



Department for
Communities and
Local Government

Review of Property Conditions in the Private Rented Sector

Government Response



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Introduction

The private rented sector is an important part of the Housing market providing flexibility and allowing people to move quickly. There are now 4.4 million households in the sector. Last year, rents increased by an average of 1.6% across England. Tenancy lengths have increased by 6%, to reach an average of over 46 months, and 81% of private renters who moved in the last three years, ended their previous tenancy because they wanted to move. 84% of private renters are satisfied with their accommodation.

A bigger and better Private Rented Sector is good for the housing market; it improves standards and choice for tenants, as well providing opportunities for investment. We have focussed on attracting more investment into the provision of rented homes, avoided unnecessary regulation and have taken action to tackle bad landlords, so they either improve or leave the sector:

Increasing housing supply and encouraging more investment

- Our £1 billion Build to Rent Fund is providing development phase finance for up to 10,000 new homes for private rent to support the creation of a purpose-built private rented sector backed by institutional investment. So far contracts are in place for over 3,000 new homes for private rent.
- Our £10 billion Housing Guarantee Schemes are now open for business, using the Government's fiscal credibility to facilitate up to £10 billion worth of investment in new, large scale private rented projects and additional affordable housing.
- The Private Rented Sector Taskforce has facilitated aspirations to invest over £10 billion, including 30 new entrants to the sector. The Taskforce is holding a conference to launch their build to rent guide for local authorities in March 2015.

Importance of not burdening the sector with regulation

- Do not want to jeopardise investment by increasing red tape and unnecessary regulation.
- Rent controls are a move away from market rents which would hold investment back when we most need to encourage it – resulting shortage of rented accommodation would help neither tenants nor landlords.

Improving the Private Rented Sector - higher standards

- Rogue landlord funding and beds in sheds programme – nearly 40,000 properties inspected and over 3,000 landlords are facing further action or prosecution;
- a new code of practice has been introduced, to improve the sector's professionalism, so all landlords and agents understand the clearly set standards;
- redress schemes have been introduced requiring all letting agents to belong to an ombudsman scheme - letting agents will also be required to publish details of their fees and whether they are members of a client money protection scheme;

- updated guidance to local authority officers to help them identify and successfully prosecute rogue landlords; and
- we have published the How to Rent Guide and the model tenancy agreement - to help tenants understand their rights and responsibilities when renting a home.

We also made a commitment to take forward a review of property conditions in the private rented sector. A discussion paper, *Review of Property Conditions in the Private Rented Sector*, was subsequently published on 12 February 2014 seeking views on what more can be done to improve property conditions in the private rented sector, and how best to tackle bad landlords without negatively impacting on the good ones.

This document analyses the responses received to each question in the discussion document, and sets out the action we have taken in response.

Responses Received to the discussion document

Overall, 5,103 responses were received. Of these 4,804 were part of a write-in campaign which had been organised by a housing charity. All of which expressed support for changes to the current legal and regulatory framework and raised identical issues.

The remaining 299 responses were received from a range of individuals and organisations who gave views on some or all of the questions raised in the document. The responses can be broken down as follows:

- 161 local authorities;
- 37 landlords, letting agents and representative bodies
- 7 MPs
- 10 charities
- 48 pressure groups
- 36 individuals

In addition, a further 97 responses related solely to possible changes to the Greater London Powers Act 1973 and short-term letting.

Section 1: Rights and responsibilities of tenants and landlords

This section invited views on what more needed to be done to raise awareness, amongst both tenants and landlords, of their rights and responsibilities.

Question 1: *In addition to the production of the Tenant's Charter, is there any further action that could be taken to raise awareness amongst tenants and landlords of their rights and responsibilities? Who needs to take this action?*

Of those that responded to the question, 150 respondents thought that more needed to be done to promote the How to Rent Guide, with the majority favouring a national promotion campaign, backed up by local publicity.

6 respondents didn't think further action would be necessary.

Question 2: *What is best practice in raising awareness amongst tenants of their right to seek help and advice from their council and how can this be shared between local authorities*

Of those that responded to the question, 148 respondents made suggestions as to what was best practice. These were largely centred around the availability of promotional material and signposting on local authority websites.

As some tenants can be nervous about approaching local authorities, it was also suggested that there might be a role for some kind of outreach work, through dedicated officers or community or student liaison groups.

Question 3: *What is best practice in dealing with requests for help and advice from private sector tenants and how can this be shared between local authorities?*

Of those that responded to the question, 130 respondents made suggestions, such as operating a triage system to deal with requests for help within local authorities, plus having dedicated officers to deal with such requests, and having service standards clearly published.

Best practice could be shared at a regional and sub-regional level, as well as nationally by Government and Stakeholder groups.

Question 4: *Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?*

Of those that responded to the question, 148 respondents thought that the existing guidance for landlords needed to be updated and/or widened to include information for tenants. In particular it was thought that the guidance needed to be simplified.

5 respondents did not think any changes were necessary.

Government Response:

The Government wants to drive up standards in the sector and improve the level of professionalism amongst landlords. To help do this, we have published a range of key documents for use by tenants and landlords:

- *How to Rent*, an accessible guide with clear advice for tenants on their rights and responsibilities with advice on what to do if something goes wrong;
- A Model Tenancy Agreement which sets out a fair balance between the rights and responsibilities of the tenant and landlord and which can be used for longer tenancy arrangements, helping to reduce voids and letting agency fees;
- Updated guidance for local authorities on improving the private rented sector, including advice on identifying and targeting rogue landlords and letting agents, taking forward successful prosecutions, pressing for the maximum penalties in court, and tackling illegal eviction.
- A short non-technical guide to help tenants recognise potentially harmful hazards in the home, such as damp, mould and excess cold and what to do about them. This will help tenants avoid properties with potential health hazards.

We asked industry to develop a Code of Practice on the letting and management of residential property. We strongly support the Code which was subsequently published by the Royal Institute of Chartered Surveyors in September 2014. It promotes consistent and high standards of management and has been endorsed by 17 organisations working across the sector.

In addition, it is now a legal requirement for all letting agents to belong to one of the 3 Government approved redress scheme. This will offer a clear and simple route for landlords and tenants to pursue complaints about their agent and where complaints are upheld they could receive compensation.

The Government recently tabled an amendment to the Deregulation Bill. The purpose of the clause is to respond to the Court of Appeal's decision in the case of *Superstrike Ltd vs Marino Rodrigues* 2013 which interpreted tenancy deposit protection legislation differently to how it had been widely interpreted before that, including by Government, in advice given to landlords published in 2007.

The Court's decision meant that certain deposits which had been received by landlords in connection with fixed term tenancies prior to the commencement of the tenancy deposit protection legislation, to which it was widely thought the tenancy deposit protection provisions did not apply, should have been protected when the fixed term expired and the tenancy became periodic. As the statutory time-limit for protection has long passed in such cases, these landlords are at risk of financial penalties and delayed possession proceedings as a result of the decision as they cannot comply with the requirements retrospectively.

The clause will amend the tenancy deposit protection legislation in the Housing Act 2004. The amendment will not completely reverse the decision made by the Court of Appeal, but

rather give landlords who still hold deposits which were taken prior to the introduction of tenancy deposit protection on 6 April 2007 where the tenancy is still in existence a grace period of up to 90 days to protect those deposits and give the tenant information telling them how the deposit is protected (this is known as 'the prescribed information').

It will also make it clear that where a deposit has been protected and the tenancy is subsequently renewed, then as long as the deposit remains protected in accordance with the tenancy deposit protection scheme, there is no requirement on the landlord to re-issue the prescribed information to the tenant at the point the tenancy is renewed. It will make it clear that this has always been the position and is the position going forwards.

This amendment will come into force when the Bill receives Royal Assent.

Section 2: Retaliatory eviction

Question 5: *Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?*

Question 6: *What would be an appropriate trigger point for introducing such a restriction?*

Question 7: *How could we prevent spurious or vexatious complaints?*

Of the responses received to the **Question 5**, 119 were in favour of imposing such restrictions, while 47 were against the proposal.

Reasons given for supporting the proposal were that it would drive up property standards, encourage a more professional approach to letting and managing property, and help to remove fear of retaliatory eviction amongst tenants. Many respondents noted that such a measure would have no impact on the majority of decent law abiding landlords and would only affect the small minority of landlords who rent out unsafe and dilapidated accommodation.

However, other respondents felt that such regulation would lead to confusion in defining serious disrepair or major improvements, and that there are issues relating to financial viability relating to the cost of some repairs. In addition, significant disrepair cannot be carried out with tenants in situ, and in some cases tenants might be responsible for disrepair.

Careful consideration of the 'trigger point' would be required, possibly needing an independent surveyor or organisation to verify the legitimacy of the repairs.

Many respondents felt that the risk of spurious complaints could be minimised through a robust property management strategy. In addition, Environmental Health Officers normally have the skills and expertise to identify such cases.

Government Response:

Retaliatory eviction is wrong and its continued practice is unacceptable. No tenant should face eviction because they have made a legitimate complaint about the condition of their home to the landlord. No decent landlord would engage in the practice. However, there are a small number of rogue landlords who think it is perfectly acceptable to evict a tenant for requesting a repair.

A YouGov survey carried out last year estimated that:

- 80,000 tenants had been evicted because they had asked for a repair to be carried out. Many of those tenants will have children and partners, so it is likely that over 200,000 people are actually affected by retaliatory eviction every year.

- Some sections of society were found to suffer significantly higher levels of retaliatory eviction:
 - o 14% of London families
 - o 13% for non-European Union nationals
 - o 10% for Black & Minority Ethnic households (rising to 17% in London).

In July 2014, Sarah Teather MP introduced a Private Members' Bill which was designed to tackle the practice of retaliatory eviction. The Bill also contained provisions to ensure that tenants are always given at least two months notice, make the eviction process more straightforward for landlords in situations where the tenant can legitimately be evicted and provide that where a landlord has failed to comply with certain legal obligations, the tenant cannot be evicted using the section 21 procedure.

The Government gave its support, in principle, for the Private Members' Bill. However, the Bill was talked out at 2nd reading on 28 November and did not proceed any further. The Government subsequently tabled an amendment to the Deregulation Bill on 4 February 2015 which was very similar to the Private Members' Bill.

The amendment is designed to be a balanced package of measures that will benefit both tenants and landlords. The amendment covers four areas and will:

- protect tenants against the practice of retaliatory eviction where they have raised a legitimate complaint about the condition of the property and a Local Authority has issued a notice confirming that the repair needs to be carried out to avoid a risk to health and safety (Improvement Notice or Notice of Emergency Remedial Action);
- ensure that tenants are always given at least two months notice before they have to move out of their home. The purpose of this measure is to deal with an approach adopted by a small minority of landlords of serving an eviction notice at the start of a tenancy, which can result in a tenant having to vacate a property with virtually no notice;
- make the eviction process more straightforward for landlords in situations where the tenant can legitimately be evicted through the introduction of a prescribed form notice to reduce errors, and simplifying the requirement around the date that must be specified in a section 21 notice while still requiring that landlords give a period of two months' notice;
- provide that where a landlord has failed to comply with certain legal obligations, the tenant cannot be evicted. We envisage this will apply to Energy Performance Certificates and Gas Safety Certificates. This restriction on the service of an eviction notice would be lifted as soon as these documents are provided.

The Bill is expected to receive Royal Assent by the end of March. Subject to Parliamentary approval, we expect that the above provisions will come into force on 1 October 2015.

Section 3: Property Conditions Review

Illegal eviction & Rent Repayment Orders

Question 8: *Do you think Government should introduce Rent Repayment Orders where a landlord has been convicted of illegally evicting a tenant?*

Question 9: *Should this be in addition to, or instead of, any damages the tenant may have received, or action taken by the local authority, for example a prohibition on renting out the property?*

Question 10: *Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?*

Of the responses received to the question, 139 were in favour of imposing such restrictions, while 17 were against the proposal.

Reasons given for supporting the proposal were that Rent Repayment Orders may provide an incentive for tenants to give evidence about being harassed or illegally evicted. However concerns were raised around increasing burdens on local authorities, or that more enforcement would be a better approach. Others thought the existing penalties available were already adequate.

Rent Repayment Orders where a property contains serious hazards

Question 11: *Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?*

Question 12: *What should the trigger point be?*

Question 13: *Should a Rent Repayment Order be in addition to, or instead of, any damages that the tenant may also be awarded, or other action taken by the local authority, for example a prohibition on renting out the property?*

Of the responses received to this question, 100 thought a Rent Repayment order should be in addition to any other damages, while 50 thought it should be instead of other damages.

Reasons given in support were that Rent Repayment Orders needed to be in addition if they were to act as a real deterrent, but that landlords would need to be informed and given adequate time to make repairs.

Question 14: *Is there a need to review the sanctions currently available to local authorities when dealing with less serious housing condition breaches?*

Of the responses received to this question, 82 thought the current range of sanctions were adequate while 47 thought there should be additional or tougher sanctions.

Government Response:

We are legislating to tackle the problem of retaliatory eviction and introducing other changes which will benefit both landlords and tenants. At this stage, we have decided not to legislate to extend Rent Repayment Orders but will keep the position under review.

On sanctions more generally, we are significantly increasing maximum fines for breaches of housing and planning legislation when section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force. Subject to Parliamentary approval, we expect this to happen shortly. The effect of this will be that where an offence is currently punishable by a fine of £5,000 or more in a magistrates' court, this upper limit will be removed and the offender will be liable to a potentially unlimited fine. Where an offence currently has a maximum penalty of less than £5,000 in a magistrate's court, the maximum penalty will be quadrupled.

The revised guidance for local authorities on tackling bad practice contains advice on dealing with illegal evictions.

Section 4: Property Conditions Review

Smoke and carbon monoxide alarms

Question 15: *Should private sector landlords be required to install, and maintain, smoke alarms in their properties, or would a non-regulatory approach to encourage greater take-up be a better option?*

Government response:

There were 237 responses to the question on smoke alarms. A regulatory approach was supported by Fire and Rescue Authorities, industry representatives and over 96% of landlords, agents and fire officials who responded to the paper.

Following the consideration of responses the Government will introduce regulations, to require private rented sector landlords, to install smoke alarms on each storey of their property and check that alarms are in working order at the start of a new tenancy. The regulations will ensure the landlord's who have remained resistant to successive governments' substantial non-regulatory messaging, install working alarms and adequately protect the lives of their tenants.

We estimate that requiring an alarm to be installed on each storey of a property will prevent up to 27 deaths and 1069 injuries each year providing benefits of £606.7 million over a 10 year period.

Question 16: *Should private sector landlords be required to install, and maintain, carbon monoxide alarms in their properties or would a non-regulatory approach be a better option?*

Government response:

The Government will introduce regulations requiring private sector landlords to install Carbon Monoxide alarms in the rooms considered most at risk from high levels of Carbon Monoxide - those with solid fuel burning combustion appliances. This approach will build on the Building Regulations 2010 measures which require the installation of a Carbon Monoxide alarm in all properties when a solid fuel heating system is first installed. We estimate the regulations will result in 6-9 fewer fatalities and 306-460 fewer injuries and provide benefits of £16.8 million over a 10 year period.

Alongside targeted regulation the Government intends to pursue non-regulatory alternatives to encourage installation of Carbon Monoxide alarms in all private rented sector properties.

Landlord & Tenant Act 1985

Question 17: *Does the Landlord & Tenant Act 1985 cover the right areas, or should it be broadened to cover other issues?*

Of the responses received to this question, 57 thought that the Act was adequate, while 64 thought it should be broadened and updated. Some respondents also expressed a view that all related legislation should be included in one place to aid clarity.

Government Response:

The Government is keen not to introduce new regulations which would be a burden on the majority of landlords who are already fully compliant with their obligations. Doing so would increase costs and reduce choice. At present, therefore, we do not propose to make any amendments to the Landlord & Tenant Act 1985.

Inspection of electrical installations

Question 18: *Do you think that the current approach strikes the right balance or should there be a statutory requirement on landlords to have electrical installations regularly checked?*

Of the responses received to the question, 38 thought that the current approach struck the right balance, while 119 thought there should be a statutory requirement to have regular checks. Of those that favoured regular checks, most favoured this to happen every 5 years in line with advice from Electrical Safety First.

Government Response:

Landlords are already under a general legal duty to ensure that electrical installations in the property are safe and kept in good working order. The Government published the *How to Rent* guide which recommends that electrical installations are checked every 5 years. The Royal Institute of Chartered Surveyors' Code of Practice on the letting and management of property makes clear that landlords must repair and keep in proper working order installations for the supply of electricity. In addition, local authorities already have strong powers to deal with unsafe property conditions and we expect them to be used.

The Government believes that the current regulatory framework, which puts a duty on landlords to ensure electrical installations in the property are safe, provides an adequate level of protection. We do not, therefore have any plans to introduce a requirement for regular checks. However, we will keep the situation under review.

Section 5: Property Conditions Review

Licensing of rented housing

Question 19: *How effective is voluntary accreditation as a way of driving up standards?*

Of the responses received to the question, 72 respondents thought that voluntary accreditation was generally effective in driving up standards, while 65 thought it was not, with many respondents saying it was only really effective in helping good landlords improve their service.

Several respondents saw voluntary accreditation as an expensive failure, although it could work better if there was a financial stimulus for landlords to join, or else enforcement powers or the threat of licensing of landlords who didn't volunteer.

Question 20: *Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?*

Of the responses received to the question, 35 thought tighter restrictions were needed, while 94 thought they were not.

Reasons given for tighter restrictions were that licensing can take up a large amount of resource which could be better focussed on targeting problem properties. Some respondees also thought that licensing was not always being used as originally intended, and shouldn't be used to burden good landlords. Those against tighter restrictions saw it as an effective measure that should be left to local discretion.

Question 21: *Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?*

Of the responses received to the question, 70 thought local authorities should be able to focus licensing schemes on rogue landlords, while 80 respondents disagreed.

Reasons given in support were that good landlords shouldn't have to bear the costs involved. Those against the proposal thought that local authorities needed discretion to be able to design schemes which suited local needs, and questioned whether it would be possible to get rogue landlords to engage with such a scheme. It was also suggested that it would be better to target rogue landlords directly.

Government Response

Voluntary accreditation can play a key role in helping to drive up standards and enabling local authorities to focus on the non-compliant rogue landlords. For example, the Mayor of London recently published *The London Rental Standard*, an accreditation scheme for local

authorities in London, which has been well received by both tenant and landlord organisations.

The Government is currently exploring the scope for developing a standard framework for a voluntary landlord accreditation scheme that draws on existing best practice and which can be used or adapted locally.

It was clear from responses to the discussion document that there would be significant drawbacks to a licensing scheme which focussed purely on rogue landlords, not least because of the difficulty in identifying such landlords. It has been decided, therefore, not to proceed with this option.

On the specific issue of selective licensing, local authorities have powers under the Housing Act 2004 to introduce selective licensing of privately rented homes in their area on the grounds of low housing demand and/or significant anti-social behaviour. Local residents, landlords and tenants must be consulted prior to the introduction of a licensing scheme. Landlords who rent out properties in an area that is subject to selective licensing are required to obtain a licence from the local authority for each of their properties. When licensing was originally introduced, local authorities had to obtain confirmation from the Secretary of State before a scheme could be introduced. However, in March 2010, a General Approval was issued, which removed the need to obtain confirmation before introducing a licensing scheme.

Licensing can play an important role when it is strictly focused on discrete areas with specific problems. However, the blanket licensing approach adopted by some local authorities has major drawbacks. This is because it impacts on all landlords and places additional burdens on reputable landlords who are already fully compliant with their obligations, thereby creating additional unnecessary costs for reputable landlords which are generally passed on to tenants through higher rents. The typical cost of a licence is around £500 and lasts for five years, so we can reasonably assume an annual fee of £100 per property. As a result, the landlord may see a reduction in their property's investment value, but the more likely outcome is for tenants to bear most of the burden, especially in areas of high rental demand. The vast majority of landlords provide a good service and the Government does not believe it is right to impose unnecessary additional costs on them, or their tenants. Such an approach is disproportionate and unfairly penalises good landlords.

To address this issue, it has been decided to amend the General Approval. With effect from 1 April, local authorities will have to seek confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area. This approach will help ensure that local authorities focus their activity on areas with the worst problems while helping to ensure that they do not adversely impact on good landlords.

Guidance for local authorities on how to seek confirmation for proposed schemes above those thresholds will be published very shortly. All applications will be considered on a case by case basis. This change will not affect the procedures for introducing additional licensing or the mandatory licensing regime for large Houses in Multiple Occupancy, which remain unchanged.

Alongside this change to the General Approval, regulations have been laid in Parliament that will expand the criteria for selective licensing. This is in response to concerns expressed by many local authorities who have suggested that the current criteria for selective licensing are too restrictive and do not give local authorities enough discretion to take account of local circumstances. It has, therefore, been decided to expand the criteria for selective licensing. Regulations have been laid before Parliament which will, subject to parliamentary approval, extend the criteria for selective licensing to cover areas experiencing poor property conditions, large amounts of inward migration, a high level of deprivation or high levels of crime. These changes will help ensure that local authorities have the right tools to help target enforcement action where it is most needed.

Question 22: *Should the relevant provisions of the Greater London Powers Act 1973 be reviewed or updated. Does London need separate rules from the rest of England, and what comments would you have on how regulations could better support and reflect modern technology?*

Of the 97 who responded to this question some 30% of individuals and businesses, assisting householders to let their residential properties or rooms on a temporary basis, supported changing the current provisions with some saying that enforcement by the London Boroughs is inconsistent. Resident groups and local authorities raise some concerns over the possible removal of section 25, the impact it would have on London's housing stock and sub-letting to short-term tenants.

Government Response

The Government published a paper on 9 February outlining the new policy on short-term use of residential property in London. This document also responds to question 22 of the Review of Property Conditions in the Private Rented Sector discussion document, and can be found at the following web address: www.gov.uk/government/publications/short-term-use-of-residential-property-in-london

Section 6: Property Conditions Review

Housing Health & Safety Rating System

Question 23: *Do you think the methodology that underpins the Housing Health and Safety Rating System and/or the accompanying operational guidance need to be updated?*

There was support for an update of the Housing Health and Safety Rating System guidance. However many respondents saw the methodology and guidance as being fundamentally sound as they are.

7 respondees did not think that any updating was required.

Government Response:

We note that many respondents believe that the current guidance is fundamentally sound. At this stage, therefore, we do not propose to update the methodology or produce a revised version of the operational guidance. However, it has been decided to produce a layperson's guide to health and safety hazards in the home and what to do if something goes wrong. A guidance document is being published at the same time as this document.

Summary of recent private rented sector initiatives

A bigger, better Private Rented Sector is good for the 4.4 million households in privately rented accommodation. We want to raise standards and empower consumers.

We want people to know their rights and responsibilities, and to live in decent and safe accommodation. We also want to eliminate bad practice in the sector so we have:

- asked industry to develop a **code of practice** for the management of residential property which was published on 11 September 2014;
- published a **'How to Rent' guide** informing tenants of their rights and responsibilities;
- published a **Model Tenancy Agreement** for the use of landlords and tenants which includes clauses that can be used for longer, family-friendly tenancies;
- published revised guidance for local authorities on improving the private rented sector and **tackling bad practice** amongst landlords;
- published 'Renting a safe home' for tenants; guidance on identifying potential risks to **health and safety** in the home;
- issuing guidance for local authorities on the new **Park Homes** site licensing regime;
- introduced a requirement that all letting and property management agents are a member of one of 3 approved **redress schemes**;
- legislated for greater transparency for letting agents;
- made available £6.7 million to a number of local authorities to help them tackle acute and complex problems with **rogue landlords** in their area, including action on 'Beds in Sheds'. So far, nearly 40,000 properties have been inspected and over 3,000 landlords are facing further action or prosecution;
- are legislating to protect tenants against **retaliatory eviction** where they have a legitimate complaint and make the eviction process more straightforward in appropriate circumstances.