

# Green light for disrepair claims? - The Homes (Fitness for Human Habitation) Act 2018

Published 20 May 2019

The Homes Act 2018 which came into force two months ago has far reaching consequences for all providers of social housing.

Living in substandard accommodation can have a significant impact on the health of tenants, and the cost of remedying defects and compensating tenants, and damage to the reputation of landlords can be great. Recent television documentaries and press articles have raised the question of whether some social housing is of a suitable standard, and in October 2018 a government report noted that, whilst the majority of public sector homes in England met the standards set by reference to the Decent Homes Standard, 13% did not.

Many of the health conditions caused by poor housing can have long term effects, impacting on a resident's ability to work. Where those affected by the poor housing are children the full extent of the injury suffered or claimed, which may include a reduction in educational attainment or mental health issues, may not be known for several years; claims presented may not be able to be resolved until the child has reached the age of 18.

In order to assist an improvement in the quality of housing stock, the government passed the The Homes (Fitness for Human Habitation) Act 2018 ("the Homes Act") which came in to force on 20 March 2019; amending the Landlord and Tenant Act 1985, the Act includes an implied covenant to residential leases that a home let must be fit for human habitation at the start of the tenancy and must remain so during throughout the duration of the tenancy (s.9A(1)).

<p>To what tenancies does the Homes Act apply?</p>	<p>The Homes Act applies to all tenancies (entered into after 20/03/19) of less than 7 years and any other tenancy to which s.11 of the <u>Landlord and Tenant Act 1985</u> (LTA 1985) applies.</p> <p>For tenancies in existence at the time of the coming into force of the Homes Act landlords have 12 months to comply i.e. until 20/03/20.</p> <p>The Homes Act extends to any common areas of a building.</p>
<p>What does the Homes Act require landlords to do?</p>	<p>The Homes Act supplements s.11 LTA 1985 and requires that the property let remains fit for human habitation.</p> <p>s.10 LTA 1985 provides a definition of fitness of for human habitation and the following factors are to be considered</p> <ul style="list-style-type: none"> <li>(a) stability</li> <li>(b) freedom from damp</li> <li>(c) internal arrangement</li> <li>(d) natural lighting</li> <li>(e) ventilation</li> <li>(f) water supply</li> <li>(g) drainage and sanitary conveniences</li> <li>(h) facilities for preparation and cooking of food and for the disposal of waste water</li> </ul> <p>The house shall be regarded as unfit for human habitation if, and only if, it is so defective in one or more of those matters that it is not reasonably suitable for occupation in that condition</p> <p>Examples of issues which may mean that a property is unfit for human habitation may</p>

include the following, based on [Schedule 1 The Housing Health and Safety Rating System \(England\) Regulations 2005](#):

- excess damp and mould growth
- excess cold or heat
- exposed asbestos
- carbon monoxide
- excess radiation
- overcrowding
- lack of lighting
- excess noise
- pests
- poor sanitation and drainage
- lack of or unsafe water supply
- unsafe drops/steps between floor levels
- electrical hazards

Need the landlord be on notice of the defect?

The landlord must be on actual notice of the defect and has a “reasonable time” to rectify the defect.

The s.9A(8) provides an implied to tenancies to which the Homes Act applies providing the landlord with the right of inspect of the property with at least 24 hours prior notice.

What is not covered by the Homes Act?

- A landlord would not be responsible for the defect if it has been caused as a result of the tenant’s behavior or possessions or fires, storms and floods which are completely beyond the landlord’s control.
- Circumstances where the landlord has not been able to get consent, for example planning permission or permission from freeholders, albeit the landlord should provide evidence of reasonable efforts to gain permission.
- Where the tenant is not an individual

The Homes Act supplements the Landlord and Tenant Act 1985 and the Defective Premises Act 1972 and breaches of the Homes Act may found claims for remedy of the defect and for damages.

### How should you respond?

Whilst resources for extra works are likely to be very tight, this is a potentially far reaching change and we would suggest that some form of assessment of existing housing provision and plans is essential to identify the most urgently needed works on a risk management basis.

DACB has an industry leading team of lawyers with a wealth of knowledge and expertise in handling claims resulting from housing conditions. This level of expertise enables us to draw on our experience from previous cases to assess the merits of each case. We regularly use leading engineering and medical experts, working in partnership with them to get results quickly for our clients, minimising the cost of claims and negative publicity.

*Our disease team deals with a wide variety of cases on a regular basis. For more information or advice, please contact one of our experts.*

### Authors



**John Goodman**

London - Walbrook  
+44 (0)20 7894 6384  
[jgoodman@dacbeachcroft.com](mailto:jgoodman@dacbeachcroft.com)



**Thomas Jordan**

Bristol  
+44 (0)117 918 2122  
[tjordan@dacbeachcroft.com](mailto:tjordan@dacbeachcroft.com)

