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BRIEFING PAPER

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Housing fitness in the private rented sector

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Summary

The private rented sector (PRS) houses more households in England than the social rented sector, but has the highest proportion of poor property standards of any tenure type. The 2014/15 English Housing Survey found that 29% of private rented properties would fail the Government's decent homes standard (DHS) compared to 14% of social housing. The DHS is a non-statutory standard which is most frequently referred to in relation to the social rented sector.

There are statutory provisions governing private landlords' repairing and maintenance obligations in addition to other requirements; for example, in relation to gas safety. Enforcement of standards in private rented housing is, in England and Wales, mainly through the Housing Health and Safety Rating System (HHSRS), a risk-assessment based regulatory model used by local authority environmental health officers.

Since the introduction of the HHSRS in 2006, replacing the old Housing Fitness Standard, there have effectively been no minimum property standards for rented housing in England.

A Private Member's Bill introduced by Karen Buck MP in 2015-16, and Labour amendments to the *Housing and Planning Bill 2015-16,* sought, unsuccessfully, to reintroduce a 'fitness for human habitation' minimum standard of property maintenance. The Housing Minister, Brandon Lewis, argued that the Housing and Planning Bill's proposals on rogue landlords were a better way to improve standards without imposing "unnecessary regulation" on landlords.

This briefing paper looks at the main debates around a minimum property standard, compared to a risk-assessment based model. These include regulatory burden on landlords and inconsistent interpretation and enforcement of the HHSRS.

As housing is a devolved policy area, different approaches to regulating PRS property standards have emerged in Wales, Scotland and Northern Ireland, which are also examined in further detail.

This briefing paper focuses on the debates around the regulatory regime for property health and safety standards in the private rented sector, including the HHSRS. More information on the HHSRS itself can be found in the Commons Library briefing paper, *The Housing Health and Safety Rating System (HHSRS)*

1. Property standards in the private rented sector

The 2014/15 English Housing Survey (EHS) found that in 2014 29% of private rented housing in England would fail the Government's decent homes standard for social housing[1], compared to 14% of social rented housing.

Whilst this is a marked decrease from the 47% of non-decent private rented housing in 2006, this decrease is due to the increased size of the sector as a whole. The absolute number of non-decent private rented properties has risen from 1.2 million to 1.3 million over the same period.[2]

Shelter's 2014 report, *Safe and decent homes*, included research on the extent and impact of non-decent homes in the private rented sector:

> Our research found that over 6 in 10 renters (61%) have experienced at least one of the following problems in their home over the past 12 months: damp, mould, leaking roofs or windows, electrical hazards, animal infestations and gas leaks.
>
> Ten per cent of renters said their health had been affected because of their landlord not dealing with repairs and poor conditions in their property in the last year, and 9% of private-renting parents said their children's health had been affected.[3]

Poor standards of maintenance and repair of some properties in the private rented sector are often cited as a downside of this tenure. A 2013 report on the private rented sector (PRS) by the Communities and Local Government (CLG) Select Committee noted:

> Although we received some evidence suggesting that standards in the private rented sector had risen in recent years, we heard concerns from a number of people about the physical standards of property in some parts of the sector, and the way in which some landlords carried out their management responsibilities.[4]

The Residential Landlords Association's (RLA) evidence to the Committee's inquiry into the PRS agreed that substandard accommodation was unacceptable, but highlighted an 85% satisfaction rate amongst private tenants with their tenancy compared to 81% amongst social tenants.[5]

In recent years however this gap has narrowed. In the 2013/14 EHS (the most recent year for which satisfaction figures are available), 82% of private sector tenants were satisfied with their accommodation compared to 81% of social tenants. 68% of private sector tenants were

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1 The Decent Homes Standard is a non-statutory minimum standard for social housing
2 DCLG, *English Housing Survey: Headline Report 2014-15*, 18 February 2016
3 Shelter, *Safe and Decent Homes: Solutions for a better private rented sector*, 9 December 2014, pp40-41
4 CLG Committee, *The Private Rented Sector*, 8 July 2013, HC 50 2013-14, para 26
5 CLG Committee, *The Private Rented Sector*, 8 July 2013, HC 50-II 2013-14, Ev 152

satisfied with repairs carried out by their landlords, although no comparative figures for social tenants were provided.[6]

In its response to the recommendations in the CLG Committee report, the Government announced it would consult on measures to improve standards, including a review of the Housing Health and Safety Rating System (HHSRS - see section 2.1), and the extension of Rent Repayment Orders to apply to landlords who rent out properties containing serious hazards.[7]

The Department for Communities and Local Government (DCLG) published its response to the consultation in March 2015. The response highlighted Government publications advising tenants on identifying health and safety hazards, as well as higher magistrates' fines brought in by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, which could be applied to landlords found to be in breach of their statutory obligations (including repairing obligations).

While the DCLG response noted the importance of improving standards in the private rented sector, it also cited the importance of not burdening the sector with regulation. The Government decided against making changes to the HHSRS, the *Landlord and Tenant Act 1985* (which includes some maintenance obligations for landlords) or to the scope of Rent Repayment Orders.[8]

However, Rent Repayment Orders were subsequently extended to cover landlords who failed to comply with a local authority improvement notice by the *Housing and Planning Act 2016*.

The Act also introduced Banning Orders, which can prevent a "rogue landlord" from renting out property for a set period of time. The scope of these orders has yet to be set out in regulations, although the Government confirmed these will cover serious breaches of housing legislation. Draft regulations are expected in the Autumn.[9]

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6 DCLG, *English housing survey 2013 to 2014: household report*, 16 July 2015
7 DCLG, *Government Response to the Communities and Local Government Select Committee Report*, Cm 8370, October 2013
8 DCLG, *Review of Property Conditions in the Private Rented Sector: Government Response*, March 2015
9 HL Deb 9 February 2016, c2141

2. Current requirements for maintenance and repairs

2.1 The Housing Health and Safety Rating System (HHSRS)

Although there is no general obligation on landlords to ensure properties are 'fit for human habitation' (see section 2.2), local authorities have powers to compel landlords to tackle serious health and safety hazards.

The HHSRS, introduced by the *Housing Act 2004* and in force since 2006, provides a mechanism through which local authority environmental health officers inspect and identify hazards in residential housing. Where they identify the most serious ('Category 1') hazards, they are required to take action, however they can also choose to take action in regard to less serious ('Category 2') hazards.

The risk-assessment approach to property standards under the HHSRS means that issues are judged on the risk they pose, not simply whether or not a property has a particular maintenance issue. It should assess for the most vulnerable member of the household, and therefore would give a different judgement depending whether or not, for example, a baby lived at the property.

Unlike the Housing Fitness Standard it replaced, the HHSRS is not a pass or fail test of housing fitness, and does not set any minimum standards.

As the HHSRS is administered by local authorities, some concerns have been raised about the consistency of interpretation and enforcement (see section 3).

More information can be found in the Commons Library briefing paper, *Housing Health and Safety Rating System (HHSRS)*.

The old Housing Fitness Standard

Prior to the introduction of the HHSRS housing fitness was regulated by section 604 of the *Housing Act 1985*. Section 604 set out a pass or fail test of housing fitness based on nine maintenance categories. Although the Housing Fitness Standard was contained in the 1985 Act, a similar standard had been in place since the mid-19th century.

Where a local authority identified a property as unfit it had a duty to take action; it was left to the authority to decide upon the most appropriate course of action.

Concerns were raised about the effectiveness of the Housing Fitness Standard, particularly that a number of the most serious health and safety hazards, including fire hazards and fall hazards, were not covered by the standard.

In addition, it was seen by some as a blunt instrument that could only pass or fail a house, and therefore sometimes did not distinguish

between more minor risks to health in dwellings and genuine or immediate health and safety hazards.[10]

2.2 Fitness for human habitation

The *Landlord and Tenant Act 1985* sets out implied terms in a tenancy agreement that require landlords to let properties which are 'fit for human habitation' at commencement of and throughout a tenancy. This is regardless of any stipulation to the contrary written into the tenancy agreement.

However, these implied terms only apply to homes under a certain level of rent, the amount of which has not been uprated from the level set out in the *Rent Act 1957*. As a result, the provisions in the 1985 Act only apply to those paying less than £80 annual rent in London, or less than £52 annual rent elsewhere, and are therefore effectively obsolete.[11]

According to the 1985 Act, a property is to be regarded as unfit for human habitation if it is "so far defective in one or more of those matters (set out below) that it is not reasonably suitable for occupation in that condition."

The relevant matters (the same as those underpinning the old Housing Fitness Standard) are:

- Repair
- Stability
- Freedom from damp
- Internal arrangement
- Natural lighting
- Ventilation
- Water supply
- Drainage and sanitary conveniences
- Facilities for preparation and cooking of food and for the disposal of waste water.[12]

There are also some longstanding common law provisions in place regarding fitness for human habitation in furnished or newly constructed rental properties (regardless of annual rent levels). These are summarised on the Residential Landlords Association (RLA) website:

> There are two cases in which, at common law, a landlord undertakes an obligation about the fitness for human habitation of residential property which he lets:
>
> (a) There is an implied condition that furnished premises are let in a state reasonably fit for human habitation. This does not impose a duty on the landlord to keep them in that condition, and does not affect unfurnished lettings. If it is unfit at the outset of the tenancy the tenant can repudiate the tenancy and walk away. It will include things such as drainage defects and the presence of vermin.

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10 See for example Department of the Environment, Transport and the Regions, *Housing Health and Safety Rating System: Report on Development*, July 2000

11 Section 8, *Landlord and Tenant Act 1985*

12 Section 10, *Landlord and Tenant Act 1985*

> (b) When a landlord agrees to let a house which is in the course of erection, there is an implied undertaking that, at the date of completion, the house should be in a fit state for human habitation. This does not apply where the tenancy is entered into after the house is finished.[13]

Apart from these common law exceptions, there is no general obligation implied in a tenancy agreement for a landlord to maintain their property at a level 'fit for human habitation'.

Eligible tenants, whose landlords do not carry out the maintenance requirements listed above, can pursue a civil remedy under the 1985 Act. This means they can apply to a court to enforce eligible repairs.

2.3 Landlords' repairing obligations

Section 11 of the *Landlord and Tenant Act 1985* sets out an implied covenant for repairs in tenancies of less than seven years, under which landlords are required to carry out repairs to:

- the structure and exterior of the dwelling;
- basins, sinks, baths and other sanitary installations in the dwelling;
- heating and hot water installations.[14]

The repair must be reported for a landlord's duty under section 11 to arise. DCLG provides the following advice on getting a landlord to carry out repairs:

> The tenancy agreement will normally set out the rights and liabilities of the parties and may cover the procedure for getting repairs done. If the landlord fails to get repairs done after being told about them:
>
> - The tenant can sue the landlord in court. The court can award damages, and order repairs to be done. Get advice before taking court action
> - Where the landlord has been told about the need for repairs, and failed to do them, a tenant can contact their local council who have new powers, under Part 1 of the *Housing Act 2004*, to carry out an assessment of the property using the new Housing Health and Safety Rating System (HHSRS).[15]

2.4 Statutory nuisance

Where there is disrepair in a property to the extent that it is prejudicial to health, this should be assessed by local authority environmental health officers, who can, where certain conditions are met, declare the issue a statutory nuisance.

Where a statutory nuisance is declared, the local authority must serve an abatement notice, which requires the disrepair to be dealt with. Common causes of statutory nuisance include the presence of dampness, mould or asbestos.

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13 RLA, *Landlord guides - repairs* (last accessed 28 September 2015]
14 Communities and Local Government, *Repairs: a guide for landlords and tenants*, 2011, p3
15 Ibid., p8

The option of pursuing a statutory nuisance through the local authority is only available to private sector or housing association tenants, as a local authority cannot serve an abatement notice on itself.

Local authority tenants can however seek an independent assessment of statutory nuisance. Where the local authority is not acting on a statutory nuisance, tenants can take private action in a magistrate's court under section 82 of the *Environmental Protection Act 1990*.

2.5 Specific maintenance regulations

Landlords are required to carry out a number of maintenance and repair duties in addition to the general duties set out above. Although not an exhaustive list, some of the major obligations, including changes due to be introduced, are listed in this section.

Gas safety

Under the *Gas Safety (Installation and Use) Regulations 1998*, landlords are responsible for the maintenance and repair of gas fittings, appliances and flues.

These must also be checked annually by a Gas Safe registered engineer, and a record of this safety check must be provided to the tenants.

More information can be found on the Health and Safety Executive's (HSE) *Gas safety – landlords and letting agents* page.

Electrical safety

Currently there are no specific regulations relating to electrical safety. Instead this is covered more generally by the HHSRS.

However, section 122 of the *Housing and Planning Act 2016* allows for the introduction of mandatory electrical safety checks.

Although not yet in force, these will likely be on a similar basis to gas safety checks, with the obligation for regular checks by a certified engineer and the threat of financial penalties for non-compliance.

Smoke and carbon monoxide alarms

As of 1 October 2015, all private landlords have been required to install a smoke alarm on every storey of the property used as rental accommodation, and a carbon monoxide alarm in any room used as living accommodation with a burning appliance for solid fuel (such as coal or wood).

Landlords must also check that these alarms are working at the start of any new tenancy.

Where these requirements are not met, local authorities can issue a remedial notice requiring the installation of the relevant alarms within 28 days. Should the issue then remain unresolved, landlords can face a civil penalty of up to £5,000.

Exposure to Legionella

Legionella are bacteria present in water systems which, when inhaled, can cause Legionnaires' disease, a potentially fatal, pneumonia-like disease.

Outbreaks of the illness occur from exposure to Legionella growing in purpose-built systems where water is maintained at a temperature high enough to encourage growth.

As a result, landlords are under a legal duty of care to ensure that the risk of exposure to Legionella for tenants, residents and visitors to their properties is adequately assessed and controlled.

The HSE published an updated Approved Code of Practice in November 2013.[16]

More information can be found in the Commons Library briefing paper, *Smoke Alarms, Carbon Monoxide Detectors and Legionella: Landlords' Responsibilities*.

2.6 Protection from retaliatory eviction

It has been argued by organisations such as Shelter that tenants seeking repairs could be at risk of retaliatory eviction. This is where a private landlord serves a section 21 notice on an assured shorthold tenant (seeking to terminate the tenancy) in response to the tenant's request for repairs, or where they have sought assistance from the local authority's environmental health department.

Retaliatory eviction is argued to be a by-product of the fact that private landlords can evict assured shorthold tenants without having to establish any 'fault' on the part of the tenant.[17]

The extent of retaliatory eviction is disputed, but following an unsuccessful attempt by Sarah Teather to protect tenants against it through a Private Members' Bill, the *Tenancies (Reform) Bill*, similar measures were subsequently added to the *Deregulation Act 2015*.

These measures came into force on 1 October 2015, and only apply to new tenancies started on or after this date. DCLG has produced a *guidance note on the new regulations* which has further information.[18]

Section 33 of the *Deregulation Act 2015* prevents landlords from issuing a section 21 eviction notice within 6 months of having been issued an improvement notice in relation to Category 1 or Category 2 hazards.

Whilst the 2015 Act covers tenants whose properties have been issued an improvement notice, it does not cover other rights of repair, including a civil remedy pursued over unfitness for human habitation or an abatement notice served in relation to a statutory nuisance.

More information can be found in the Commons Library briefing, *Retaliatory eviction in the private sector*.

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16 HSE, *Legionnaire's disease: The control of legionella bacteria in water systems*, ACOP L8(4th edition), November 2013

17 See for example Citizens Advice Bureau, *The tenant's dilemma*, June 2007

18 DCLG, *Retaliatory Eviction and the Deregulation Act 2015: guidance note*, 1 October 2015

3. Minimum property standards: the main debates

The replacement of the Housing Fitness Standard with the HHSRS marked a transition from a minimum property standards model of regulation to a risk-assessment model.

Prior to and since the passing of the *Housing Act 2004*, which legislated for the HHSRS, the issue of which model offers the best protection for tenants and for landlords has often been debated. Some of the main issues in this debate are set out below.

3.1 Inconsistent interpretation of regulations

There have been criticisms of the HHSRS that its risk-assessment based nature, and the lack of prescribed minimum standards, means much is left to individual assessors, and it can often be inconsistently interpreted between different local authorities.[19]

Whilst some have argued that the HHSRS results in inconsistent assessment of hazards, its predecessor, the Housing Fitness Standard, also faced similar criticisms.[20] This is despite it having prescribed minimum property standards.

To combat the perceived inconsistencies between local authorities' interpretation of the HHSRS, the Coalition Government proposed extending Primary Authority to cover the system. This was intended to be of particular benefit to landlords operating across local authority boundaries. Primary Authority is a regulatory system which:

> Allows businesses to be involved in their own regulation. It enables them to form a statutory partnership with one local authority or fire and rescue authority, which then provides robust and reliable advice for other local regulators to take into account when carrying out inspections or addressing non-compliance.[21]

The intention of this change, which came into force in October 2013, was to encourage regulatory compliance by providing a more consistent set of standards for larger landlords and management agencies.[22]

However, this move towards increased standardisation was criticised by some organisations and Labour MPs. For example, the Chartered Institute of Environmental Health (CIEH) raised the following concerns:

> The application of the HHSRS in improving and maintaining standards and correcting Category 1 and 2 hazards is unique to the property under inspection, since it is built on a rigorous risk-based assessment and approach.

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19 See for example, HomeLet Direct, *Memorandum to the Communities and Local Government Select Committee*, January 2013

20 Legal Research Unit, University of Warwick, *Controlling Minimum Standards in Existing Housing*, January 1998, para 2.11

21 Department for Business, Innovation and Skills (BIS), *Primary Authority: Nurturing Partnerships for Growth*, June 2015

22 BIS, *Government Response: Extending the Range of Regulations Covered by Primary Authority*, April 2013

> HHSRS inspections need to continue to be performed on an individual basis without let or hindrance, as the consequence of making it possible for someone with, say, two properties to approach a primary authority would compromise the very point of the system behind the scheme.[23]

3.2 Inconsistent enforcement of regulations

In addition to concerns over inconsistent interpretation of the HHSRS, there have also been numerous concerns about the consistency of enforcement by local authorities. During the Lords Report stage of the *Housing and Planning Bill*, Baroness Grender argued this point:

> We know from Shelter's survey that more than 10% of renters feel either that their issue is not serious enough to take to the council, or that nothing will change as a result. Bringing back to life this legislation as a means of civil redress for private renters, as this amendment would, would free up local authorities to focus on those who really need help.
>
> This is important because local authorities, as we all know, are struggling to manage the demands on their environmental health officer teams as the private rented sector balloons.[24]

Baroness Grender then quoted from a report commissioned by Karen Buck MP, which found that in 2013-14 there were 51,916 complaints about property conditions, of which 29,768, or 57%, were investigated.

Rather than a minimum standard of property maintenance, the HHSRS assesses for Category 1 hazards, where local authority action must be taken, and Category 2 hazards, where local authorities can choose to take action.

It is arguable that repairs to Category 2 hazards are likely to be more infrequently or informally enforced by local authorities given their non-mandatory status.

Statistics from the report show that in 2013-14, 'informal' enforcement action, such as a letter, was used 15,964 times. It also noted that 'informal' action is frequently being taken against Category 1 hazards, despite a legal requirement for local authorities to take formal action.[25]

Karen Buck raised the issue of Category 2 enforcement during debates on her 2015-16 Private Member's Bill, which sought to introduce a minimum property standard to operate alongside the HHSRS (see section 4):

> The remedy available (for Category 2 hazards) depends entirely on the choice that local authorities make on their enforcement strategy and, of course, the resources available to them. Overall, local authorities have not used their powers as often, or met their duties as well, as they might, too often acting only after receiving complaints from tenants, rather than proactively.
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> […]

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23 *Environmental Health News*, 'HHSRS primary authority warning', 31 July 2013
24 HL Deb 11 April 2016, c93
25 Stephen Battersby & Karen Buck MP, *The challenge of tackling unsafe and unhealthy housing*, December 2015

> The most common way of dealing with hazards that are found when environmental health officers go into a property is informally. It is not clear what that is, but it is extremely hard to monitor and get a national picture for how effective it is.[26]

This highlights some difficulties of having a regime operating solely through local authorities, where the authorities are enforcing inconsistently. A note of caution should also be sounded; a lack of enforcement activity by a local authority may mean that landlords are taking action without the need for formal enforcement.

Alternative civil remedies for tenants

The Private Member's Bill was partially based on a 1996 Law Commission report. This recommended removing the rent limits from the *Landlord and Tenant Act 1985*, to give a civil remedy to all tenants against landlords who fail to maintain the property at a level 'fit for human habitation' (see section 2.2).[27]

This attempt to reintroduce (or at least significantly expand from its current moribund levels) a minimum property standard was intended to give tenants an alternative legal approach to going through the local authority, particularly in properties where disrepair did constitute a significant health and safety risk. As Karen Buck stated:

> The truth is, the resources going into environmental health are very limited and the quality of enforcement varies hugely across the country. What I wanted to do was give tenants an ability to take action against their landlords without having to rely on local authorities. [28]

However, as with pursuing a civil remedy under section 11 of the 1985 Act (see section 2.3), tenants would have no protection against retaliatory evictions under this proposed new legal route.

The Bill is discussed further in section 4.

3.3 Impact of regulations on landlords

During Committee stage debates of the *Housing Bill* (which introduced the HHSRS), the then Housing Minister Keith Hill argued that the existing minimum standard of property maintenance was damaging to the private rented sector as a whole:

> **Keith Hill:** Broadly speaking, the private rented sector is fragile, as I am sure hon. Members with greater experience of such matters than I are fully aware. Despite various efforts by a succession of Governments over the past 15 years to boost the private rented sector, on the whole there has been relatively little expansion.
>
> […]
>
> We need to be sensitive to the burdens that we are imposing on the sector.

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26 HC Deb 16 October 2015, cc617-8

27 Law Commission, *Landlord and tenant: responsibility for state and condition of the property*, 19 March 1996, Law Com 238, para 8.11

28 *West End Extra*, 'MP Buck's Bill could give renters new powers to force landlords to make repairs', 26 June 2015

> A uniform, across-the-board requirement to restore every kind of defect in a property would probably have the effect described of encouraging people to be restrictive in their choice of tenants or to get out of the industry altogether. I hope that I have explained to my hon. Friend the Member for Morecambe and Lunesdale (Geraldine Smith) why we are adopting that approach.
>
> **Geraldine Smith:** I still have the concern that landlords who own seven or eight houses in my area might rent some houses to families with children, others to people with physical disabilities or mental health problems, and another to a group of single young men. That is the make-up of housing in certain parts of my constituency. Such landlords would find it hard to understand why different standards applied to each house.
>
> […]
>
> **Keith Hill:** My view is that landlords would on the whole welcome the sort of discretionary regime that we propose rather than find it unacceptable.[29]

The concerns about lack of expansion of the sector raised by Keith Hill in 2004 appear less relevant today. Between 2004 and 2015, the number of private rented properties in England rose by 84%, overtaking social housing as the second most popular tenure type in 2011 (behind owner occupation).[30]

However, over-regulation is a concern raised by landlord associations. In 2012, the Residential Landlords Association (RLA) published its review of private rented sector regulations which found the following:

> We have now identified over 100 Acts of Parliament or statutory regulations which specifically impact on private rented sector landlords. These contain around 400 individual requirements which could affect the way in which a landlord owns or manages his/her property and conducts tenancies.[31]

The CLG Committee's report into the PRS recommended a review to consolidate existing legislation to make it easier to understand, although this was rejected by the Government on the basis that a review would introduce uncertainty into the sector.[32]

During the Lords Committee stage of the *Housing and Planning Bill 2015-16*, Baroness Williams of Trafford noted the Government's objection to a minimum fitness for human habitation standard, on the basis of the potential regulatory burden on landlords:

> I support the aim of this amendment—raising standards for tenants—but it would lead to additional costs for good landlords, who are the ones that will pay for inspections and certificates to prove the condition of their property.[33]

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29 PBC Deb 20 January 2004, Housing Bill in Standing Committee E, 2nd sitting, cc62-3
30 DCLG, *Live tables on dwelling stock – Table 104*, April 2016
31 RLA, *Statutory regulations affecting the Private Rented Sector*, June 2012
32 DCLG, *Government Response to the Communities and Local Government Select Committee Report*, Cm 8370, October 2013
33 HL Deb 9 February 2016, c2221

4. Attempts to change the law

4.1 Homes (Fitness for Human Habitation) Bill 2015-16

Karen Buck secured ninth place in the 2015-16 Private Member's Bill ballot, and subsequently presented the *Homes (Fitness for Human Habitation) Bill*. The purpose of the Bill was "to amend the *Landlord and Tenant Act 1985* to require that residential rented accommodation is provided and maintained in a state of fitness for human habitation."

This would have amended the 1985 Act to remove the rent limits on the 'fitness for human habitation' requirements, so that they would to apply to all rented properties, with some minor exceptions. As per the Law Commission's 1996 report, the requirements would not have applied in case of natural disaster or where repairs arose that were due to the negligence of the tenant.[34]

It would also have extended the fitness provision to cover all HHSRS Category 1 hazards, addressing some of the shortfalls of the old Housing Fitness Standard (such as the exclusion of fire or fall risks).

Rather than replacing the HHSRS with a new Housing Fitness Standard, the Bill sought to introduce a parallel system. In this mixed system, the risk-assessment based HHSRS, enforced by local authorities would remain, but a new set of minimum property standards would be introduced, which tenants could seek to enforce through the civil courts.

The proposals received support from organisations including Shelter, who had made similar recommendations in their 2014 *Safe and Decent Homes* report.[35]

On 16 October 2015 the Bill had its Second Reading, where it was talked out. Opponents of the Bill cited the increased regulatory burden it would place on landlords and the perception of minimum housing fitness standards as too blunt an instrument. On this latter point, Philip Davies cited the case of *Summers v Salford Corporation [1943] AC 283*, where a broken sash window cord was held to make the property unfit for human habitation.[36]

In an article following Second Reading, Karen Buck responded to the legislative burden concerns, arguing that the Bill would have added no new duties to landlords, and that instead it would have given better redress to tenants."[37]

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34 Law Commission, *Landlord and tenant: responsibility for state and condition of the property*, 19 March 1996, Law Com 238, para 8.11

35 *Shelter Policy Blog*, 'A not-so 21st century approach: why homes don't have to be suitable for humans to live in them', 9 October 2015

36 HC Deb 16 October 2015, c624

37 *Karen Buck MP*, 'Homes (Fitness for Human Habitation) Bill – My attempt to raise standards in the private rented sector', 22 October 2015

4.2 Attempts to amend the Housing & Planning Bill 2015-16

During the Committee Stage of the *Housing and Planning Bill 2015-16*, Shadow Housing Minister Teresa Pearce introduced as an amendment Karen Buck's fitness for human habitation proposals.

In response, the Housing Minister Brandon Lewis argued that the Bill's proposals on rogue landlords were a better way to improve standards without imposing "unnecessary regulation" on landlords. The Minister argued that the HHSRS was in place to keep properties in a decent state of repair, and that it was up to local authorities to enforce this properly.[38]

Teresa Pearce withdrew the amendment, but highlighted the shortage of personnel in local authorities enforcing HHSRS, and asked the Government to consider ring-fencing housing fines to go back into environmental health teams.[39] The amendment was introduced again at Report Stage, but was defeated.[40]

The fitness for human habitation amendment was introduced again in the Lords during the Committee Stage. In response, Baroness Williams of Trafford argued that the civil remedy that would be introduced would not be beneficial to tenants, nor would it be a course of action that could counter local authority inaction:

> I question whether a vulnerable tenant would prefer to go through a lengthy court process rather than to be in a position to get their landlord to carry out repairs or to seek redress. My concern is that such a measure would lead only to rogues avoiding their responsibilities and the sanctions that could lead to them being banned.
>
> In addition, the amendment provides, among other things, for the court to have regard to whether there is a Category 1 hazard in the property. In order to establish whether there is a Category 1 hazard, the local authority would need to have carried out an inspection using the HHSRS methodology. In such cases, therefore, the tenant would need to involve the local authority in the proceedings.[41]

A similar point was raised by Baroness Evans of Bowe Park during debate on the amendment at Report Stage, when the amendment was again defeated:

> It risks letting rogue landlords off the hook by expecting tenants—sometimes very vulnerable tenants—to accurately inspect the condition of their property and go to the expense and stress of taking their landlord to court where there are failings.[42]

38 PBC Deb 10 December 2015 (afternoon), c707
39 PBC Deb 10 December 2015 (afternoon), cc704-708
40 HC Deb 12 January 2016, cc786-791
41 HL Deb 9 February 2016, c2222
42 HL Deb 11 April 2016, c95

5. Housing fitness in the devolved administrations

Housing is a devolved competence in Scotland, Wales and Northern Ireland. The three devolved administrations have all adopted markedly different approaches with regards to regulating housing fitness.

5.1 Wales

Part 1 of the *Housing Act 2004*, which is the legislative basis for the HHSRS, applies to Wales as well as England. The HHSRS is currently the main regulatory instrument for property standards in Wales.

However, on 18 January 2016 the *Renting Homes (Wales) Act 2016* was given Royal Assent. Although not yet in force, section 91 of the Act will require all landlords to ensure properties are fit for human habitation at the commencement of, and throughout, the tenancy agreement.

Ministers will be able to pass regulations defining what is fit for human habitation, and therefore the Act will introduce prescribed, minimum property standards for landlords to maintain.

The Act does not repeal the HHSRS, which will remain in place. This means that a mixed minimum standard and risk-assessment based model will be in force, similar to the model proposed by Karen Buck's Private Member's Bill (see section 4.1).

First Minister Carwyn Jones argued that the Act would:

> Not only introduce much needed clarity and fairness into the rental sector, but also protect some of the most vulnerable people in society.[43]

5.2 Scotland

Scotland has a minimum property standard enforced by local authorities, although the *Housing (Scotland) Act 1969* replaced the term fitness for human habitation with the current "Tolerable Standard".[44] This is a pass or fail measure of housing fitness.

The last significant update to the Tolerable Standard was set out in section 11 of the *Housing (Scotland) Act 2006*, which added thermal insulation and electrical safety to the minimum standard.

5.3 Northern Ireland

The last major update to property standards regulation in Northern Ireland was the *Housing (Northern Ireland) Order 1992*. This is the legislative basis for the Housing Fitness Standard, the same pass or fail model as preceded the HHSRS in England and Wales, although it is

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43 *Welsh Housing Quarterly*, 'Renting Homes Act signed and sealed', 18 January 2016

44 Scottish Government, *Implementing the Housing (Scotland) Act 2006: Advisory and Statutory Guidance for Local Authorities*, March 2009

enforced by the Northern Ireland Housing Executive rather than local authorities.

Northern Ireland's Housing Fitness Standard has faced similar criticism to that faced in the rest of the UK, namely that it does not cover areas such as thermal comfort, fire safety, electrical safety and the prevention of falls.

In March 2016, the Department for Social Development published a discussion paper on the future of the Housing Fitness Standard, which presented two possible options for reform:

> Option A – An Enhanced Housing Fitness Standard
>
> Option B – Introduce the Housing Health and Safety Rating System in Northern Ireland[45]

Option A, in extending the standard to address current shortfalls can be viewed as the 'Scotland model', whilst option B, in replacing the Housing Fitness Standard altogether with a risk-assessment based model, can be viewed as the 'England model'.

The consultation is open until 10 June 2016.

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45 Department for Social Development, *Review of the Statutory Minimum Housing Fitness Standard for all Tenures of Dwelling*, March 2016

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