect.

There have been previous calls for changes to the scope of the 1985 Act. The Law Commission made the case for change in a 1996 report⁶⁴ (see section 1.4), and Shelter made a similar call in its 2014 report, [Safe and decent homes](#).⁶⁵ The limitations of the current framework governing housing standards are covered in detail in [Closing the Gaps: Health and Safety at Home](#) (2017) – the authors of this report support the Bill's provisions.⁶⁶

The Bill is made up of 2 clauses and provides that:

- there is to be an implied covenant in a lease that a landlord must ensure that their property is fit for human habitation at the beginning of the tenancy and for the duration of the tenancy; and
- where a landlord fails to let/maintain a property that is fit for human habitation, the tenant will have the right to take legal action for breach of contract (covenant) on the grounds that the property is unfit for human habitation.

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

Clause 1 would delete the existing section 8 from the 1985 Act and substitute it with new text. The rent limits, last updated in 1957, would be removed.

The **new section 8(1)** would introduce an implied covenant applying to the landlord **to ensure that the dwelling is fit for human habitation at the time of the grant and kept in this condition thereafter.**

Subsection 8(2) would allow for **some exemptions from the implied covenant**. Landlords would not be liable for unfitness arising in certain circumstances, e.g. as a result of natural disaster or the tenant's failure to use the dwelling in a tenant-like manner. Landlords would not be obliged to maintain property belonging to a tenant. There would also be a limitation to the landlord's duty to carry out works where this would put him/her in breach of any other legal obligation (subsection

Amendments to clause 1 agreed in Public Bill Committee are explained in section 4.1 of this paper.

⁶⁴ Law Commission, [Landlord and tenant: responsibility for state and condition of the property](#), 19 March 1996, Law Com 238, para 8.11

⁶⁵ Shelter, [Safe and Decent Homes](#), 9 December 2014, p41

⁶⁶ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p22

8(2)(d)), or where consent is required from a superior landlord and that consent is refused (subsection 8(2)(e).

Subsection 8(3) would provide that a landlord is not liable where the unfitness is mainly due to a breach by the tenant of the implied covenant or disrepair that the landlord is not required to make good because of a county court order.

Contracting out of the covenant would be prohibited by subsection 8(4).

The courts would be able to provide a remedy for a breach of the implied covenant in the form of 'specific performance' of that obligation (subsection 8(5)).

Subsection 8(6) covers access for inspections. A landlord, or someone acting on his/her behalf, would have access to the property to check its condition if, under subsection 8(7), the tenant has been given notice and the time proposed is a reasonable time of day.

New section 8A defines the leases to which section 8 would apply.

The implied covenant **would apply** to leases under which a dwelling is let mainly for human habitation and:

- a) the lease is for a term of less than 7 years; or
- b) the lease is for a secure, assured or introductory tenancy for a fixed term of 7 years or more.⁶⁷

This general provision is qualified by the following subsections.

The intention is that the covenant would **not apply** to new leases granted to an existing tenant (renewal) or to a previous tenant still in possession (8A(2)). The covenant would also **not apply** to a lease granted before the commencement of new section 8, or to a lease granted on or after the commencement date where the agreement was entered into, or arose as a result of a court order, before the date of commencement (8A(3)). However, **exceptions** to this are defined in subsections 8A(4) and (5), such that the covenant **would apply** to a periodic or secure tenancy in existence on the date of commencement **12 months after new section 8 comes into force**.⁶⁸ And where a fixed-term lease is granted or renewed before the date of commencement for a further fixed-term after the date of commencement, the renewal would be treated as the grant of a new lease **at which point the covenant would apply**.

Clause 1(3) of the Bill would amend section 9 of the *Landlord and Tenant Act 1985* by substituting 'house' with 'dwelling' – this would

⁶⁷ Subsection 8A(1). Secure and introductory tenants are council tenants, while most housing association tenants are assured tenants. Currently, most of these tenancies are let on a periodic basis with no fixed term but after relevant provisions in the Housing and Planning Act 2016 are brought into force councils will, as a general rule, only be able to offer fixed-term tenancies which will be subject review.

⁶⁸ The [Explanatory Notes to the Bill](#) state that "This allows time for compliance in relation to existing tenancies."

bring other types of dwelling, such as flats, within the scope of the Bill's provisions.

Section 10 of the *Landlord and Tenant Act 1985* lists those matters which are taken into account when determining whether or not a dwelling is fit for human habitation.⁶⁹ **Clause 1(4) of the Bill would amend section 10 to include in the list of matters "any prescribed hazard" as defined by regulations made under section 2 of Housing Act 2004** for the actual occupiers. Section 2(1) of the *Housing Act 2004* defines 'hazard' as:

...any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).

However, the definition in section 2(1) of the 2004 Act would be treated, for the purposes of this Bill, as **omitting the reference to a "potential occupier"**. The Explanatory Notes to the Bill state:

This provides that whether a dwelling is unfit for human habitation is to be determined with regard to a hazard, meaning any matter or circumstance as prescribed in regulations under section 2 of the Housing Act 2004, and that hazard is defined as in section 2(1) of that Act, omitting reference to a "potential occupier". By virtue of the surrounding provisions of section 10, the dwelling shall be regarded as unfit for human habitation 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.⁷⁰

Clause 1(4) would also substitute reference to "house" in section 10 with "dwelling".

The revised section 8 would enable tenants to bring a claim against their landlord for rectification of risk and damages. [Closing the Gaps: Health and Safety at Home](#) (2017) comments:

This Bill addresses and provides redress for the gaps which currently exist in the private law of landlord and tenant regarding the state and condition of the property; the restrictions on a landlord's repairing obligations; and updating the criteria for determining fitness.⁷¹

The inclusion of hazards in section 10, together with the changes to section 8 of the 1985 Act, would enable local authority tenants to take action against their landlord.

⁶⁹ A full list is provided on page 6 of this paper.

⁷⁰ [Bill 10-EN](#)

⁷¹ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p22

2.2 Commencement (clause 2 as originally introduced)

Clause 2 would bring the Bill into force in England three months after receiving Royal Assent.

The Bill extends to England and Wales; however, the amendments to the 1985 Act would only apply to tenancies in England.

Amendments to clause 2 agreed in Public Bill Committee are explained in section 4.1 of this paper.

3. Reaction to the Bill

Bodies representing the interests of both landlords and tenants have expressed support for the Bill. On 14 January 2018, the then Secretary of State for Housing, Sajid Javid, **confirmed that the Bill would attract Government support**. He outlined several Government measures aimed at tackling rogue landlords and went on:

...public safety is paramount and I am determined to do everything possible to protect tenants. That is why government will support new legislation that requires all landlords to ensure properties are safe and give tenants the right to take legal action if landlords fail in their duties.⁷²

The [Shelter briefing on the Bill](#) called on the Government to:

...adopt this Bill as part of a cross-party, national, response to the Grenfell tragedy so that future tenants are not ignored and their safety put at risk.⁷³

Shelter describes the benefits to tenants as follows:

This Bill provides social tenants with a **tool to compel the local authority** to carry out repairs or rectify problems in the property.

It will not only directly help those tenants who take their landlords to court, but will **help to raise conditions** generally, through the broader **positive impact on landlord education** and awareness of their responsibilities and the risk of being sued. This fits with the government's consumer rights agenda and its commitment to intervene in markets that are failing consumers.

Empowered tenants seeking their own route to redress also won't have to be reliant upon Local Authorities. In the worst cases it will be possible for tenants to **provide their own evidence** to the judge, such as photos of disrepair, without relying on an environmental health officer or independent surveyor's report, which can be expensive. This allows Local Authorities to manage their scarce resources and make full use of the new powers in the Housing and Planning Act by continuing to **focus on the very worst offenders in the sector**.⁷⁴

The Shelter briefing emphasises that the Bill's provisions would not impact on landlords who are already meeting their obligations:

Importantly, the **vast majority of private landlords** who are fulfilling their duties **will be unaffected** by the Bill becoming law as it does not introduce new property standards or additional regulation – it simply gives tenants the ability to **enforce existing standards** that landlords are expected to meet.⁷⁵

This point is also made by landlord organisations, the Residential Landlords Association (RLA) and the National Landlords Association (NLA):

The RLA is pleased that Buck plans to re-introduce the Bill today. The Policy Director of the organisation, David Smith, says:
"Tenants have a right to expect that homes are fit for habitation,

⁷² [MHCLG. Press Release](#), 14 January 2018

⁷³ [Shelter Briefing: Fitness for Human Habitation Bill](#), 2017

⁷⁴ Ibid.

⁷⁵ Ibid.

and the vast majority of good landlords already provide this. This Bill therefore reinforces what landlords should already be doing.

“By providing a route to direct tenant enforcement of basic housing standards, the Bill will give a further opportunity to deal with the minority of landlords who have no place in the market. Current legislation often lets these criminals off the hook due to underfunded councils being unable to properly enforce it.”⁷⁶

Chris Norris, head of policy, public affairs and research at the National Landlords Association (NLA), said: “The NLA met with Karen Buck MP in 2015 prior to the introduction of her private members bill and was happy to offer any support we could. Assuming that Ms Buck’s new bill sets out to achieve the same goals as her previous attempt, the NLA remains happy to support its passage through Parliament and welcome it onto the statute books.”⁷⁷

The RLA’s briefing for the debate on Second Reading referred to a lack of enforcement by local authorities of the existing legislation governing housing standards in rented homes:

As a result of a Freedom of Information (FOI) exercise, the RLA has found that in 2016/17, among the 296 councils in England and Wales that responded, there were just 467 prosecutions of landlords. This averages at just over 1.5 per council. In the same year, the councils responding received 105,359 complaints regarding landlords.⁷⁸

This lack of enforcement is, according to the RLA, due to a lack of resources. Not all complaints would be expected to result in prosecutions – it is also the case that successful intervention by EHOs, e.g. the service of an improvement notice on which the landlord acts, will not result in prosecution. However, the gap between the number of complaints and enforcement action by authorities does raise significant questions.

The RLA makes the point that tenants may need additional assistance if they are to enforce their new rights under the Bill, for example; there is support for the establishment of a housing court by building on the work of the First-Tier Tribunal (Property Chamber).⁷⁹

As previously noted, the joint report by the universities of Bristol and Kent, [Closing the Gaps: Health and Safety at Home](#) (2017), also expressed support for the Bill’s provisions:

This Bill addresses and provides redress for the gaps which currently exist in the private law of landlord and tenant regarding the state and condition of the property; the restrictions on a landlord’s repairing obligations; and updating the criteria for determining fitness.

⁷⁶ [Residential Landlords Association welcome reintroduction of bill concerning housing standards](#), July 2017

⁷⁷ [Bid to improve standards in rented homes welcomed by landlord groups](#), June 2017

⁷⁸ RLA. Briefing for Second Reading Debate, January 2018

⁷⁹ Sajid Javid made reference to an intention to consult on “a new specialist, Housing Court, so that we can get faster, more effective justice” during his speech at the [Conservative Party Conference](#), 1 October 2017. MHCLG’s consultation paper on [Strengthening consumer redress in housing](#) (18 February 2018) said that “work is underway with the Ministry of Justice to explore how we might improve court processes, including considering the case for a new Housing Court” [para 37].

[...] It has been drafted in conjunction with senior members of the legal profession with intimate knowledge and appreciation of the current deficit in the law. It has been introduced previously and been 'talked out' as a result of concerns about the over-regulation of private landlords. The data we have presented in chapters 2 and 3 of this report make the case for its adoption unassailable. In short, the regulation of the relationship between landlord and tenant as regards the state and condition of the property is woefully lacking.

Although we fully support the Bill, we have made clear in this report that the main responsibility for improving the health and safety of people's homes must lie with the state, and that position informs our key proposal.⁸⁰

Generation Rent, an organisation which campaigns on behalf of private renters, supported Karen Buck's 2015-16 Bill and has said they are "very happy to be able to do so again":

In a context where cuts to local authorities are continuing to bite and where environmental health enforcement action remains at low levels, it's very important that private tenants are empowered to take action where there is clear cause to do so.⁸¹

Generation Rent would also like to see improved security of tenure to remove the threat of retaliatory eviction and the restoration of legal aid for private tenants to enable them "to take action against a range of housing offences."⁸² Shelter's briefing, [Happier and healthier: improving conditions in the private rented sector](#) (September 2017) echoes these requests while welcoming the new powers for local authorities contained in the *Housing and Planning Act 2016*:

Hard fought new powers in the Housing and Planning Act 2016 extends the range of measures local councils can use to take tough enforcement action and crack down on rogue landlords who, either wilfully or through ignorance, allow their tenants to live in poor conditions, causing ill health and distress. They enable councils to impose banning orders, civil penalty notices and rent repayment orders on landlords who fail to improve conditions in their properties, and to maintain a database of banned landlords and those convicted of a banning order offence.

At the same time, however, the supply of, and demand for, private rented homes and cuts to legal advice, have made it harder for renters to exercise their consumer power and local council's resources to tackle landlords on their behalf have continued to decline. **The new powers will not be enough to fundamentally improve conditions in the private rented sector if we do not also tackle these.**⁸³

Those Members who objected to Karen Buck's 2015-16 Bill cited the increased regulatory burden it would place on landlords and the perception of minimum housing fitness standards as too blunt an instrument. On this latter point, Philip Davies cited the case of *Summers v Salford Corporation [1943] AC 283*, where a broken sash window

⁸⁰ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p22

⁸¹ Generation Rent, [Giving people the right to a safe home](#), 21 July 2017

⁸² Ibid.

⁸³ Shelter, [Happier and healthier: improving conditions in the private rented sector](#), September 2017

cord was deemed to render the property unfit for human habitation.⁸⁴ In the case in question, the broken cord had resulted in the window injuring the elderly tenant, while the inability to open the window meant that the bedroom lacked adequate ventilation and represented a hazard to the occupants.

Similar concerns were raised in response to attempts to amend the housing fitness standard via the *Housing and Planning Bill 2015-16*. Then Housing Minister, Brandon Lewis, argued that the Bill's proposals on rogue landlords were a better way to improve standards without imposing "unnecessary regulation" on landlords. He said that the HHSRS was in place to keep properties in a decent state of repair, and that it was up to local authorities to enforce this properly.⁸⁵

The fitness for human habitation amendment was introduced again when the *Housing and Planning Bill 2015-16* reached its Committee Stage in the House of Lords. In response, Baroness Williams of Trafford argued that the proposed civil remedy would not be beneficial to tenants, nor would it be a course of action that could counter local authority inaction:

I question whether a vulnerable tenant would prefer to go through a lengthy court process rather than to be in a position to get their landlord to carry out repairs or to seek redress. My concern is that such a measure would lead only to rogues avoiding their responsibilities and the sanctions that could lead to them being banned.

In addition, the amendment provides, among other things, for the court to have regard to whether there is a Category 1 hazard in the property. In order to establish whether there is a Category 1 hazard, the local authority would need to have carried out an inspection using the HHSRS methodology. In such cases, therefore, the tenant would need to involve the local authority in the proceedings.⁸⁶

A similar point was raised by Baroness Evans of Bowe Park during debate on the amendment at Lords Report Stage, when the amendment was again defeated:

It risks letting rogue landlords off the hook by expecting tenants—sometimes very vulnerable tenants—to accurately inspect the condition of their property and go to the expense and stress of taking their landlord to court where there are failings.⁸⁷

Following the 'talking out' of her 2015-16 Private Member's Bill at Second Reading, Karen Buck responded to the legislative burden concerns, arguing that the Bill would have added no new duties for landlords, and that, instead, it would have provided tenants with an improved means of seeking redress."⁸⁸

⁸⁴ [HC Deb 16 October 2015, c624](#)

⁸⁵ [PBC Deb 10 December 2015 \(afternoon\), c707](#)

⁸⁶ [HL Deb 9 February 2016, c2222](#)

⁸⁷ [HL Deb 11 April 2016, c95](#)

⁸⁸ Karen Buck MP, '[Homes \(Fitness for Human Habitation\) Bill – My attempt to raise standards in the private rented sector](#)', 22 October 2015

4. The Bill's progress through Parliament

The [*Homes \(Fitness for Human Habitation and Liability for Housing Standards\) Bill 2017-19*](#) had its First Reading in the House of Commons on 19 July 2017 and its Second Reading on 19 January 2018. The Public Bill Committee met on 20 June 2018. Report stage is scheduled to take place on 26 October 2018. The Bill has cross-party support.

4.1 Amendments in Public Bill Committee – 20 June 2018

The Public Bill Committee met on 20 June 2018.⁸⁹ In total 16 amendments were tabled; all were agreed without a vote.

The key substantive amendments to **clause 1** of the Bill were to:

- provide that a landlord would not be liable under the implied covenant as to fitness for human habitation in circumstances where the works or repairs required the **consent of a third party** (such as a neighbour, superior landlord, mortgage company or public authority, such as one responsible for giving listed building consent) and reasonable efforts had been made to obtain consent, but the consent had not been given.⁹⁰
- extend the implied covenant as to fitness for human habitation, in cases where the dwelling forms part of a building, to any of the **building's common parts** (e.g. the structure and exterior of the building and internal common parts) in which the landlord has an estate or interest.⁹¹ This ensures consistency with the *Landlord and Tenant Act 1985*, which imposes an equivalent liability on the landlord for section 11 repair obligations. Karen Buck explained the rationale for the amendment as follows:

Where a dwelling is part of a larger building – a room, for example, in a home in multiple occupation, a flat in a purpose-built block or a house that has been converted into flats – amendment 4 would extend the implied covenant of fitness, so that the whole building would be fit for human habitation, including any part of the building in which the landlord has an estate or an interest. That would include, for example, the outside walls and roof of a block of flats, and the internal commons parts where the landlord owns the block.

If the common parts are in such a state that they present a risk to the health or wellbeing of the occupiers of the dwelling, the landlord will be required to take remedial action, subject to any exceptions available...⁹²

- ensure that the implied covenant as to fitness for human habitation will apply to any **periodic or secure tenancy** that comes into existence after the date on which the Bill comes into

⁸⁹ [PBC Deb 20 June 2018](#)

⁹⁰ [PBC Deb 20 June 2018 c6-11](#)

⁹¹ Ibid.

⁹² [PBC Deb 20 June 2018 c6-7](#)

force, where the tenancy arose out of a fixed-term tenancy granted before that date.⁹³ This would include a secure tenancy after an introductory tenancy, an assured tenancy after a fixed-term 'starter' tenancy, or a statutory periodic tenancy arising at the end of a fixed-term assured shorthold tenancy.⁹⁴

The key technical and consequential amendments to the Bill were to:

- **amend the long title of the Bill and the short title (in clause 2) to remove "and Liability for Housing Standards"**. This wording originally related to a contemplated clause addressing liability for failure to comply with building regulations. That clause was not brought forward on Second Reading, so Members agreed that the short and long titles of the Bill should be amended to reflect that.⁹⁵
- amend clause 1 to ensure that **the existing Section 8 of the *Landlord and Tenant Act 1985*** (which imposes an implied covenant as to fitness for human habitation but only in relation to leases falling within certain rent limits) **will continue to apply in Wales**.⁹⁶ Wales intends to introduce a requirement for rented dwellings to be fit for human habitation through regulations under the *Renting Homes (Wales) Act 2016* (see section 1.4 of this paper). However, in the meantime, Section 8 needs to continue to apply to Wales:

...The Bill extends to tenancies in England only. Housing is a devolved matter and section 8 is a matter for the Welsh Government in Wales. Until any changes are made, sections 8 to 10 of the 1985 Act will continue to apply in Wales in their existing form. The amendments provide for that, while introducing the provisions of the Bill for England.⁹⁷

Bill documents and the latest version of the Bill (as amended in Committee) are available on the [Parliament website](#).

Members raised the following key points during the Committee proceedings:

- tenants will need support to enable them to enforce their rights under the legislation, this should include education and access to legal advice/aid.
- some local authorities are struggling to finance effective enforcement action.
- tenants will need to be protected from retaliatory evictions.
- the Government should address electrical safety in the private rented sector in tandem with the Bill.

In response, the Minister for Housing and Homelessness, Heather Wheeler, pointed out that local authorities can raise additional funding for enforcement activities by using their power to impose a civil penalty of up to £30,000 as an alternative to prosecution for certain housing

⁹³ [PBC Deb 20 June 2018 c6-11](#)

⁹⁴ [PBC Deb 20 June 2018 c6-11](#)

⁹⁵ [PBC Deb 20 June 2018 c18](#)

⁹⁶ [PBC Deb 20 June 2018 c3-5](#)

⁹⁷ [PBC Deb 20 June 2018 c5](#)

offences.⁹⁸ She also noted that legislation is already in place to protect tenants from retaliatory eviction,⁹⁹ and that an announcement on electrical safety standards in the private rented sector would be made in due course.¹⁰⁰

The Minister confirmed that the Ministry of Housing, Communities and Local Government (MHCLG) will publish guidance for tenants that will explain their rights under the legislation and how to represent themselves in court, should that prove necessary.¹⁰¹

⁹⁸ [PBC Deb 20 June 2018 c14](#). For further information on civil penalties see: MHCLG, [Civil penalties under the Housing and Planning Act 2016](#), last updated 6 April 2018

⁹⁹ [PBC Deb 20 June 2018 c15](#)

¹⁰⁰ [PBC Deb 20 June 2018 c16](#)

¹⁰¹ [PBC Deb 20 June 2018 c15](#)

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