



HOUSE OF COMMONS

Housing fitness and tenant fees: new requirements

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Fitness for human habitation requirement

- Homes (Fitness for Human Habitation) Act 2018.
- Amended the Landlord and Tenant Act 1985 with the result that **landlords are required to ensure properties are fit for human habitation when the tenancy is granted and remains so for the duration of the tenancy.**
- In force for new tenancies of 7 years or less created on or after **20 March 2019**. Includes tenancy renewals and fixed-term tenancies that become periodic after 20 March 2019.
- Will apply to pre-existing periodic tenancies on **20 March 2020** (e.g. secure council and assured housing association tenancies).



A new implied term in a tenancy agreement

- The requirement for fitness for human habitation is **implied** in all tenancies affected.
- Landlords may not 'contract out' of this requirement.
- The obligation extends to the building and any part where the landlord has an estate or interest (it includes the common parts).

"The government expects standards to improve as tenants will be empowered to take action against their landlord where they fail to adequately maintain their property. This will level the playing field for the vast majority of good landlords who are already maintaining homes fit for human habitation without serious hazards, by ensuring that they are not undercut by landlords who knowingly and persistently flout their responsibilities."



The definition of fitness for human habitation

- The property is “so far defective in one or more of those matters (see below) that it is not reasonably suitable for occupation in that condition.”
- 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
- **Any prescribed hazard: Housing Health and Safety (England) Regulations 2005**



Prescribed hazards under the HHSRS

- Any prescribed hazard means that the 29 Housing, Health and Safety Rating hazards are automatically factors that will be taken into account when judging fitness.
- Covers category 1 and category 2 hazards.
- Court will judge whether the dwelling is “not reasonably suitable for occupation in that condition”.
- No need for a full HHSRS inspection or report by an environmental health officer. Tenant could supply photos/GP report as proof.
- Expert evidence might be needed in more complex cases to identify cause and extent.



Impact?

- Tenants will be able to sue the landlord for breach of the implied term (fitness for human habitation).
- May obtain an injunction to compel the works to be carried out.
- Damages – likely to be assessed on the basis of putting the tenant back in the position they would have been in had the implied term been performed.
- Possibly a repudiatory breach of contract which would enable tenant to treat tenancy as terminated.
- Responsibility arises once LL is notified of the issue – immediate responsibility arises in relation to common parts of a block of flats or HMO.
- Work should be carried out in a reasonable time (will vary).



Defences and exceptions

- Unfitness caused by the tenant
- Damage by storm/fire/flood – events beyond landlord's control
- Problem caused by tenant's possessions
- Landlord unable to get consent for the works, e.g. from freeholder/planning authority. Must be evidence of an attempt.
- Doing the work would put the landlord in breach of any obligation imposed by any enactment, e.g. unfit building is subject to listed building restrictions.



Guidance

MHCLG: guidance for tenants

<https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-tenants-homes-fitness-for-human-habitation-act-2018>

Guidance for landlords:

<https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-landlords-homes-fitness-for-human-habitation-act-2018>



Tenant Fees Act 2019

- Bans most upfront fees for prospective tenants and limits the level of security deposits.
- Applies to **new tenancies** created on/after 1 June 2019 and to **renewals of existing tenancies** (**excluding** any statutory periodic tenancies that arise after a fixed-term assured shorthold tenancy comes to an end). **One year after coming into force, the ban will be extended to apply to pre-existing tenancies.**
- Schedule 1 of the 2019 Act lists the 'permitted payments' – all other payments will be prohibited.



Permitted fees

- Rent.
- Tenancy deposit of no more than five weeks' rent (refundable) where the annual rent is less than £50,000, or six weeks' rent where the annual rent exceeds £50,000.
- Holding deposit of no more than one week's rent (paid to reserve a property).
- Payments in the event of a default. This will be restricted to the loss of a key or other security device giving access to the dwelling, or a failure to pay the full rent due within 14 days beginning with the date on which the payment is due. Payments must be evidenced in writing and must have been reasonably incurred by the landlord or letting agent. The interest payable on overdue rent will be restricted to an annual percentage rate of 3% above the Bank of England base rate.



Permitted fees

- Payments for variation, assignment or novation of a tenancy capped at £50 or the reasonable costs incurred if higher.
- Payments on termination of a tenancy at the tenant's request, capped at the landlord's loss.
- Council Tax payments.
- Payments for the provision of utilities, e.g. gas, electricity, water as long as the tenancy agreement provides for these payments.
- Payments towards energy efficiency measures under a green deal plan if the tenancy agreement provides for this.
- Payments for a television licence.
- Payments for communication services, e.g. telephone, internet, cable/satellite television.



Penalties

- Enforcement by trading standards.
- Breach will be a civil offence with a financial penalty of up to £5,000.
- If a breach is committed within 5 years of the imposition of a financial penalty or conviction for a previous breach it will be a criminal offence. This is a banning order offence and subject to an unlimited fine.
- Local authorities have the option of serving a CPN of up to £30,000 as an alternative to prosecution.
- Breach of a requirement to repay a holding deposit is a civil offence liable to a fine of up to £5,000.
- Restrictions on service of a section 21 notice where a prohibited payment is outstanding.



Guidance

MHCLG Guidance for tenants/landlords & agents/enforcement authorities:

<https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>