

## **Legal Aid Agency internal guidance (circulated to rep bodies 20 March 2019)**

### **The Homes (Fitness for Human Habitation) Act 2018 - note for caseworkers**

#### **The Act**

1. The Homes (Fitness for Human Habitation) Act 2018 (FFH) received Royal Assent on 20 December 2018 and comes into force on 20 March 2019. The Act can be found at the following link: [Homes \(Fitness for Human Habitation\) Act 2018](#).
2. The Act amends the Landlord and Tenant Act 1985 to require all landlords (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. The Act states that there is an implied agreement between the tenant and landlord at the beginning of the tenancy that the property will be fit for human habitation. To achieve that, 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.
3. Where a landlord fails to do so, the tenant has the right to take action for a breach of contract on the grounds that the property is unfit for human habitation. The remedies available to the tenant include an order by a court requiring the landlord to take action to reduce or remove the hazard.

#### **Legal aid**

4. Tenant claims for breach of landlords' obligations under the FFH would fall within the scope of legal aid so long as the requirements set out in Schedule 1 Paragraph 35 of LASPO apply. Section 12 of the Lord Chancellor's Guidance provides guidance on paragraph 35 and can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/672154/lord-chancellors-guidance-under-section\\_4-laspo.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672154/lord-chancellors-guidance-under-section_4-laspo.pdf)
5. Paragraph 35 is not framed in terms of specific legislative provisions or causes of action, but concerns the nature and level of risk posed by a property to a tenant (or occupant). Therefore there have been no changes to LASPO or to matter types and proceedings codes.
6. The new statutory provision represents a potential new legal means of enforcing certain matters falling within the scope of paragraph 35, by bringing more potential deficiencies in a property within the terms of the tenancy agreement itself. These would be brought (as before) under the Landlord and Tenant Act 1985 (a new s.9A).
7. Some matters that may cause a risk to health, notably condensation dampness, that could previously only have been addressed by the client by bringing a private prosecution under the Environmental Prosecution Act in the magistrates' court, can now form the basis of a breach of contract claim in the county court. Therefore a greater range of such cases may now form the subject of applications for legal representation (given that the claim will now be in a venue for which advocacy is in scope), whereas previously they may have presented on legal help audit.