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**Title:** Homes (Fitness for Human Habitation) Act 2018

**Report of:** Interim Managing Director

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### **Purpose of Report**

1. This report provides an overview of the Homes (Fitness for Human Habitation) Act introduced March 2019.

### **Background**

2. The Act covers people who:
  - rent privately,
  - rent from a housing association; or
  - rent from their local council
3. The Act amends the Landlord and Tenant Act 1985. Section 11 of the Landlord and Tenant Act 1985 implies an absolute and non-excludable obligation upon landlords to carry out basic repairs and avoid Disrepair.
4. Going forward while Disrepair may give rise to unfitness, and as such there can be an overlap with Section 11 obligations, not all disrepair will make a property unfit under the Homes (Fitness for Human Habitation) Act so they need to be seen as distinct obligations.
5. The implication is that under the new Homes (Fitness for Human Habitation) Act tenants will be able to bring claims over property conditions, even when they aren't caused by disrepair. For example, condensation mould due to poor design (no ventilation, no insulation to external walls, cold bridging and so on), lack of heating, or inadequate heating for the space, fire safety risks to the building, and so on.

### **What is the new law?**

6. On 20 March 2019 a new law came into force to make sure that rented houses and flats are 'fit for human habitation', which means that they are safe, healthy and free from things that could cause serious harm.

7. If rented houses and flats are not 'fit for human habitation', tenants can take their landlords to court. The court can make the landlord carry out repairs or put right health and safety problems. The court can also make the landlord pay compensation.
8. Landlords must make sure that homes are 'fit for human habitation', which means that it's safe, healthy and free from things that could cause anyone else in the household serious harm. For example, if a house or flat is too cold and it can't be heated which can affect health.
9. The landlord is considered responsible when they are made aware of the hazard by the tenant. However, any hazard located in common parts of a block of flats would make the landlord immediately liable.
10. The landlord will then have a reasonable amount of time to deal with this hazard, which will depend on the circumstances. Once the landlord has been made aware of a hazard, and is not actively attempting to remedy this hazard, the tenant would be able to take their landlord to court. It is for the court to decide whether the landlord dealt with the hazard in a reasonable time.

### **Who can use the Homes Act?**

11. Tenants can use the Homes Act immediately if they signed a tenancy agreement contract on or after 20 March 2019, whether or not they have moved into a new property. If they signed a contract before 20 March 2019, they will have to wait until March 2020 before they can use the Homes Act.

| <b>From 20 March 2019</b>   | <b>From 20 March 2020</b>   |
|---|---|
| From 20 March 2019, anyone who signs a new tenancy agreement for a home, either the one they are currently living in, or a new home, or anyone whose tenancy becomes a periodic tenancy on or after 20 March 2019, can use the Homes Act. This includes tenants who sign tenancies of shorter than 7 years. | After 20 March 2020, everyone who has a secure or assured tenancy, or a statutory tenancy, or a private periodic tenancy, can use the Homes Act regardless of when their tenancy began. Anyone who is still on the fixed term of a private tenancy that began before 20 March 2019 cannot use the Act until the end of that fixed term. |

### **What issues are covered?**

12. Any one of the following:
  - the building has been neglected and is in a bad condition
  - the building is unstable
  - there's a serious problem with damp
  - it has an unsafe layout
  - there's not enough natural light
  - there's not enough ventilation
  - there is a problem with the supply of hot and cold water
  - there are problems with the drainage or the lavatories
  - it's difficult to prepare and cook food or wash up

13. Or there is a problem with any of the following 29 things:

- damp and mould growth
- excess cold
- excess heat
- asbestos and manufactured metal fibres
- biocides (chemicals that treat mould)
- carbon monoxide
- lead
- radiation (from radon gas, which is airborne or in water)
- uncombusted fuel gas (leaks in gas appliances)
- volatile organic compounds (chemicals which are gases at room temperature)
- crowding and space
- entry by intruders (such as not having a lock on your front door)
- lighting
- domestic hygiene, pests and refuse (including inadequate provision for disposal of waste water and household waste)
- noise
- food safety
- personal hygiene, sanitation and drainage
- water supply
- falls associated with bath or shower
- falls associated with stairs and steps
- falls on the level (danger of falling on a flat surface)
- falls between levels (danger of falling from one level to another, for example, falls out of windows)
- electrical hazards
- fire and fire safety
- Hot surfaces and materials
- collision and entrapment
- explosions
- physical strain associated with operating amenities (i.e. very heavy doors)
- structural collapse and falling elements

14. Following litigation if the judge accepts that an unfit property has been rented out, they can order the landlord to improve conditions in the property. They may also make landlords pay you compensation. There is no fixed limit on how much may be awarded and this will be judged by the court depending on the facts such as how bad the problem is, the mental or physical health problems it has caused and the length of time the problem has existed for.

15. If the court decides that a home is not fit for habitation, then they can do one or both of these two things:

- they can make the landlord do the necessary works to improve the home
- they can make the landlord pay compensation

16. The court will decide how much the compensation should be by looking at how long the house or flat was unfit, how bad it was what harm was caused.

17. The court may also order landlords to pay some or all of the legal costs.

## **So, what has changed with this legislation?**

18. The Homes Act requires:
  - that landlords must ensure that any dwelling they rent out is free of hazards from which a risk of harm may arise to the health or safety of the tenant or another occupier of the property. This requirement applies from the outset and for the duration of the tenancy; and
  - where a landlord fails to do so, the tenant has the right to take action in the courts for breach of contract on the grounds that the property is unfit for human habitation. The remedies available to the tenant will include an order by the court requiring the landlord to take action to reduce or remove the hazard and damages to compensate them for having to live in a property which was not fit for human habitation.
19. Council and housing association tenants can follow the complaints process for their housing provider and where necessary escalate this to the Housing Ombudsman. Tenants can also contact the Regulator of Social Housing.

### **Next steps**

20. We have included this update in the Housing Strategy Action Planning meetings which will focus on the theme of standards. We will continue to contribute to the discussion on the new legislation and the implications for the Asset Management Strategy.
21. We have completed training within the Property and Asset Service on the legal implications of the legislation in order to inform the operational approach to the management of hazards.
22. We will reflect the implications of the new Act within any proposed future amendments to the tenancy agreement.

### **Links to Values**

23. This report is aligned to the following company values: -
  - Fair
  - Open and honest
  - Customer focused

### **Equality and Diversity Implications**

24. There are no equality and diversity implications directly arising from this report.

### **Financial Implications**

25. Although there are no financial implications arising from this report, there will be financial implications attached to this. It is not yet possible to quantify this until actual levels of compensation have been determined.

## **Impact on Customers**

26. As explained earlier in the report, tenants can use the Homes Act immediately if they signed a tenancy agreement contract on or after 20 March 2019, whether or not they have moved into a new property. If they signed a contract before 20 March 2019, they will have to wait until March 2020 before they can use the Homes Act.

## **Risk Management Implications**

27. The current operational risk around not effectively managing Section 11 (disrepair) insurance claims will need to be reviewed and updated in light of this new legislation.

## **Value for Money Implications**

28. There are no value for money implications directly arising from this report.

## **Health Implications**

29. A tenant's mental or physical health will be considered by the court when making a judgement in line with the Act.

## **Consultation Carried Out**

30. This overview of the Homes (Fitness for Human Habitation) Act has been shared with the Council, including Portfolio holders.

## **Recommendation**

31. The Board is recommended to note the overview of the Homes (Fitness for Human Habitation) Act 2018.