

Shelter briefing: Lords Second Reading of Fitness for Human Habitation Bill

Summary:

- Shelter supports the introduction of the **Homes (Fitness for Human Habitation) Bill**, which will help to improve property conditions for renters in both social housing and the private rented sector.
- The fire at Grenfell Tower has shone a light on the problems facing social tenants and has placed the issues of poor quality housing, tenant safety and the neglect of low-income renters on the public agenda. Many of the issues currently being discussed are those that Shelter has been campaigning on for many years.
- The Bill will give tenants a meaningful route to improve conditions without relying on patchy **local authority resources**
- This Bill has been **endorsed by the government**, has received **cross-party support in the House of Commons** and is being supported by the **Residential Landlords Association** and **National Landlord Association**

Shelter is calling on Peers to support this Bill and pass it without further amendment, 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.

Why do we need this Bill?

Renting, in both the social and private sectors, is **not fit for purpose**, and hasn't been for a generation. Too many renters live in unsafe conditions. In total, over **1 million private and social tenancies have Category 1 hazards**, home to about **2.5 to 3 million people**, including children. These figures have been pretty much static for the last 3 years.

According to the 2015/2016 English Housing survey, the number of properties with a **Category 1 hazard** under the Housing Health and Safety Rating System (HHSRS), which is defined as a **"serious and immediate risk to a person's health and safety"** are:

- Social: **244,122**
- Private: **794,600**

The tragedy at Grenfell Tower provided the starkest reminder of the **dangers of unsafe accommodation**. It demonstrated the terrible consequences of letting these problems go unaddressed. Urgent action is needed to ensure that something similar isn't allowed to happen again.

Social tenants currently have **no effective means of redress** over poor conditions, as Local Authorities cannot enforce the HHSRS against themselves and in practice rarely ever enforce against housing association. This Bill would therefore provide social tenants with a **tool to compel the local authority** to carry out repairs.

Private tenants currently have to rely on **over-stretched local authority** Environmental Health Teams (or employ an independent surveyor) to investigate and evidence poor conditions if they want to take their landlord to court.

Freedom of Information research in 2015 found that formal enforcement activity (hazard awareness notices, improvement and prohibition notices) had **fallen by 40% since** the past Parliament, while the number of private rented properties with **Category 1 hazards has increased**.

What does the Bill do?

The Bill revives a clause which already exists in the **Landlord and Tenant Act 1985**, requiring all rented homes to be **'fit for human habitation'** at the start of the tenancy and to remain so throughout. The clause is defunct due to the application of antiquated rent levels (£80/year in London, £52/year elsewhere).

In determining whether a house is 'unfit', the Bill incorporates the hazards enshrined in the **Housing Health and Safety Rating System** and adds them to the 9 original fitness categories. This has modernised the Bill from the 1985 version and ensures that we avoid creating parallel enforcement standards in renting.

The updated 'fitness standard' includes issues **not currently covered** by a landlord's legal repair responsibilities, such as damp caused by design defects (lack of ventilation) rather than disrepair, and infestation (rodents, insects, bed bugs).

The Bill gives tenants a way to take effective action themselves if they rent a property in **poor condition and the landlord fails to do the necessary maintenance**. This applies to both private and social tenants. Currently tenants have no way to enforce property standards themselves.

The Bill gives tenants the **right to take their landlord to court** where the property is not fit - they will be able to apply directly to the Court for an injunction to compel a landlord to carry out works, or for damages (compensation) for the landlord's failure to keep the property in good repair. Some tenants will be able to apply directly to the court using their own evidence, such as photos of severe mould or hazards.

How will the Bill help tenants?

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 private 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 Authority Environmental Health teams. 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**.

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. This Bill has support from the **Residential Landlords Association** and the **National Landlords Association**.

Key amendments made during the Commons Stages

At Committee Stage in the Commons the remit of the Bill was **extended** to apply to **all common parts** (e.g. stairwells) **and the structure** of the building, if the landlord also has an interest in the building, so that tenants can compel their landlord to make repairs to these too.

This amendment ensures that the Bill would have fully applied in the case of Grenfell. This is because the problems that were being raised by Grenfell tenants – **about fire doors, emergency lighting and sprinklers** – are now covered by the extension of the Bill's remit. Although the inquiry is yet to report, anecdotal evidence from residents tells us that these problems were a **major contributing factor in people not being able to escape**, therefore increasing the number of fatalities.

The tragedy of Grenfell Tower was not only the most terrible example of what can happen when we let unsafe conditions go unaddressed, but it highlighted how easily tenants' voices can be neglected. Tenants **repeatedly raised safety concerns which were ignored**. Once the residents had raised the issues and had been ignored, they had no further options or routes to redress. This is the experience of social renters up and down the country.

Making the Bill work: wider issues to consider

While we are supportive of the contents of the Bill, we believe there are wider reforms needed to ensure the Bill works as effectively as possible.

- **Security of tenure**

Security of tenure is **fundamental to better consumer rights** in the private rented sector and in order for private tenants to feel empowered to exercise the new rights in the Bill, they need **protection from retaliatory eviction**. Landlords should not be able to evict tenants simply because they are taking a case to court to resolve unfitness in their home, which the landlord has failed to address.

While protections against retaliatory eviction exist in the Deregulation Act (2015), they rely on Local Authorities inspecting the property and serving a relevant notice requiring the landlord to improve conditions. One of the key benefits of this Bill is to provide an **alternative route to justice** that does not rely on overstretched local authorities and this benefit will potentially be lost if tenants have to rely on the local authority to ensure they are protected from eviction. Additionally, evidence to the HCLG Select Committee inquiry on the private rented sector suggested the **retaliatory eviction protections are not working effectively** and the government has already started reviewing these protections as part of the consultation on three-year tenancies.

To ensure renters are properly protected from retaliatory eviction, **Shelter is calling on government to bring forward legislation to give all renters a minimum of three-year tenancies.**

- **Funding for Local Authority enforcement**

While it is positive that this Bill gives private tenants an option to side-step patchy Local Authority resources, we think that the bulk of enforcement activity should still be the responsibility of local authorities. This is **increasingly challenging** for local authorities to deliver; **cuts to local authority budgets** have contributed to the decrease in enforcement activity mentioned earlier in this briefing.

At Second Reading of this Bill in the Commons we were pleased to see **cross-party agreement** amongst MPs that local authorities need to be properly resourced, so they can protect vulnerable tenants and drive up housing standards.

- **Legal Aid**

Legal Aid is a **fundamental resource** for lower-income households to be able to exercise their rights and access justice. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 cut legal aid for early advice on housing cases and restricted it to only the most serious disrepair cases.

Last year's Grenfell Tower tragedy illustrates that where residents are worried about disrepair in their homes, it is vital that, assuming that the current Homes (Fitness for Human Habitation) Bill is enacted, they can access free legal advice, advocacy and, where necessary representation, to **ensure that they can enforce their rights** to a home that meets the fitness standard not only when, but before, it starts to pose a serious risk to health and safety.

The government is currently conducting a review of the LASPO 2012 reforms. **We are calling for legal aid to be restored for matters of disrepair and unfitness, including damages-only claims.**

Supporting the Bill

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

The Bill will help all renters, social and private, get meaningful action taken on poor and unsafe conditions.

If you require any further information, please get in touch with Poppy Terry on 0344 515 2274 or poppy_terry@shelter.org.uk