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Housing conditions in the private rented sector (England)



Summary

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Summary

In recent years the extent and role of the private rented sector (PRS) has seen significant changes. The sector has grown; 4.6 million households rented their home from a private landlord in 2021/22, representing 19% of all households in England. A more diverse range of households, including families with children, are now living in the sector. For many it is providing long-term accommodation.

The PRS has the worst housing conditions

The expansion of the PRS has focused attention on the need to improve conditions. The English Housing Survey (EHS) estimated that in 2021, 23% of PRS homes did not meet the Decent Home Standard – around 1 million homes. This compares with 13% of owner-occupied and 10% of social-rented homes.

PRS homes were also more likely to have at least one Category 1 hazard under the Housing Health and Safety Rating System (HHSRS). An [inquiry by the Public Accounts Committee in 2022](#) concluded “the sector is failing far too often to provide safe and secure homes for renters...”

The Government’s white paper, [A fairer private rented sector](#), was published on 16 June 2022. It set out a 12-point action plan to deliver “a fairer, more secure, higher quality private rented sector” and included commitments to:

- halve the number of non-decent rented homes by 2030 and require privately rented homes to meet the Decent Homes Standard for the first time.
- introduce a new single Ombudsman that all private landlords must join.
- introduce a new digital Property Portal to make sure that tenants, landlords and local authorities have the information they need.
- strengthen local authorities’ enforcement powers.
- abolish section 21 of the Housing Act 1988 and end ‘no-fault’ evictions.

The private rented sector reforms require legislation. The [Queens Speech 2022](#) said a Renters Reform Bill would be introduced in the 2022-23 parliamentary session. Government Ministers have subsequently said the Bill will be introduced “in this Parliament”.

Section 1 of the paper provides an introduction to housing conditions in the PRS, together with an overview of policy developments since 2010.

The legal framework governing housing standards

Section 2 provides an overview of the legal framework for housing standards in the PRS. There are statutory provisions governing private landlords' repairing and maintenance obligations in addition to other specific requirements, for example, in relation to gas and electrical safety. Enforcement of standards in private rented housing is primarily through the HHSRS, a risk-assessment based regulatory model used by local authority environmental health officers.

The Homes (Fitness for Human Habitation) Act 2018 requires private sector landlords in England to ensure their properties are fit for human habitation at the beginning of the tenancy and throughout. The Act provides tenants with the means to take legal action against their landlord.

Issues with the legal framework

Section 3 provides an overview of some of the issues identified with the legal framework governing housing standards in the PRS:

- Calls to reform the HHSRS which is criticised for being overly complex, difficult for landlords and tenants to understand and out of date. A review of the HHSRS is underway.
- Inconsistent and low levels of enforcement of housing standards by local authorities, which is thought to be a result of: limited local authority capacity; lack of knowledge of the private rented stock; and a lack of political or corporate commitment to address low standards in the sector.
- The power imbalance between tenants and landlords, which puts tenants at risk of retaliatory eviction or rent rises when they seek repairs and maintenance of their homes. Tenants may fail to seek redress because of the cost, time and complexities involved.
- Some commentators have called for a fundamental reform of the PRS regulatory framework. The complex and piecemeal nature of the framework is said to be leaving landlords confused about their obligations and tenants uncertain about who is responsible for resolving problems.
- Insufficient data on the challenges facing tenants, landlords and local authorities and to evaluate the impact of legislative changes.

The Levelling Up, Housing and Communities Select Committee is currently conducting an inquiry on [Reforming the Private Rented Sector](#).

Wales, Scotland and Northern Ireland

Housing is a devolved policy area, different approaches to regulating housing standards in the PRS have emerged in Wales, Scotland and Northern Ireland. These approaches are outlined in **section 4**.

1 Background

1.1 Data on housing fitness

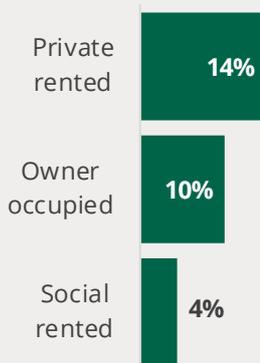
In recent years the extent and role of the private rented sector (PRS) in the housing market has seen significant changes. 4.6 million households in England rented their home from a private landlord in 2021/22, representing 19% of all households. The number of households renting privately has more than doubled since 1997, at which time only 10% of households were private renters.¹ The sector is now accommodating a more diverse range of households, including families with children, and for many it is providing long-term rather than temporary or short-term accommodation.²

Poor housing conditions in the PRS are a longstanding concern. The English Housing Survey estimated³ that in 2021, 23% of homes in the PRS in England were in a condition that would fail the Decent Homes Standard - around 1 million homes.⁴ This was the highest proportion of all tenure groups, compared with 13% of owner-occupied homes and 10% of social-rented homes.

Privately rented homes were also the most likely to have at least one Category 1 hazard under the Housing Health and Safety Rating System (Category 1 covers the most serious hazards - see section 2.3 for information on the HHSRS). 14% of privately rented homes had a Category 1 hazard in 2021, compared with 10% of owner-occupied homes and 4% of all social-rented homes.⁵

Poor housing conditions can affect residents' health, safety and wellbeing. The independent [Marmot Review \(PDF\)](#) commissioned by the Government and published in 2010, concluded that housing is a 'social determinant of health', meaning it can affect physical and mental health inequalities throughout life. One estimate puts the cost of poor housing to the NHS at £1.4bn per year in

% of homes with a Cat. 1 HHSRS hazard, 2021



Source: DLUHC

¹ DLUHC, [English Housing Survey 2021 to 2022: headline report](#), 15 December 2022, Annex Table 1.1

² For an analysis of changes in the extent and nature of the private rented sector see: UK Collaborative Centre for Housing Evidence, [The private rented sector in the UK: An overview of the policy and regulatory landscape](#), A Marsh and K Gibb, 25 July 2019

³ DLUHC, [English Housing Survey 2021 to 2022: headline report](#), 15 December 2022, Annex Table 2.3

⁴ The [Decent Homes Standard](#) is a non-statutory housing standard which was developed in 2000 as part of the Labour Government's programme to raise standards in social rented housing.

⁵ DLUHC, [English Housing Survey 2021 to 2022: headline report](#), 15 December 2022, Annex Table 2.4

England.⁶ The coronavirus (Covid-19) pandemic further highlighted the impact of poor housing conditions on physical and mental health.⁷

Most tenants in the PRS say they are satisfied with their housing. The 2020/21 English Housing Survey reported that 80% of private renters were satisfied with their accommodation, compared with 94% of owner-occupiers and 75% of social renters. 75% of private renters were satisfied with repairs and maintenance, compared with 66% of social renters.⁸ However, tenant satisfaction surveys need to be treated with caution, as the extent to which survey results are influenced by low expectations rather than good quality accommodation is debatable.

Research commissioned by Citizens Advice in 2019 identified that some landlords were failing to meet their repairing obligations. Over the previous two years, 60% of private tenants surveyed had experienced disrepair their landlord was responsible for fixing. Of those who experienced disrepair:

- 1 in 6 (15%) said it was a major threat to their health and safety (rising to 1 in 5 disabled people).
- 1 in 2 (49%) said it had a major impact on their level of comfort.
- 1 in 5 (19%) did not have it fixed within a reasonable amount of time, whilst 1 in 10 said the disrepair was never completely fixed.
- Nearly half (46%) of tenants encountered some form of additional hardship because of the disrepair (eg, spending their own time or money on fixing the disrepair themselves).⁹

As a result of the expansion of the PRS there has been a greater focus on housing conditions in the sector in recent years.

1.2

Policy on housing fitness: overview

The Housing Health and Safety Rating System (HHSRS)

The Housing Health and Safety Rating System (HHSRS) was introduced by the Housing Act 2004 and has been in force since April 2006. It is the main system for assessing and enforcing housing standards in England and Wales.

⁶ Building Research Establishment, [The cost of poor housing in England](#), H Garrett et al, 9 November 2021

⁷ See for example: The Health Foundation, [Better housing is crucial for our health and the COVID-19 recovery](#), 28 December 2020; and The Kings Fund and Centre for Ageing Better, [Homes, health and COVID-19](#), 22 September 2020

⁸ DLUHC, [English Housing Survey 2020 to 2021: private rented sector](#), 7 July 2022, pp13-14

⁹ Citizens Advice, [Getting the house in order: How to improve standards in the private rented sector](#), 26 June 2019, pp8-9

Prior to the HHSRS, housing fitness was governed by section 604 of the Housing Act 1985. Section 604 set out a pass or fail test of housing fitness based on nine factors. Concerns were raised about the effectiveness of the Standard, particularly that several of the most serious hazards, including fire and fall hazards, were not covered. It was seen by some as a blunt instrument that could only pass or fail a property, and sometimes did not distinguish between more minor risks to health in dwellings and genuine or immediate health and safety hazards.¹⁰

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. The issue of which model offers the best protection for tenants and landlords has been subject to debate.

Coalition Government 2010-15

A [2013 report on the private rented sector \(PDF\)](#) by the House of Commons Communities and Local Government (CLG) Select Committee highlighted concerns about the physical standards of property in some parts of the sector and criticised the complexity of the HHSRS. It recommended “the Government consult on the future of the housing health and safety rating system and the introduction of a simpler, more straightforward set of quality standards for housing in the sector”.¹¹ It also called on the Government to raise awareness of tenants’ and landlords’ respective rights and responsibilities.¹²

In its response, the Coalition Government said it would consult on measures to improve standards, including a review of the HHSRS and the extension of rent repayment orders¹³ to apply to landlords who rent out properties containing serious hazards.¹⁴

The Coalition Government published its [response to the consultation on property conditions in the PRS](#) in March 2015. It 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 Government response noted the importance of improving standards in the PRS, it also cited the importance of not burdening the sector with regulation. The Government decided against making changes to the HHSRS,

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

¹¹ House of Commons Communities and Local Government Select Committee, [The Private Rented Sector \(PDF\)](#), 8 July 2013, HC 50 2013-14, para 18

¹² As above, para 24

¹³ A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

¹⁴ DCLG, [Government Response to the Communities and Local Government Select Committee Report \(PDF\)](#), Cm 8370, October 2013

the Landlord and Tenant Act 1985 (which includes repair and maintenance obligations for landlords) or to the scope of rent repayment orders.¹⁵

Housing and Planning Act 2016

The 2015 Conservative Government was also reluctant to increase the regulatory burden on reputable landlords and instead focused on targeting ‘rogue’ private landlords who knowingly rent out unsafe and substandard accommodation, seeking to force them to improve the condition and management of their properties or leave the sector entirely.

The Housing and Planning Act 2016 extended the range of enforcement measures local authorities in England can use against rogue landlords, including:

- ‘banning orders’, issued by a First-tier Tribunal on application by a local authority, which can ban an individual from letting housing or engaging in any letting agency or property management work;
- a database of landlords and agents subject to a banning order;
- extending the circumstances in which a local authority can apply to a First-tier Tribunal for a rent repayment order to cover, amongst other things, breaches of improvement orders and prohibition notices; and
- giving local authorities additional enforcement powers in the form of civil penalties (up to £30,000) which can be imposed as an alternative to prosecuting landlords.

The then Ministry of Housing, Communities and Local Government (MHCLG) published [guidance on Rogue Landlord Enforcement](#) (April 2019) which provides practical advice to help local authority officers enforce against non-compliant landlords.¹⁶

2017 Conservative Government

The 2017 Conservative Government adopted an increasingly interventionist approach to the PRS, and introduced further measures and proposals designed to improve standards in the sector, including:

- From October 2018 the Government extended the scope of mandatory licensing of houses in multiple occupation (HMOs) in England to bring smaller HMOs within the scheme.¹⁷

¹⁵ DCLG, [Review of Property Conditions in the Private Rented Sector: Government Response](#), March 2015

¹⁶ MHCLG, [Rogue Landlord Enforcement: guidance for local authorities](#), 9 April 2019

¹⁷ The House of Commons Library briefing on [Houses in multiple occupation \(HMOs\) England and Wales](#) provides further information.

- The Government supported Karen Buck’s Private Member’s Bill which is now the [Homes \(Fitness for Human Habitation\) Act 2018](#). The Act requires all private sector landlords in England to ensure their properties are fit for human habitation at the beginning of the tenancy and throughout. (see section 2.4)
- In April 2018 the Government confirmed its intention to regulate letting and property management agents.¹⁸ It also proposed to legislate to require all private landlords to sign up to a redress scheme.¹⁹
- In April 2019 the Government announced its intention to abolish section 21 of the Housing Act 1988 and end ‘no-fault’ evictions. This is expected to improve tenants’ security of tenure and thus their ability to request repairs without the risk of a retaliatory eviction. (see section 2.9)
- In July 2019 the Government confirmed it would carry out a review of the Housing, Health and Safety Rating System (HHSRS) to make it more accessible to tenants and landlords and enable more efficient enforcement by local authorities.²⁰ (see sections 2.3 and 3.1)

Private rented sector white paper

The Government’s white paper, [A fairer private rented sector](#), was published on 16 June 2022. It set out a 12-point action plan to deliver “a fairer, more secure, higher quality private rented sector” and included commitments to:

- deliver on the levelling up housing mission²¹ to **halve the number of non-decent rented homes by 2030 and require privately rented homes to meet the Decent Homes Standard for the first time.**²²
- **accelerate quality improvements in the areas that need it most.** The Government will run pilot schemes with a selection of local councils to explore different ways of enforcing standards and work with landlords to speed up adoption of the Decent Homes Standard.
- strengthen tenants’ ability to hold their landlord to account and **introduce a new single Ombudsman that all private landlords must join.**

¹⁸ MHCLG, [Protecting Consumers in the letting and managing agent market: Government response](#), April 2018. The House of Commons Library briefing on [The regulation of letting and managing agents \(England\)](#) provides further information.

¹⁹ MHCLG, [Strengthening consumer redress in the housing market: summary of responses to the consultation and the government’s response](#), 24 January 2019

²⁰ MHCLG, [Outcomes of report on Housing Health and Safety Rating System \(HHSRS\) scoping review](#), 11 July 2019

²¹ The [Levelling Up the UK white paper](#) (February 2022) introduced the Government’s Housing Quality Mission, which set a clear target of reducing non-decency by 50% in all rented homes by 2030, with the biggest improvements in the worst performing areas.

²² The Decent Homes Standard has been in place in the social rented sector since 2001.

- **introduce a new digital Property Portal** to make sure tenants, landlords and local councils have the information they need. The portal will provide a single ‘front door’ for landlords to understand their responsibilities, tenants will be able to access information about their landlord’s compliance, and local councils will have access to better data.
- **strengthen local councils’ enforcement powers and ability to crack down on criminal landlords** by seeking to increase investigative powers and strengthening the fine regime for serious offences.²³

Applying the Decent Homes Standard to the private rented sector

The Decent Homes Standard is a non-statutory standard which is most often referred to in the context of social rented housing stock. The Government launched [a two-part review of the Decent Homes Standard](#) in 2021.²⁴ Part 1 of the review closed in autumn 2021 and concluded the standard remained broadly suitable and effective, but said an update would be beneficial. Part 2 began in spring 2022. This is exploring the application of the Decent Homes Standard to the private rented sector and potential regulatory changes to the standard that would apply to both the PRS and social rented sectors.

On 2 September 2022, the Government published a [consultation on applying the Decent Homes Standard to the private rented sector](#).²⁵ It is proposed that in order to meet the Decent Homes Standard (DHS) in the PRS a property will have to:

- meet the current statutory minimum standard for housing (to be decent it should be free of category 1 hazards, assessed through the HHSRS).
- be in a reasonable state of repair;
- have reasonable facilities and services; and
- provide a reasonable degree of thermal comfort.

The Government proposes to introduce a legal duty on landlords to ensure their property meets the DHS. Local authorities would have a duty to investigate complaints relating to the DHS in their area. A breach of the DHS would be a criminal offence, which could incur a civil penalty or result in a prosecution in the Magistrate’s Court. It would also be a banning order offence, which would prohibit a landlord from letting housing or engaging in letting agency or property management work.

²³ DLUHC, [A fairer private rented sector](#), 16 June 2022

²⁴ DLUHC, [Decent Homes Standard: review](#), 8 February 2021

²⁵ DLUHC, [New standards for rented homes under consideration](#), 2 September 2022

The Government intends to extend the grounds for rent repayment orders, requiring landlords to repay rent to the tenant(s) in situations where they have not complied with the DHS.

The consultation closed on 14 October 2022 and the Government is considering responses.

Renters Reform Bill

In the [Queen's Speech December 2019](#) the Government committed to introduce a Renters' Reform Bill to strengthen protections for tenants in the PRS.²⁶ The Bill was not introduced in the 2019-21 parliamentary session.

The [Queen's Speech 2021](#) confirmed the Government's commitment to a "Better Deal for Renters" and its intention to provide details of a private rented sector reform package in a white paper in autumn 2021 (see above).²⁷

The private rented sector reforms require legislation. The [Queens Speech 2022](#) said a Renters Reform Bill would be introduced in the 2022-23 parliamentary session. When subsequently pressed about the timing of a Bill, Government Ministers have said it will be introduced "in this Parliament."²⁸

Whilst many of the measures outlined above have been welcomed by organisations representing tenants, concerns around housing standards in the PRS remain, particularly with respect to the complexity of the current legislation and the ability of local authorities and tenants to enforce it. These issues are discussed further in section 3.

²⁶ Prime Minister's Office, [Queen's Speech December 2019: background briefing notes](#), 19 December 2019, pp46-47

²⁷ The Prime Minister's Office, [Queen's Speech 2021: background briefing notes](#), 11 May 2021, p113

²⁸ See, for example: [PQ HI 2662 \[on rented housing\], 31 October 2022](#)

2 The legal framework

This section provides an overview of the legislation governing housing standards in the private rented sector (PRS) and the remedies available to tenants where a landlord breaches their statutory obligations. Section 2.9 discusses the risk of retaliatory eviction for tenants seeking repairs or maintenance of their rental property.

2.1 Landlords' repairing obligations

The tenancy agreement between a landlord and a tenant is a contractual agreement that contains legally binding obligations on both parties. These contractual terms can be **express**, ie, expressly stated or written, or **implied**, ie, inserted by law.

Express terms

Some tenancy agreements may impose obligations on the landlord in relation to housing conditions that go beyond the minimum standards implied by statute, for example:

- An obligation to keep the property “in good condition”.
- An obligation to keep the estate and common parts “clean and tidy”.²⁹

They may also include repairs to items in the dwelling not covered by statute, eg, kitchen units and internal doors.

Implied terms

Section 11 of the Landlord and Tenant Act 1985 (the 1985 Act) inserts an implied covenant³⁰ in tenancies with a fixed term of less than seven years under which landlords are required to:

- keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes);

²⁹ Legal Action Group, *Housing Law Handbook*, Diane Astin, Fourth Edition, 2018, para 9.7

³⁰ In other words, the landlord's repair obligations under Section 11 apply even if the tenancy agreement says nothing about repair obligations. Furthermore, any attempt by a landlord to contract out of these obligations will be void.

- keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity); and
- keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.³¹

The 1985 Act also provides for an implied covenant on a tenant to allow the landlord (or anyone authorised in writing by the landlord) to enter the premises to inspect the dwelling's state of repair. The right is to enter at reasonable times of the day having given 24 hours' notice in writing to the tenant.³²

A landlord will be in breach of Section 11 of the 1985 Act if: the disrepair falls within the landlord's repairing covenant; the tenant has informed the landlord of the disrepair; and the landlord has failed to carry out effective repairs within a reasonable time. What is a 'reasonable' length of time will depend on the effect of the disrepair and the extent of the repairs needed.³³

Section 11 only applies to disrepair. Inherent defects are not disrepair and there is no obligation to make improvements. So, lack of windows for ventilation, lack of a central heating system, or safety risks which are also not disrepair cannot be remedied under Section 11. There are several exceptions to the implied term under Section 11, including:

- The landlord is not liable for disrepair caused by a breach of the tenant's own duty to use the property in a "tenant-like manner".
- There is no obligation to rebuild or reinstate the dwelling in the case of destruction or damage by fire, storm, flood or other inevitable accident.
- The landlord is not obliged to repair or maintain anything that the tenant is entitled to remove from the dwelling.
- Where works are necessary outside the property and the landlord cannot, despite their reasonable endeavours, obtain the necessary permission to carry out the works.³⁴

Where a landlord has breached the express or implied terms in a tenancy agreement, the tenant can:

³¹ [Section 11\(1\) of the Landlord and Tenant Act 1985](#)

³² [Section 11\(6\) of the Landlord and Tenant Act 1985](#)

³³ Legal Action Group, *Housing Law Handbook*, Diane Astin, Fourth Edition, 2018, paras 9.62-9.64

³⁴ [Sections 11\(2\) and 11\(3A\) of the Landlord and Tenant Act 1985](#)

- Contact their local authority to request an assessment of health and safety risks from the disrepair under Part 1 of the Housing Act 2004. (see section 2.3 below)
- Take legal action against the landlord in the county court. The court can order repairs to be done and award damages. (Legal advice from a suitably qualified professional is always advised before commencing any legal action).

Tenants acting against their landlord for failure to carry out repairs could be at risk of retaliatory eviction (see section 2.9).

The Shelter website provides further information on [Landlord and tenant responsibilities for repairs](#).³⁵ An [online legal support signposting tool](#) is available on GOV.UK to help individuals resolve housing disrepair issues in private rented accommodation.

2.2 Defective premises

Section 4 of the Defective Premises Act 1972 places a duty on landlords who have an implied or express obligation to repair or maintain a property or have the right to enter the property to carry out certain repairs, to take “reasonable care” to ensure the tenant, members of the tenant’s household and visitors are reasonably safe from personal injury or damage to their property caused by a “relevant defect” in the state of the premises. The duty arises if the landlord knows, or ought reasonably to have known, of the defect.

The duty does not: extend beyond the landlord's repairing obligations; apply to design defects; or apply to defects due to the tenant's failure to meet a repairing obligation. A duty to repair what is in disrepair is not the same as a duty to make improvements or even to make safe.³⁶

2.3 The Housing Health and Safety Rating System (HHSRS)

The Housing Health and Safety Rating System (HHSRS), introduced by Part 1 of the Housing Act 2004 and in force since 2006, is used by local authorities to assess health and safety risks in residential properties (ie, it extends beyond repairs to broader housing conditions).

³⁵ Shelter, [Landlord and tenant responsibilities for repairs. Who's responsible for repairs in your rented home?](#) (accessed on 15 December 2022)

³⁶ The Shelter Legal webpage on [Duty of care under the Defective Premises Act 1972](#) provides further information.

Local authorities are required to keep housing conditions in their area under review.³⁷ However, in practice it will normally be a tenant who asks the local authority to carry out a HHSRS inspection.

The HHSRS is not a pass or fail test of housing fitness and does not set minimum standards. It is a risk-based assessment of residential housing conditions.

The HHSRS currently sets out 29 hazards, including fire, damp, cold, trips and falls. If, following an inspection, an environmental health officer identifies a hazard that poses a risk to the health or safety of an actual or potential occupier of a dwelling, the local authority has various powers at its disposal to ensure the landlord takes corrective measures. Where the officer identifies the most serious ('Category 1') hazards, the local authority is required to take action. It can choose to take action in regard to less serious ('Category 2') hazards.

There are several types of formal enforcement action authorities have at their disposal:

- serving an improvement notice;
- making a prohibition order;
- serving a hazard awareness notice;
- taking specified emergency measures;
- demolition orders;
- slum clearance orders.

The system has been criticised for being outdated and complex. The Government is currently reviewing the HHSRS – this is discussed in section 3.1.

The Library briefing on the [Housing Health and Safety Rating System \(HHSRS\)](#) provides further background information.

2.4 Fitness for human habitation

The [Homes \(Fitness for Human Habitation\) Act 2018](#) (the 2018 Act),³⁸ which came into force on 20 March 2019,³⁹ amended the Landlord and Tenant Act 1985 to require all private sector landlords in England to ensure their properties, including any common parts of the building, are fit for human

³⁷ [Section 3 of the Housing Act 2004](#)

³⁸ The House of Commons Library briefing on the [Homes \(Fitness for Human Habitation\) Bill 2017-19](#) provides the background to Karen Buck's Private Members' Bill on housing fitness, and explains its provisions and amendments made at Committee Stage.

³⁹ Nb, implementation of the Act was phased. See: Nearly Legal: Housing Law, [Fitness for Habitation – a thumbnail guide](#), Giles Peaker, 21 December 2018

habitation at the beginning of the tenancy and throughout. The Act achieves this by implying a covenant to this effect in the tenancy agreement.

In determining for the purposes of the Act whether a property is unfit for human habitation, regard should be had to its condition in respect of the following factors:

- repair
- stability
- freedom from damp
- internal arrangement
- natural lighting
- ventilation
- water supply
- drainage and sanitary conditions
- facilities for preparation and cooking of food and for the disposal of waste water
- any ‘prescribed hazard’ - this is defined as any matter or circumstance amounting to a category 1 or 2 hazard under the [Housing Health and Safety Rating System \(HHSRS\)](#).⁴⁰

A property will be unfit for human habitation if it is “so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition”.⁴¹

There are several exceptions to the implied term of fitness for human habitation (as with Section 11 of the Landlord and Tenant Act 1985), including:

- The landlord is not liable for disrepair caused by a breach of the tenant’s own duty to use the property in a “tenant-like manner”.
- There is no obligation to rebuild or reinstate the dwelling in the case of destruction or damage by fire, storm, flood or other inevitable accident.
- The landlord is not obliged to repair or maintain anything that the tenant is entitled to remove from the dwelling.
- Where works are necessary outside the property and the landlord can’t, despite their reasonable endeavours, obtain the necessary permission to carry out the works, then there is no liability.⁴²

⁴⁰ [Section 10 of the Landlord and Tenant Act 1985 \(as amended\)](#). The HHSRS recognises 29 ‘matters and circumstances’ that give rise to hazards.

⁴¹ [Section 10\(1\) of the Landlord and Tenant Act 1985 \(as amended\)](#)

⁴² [Section 9A\(2\) of the Landlord and Tenant Act 1985](#)

Where a landlord fails to let or maintain a property that is fit for human habitation, **the tenant may take legal action for breach of contract on the grounds that the property is unfit for human habitation**. The court can make the landlord carry out repairs or address the health and safety problems and can order compensation to be paid to the tenant.

Tenants acting against their landlord for failure to carry out repairs could be at risk of retaliatory eviction (see section 2.9).

The then Ministry of Housing, Communities and Local Government (MHCLG) published [guidance for tenants, landlords and local authorities on the Homes \(Fitness for Human Habitation\) Act 2018](#).

2.5 Statutory nuisance

The Environmental Protection Act 1990 (the 1990 Act) applies where a tenant's home is suffering from a 'statutory nuisance'. The Act sets out the circumstances which might give rise to a statutory nuisance, including: "... any premises in such a state as to be prejudicial to health or a nuisance".⁴³

The premises as a whole have to be prejudicial to health or a nuisance in order for a statutory nuisance to occur. This can be due to a single major item of disrepair, such as a leaking roof, or a number of minor items. Although there may be disrepair to premises, it is the effect of the defect that gives rise to the nuisance rather than the disrepair itself. Dampness, condensation or mould growth are all examples of defects in premises that are considered prejudicial to health. However, the landlord may not be liable if these occur because the tenant has failed to use the heating system properly.⁴⁴

Private tenants should in the first instance request an inspection of the property by a local authority environmental health officer. Where a statutory nuisance is identified, the local authority must serve an abatement notice, which requires the nuisance to be dealt with.

Tenants have the option of pursuing a private prosecution for statutory nuisance in a magistrate's court under section 82 of the 1990 Act. The procedure for bringing a criminal prosecution is complex and prosecutions under the Act are not common. The court can order works to be done to abate the nuisance and prevent it from recurring, impose a fine and order compensation to be paid to the tenant.

⁴³ [Section 79\(1\)\(a\) of the Environmental Protection Act 1990](#)

⁴⁴ Shelter Legal, [Statutory nuisance under Environmental Protection Act 1990](#) (accessed 15 December 2022)

2.6

Specific maintenance regulations

Landlords are required to carry out several specific repair and maintenance 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](#) (SI 1998/2451), landlords are responsible for the installation, maintenance and repair of gas fittings, appliances and flues.

These must 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

Sections 122 and 123 of the Housing and Planning Act 2016 gave the Secretary of State power to make regulations imposing duties on private landlords of residential premises in England for the purpose of ensuring electrical safety standards are met during tenancies, and to provide for the enforcement of those duties. These sections were brought into force on 25 October 2019.⁴⁵

Following a [consultation on proposals to strengthen electrical safety in the private rented sector](#), the Government confirmed its intention to legislate to require private landlords to ensure the electrical installations in their properties are safe.⁴⁶

The [Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#) (SI 2020/312) came into force on 1 June 2020, they applied to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021.

The regulations require:

- Electrical installations must be inspected and tested by a qualified and competent person at least every five years;
- Electrical safety standards must be met; and

⁴⁵ [The Housing and Planning Act 2016 \(Commencement No. 11\) Regulations 2019 \(SI 2019/1359\)](#)

⁴⁶ MHCLG, [Electrical safety in the private rented sector: government response](#), 29 January 2019

- Reports (known as ‘Electrical Installation Condition Reports or ‘EICRs’) must be provided to tenants within 28 days, and to local authorities on request.

The regulations set out enforcement powers for local authorities, including the imposition of a financial penalty of up to £30,000 for landlords who are in breach.

The regulations apply to all private landlords, including landlords of houses in multiple occupation (HMOs).

The Government published [guidance setting out how the regulations affect landlords, tenants and local authorities](#).

Smoke and carbon monoxide alarms

Since 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 ensure alarms are in working order on the first day of the tenancy.⁴⁷

The Government launched a review of smoke and carbon monoxide alarm requirements in 2017.⁴⁸ Following [consultation on domestic smoke and carbon monoxide alarms](#), the Government introduced legislation to extend requirements so a carbon monoxide alarm is required in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers). There is a requirement for landlords to repair or replace a faulty alarm during the tenancy where a fault is reported.

The [Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022](#) (SI 2022/707) came into force on 1 October 2022. The regulations are enforced by local authorities who can issue remedial notices and fines of up to £5,000 for non-compliance.

The Government has published [guidance for landlords and tenants on the new smoke and carbon monoxide alarm requirements](#).⁴⁹

Exposure to Legionella

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

⁴⁷ The [Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#) came into force on 1 October 2015.

⁴⁸ MHCLG, [Review of the Smoke and Carbon Monoxide Alarm Regulations 2015: government response](#), 20 July 2018

⁴⁹ DLUHC, [Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022: guidance for landlords and tenants](#), last updated 29 July 2022

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 have a duty of care to ensure the risk of exposure to Legionella for tenants, residents and visitors to their properties is adequately assessed and controlled.

The Health and Safety Executive (HSE) webpage on Legionella and Legionnaires' disease provides general information on the [legal responsibilities of landlords](#) with regards to assessing and controlling the risk of Legionella.

Energy efficiency

[The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#) (SI 2015/962) (as amended) established a minimum level of energy efficiency of Energy Performance Certificate (EPC) Band E for domestic private rented property in England and Wales.

The Regulations prohibit the letting of private rented properties which fall below the E energy efficiency standard. Landlords are required to improve the property energy efficiency rating to E or register an exemption.

If a local authority believes a landlord has failed to fulfil their obligations under the 2015 Regulations, they can serve the landlord with a compliance notice. If a breach is confirmed the landlord may receive financial penalties of up to £5,000 per property. In 2021, the Government made £2 million funding available to help local authorities build their capacity and capability to enforce the energy efficiency regulations.⁵⁰

The Government has published guidance for landlords of domestic private rented property on [how to comply with the 2018 'Minimum Level of Energy Efficiency' standard \(EPC band E\)](#).

The Government has committed to upgrade as many PRS homes as possible to EPC Band C by 2030, where practical, cost-effective and affordable. It has [consulted](#) on a suite of policy proposals towards achieving this. The consultation closed on 8 January 2021 and the Government is analysing responses.⁵¹

2.7

Withholding rent

In general, tenants do not have the right to withhold rent if the landlord does not carry out repairs. **Doing so will invariably breach the terms of the**

⁵⁰ BEIS, [Apply for private rented sector Minimum Energy Efficiency Standard \(MEES\) compliance and enforcement funding](#), 24 May 2021

⁵¹ BEIS, [Improving the energy performance of privately rented homes](#), 30 September 2020

tenancy agreement and jeopardise the tenant's right to remain in the accommodation. In certain circumstances a tenant can pay for repairs and deduct the cost from future rent. Using rent in this way may be quicker than court action and avoids legal costs for both the tenant and the landlord.

The Shelter website provides advice on [the procedure that must be followed and the limitations of this remedy](#).⁵²

2.8 Legal aid

An individual who needs help to pay for legal advice or representation in England and Wales may sometimes be eligible for assistance through the legal aid scheme. Legal aid may be available for the following housing matters:

- serious disrepair
- possession proceedings and eviction - including counterclaims for disrepair
- unlawful eviction
- homelessness⁵³

The individual must fulfil the financial eligibility criteria. In some cases, those in receipt of legal aid may be required to contribute to their legal costs.

GOV.UK provides further information on legal aid, [Overview of legal aid](#),⁵⁴ and an online eligibility checker (guidance but not a decision on eligibility for legal aid), [Check if you can get legal aid](#).⁵⁵

The Library briefing on [Legal help: where to go and how to pay](#) provides further information about where to seek legal help and advice.

2.9 Protection from retaliatory eviction

It's argued by organisations such as Shelter and Citizens Advice that tenants seeking repairs are at risk of retaliatory eviction.⁵⁶ The phrase 'retaliatory eviction' is used to describe situations where private landlords, when faced with a request for repairs, serve their tenants with a notice to terminate the tenancy. Section 21 of the Housing Act 1988 offers landlords a means of

⁵² Shelter, [Doing the repairs if your landlord won't](#) (accessed 15 December 2022)

⁵³ For further information see: The Law Society webpage on [Help with paying legal costs](#) (accessed 15 December 2022)

⁵⁴ GOV.UK, [Overview of legal aid](#) (accessed 15 December 2022)

⁵⁵ GOV.UK, [Check if you can get legal aid](#) (accessed 15 December 2022)

⁵⁶ See for example: Citizens Advice Bureau, [The tenant's dilemma \(PDF\)](#), June 2007

evicting assured shorthold tenants without having to prove any fault on the part of the tenant.

The extent of retaliatory eviction is disputed but following an unsuccessful attempt by Sarah Teather to protect tenants against it through a Private Member's Bill, the Tenancies (Reform) Bill 2014-15, similar measures were subsequently added to the Deregulation Act 2015. These measures came into force on 1 October 2015 and apply to new tenancies started on or after this date.

[Section 33 of the Deregulation Act 2015](#) prevents landlords from issuing a section 21 eviction notice within 6 months of having been served with an improvement notice by a local authority in relation to Category 1 or Category 2 hazards. The then Department for Communities and Local Government (DCLG) published guidance on the measures: [Guidance note: Retaliatory Eviction and the Deregulation Act 2015](#).⁵⁷

Research by Generation Rent (based on Freedom of Information requests to local authorities) found, of the responding councils, in 2019/20 76 recorded 11,570 Category 1 hazards in private rented homes which prompted the service of 2,814 improvement notices - representing 24.3% of hazards found. It's contended that this left large numbers of tenants unprotected from retaliatory eviction.⁵⁸

Rugg and Rhodes refer, in [The Evolving Private Rented Sector: Its Contribution and Potential](#) (2018), to HHSRS guidance which encourages environmental health officers to avoid formal enforcement action and instead focus on working with landlords to remedy hazards.⁵⁹ This informal approach can leave tenants with no protection from retaliatory eviction.

Furthermore, whilst the 2015 Act covers tenants whose homes are subject to an improvement notice, it does not provide protection where other enforcement action is used, such as civil remedies for breach of the fitness requirement or an abatement notice served in relation to a statutory nuisance.

The Shelter website provides advice on tenants' rights in the event of [Revenge eviction if you ask for repairs](#). The Library briefing on [Retaliatory eviction in the private sector](#) provides further background information.

In April 2019, the Government announced its intention to abolish section 21 of the Housing Act 1988.⁶⁰ Organisations representing tenants regard this as a welcome step in redressing the power imbalance between tenants and

⁵⁷ DCLG, [Retaliatory Eviction and the Deregulation Act 2015: guidance note](#), 1 October 2015

⁵⁸ 'Three quarters of tenants in unsafe homes go unprotected', Generation Rent, 28 April 2021

⁵⁹ Rugg J, Rhodes D, University of York, [The Evolving Private Rented Sector: Its Contribution and Potential](#), 2018, p99

⁶⁰ MHCLG, [Government announces end to unfair evictions](#), 15 April 2019

landlords. The Library briefing on [The end of 'no fault' section 21 evictions](#) examines the proposals in more detail.

The [Queens Speech 2022](#) announced a Renters Reform Bill, including provisions to abolish section 21, would be introduced in the 2022-23 parliamentary session. (see section 1.2)

3 Key issues

This section provides a brief overview of the key issues identified with the current legal framework for housing fitness in the private rented sector (PRS).

3.1 Reform of the Housing, Health and Safety Rating System (HHSRS)

The HHSRS covers a much wider range of housing defects than its predecessor – the Housing Fitness Standard. However, there have been criticisms that its risk-assessment nature, and the lack of prescribed minimum standards, means much is left to individual assessors, and it can be inconsistently interpreted between different local authorities.⁶¹ It is noteworthy that despite having prescribed minimum property standards, the Housing Fitness Standard faced similar criticisms.⁶²

The HHSRS has also attracted criticism for being outdated and overly complex. The baseline assumptions underpinning the system have not been updated since 2006. The complexity makes it difficult for landlords and tenants to understand how it works.

A [2018 report on the private rented sector](#) by the Housing, Communities and Local Government (HCLG) Select Committee recommended the HHSRS be immediately updated and ultimately replaced with a more straightforward set of quality standards:

We acknowledge that the Housing Health and Safety Rating System (HHSRS) is supported by many environmental health professionals, but the evidence we received indicated that the system is unnecessarily complicated and fails to give tenants, landlords and agents a clear understanding of the minimum standards that are expected in a private rented property. **The Government must immediately update the baseline assumptions within the operating guidance for the HHSRS, which are now twelve years out-of-date. We have already called on the Law Commission to review private rented sector legislation, including the Housing Act 2004, and believe that this should include a review of the HHSRS itself. Ultimately, it is our strongly held view that the Government should introduce a more straightforward set of quality standards for the sector, so that it is clear to everyone—not just to highly qualified professionals— whether a property meets minimum**

⁶¹ See for example: HomeLet Direct, Memorandum to the Communities and Local Government Select Committee, January 2013

⁶² Legal Research Unit, University of Warwick, Controlling Minimum Standards in Existing Housing, January 1998, para 2.11

standards. These standards should be higher than those in the HHSRS, reflecting an improvement in housing quality since the system was introduced.⁶³

In its response the Government asserted: “While there is some complexity involved in calculating the level of risk, we believe the overall approach is fundamentally sound and provides the right level of assurance for those professionals who use it on a day-to-day basis”. The Government recognised the methodology and associated guidance for the HHSRS was several years old and agreed to consider whether it needed updating.⁶⁴

In October 2018 the Government [announced a review of the HHSRS](#).⁶⁵ On 11 July 2019, following a scoping exercise, the Government [confirmed its intention to carry out further work](#) to “make the system easier to understand for landlords and tenants, correct the disconnect between the HHSRS and other legislative standards, and facilitate the effective enforcement of housing standards by local authorities”.⁶⁶ The review was due to conclude in autumn 2022.⁶⁷

The Library briefing on [Housing Health and Safety Rating System \(HHSRS\)](#) provides further information about the HHSRS.

3.2 Ineffective local authority enforcement

Local authorities have extensive powers to tackle poor property conditions and management standards in the PRS. However, there is widespread concern about low and inconsistent levels of enforcement between local authorities.

Research by the National Residential Landlords Association (NRLA) identified a “postcode lottery” with regards to local authority enforcement in the PRS.⁶⁸ Freedom of Information data provided to Generation Rent by 81 local authorities in 2019-20 indicated that numbers of inspections of privately rented properties ranged from 30 to more than 14,000.⁶⁹

The National Audit Office also identified inconsistent enforcement approaches:

⁶³ House of Commons Housing, Communities and Local Government Committee, [Private rented sector](#), 19 April 2018, HC 440 2017-19, para 70

⁶⁴ HM Government, [Government response to the Housing, Communities and Local Government Select Committee Report: Private rented sector](#), 4 July 2018, Cm 9639, paras 12-13

⁶⁵ MHCLG, [Greater protection for renters thanks to plans to tighten tenant safety](#), 26 October 2018

⁶⁶ MHCLG, [Outcomes of report on Housing Health and Safety Rating System \(HHSRS\) scoping review](#), 11 July 2019

⁶⁷ DLUHC, [A fairer private rented sector](#), 16 June 2022, p25

⁶⁸ NRLA, [The enforcement lottery: local authority inspections and notices](#), 9 February 2022

⁶⁹ [‘Three quarters of tenants in unsafe homes go unprotected’](#), Generation Rent, 28 April 2021

We found a wide range of approaches and levels of regulatory activity. For example, some authorities inspect almost no properties while others inspect a large proportion of their market, and we were only able to identify 65 out of 308 that have chosen to license more properties than the minimum requirement since 2010, due to data limitations. We also found low use of some regulatory tools such as banning orders and penalty notices – only 10 landlords and letting agents have been banned by local authorities since new powers were introduced in 2016.⁷⁰

DLUHC commissioned research by the Centre for Regional Economic and Social Research (CRESR) at Sheffield Hallam University to explore local authority enforcement in the PRS. [The headline research report](#), published in June 2022, concluded that whilst the powers and enforcement measures available to local authorities are valuable tools, authorities face significant barriers to tackling poor conditions in the PRS, including:

- lack of knowledge of the private rented stock - preventing informed, strategic decision making;
- limited enforcement capacity - restricting some local authorities to just ‘fire-fighting’;
- lack of political or corporate commitment to improving housing conditions - making it difficult to robustly enforce standards; and
- issues relating to the legal framework, such as the range and complexity of laws relevant to enforcement work.

Other key findings included:

- only a few local authorities carried out regular reviews of stock - gathering evidence was described as one of the biggest challenges enforcement officers faced.
- while a small number of local authorities were making proactive efforts to identify and tackle poor conditions, most operated a ‘reactive’ enforcement service that responded to complaints. The report questioned the extent to which relying on tenant complaints is a robust basis for identifying poor conditions, given that tenants can be fearful of reprisals or eviction and have limited understanding of their rights.
- there was significant variation in local authority approaches to enforcement, with a small number making full use of the tools and powers available, and others where formal enforcement action was a last resort.⁷¹

⁷⁰ NAO, [Regulation of private renting](#), 10 December 2021, Summary, para 13

⁷¹ DLUHC, [Local authority enforcement in the private rented sector: headline report](#), 16 June 2022

[The Public Accounts Committee's 2022 inquiry into the regulation of private renting](#) also highlighted that a lack of capacity was constraining local authorities' use of enforcement powers:

Many local authorities take a light touch or “fire-fighting” approach, as they do not have the capacity to protect tenants and ensure landlords comply with regulations. For example, tenancy relations officers provide valuable support to tenants experiencing illegal eviction or harassment, but very few local authorities can afford to have them. Only 10 landlords and letting agents have been banned by local authorities since new powers were introduced in 2016. Shelter reports that 80% of local authority officials said they did not have sufficient numbers of staff working on licensing and enforcement to ensure that the landlords in that area were compliant with their legal responsibilities. The Department does not know what basic level of resource is needed for local authorities to regulate their rental markets against legal standards.⁷²

The Committee recommended DLUHC should conduct a realistic assessment of the resources needed for local authorities to regulate effectively.⁷³ The Government rejected this recommendation, contending local authorities face different circumstances and challenges in their area and are therefore best placed to decide how to organise and prioritise resources.⁷⁴

The Government's white paper, [A fairer private rented sector](#), published on 16 June 2022, outlined a number of measures to improve local authority enforcement. In particular, the Government intends to:

- run pilot schemes with a selection of local authorities to trial improvements to the enforcement of existing standards.
- identify and share best practice on local authority enforcement approaches.
- introduce a new digital Property Portal which will provide access to information about privately rented properties to help local authorities deliver more targeted enforcement.
- strengthen local authorities' enforcement powers by seeking to increase their investigative powers and strengthen the fine regime for serious offences.
- explore how it can bolster national oversight of local authority, eg, by requiring authorities to report on their housing enforcement activity.⁷⁵

⁷² Committee of Public Accounts, [Regulation of private renting](#), 13 April 2022, HC 996 2021-22, Summary, para 7

⁷³ As above, p5

⁷⁴ DLUHC, [Government response to the Committee of Public Accounts on the Forty Ninth report from Session 2021-22](#), 2 September 2022, para 2.5

⁷⁵ DLUHC, [A fairer private rented sector](#), 16 June 2022

3.3

Power imbalance between tenants and landlords

The regulatory system for housing standards primarily relies on tenants acting against their landlord by reporting poor conditions to their local authority or seeking redress through the courts. It's contended that this system cannot function properly given the imbalance of power between tenants and landlords.

Surveys indicate many tenants are unwilling to pursue a complaint against their landlord for fear of retaliatory eviction or a rent rise. For example, in a YouGov survey commissioned by Shelter in 2021, 39% of private renters said they had been forced to live in dangerous or unhealthy conditions because they feared complaining to their landlord would trigger a retaliatory eviction.⁷⁶ Similarly, a YouGov survey commissioned by Citizens Advice of over 700 private renters in England between 10 and 17 March 2017 found:

- Nearly 3 in 5 (57%) of renters who could get compensation said they didn't want to force the issue with their landlord for fear of being evicted.
- Half of renters (51%) were also concerned their landlord would increase their rent if they continued complaining.⁷⁷

The threat of eviction is more severe when tenants' choice of alternative accommodation is constrained by a shortage of affordable accommodation. In research commissioned by Shelter, [Closing the Gaps: Health and Safety at Home](#) (2017), the authors refer to tenants' rights to secure repairs as "symbolic":

We also recognise that rights can be symbolic for other reasons, most notably in the private rented sector. This is because of the limited security of tenure of most private rented sector tenants. It is assumed that they are unlikely to exercise their rights, or complain about the state and condition of their property, because they risk being evicted on a no fault basis if they do so. As one of our private rented tenants put it: "Letting agency ignored reports, threatened to not renew lease and leave me homeless again as there were only local agency that accepted housing benefits. I stopped complaining".⁷⁸

They also point out: "...there is a limit on what can be achieved by individual tenants. Actions under private law require stamina. Many tenants are vulnerable or have too many other things going on in their lives to prioritise legal action".⁷⁹

⁷⁶ ['Over a third of private renters forced to live in dangerous conditions for fear of eviction'](#), Shelter, 19 April 2021

⁷⁷ ['1.85 million households wait longer than they should for a repair in their home to be carried out'](#), Citizens Advice Press Release, 13 July 2017

⁷⁸ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p11

⁷⁹ As above, p14

Furthermore, tenants may lack funding to take legal action. Legal aid for disrepair is only available at the point of crisis - when disrepair has become a serious risk to health or safety. A number of submissions received by the authors of [Closing the Gaps: Health and Safety at Home](#) highlighted restricted access to legal aid as an issue, for example:

The fact that legal aid is now so limited for disrepair cases and often non-existent, means that very many people go without a remedy at all. This is compounded by the fact that the courts are inaccessible to litigants in person, who are unlikely to be able to draft and present their claim in the way the court expects, and by the need to commission and pay for expert reports. Damages claims (except when in the form of a counterclaim) can realistically only be done by CFAs or DBAs, and only a small minority of tenants will be able to find a solicitor to act on this basis.⁸⁰

The National Audit Office's 2021 report on the [Regulation of private renting](#) identified other barriers to tenants raising complaints with landlords, including: a lack of recourse to public funds; tenants having a poor understanding of the options available to them; language barriers and distrust of services among tenants; and a complex system.⁸¹

As previously noted in sections 1.2 and 2.9, the Government has committed to abolish section 21 'no fault' evictions and require all private landlords to sign up to an independent redress scheme. Once implemented, these measures should make it easier for tenants to resolve disputes over repairs and maintenance without fear of eviction.

Organisations representing tenants regard this as a welcome step in redressing the power imbalance between tenants and landlords. The Commons Library briefing on [The end of 'no fault' section 21 evictions](#) examines the Government's proposals in more detail.

3.4 Complex and piecemeal legislation

The National Audit Office has identified 36 key pieces of legislation relating to the private rented sector, setting legal obligations for landlords and letting agents and enforcement arrangements.⁸²

The legal and regulatory framework within which the PRS operates has been criticised for being fragmented, inconsistent and complex:

The legal and regulatory framework within which the private rented sector operates is a longstanding source of debate and concern. Law and policy governing the sector has been characterised as fragmented, opaque, inconsistent and in need of radical reform – particularly in England. The framework represents the sedimentation of layers of regulation from different

⁸⁰ Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p11

⁸¹ NAO, [Regulation of private renting](#), 10 December 2021, para 4.9

⁸² NAO, [Regulation of private renting](#), 10 December 2021, para 1.2

eras, motivated by different regulatory philosophies. Concerns about the gaps that open up between the letter of the law and its operation in practice are well-established.⁸³

A 2018 review of the PRS in England by academics at the University of York concluded that current regulation of the sector is “confused and contradictory” and “failing at multiple levels”. In particular, the authors criticised the lack of an overarching policy strategy for the sector.⁸⁴

The piecemeal development of policy and legislation on housing standards in the PRS has arguably made it difficult for landlords and tenants to understand and for local authorities to enforce.

Research commissioned by Citizens Advice in 2019, [Getting the house in order: How to improve standards in the private rented sector](#), highlighted the lack of understanding and knowledge of housing standards in the PRS:

- 9 in 10 tenants didn’t know whether a repairing responsibility was theirs or their landlord’s.
- 1 in 4 landlords were not able to correctly identify any of the potential outcomes of failing to meet their obligations towards tenants.
- 1 in 3 landlords found it difficult to keep up with rules and regulations.⁸⁵

Research by the Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#) (2017), concluded the legislation requires reform:

This research has demonstrated that the law regarding the state and condition of property is in a mess. It is old and out of date; it does not provide appropriate remedies for modern concerns; its enforcement is variable; and, at least some of it is of symbolic value only. It desperately requires reform...⁸⁶

The HCLG Select Committee’s 2018 PRS inquiry heard a range of views on the merits of reforming the legislative framework and consequently recommended: “the Law Commission undertake a review of the legislation relating to the private rented sector and provides guidance as to whether a new approach to regulation in the sector would bring more clarity for tenants, landlords and local authorities”.⁸⁷

In its response, the Government noted that to help people better understand the PRS, it had updated the [How To guides](#) for landlords and tenants which

⁸³ UK Collaborative Centre for Housing Evidence, [The private rented sector in the UK: An overview of the policy and regulatory landscape](#), A Marsh and K Gibb, 25 July 2019, p8

⁸⁴ ‘[Landmark review slams successive governments for ‘unquestioning’ and ‘uncoordinated’ policy on private renting](#)’, Nationwide Foundation News Release, 10 September 2018

⁸⁵ Citizens Advice, [Getting the house in order: How to improve standards in the private rented sector](#), 26 June 2019

⁸⁶ Shelter, [Closing the Gaps: Health and Safety at Home](#). Universities of Kent and Bristol, H Carr et al, 2017, p25

⁸⁷ House of Commons Housing, Communities and Local Government Select Committee, [Private rented sector](#), 19 April 2018, HC 440 2017-19, para 58

set out the rights and responsibilities derived from legislation. The Government did not consider significant legislative reform was appropriate at that time but committed to discuss the issue with the Law Commission to ascertain what support they could provide in this area.⁸⁸

[The Public Accounts Committee's 2022 inquiry into the regulation of private renting](#) said the Government's piecemeal legislative changes to the PRS had "made the regulatory system even more overly complex and difficult to navigate for tenants, landlords and local authorities."⁸⁹ The Committee called on the Government to adopt a more strategic approach:

The Department told us it is now returning to the strategic reform agenda and intends to publish a White Paper later in 2022. It has highlighted specific issues it plans to address as part of its reforms, including security of tenure, enforcement, and redress. However, it has not set out its overall ambition for the sector, and does not have a grasp on the overall size or shape of the private rental market. The Department's planned reforms provide an opportunity to make significant improvements to the sector. But it will not be able to take this opportunity without a full grasp of the challenges in the sector, an overarching strategy for how to address these challenges and a good understanding of the expected impacts of the reforms.⁹⁰

3.5

Insufficient data on the private rented sector

[The Public Accounts Committee's 2022 inquiry into the regulation of private renting](#) concluded the Government lacked sufficient data on the private rented sector:

The Department lacks sufficient data on the challenges facing landlords, tenants, and local authorities within the sector. For example, it lacks robust data on complaints, overcrowding, harassment and evictions, and has a limited understanding of who is vulnerable and how this impacts their renting experience...The Department also lacks data to evaluate the impact of recent legislative changes on the overall operation of the market, and so is unable to benchmark success. For example, in 2015 the Department introduced changes in the Deregulation Act to prevent retaliatory eviction of tenants who raise complaints. However, it does not have data on landlords' reasons for evicting tenants, meaning it does not know how effective the changes have been.⁹¹

The Committee recommended the DLUHC should develop a coherent data strategy to identify and collect the data it needs to: i) understand the

⁸⁸ HM Government, [Government response to the Housing, Communities and Local Government Select Committee Report: Private rented sector](#), 4 July 2018, Cm 9639, paras 15-20

⁸⁹ Committee of Public Accounts, [Regulation of private renting](#), 13 April 2022, HC 996 2021-22, Summary, p3

⁹⁰ As above, para 26

⁹¹ Committee of Public Accounts, [Regulation of private renting](#), 13 April 2022, HC 996 2021-22, Summary, para 5

problems renters are facing; and ii) evaluate the impact of legislative changes.⁹²

In its response, the Government confirmed it would build on existing PRS data, address gaps where needed, and consider how best to monitor and evaluate the impact of PRS reforms on tenants and landlords.⁹³

⁹² Committee of Public Accounts, [Regulation of private renting](#), 13 April 2022, HC 996 2021-22, Summary, para 5

⁹³ DLUHC, [Government response to the Committee of Public Accounts on the Forty Ninth report from Session 2021-22](#), 2 September 2022, para 5.7

4 The devolved administrations

Housing is a devolved competence in Scotland, Wales and Northern Ireland. The three devolved administrations have adopted different approaches with regards to regulating housing fitness in the private rented sector (PRS).

4.1 Wales

In Wales, the provisions on housing fitness in the Landlord and Tenant Act 1985 and the Housing Act 2004 have been replaced by those in the [Renting Homes \(Wales\) Act 2016](#) (the 2016 Act), which came into force on 1 December 2022.

The 2016 Act requires landlords to ensure the property is fit for human habitation at the commencement of, and throughout, the tenancy.⁹⁴ [The Renting Homes \(Fitness for Human Habitation\) \(Wales\) Regulations 2022](#) (SI 2022/W4) set out 29 matters and circumstances to which regard must be had when determining whether a property is fit for human habitation. The regulations also set out specific requirements for smoke and carbon monoxide alarms, and electrical safety.⁹⁵

Landlords must also “keep in repair” the structure and exterior of the house, as well as the installations for water, gas, electricity, sanitation, space heating and water heating.⁹⁶ This is a fundamental term of the occupation contract.⁹⁷

Where a landlord has not complied with the fitness for human habitation, repair and mandatory safety requirements, tenants can make a claim to the County Court to get works carried out and for compensation. Tenants may be able to defend landlord possession proceedings which have been brought in retaliation for complaining about disrepair or poor property conditions. The Court will be able to determine whether an eviction is retaliatory without the need for there to have been any action taken by the local environment health

⁹⁴ [Section 91 of the Renting Homes \(Wales\) Act 2016](#)

⁹⁵ The Welsh Government consulted on the draft regulations and [confirmed the final detail of the regulations](#) in March 2021.

⁹⁶ These repairing provisions are largely a restatement of section 11 of the Landlord and Tenant Act 1985.

⁹⁷ [Section 92 of the Renting Homes \(Wales\) Act 2016](#)

department.⁹⁸ A [Citizens Advice article on the Renting Homes \(Wales\) Act 2016](#) provides further information on tenants' rights.⁹⁹

The Welsh Government has published [guidance for landlords](#), [guidance for tenants](#) and a [checklist for landlords and tenants](#) on the new requirements under the 2016 Act.

4.2

Scotland

The [Tolerable Standard](#) is the basic statutory minimum standard for housing in Scotland. It is a pass or fail measure of housing fitness applying to all tenures. The last significant update to the Tolerable Standard was set out in section 11 of the Housing (Scotland) Act 2006 (the 2006 Act), which added thermal insulation and electrical safety to the minimum standard.¹⁰⁰ Where a dwelling is below the Tolerable Standard, local authorities have a duty to take action to close it, demolish it, or bring it up to the required standard.

Section 13 of the 2006 Act outlines the [Repairing Standard](#). This standard applies in addition to the Tolerable Standard. Under the 2006 Act, private landlords in Scotland are required to ensure a rented property meets the Repairing Standard at the start of a tenancy and throughout the letting. Private landlords must also carry out electrical safety inspections at least once every five years.

The Scottish Government's [Energy Efficiency and Condition Standards in Private Rented Housing consultation](#) proposed further changes to the Repairing Standard to bring it closer to the standards required for social rented housing. Following that consultation, the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019, amended and extended the Repairing Standard. The changes will apply from 1 March 2024 to allow private landlords time to prepare their properties to meet the standard. The Scottish Government has also committed to improve the energy efficiency of the PRS and intends to bring forward legislation in due course.¹⁰¹

In December 2021, the Scottish Government launched a [consultation on a draft new rented sector strategy](#) seeking views on proposals to deliver a 'new deal' for tenants. The proposals included:

- a new Housing Standard to apply to all homes;

⁹⁸ [Section 217 of the Renting Homes \(Wales\) Act 2016](#)

⁹⁹ Citizens Advice Adviser, [Renting Homes \(Wales\) Act 2016: Repair obligations, fitness for human habitation and retaliatory evictions](#), 7 December 2022

¹⁰⁰ Scottish Government, [Implementing the Housing \(Scotland\) Act 2006: Advisory and Statutory Guidance for Local Authorities](#), March 2009

¹⁰¹ Scottish Government, [Energy efficiency standards for the private rented sector](#) (accessed 15 December 2022)

- establishing a private rented sector regulator to uphold new housing standards and to ensure the system is fair for both landlords and tenants; and
- setting minimum standards for energy efficiency.¹⁰²

The consultation closed on 15 April 2022. The Government published its [analysis of consultation responses](#) in August 2022.¹⁰³ The results are expected to feed into the final version of the Government's Rented Sector Strategy, with legislation being introduced in due course.

The Scottish Parliament Information Centre's (SPICe) research briefing on [Housing conditions and standards](#) provides further information.¹⁰⁴

4.3 Northern Ireland

The statutory minimum standard for properties in the PRS in Northern Ireland is known as the [Housing Fitness Standard](#). The Fitness Standard was last updated by the Housing Order (Northern Ireland) 1992. It is a pass or fail standard and is primarily concerned with the internal and external fabric of the building, and the provision of heating, lighting, ventilation and sanitation. Local authorities are responsible for the fitness enforcement process in respect of private rented dwellings.

All properties built before 1945, where a private tenancy commenced after 1 April 2007, must meet the Fitness Standard to attract a market rent. A certificate of fitness must be acquired from the local authority. In the absence of a certificate of fitness the amount of rent that can be charged is determined by the Rent Officer for Northern Ireland and this controlled rent applies until such times as the property is made fit.¹⁰⁵

In addition, private landlords are required to ensure their properties comply with minimum standards set out in the [Housing \(Standards for Rented Houses\) Regulations 2019 \(SI 137/2019\)](#).

The Department for Social Development's¹⁰⁶ Housing Strategy 2012-2017 committed to review and enhance the Fitness Standard. In March 2016, the Department published a [discussion paper \(PDF\)](#) on the future of the Fitness Standard, which presented two possible options for reform:

¹⁰² Scottish Government, [A new deal for tenants](#), 20 December 2021

¹⁰³ Scottish Government, [A new deal for tenants: Consultation analysis](#), 23 August 2022

¹⁰⁴ The Scottish Parliament Information Centre, [Research briefing SB 21-71: Housing conditions and standards \(updated\)](#), 13 October 2021

¹⁰⁵ Department for Social Development, [Review of the Role and Regulation of the Private Rented Sector \(PDF\)](#), November 2015, p23

¹⁰⁶ The Department for Social Development is now part of the Department for Communities.

Option A – An Enhanced Housing Fitness Standard.

Option B – Introduce the Housing Health and Safety Rating System in Northern Ireland.¹⁰⁷

In January 2017, the Department for Communities [consulted on wide-ranging proposals for PRS reform](#) in Northern Ireland. The [Departmental response](#), published in May 2021 committed to:

- Legislate to introduce a requirement for landlords to provide smoke and carbon monoxide detectors and carry out periodic electrical checks.
- Introduce an enabling power in primary legislation to make provision for the introduction and enforcement of minimum standards of energy efficiency in the PRS.
- Amend legislation so that all unfit properties built before 1956 are subject to rent control.¹⁰⁸

The [Private Tenancies Act \(Northern Ireland\) 2022](#), which received Royal Assent on 27 April 2022, introduced new requirements in relation to fire, smoke and carbon monoxide detectors (section 8) and gave the Department for Communities the power to make regulations with regards to energy efficiency standards (section 9) and electrical safety standards (section 10).

The Minister for Communities, then Deirdre Hargey, indicated the Act was the first step in PRS reform and further work was a priority for the Department.¹⁰⁹

¹⁰⁷ Department for Social Development, [Review of the Statutory Minimum Housing Fitness Standard for all Tenures of Dwelling \(PDF\)](#), March 2016

¹⁰⁸ Department for Communities, [Departmental Response Consultation on the Review of the Role and Regulation of the Private Rented Sector](#), 4 May 2021

¹⁰⁹ Department for Communities, [Minister Hargey delivers protections for private renters](#), 15 March 2022

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Further information

The following are a selection of further sources of information on housing conditions in the private rented sector:

UK Collaborative Centre for Housing Evidence (UKCCHE), [Understanding landlord behaviour in the private rented sector in the UK](#), J Harris and A Marsh, 7 November 2022

Northern Housing Consortium and CaCHE, [Lessons from last time: a review of evidence on the first decent homes programme in the social and private rented sectors](#), M Marshall et al, November 2022

Institute for Public Policy Research (IPPR), [High Standards: Developing a property improvement model for the private rented sector in Greater Manchester](#), 11 September 2022

Department for Levelling Up, Housing and Communities, [English Private Landlord Survey: Segmenting private landlord compliance](#), 26 May 2022

National Residential Landlords Association, [The enforcement lottery: local authority inspections and notices](#), 9 February 2022

BRE, [The cost of poor housing in England](#), H Garrett et al, 9 November 2021

UKCHE, [Health and wellbeing in the private rented sector](#), July 2021

Centre for Ageing Better, [Past, Present and Future: Housing policy and poor-quality homes](#), J Preece et al, May 2021

University of Stirling, Edge Hill and Cardiff University, [Making a home in the private rented sector: An evidence review](#), K McKee et al, January 2021

Ministry of Housing, Communities and Local Government (MHCLG), [How to rent a safe home](#), last updated 10 December 2020

MHCLG, [How to let](#), last updated 10 December 2020

The Northern Housing Consortium, [Lockdown. Rundown. Breakdown. The COVID-19 lockdown and the impact of poor-quality housing on occupants in the North of England](#), P Brown et al, October 2020

Cambridge House Research, [Journeys in the shadow private rented sector \(PDF\)](#), R Spencer et al, August 2020

UKCCHE - [Improving compliance with private rented sector legislation: Local authority regulation and enforcement \(PDF\)](#), J Harris et al, 5 August 2020

UKCCHE policy briefing, [Improving compliance and enforcement in the private rented sector: Information for UK and devolved governments \(PDF\)](#), J Harris et al, 5 August 2020

UKCCHE Practice briefing, [Improving compliance in the private rented sector: Information for local authorities \(PDF\)](#), J Harris et al, 5 August 2020

Local Government Association, [Improving the private rented sector](#) (a guide for councils, a toolkit for councils and case studies), 3 August 2020

Institute of Health Equity, [Health Equity in England: The Marmot Review 10 Years On](#), M. Marmot et al, February 2020

UKCCHE, [The private rented sector in the UK: An overview of the policy and regulatory landscape](#), A Marsh and K Gibb, 25 July 2019

Citizens Advice, [Getting the house in order: How to improve standards in the private rented sector](#), H Poll and C Rogers, 26 June 2019

MHCLG, [Landlord and tenant rights and responsibilities in the private rented sector](#), 9 April 2019

Residential Landlords Association, [The Postcode Lottery of Local Authority Enforcement in the Private Rented Sector](#), T Simcock and N Mykkanen, November 2018

Centre for Housing Policy University of York, [The Evolving Private Rented Sector: Its Contribution and Potential](#), J Rugg and D Rhodes, September 2018

Which, [Reform of the private rented sector: the consumer view](#), 23 July 2018

House of Commons Housing, Communities and Local Government Select Committee, [Private rented sector](#), 19 April 2018, HC 440 2017-19

Parliamentary Office of Science and Technology, [Health in Private-Rented Housing](#), 4 April 2018

Shelter, [Closing the Gaps: Health and Safety at Home](#), Universities of Bristol and Kent, H Carr et al, November 2017

Shelter, [Happier and healthier: improving conditions in the private rented sector](#), V Pearlman, September 2017

Citizens Advice, [A state of disrepair](#), 7 March 2017

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