

**Report to:** **Housing Review Board**  
**Date of Meeting:** 20 June 2019  
**Public Document:** Yes  
**Exemption:** None



**Review date for release** None

**Subject:** **The Homes (Fitness for Human Habitation) Act 2018**

**Purpose of report:** The Homes (Fitness for Human Habitation) Act 2018 received Royal Assent on 20 December 2018 and came into force on 20 March 2019. This report outlines the operation and intent of this new legislation. EDDC owns and manages in excess of some 4200 properties which remain compliant and to a high standard. This legislation is designed to provide those tenants of 'slum landlords' who flout their legal responsibilities in providing a 'Decent Home' greater direct access to the courts to address their concern.

**Recommendation:** **The Housing Service ensures that the properties in the Council's portfolio comply with the Homes (Fitness for Human Habitation) Act 2018.**

**Reason for recommendation:** EDDC consistently maintains its housing stock to a high standard. Annually it reinvests significant budgets from the Housing Revenue Account (HRA) to undertake both planned maintenance and cyclical compliance works to ensure we keep our residents (and their visitors) safe in a decent home fit for purpose. These identified scheduled programmes of works are further supplemented with an appropriately sized responsive repairs budget to address those ad-hoc repairs requiring attention between programmes.

There are numerous existing stringent legislative checks and balances in place to ensure that EDDC remain compliant; these being regularly checked and tested through our Internal Audit process to provide assurance. EDDC, other stock owning Councils and RP's although not immune to this new Act, are highly unlikely to be challenged by it. The spirit of this legislation seeks to address those slum landlords who consistently flout the law by giving their tenants greater access to the courts for a quicker remedy whilst protecting their tenancy from possible subsequent vindictive eviction.

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**Financial implications:** As mentioned within the above summary, there are no additional financial implications expected.

**Legal implications:** The legal implications are set out in the report and build upon the current requirements of landlords in the Landlord and Tenant Act 1985 and the Pre-action Protocol for Disrepair claims. Officers will need to ensure that procedures and processes are in place to deal with disrepair complaints

with the new legislation clearly in the forefront of ensuring that tenants have no cause of action for breach of contract.

**Equalities impact:** Low Impact

**Risk:** Low Risk  
EDDC regularly maintains its stock to a good and compliant standard with resident satisfaction remaining high.

**Links to background information:** • [Item 23, March 2019 Housing Review Board](#) refers.

**Link to Council Plan:** Continuously improving to be an outstanding Council.

## 1. Introduction

- 1.1 The Homes (Fitness for Human Habitation) Act 2018 came into force on 20 March 2019; it's designed to ensure that all rented accommodation is 'fit for human habitation' and strengthens the tenants' means to seek redress against the minority of landlords who do not fulfil their legal obligations to keep their properties safe and free from issues that could cause serious harm.
- 1.2 Like East Devon District Council (EDDC) most landlords make sure that the domestic dwellings they rent out remain safe, secure, warm and dry but unfortunately there remain a few unscrupulous landlords do not; this means that some tenants still live in dangerous or unhealthy conditions. This new law is designed to help those tenants and make sure irresponsible landlords improve their properties.
- 1.3 There are no new obligations for landlords under this Act, it simply forges a 'fast track' for tenants of failing landlords. The legislation requires landlords to ensure they are meeting their existing responsibilities with regards to property standards and safety.
- 1.4 Under the Act, the Tenant and landlord Act 1985 is amended to require all landlords (both Private and Social) to ensure that their properties, including any common parts of the building, are fit for human habitation at the beginning of the tenancy and throughout its duration. The Act states there is an implied agreement between the tenant and the landlord at the beginning of the tenancy that the property will be fit for human habitation.
- 1.5 The Government supports those good landlords who currently provide a decent and well maintained home, which typically includes the stock owned and by EDDC. For those landlords who do not maintain safe properties the Act provides additional leverage for tenants' to seek redress by giving them power to hold their own landlord to account without having to rely on their local authority to do so.
- 1.6 Understandably the government are expecting standards to improve as tenants are now better empowered to take action against their landlord where they fail to adequately maintain their property. Other than ensuring a quality home for all, the additional objective is to ensure a level playing field for the vast majority of good landlords who already maintain their homes to a decent standard and are 'fit for human habitation' without serious hazard ensuring they are not undercut by unscrupulous landlords who flout their responsibilities.

## 2. Overview of the Act

- 2.1 The Act applies to the social and private rented sectors and makes it clear that landlords must ensure that their property, including any common parts of the building, are fit for human habitation at the beginning of the tenancy and maintained throughout.

- 2.2 To achieve this, landlords will need to make sure that their property is free of hazards which are so serious that the dwelling is not reasonably suitable for occupation in that condition. Most landlords, such as EDDC, take their responsibility seriously and do this already.
- 2.3 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 are an order by the court requiring the landlord to take action to reduce or remove the hazard, and / or damages to compensate them for having to live in a property which was not fit for human habitation.

### **3. What exceptions are there?**

- 3.1 The landlord will not be required to remedy unfitness when:
- the problem is caused by tenant behaviour
  - the problem is caused by events like fires, storms and floods which are completely beyond the landlord's control (sometimes called 'acts of God')
  - the problem is caused by the tenants' own possessions
  - the landlord hasn't been able to get consent e.g. planning permission, permission from freeholders etc. There must be evidence of reasonable efforts to gain permission
  - the tenant is not an individual, e.g. local authorities, national parks, housing associations, educational institutions

### **4. When can tenants start to use the Act?**

- 4.1 When the Act came into force on 20 March 2019, landlords with properties let on existing tenancies had 12 months to comply. For any new tenancies that start on or after 20 March 2019, the Act will apply immediately.

### **5. Complying with the Act**

- 5.1 If a landlord fails to comply with the Act, tenants may have the right to take court action for breach of contract. If the court decides that the landlord has not provided their tenant with a home that is fit for habitation, then the court can:
- make the landlord pay compensation to their tenant
  - make the landlord do the necessary works to improve their property
- 5.2 If the tenant seeks redress through the courts, this does not stop their Local Authority from using its own enforcement powers. Local authorities have a range of powers which allow them to tackle poor and illegal practices by landlords and letting agents, including when landlords fail to carry out necessary works that have been brought to their attention. For a social housing landlord the 'Regulator of Social Housing' and the 'Housing Ombudsman' will also have a role to play.

### **6. What are the criteria for 'Fitness for Human Habitation'?**

- 6.1 The courts will decide whether a property is fit for human habitation by considering the matters set out in section 10 of the Landlord and Tenant Act 1985. These are whether:
- 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
- or any of the 29 hazards set out in the Housing Health and Safety (England) Regulations 2005 (HHSRS).

6.2 It is for the courts to decide whether the dwelling is fit for human habitation. A HHSRS assessment is not necessary. However, a landlord might choose to carry out an assessment if they want to establish whether a serious health and safety hazard is present. Landlords of social housing will also have regard to the Decent Homes Standard.

6.3 The court may also make a decision on unfitness without expert advice. For example, if there were no plumbed sanitary conveniences in the property an expert opinion would not be necessary as the property would evidently be unfit.

## **7. How long do landlords have to fix the problem?**

7.1 The landlord is considered responsible from when they are made aware of the hazard by the tenant. However, any hazard located in common parts of a block of flats or a House in Multiple Occupation (HMO) would make the landlord immediately liable.

7.2 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.

## **8. Penalties: what happens if a landlord fails to comply?**

8.1 If the courts find that a property is not fit for human habitation, then they may require one or both of the following:

- compulsory improvement to the condition of the property
- compensation to the tenant

## **9. Tenant compensation**

9.1 Currently there are no specified limits on the level of compensation that can be awarded, and this is at the discretion of the judge having considered the evidence.

9.2 Factors which will be taken into account include the perceived harm that has been inflicted on the tenant, the longevity of the issue and the severity of the unfitness in the dwelling. The Landlord may also be ordered to pay the tenant's legal costs.

## **10. Local authorities' powers and 'retaliatory eviction'**

10.1 Local authorities will still be able to use their enforcement powers if a tenant in the private rented sector seeks redress under the Act, apart from where the local authority is also the landlord.

10.2 A landlord cannot serve a section 21 'no fault' eviction notice to a tenant with an assured shorthold tenancy unless they have complied with certain legal responsibilities. Social housing landlords cannot make use of a section 21 'no fault' eviction notice as this only applies to assured shorthold tenancies.

10.3 Existing protections against retaliatory eviction provided under the Deregulation Act 2015 will still be available to tenants if local authorities have taken certain actions under the Housing Act 2004. Therefore, there may be circumstances where local authorities consider

it necessary to take enforcement action under the Housing Act 2004 even though tenants are also seeking redress under the Act.

- 10.4 This will protect tenants against unfair eviction where they have raised a legitimate complaint about the condition of their home.