



## BRIEFING PAPER

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# Housing conditions in the private rented sector (England)

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Inside:

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## Summary

In recent years the extent and role of the private rented sector (PRS) in the housing market has seen significant changes. The sector has grown considerably; 4.6 million households rented their home from a private landlord in 2018/19, representing 19% of all households in England. A more diverse range of households, including families with children, are now accommodated in the sector and for many it is providing long-term rather than short-term accommodation.

The expansion of the PRS has focused attention on the need to improve housing conditions in the sector. The English Housing Survey estimates that in 2018 25% of homes in the PRS were in a condition that would fail the Decent Home Standard – around 1.2 million homes. This was the highest proportion of all tenure groups. Privately-rented homes were also the most likely to have at least one Category 1 hazard under the Housing Health and Safety Rating System (HHSRS).

**Section 1** of the briefing paper provides information on housing fitness and levels of disrepair in the PRS, together with background on policy developments. The *Housing and Planning Act 2016* strengthened local authority powers to take enforcement action against ‘rogue’ landlords who knowingly rent out substandard accommodation. The 2017 Conservative Government proposed further interventions to help improve standards in the PRS, including: legislation to require all private landlords to sign up to a redress scheme; and the regulation of all letting and managing agents.

**Section 2** of the briefing paper provides an overview of the current legal framework for housing fitness 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 safety. On 13 January 2020, the Government laid before Parliament new regulations that will require private landlords to make sure the electrical installations in their properties are safe. 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*, which came into force for new tenancies created on or after 20 March 2019, requires private sector landlords in England to ensure that 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 without having to rely on their local authority.

**Section 3** of the briefing paper provides a brief overview of some of the key issues identified with the legal framework governing housing standards in the PRS:

- Calls to reform the HHSRS which has been criticised for being overly complex, difficult for landlords and tenants to understand and out of date. The 2017 Government responded by initiating a review of the system.
- Inconsistent and low levels of enforcement of housing standards by local authorities, which is thought to be a result of: insufficient local authority resources; the complexity of the legislation; and a lack of political will 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 rental properties. Tenants may also 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 what their obligations are and tenants uncertain about who is responsible for resolving problems.

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

# 1. Background

## 1.1 Data on housing fitness

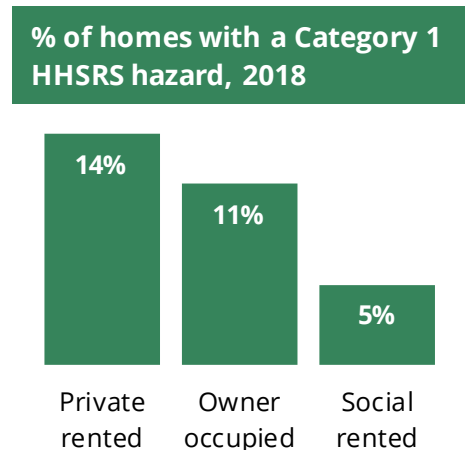
In recent years the extent and role of the private rented sector (PRS) in the housing market has seen significant changes. 4.6 million households in England rented their home from a private landlord in 2018/19, representing 19% of all households. The number of households renting privately has more than doubled since 1997, at which time only 10% of households were private renters.<sup>1</sup> 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.<sup>2</sup>

Poor housing conditions in the PRS are a longstanding concern. The English Housing Survey estimates<sup>3</sup> that in 2018, 25% of homes in the PRS in England were in a condition that would fail the Decent Homes Standard – around 1.2 million homes.<sup>4</sup> This was the highest proportion of all tenure groups, compared with 17% of owner-occupied homes and 12% 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 2018, compared with 11% of owner-occupied homes and 5% of all social-rented homes.<sup>5</sup>

Poor housing conditions can affect residents' health, safety and wellbeing. The independent [Marmot Review](#) commissioned by the Government and published in 2010, concluded that housing is a 'social determinant of health', meaning that 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 England.<sup>6</sup>

The majority of privately-renting tenants say that they are satisfied with their housing. The 2017/18 English Housing Survey reported that 84% of private renters were satisfied with their accommodation, compared with 95% of owner-occupiers and 80% of social renters. 73% of private renters were satisfied with repairs and maintenance, compared



<sup>1</sup> MHCLG, [English Housing Survey headline report 2018 to 2019](#), Annex Table 1.1

<sup>2</sup> 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](#), Professor A. Marsh and Professor K. Gibb, 25 July 2019

<sup>3</sup> MHCLG, [English Housing Survey headline report 2018 to 2019](#), Annex Table 2.2

<sup>4</sup> 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.

<sup>5</sup> MHCLG, [English Housing Survey headline report 2018 to 2019](#), Annex Table 2.3

<sup>6</sup> Parliamentary Office of Science and Technology, [Health in Private-Rented Housing](#), 4 April 2018



with 66% of social renters.<sup>7</sup> 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.

Shelter's 2014 report, [Safe and decent homes](#), included research on the extent and impact of non-decent homes in the PRS:

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.<sup>8</sup>

Research commissioned by Citizens Advice in 2019 also identified that some landlords were failing to meet their repairing obligations. Over the previous two years, 60% of private tenants surveyed had experienced disrepair that 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 (e.g. spending their own time or money on fixing the disrepair themselves).<sup>9</sup>

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

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.

Prior to 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 factors. Concerns were raised about the effectiveness of the Housing Fitness Standard, particularly that several of the most serious hazards, including fire and fall hazards, were not covered.

<sup>7</sup> MHCLG, [English Housing Survey 2017 to 2018: private rented sector](#), p.12, 17 July 2019

<sup>8</sup> Shelter, [Safe and Decent Homes: Solutions for a better private rented sector](#), 9 December 2014, pp40-41

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

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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.<sup>10</sup>

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 for landlords has been subject to debate.

A [2013 report on the private rented sector](#) 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 that “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”.<sup>11</sup> It also called on the Government to raise awareness of tenants’ and landlords’ respective rights and responsibilities.<sup>12</sup>

In its response to the Committee’s recommendations, the Coalition Government announced it would consult on measures to improve standards, including a review of the HHSRS and the extension of Rent Repayment Orders<sup>13</sup> to apply to landlords who rent out properties containing serious hazards.<sup>14</sup>

The Government published its response to the consultation 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, the *Landlord and Tenant Act 1985* (which includes repair and maintenance obligations for landlords) or to the scope of Rent Repayment Orders.<sup>15</sup>

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

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

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

<sup>12</sup> *Ibid.*, para 24

<sup>13</sup> A Rent Repayment Order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

<sup>14</sup> DCLG, [Government Response to the Communities and Local Government Select Committee Report](#), Cm 8370, October 2013

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

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 to crack down on 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 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.<sup>16</sup>

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 in England to bring smaller HMOs within the scheme.<sup>17</sup>
- The Government supported Karen Buck’s Private Member’s Bill which is now the *Homes (Fitness for Human Habitation) Act 2018*. The Act, which is being phased in, requires all private sector landlords in England to ensure that 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.<sup>18</sup> It also proposed to legislate to require all private landlords to sign up to a redress scheme.<sup>19</sup>
- In April 2019 the Government announced its intention to abolish Section 21 of the *Housing Act 1988* and end ‘no-fault’ evictions.

<sup>16</sup> Ministry of Housing, Communities and Local Government, [Rogue Landlord Enforcement: guidance for local authorities](#), 9 April 2019

<sup>17</sup> The House of Commons Library briefing paper SN00708: [Houses in multiple occupation \(HMOs\) England and Wales](#) provides further information.

<sup>18</sup> MHCLG, [Protecting Consumers in the letting and managing agent market: Government response](#), April 2018. The House of Commons Library briefing paper SN06000: [The regulation of letting and managing agents \(England\)](#) provides further information.

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



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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 the [Queen's Speech December 2019](#) the Government committed to introduce a Renters' Reform Bill to strengthen protections for tenants in the PRS. Measures will include improving security for tenants and professionalising letting agents.<sup>20</sup>

Whilst the above measures have been generally 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.

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<sup>20</sup> Prime Minister's Office, [Queen's Speech December 2019: background briefing notes](#), 19 December 2019, pp 46-47

## 2. The legal framework

This section provides an overview of the legislation that applies to housing fitness in the private rented sector 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 obligations that are legally binding on both parties. These contractual terms can be **express**, i.e. expressly stated or written, or **implied**, i.e. 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".<sup>21</sup>

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

#### Implied terms

**Section 11 of the *Landlord and Tenant Act 1985*** (the 1985 Act) inserts an implied covenant<sup>22</sup> 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);
- 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.<sup>23</sup>

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

<sup>21</sup> Legal Action Group, *Housing Law Handbook*, Diane Astin, Fourth Edition, 2018, para 9.7

<sup>22</sup> 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.

<sup>23</sup> Section 11(1) of the *Landlord and Tenant Act 1985*

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enter at reasonable times of the day and on giving 24 hours' notice in writing to the tenant.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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

- 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 taking action 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](#).<sup>27</sup>

**Section 8 of the *Landlord and Tenant Act 1985*** created an implied term requiring landlords to keep premises fit for human habitation at commencement of and throughout a tenancy. However, it effectively became obsolete as it only applied to tenancies where the original

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<sup>24</sup> Section 11(6) of the *Landlord and Tenant Act 1985*

<sup>25</sup> Legal Action Group, *Housing Law Handbook*, Diane Astin, Fourth Edition, 2018, paras 9.62-9.64

<sup>26</sup> Sections 11(2) and 11(3A) of the *Landlord and Tenant Act 1985*

<sup>27</sup> [Landlord and tenant responsibilities for repairs: https://england.shelter.org.uk/housing\\_advice/repairs/landlord\\_and\\_tenant\\_responsibilities\\_for\\_repairs](https://england.shelter.org.uk/housing_advice/repairs/landlord_and_tenant_responsibilities_for_repairs) [Accessed 18 November 2019].

annual rent was no more than £52 (or £80 in London). In England it has now been superseded by the provisions in the *Homes (Fitness for Human Habitation) Act 2018* (see section 2.4 below).

## 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 that 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.<sup>28</sup>

## 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 (i.e. it extends beyond repairs to broader housing conditions).

Local authorities are required to keep housing conditions in their area under review.<sup>29</sup> 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.

If, following an inspection, an environmental health officer (EHO) 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 that the landlord takes corrective measures. Where the officer identifies the most serious (‘Category 1’) hazards, the local authority is **required** to take action. However, it can also choose to take action in regard to less serious (‘Category 2’) hazards.

There are several types of formal enforcement action that can be taken by a local authority, depending on the circumstances:

- serving an improvement notice;
- making a prohibition order;

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<sup>28</sup> The Shelter Legal webpage on [Landlord's duty of care for repairs](#) provides further information on the Defective Premises Act 1972.

<sup>29</sup> Section 3 of the *Housing Act 2004*

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- serving a hazard awareness notice;
- taking specified emergency measures;
- demolition orders;
- slum clearance orders.

The system has been criticised for being outdated and too complex. In October 2018 the Government [announced](#) a review of the HHSRS.<sup>30</sup> (discussed further in section 3.1)

The Commons Library briefing paper, [Housing Health and Safety Rating System \(HHSRS\)](#) (SN01917) provides further information about the HHSRS.

### 2.4 Fitness for human habitation

The [Homes \(Fitness for Human Habitation\) Act 2018](#) (the 2018 Act),<sup>31</sup> which came into force on 20 March 2019, amends the *Landlord and Tenant Act 1985* to require all private sector landlords in England to ensure that their properties, including any common parts of the building, are fit for human habitation at the beginning of the tenancy and throughout. The Act does so by implying a covenant to this effect in the tenancy agreement.

Implementation of the 2018 Act is phased. The Act applies to

- all new tenancies with a fixed term of less than seven years that begin **on or after 20 March 2019**.
- all tenancies that began as a fixed term tenancy before 20 March 2019 but became a periodic tenancy **on or after 20 March 2019**.
- all periodic tenancies in existence on 20 March 2019 **from 20 March 2020**.<sup>32</sup>

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

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<sup>30</sup> MHCLG, [Greater protection for renters thanks to plans to tighten tenant safety](#), 26 October 2018

<sup>31</sup> The House of Commons Library briefing paper CBP08185: [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.

<sup>32</sup> Nearly Legal: Housing Law, [Fitness for Habitation – a thumbnail guide](#), Giles Peaker, 21 December 2018

- 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 \(HHSRS\)](#).<sup>33</sup>

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".<sup>34</sup>

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.<sup>35</sup>

Where a landlord fails to let or maintain a property that is fit for human habitation, **the tenant has the right to 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.

Legal advice from a suitably qualified professional is always advised before commencing any legal action. Tenants taking action against their landlord for failure to carry out repairs could be at risk of retaliatory eviction (see section 2.9).

The Ministry of Housing, Communities and Local Government (MHCLG) has 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,

<sup>33</sup> Section 10 of the *Landlord and Tenant Act 1985* (as amended). The HHSRS recognises [29 'matters and circumstances' that give rise to hazards](#).

<sup>34</sup> Section 10(1) of the *Landlord and Tenant Act 1985* (as amended)

<sup>35</sup> *Ibid.*, Section 9A(2)



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including: "... any premises in such a state as to be prejudicial to health or a nuisance".<sup>36</sup>

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 actually 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.<sup>37</sup>

Private tenants should in the first instance request an inspection of the property by a local authority EHO. 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.

### 2.6 Specific maintenance regulations

Landlords are required to carry out a number of 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 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

Sections 122 and 123 of the *Housing and Planning Act 2016* give the Secretary of State the power to make regulations imposing duties on private landlords of residential premises in England for the purpose of ensuring that electrical safety standards are met during tenancies, and

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<sup>36</sup> [Section 79\(1\)\(a\) of the Environmental Protection Act 1990](#)

<sup>37</sup> Shelter Legal, [Definition of statutory nuisance](#) [Accessed 27 November 2019]

to provide for the enforcement of those duties. These sections were brought into force on 25 October 2019.<sup>38</sup>

Following a [consultation on proposals to strengthen electrical safety in the private rented sector](#), the Government confirmed its intention to legislate to require landlords to have electrical installations in privately rented homes checked every five years.<sup>39</sup>

On 13 January 2020, the Government laid before Parliament new regulations that will require private landlords to make sure the electrical installations in their properties are safe.

[The Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#) require that:

- Electrical installations must be inspected and tested by a qualified and competent person at least every five years;
- Electrical safety standards must be met;
- Reports (known as ‘Electrical Installation Condition Reports or ‘EICRs’) must be provided to tenants, and to local authorities on request.

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

The regulations apply to all private landlords, including landlords of Houses in Multiple Occupation (HMOs).

Subject to approval by Parliament, these requirements will come into force for all new tenancies from 1 July 2020 and for all existing tenancies from 1 April 2021.<sup>40</sup>

## 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 remain unresolved, landlords can face a civil penalty of up to £5,000.

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<sup>38</sup> [The Housing and Planning Act 2016 \(Commencement No. 11\) Regulations 2019 \(SI 2019/1359\)](#)

<sup>39</sup> MHCLG, [Electrical safety in the private rented sector: government response](#), 29 January 2019

<sup>40</sup> [PQ HL393 \[Private Rented Housing: Electrical Safety\] 28 January 2020](#)

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The Government launched a review of carbon monoxide alarm requirements in 2018<sup>41</sup> and committed to set out the review findings in its response to the Social Housing Green Paper.<sup>42</sup> In response to a written parliamentary question in January 2020, the Government confirmed it was considering the findings of the review and will set out the next steps in due course.<sup>43</sup>

### 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 have a 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 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.<sup>44</sup>

More information can be found in the House of Commons Library briefing paper: [Smoke Alarms, Carbon Monoxide Detectors and Legionella: Landlords' Responsibilities](#) (CBP07307).

### Thermal efficiency

The *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015* (S.I. 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.

Since 1 April 2018 private landlords may not let domestic properties to new or existing tenants if the EPC rating is F or G. From 1 April 2020 the prohibition on letting F and G rated properties will extend to all relevant properties, even where there has been no change in tenancy. Landlords are required to improve the property energy efficiency rating to E or register an exemption. A civil penalty of up to £4,000 may be imposed for breaches of the regulations.

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 \(EPC band E\)](#) (October 2017).

## 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**

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<sup>41</sup> MHCLG, [Greater protection for renters thanks to plans to tighten tenant safety](#), 26 October 2018

<sup>42</sup> [Written PQ 269761 1 July 2019](#)

<sup>43</sup> [PQ 4300 \[Rented Housing: Carbon Monoxide\] 24 January 2020](#)

<sup>44</sup> Health and Safety Executive, [Legionella and landlords' responsibilities](#), undated

**of the tenancy agreement and jeopardise the tenant's right to remain in the accommodation.** In certain circumstances, however, 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](#).<sup>45</sup>

## 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
- homelessness<sup>46</sup>

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](#),<sup>47</sup> and an online eligibility checker (guidance but not a decision on eligibility for legal aid), [Check if you can get legal aid](#).<sup>48</sup>

The House of Commons Library briefing paper SN03207: [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 has been argued by organisations such as Shelter and Citizens Advice that tenants seeking repairs could be at risk of retaliatory eviction.<sup>49</sup> 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 in order to terminate the tenancy. Section 21 of the *Housing Act 1988* offers landlords a means of 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*,

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<sup>45</sup> Shelter: Withholding Rent: [https://england.shelter.org.uk/legal/housing\\_conditions/taking\\_action\\_on\\_disrepair/withholding\\_rent](https://england.shelter.org.uk/legal/housing_conditions/taking_action_on_disrepair/withholding_rent) [Accessed 04/02/2020]

<sup>46</sup> The Law Society webpage on [Legal Aid](#) [Accessed 04/02/2020]

<sup>47</sup> <https://www.gov.uk/legal-aid>

<sup>48</sup> <https://www.gov.uk/check-legal-aid>

<sup>49</sup> See for example: Citizens Advice Bureau, [The tenant's dilemma](#), June 2007

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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 issued an improvement notice by a local authority in relation to Category 1 or Category 2 hazards. The Department for Communities and Local Government (DCLG) published guidance on the measures: [Guidance note: Retaliatory Eviction and the Deregulation Act 2015](#).<sup>50</sup>

Whilst the 2015 Act covers tenants whose homes are subject to 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.

The Shelter website provides advice on tenants' rights in the event of [Revenge eviction if you ask for repairs](#).<sup>51</sup> The House of Commons Library briefing paper [Retaliatory eviction in the private sector](#) (SN07015) provides further background information.

In April 2019 the Government announced its intention to abolish Section 21 of the *Housing Act 1988*.<sup>52</sup> Organisations representing tenants regard this as a welcome step in redressing the power imbalance between tenants and landlords. Landlord bodies, on the other hand, are opposed to it. The House of Commons Library briefing paper [The end of 'no fault' section 21 evictions](#) (CBP08658) examines the proposals in more detail.

In the [Queen's Speech December 2019](#) the Government committed to bring forward a Renters' Reform Bill which will abolish the use of 'no fault' section 21 evictions and reform the grounds for possession.<sup>53</sup>

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<sup>50</sup> DCLG, [Retaliatory Eviction and the Deregulation Act 2015: guidance note](#), 1 October 2015

<sup>51</sup> [Revenge eviction if you ask for repairs: https://england.shelter.org.uk/housing\\_advice/repairs/revenge\\_eviction\\_if\\_you\\_ask\\_for\\_repairs](https://england.shelter.org.uk/housing_advice/repairs/revenge_eviction_if_you_ask_for_repairs) [Accessed 04/02/2020]

<sup>52</sup> MHCLG, [Government announces end to unfair evictions](#), 15 April 2019

<sup>53</sup> Prime Minister's Office, [Queen's Speech December 2019: background briefing notes](#), 19 December 2019, pp 46-47

## 3. Key issues

This section provides a brief overview of the key issues identified with the current legal framework for housing fitness.

### 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. However, there have been criticisms 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.<sup>54</sup> Although, it should be noted that despite having prescribed minimum property standards, the Housing Fitness Standard faced similar criticisms.<sup>55</sup>

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

A [2018 report on the private rented sector](#) by the House of Commons Housing, Communities and Local Government (HCLG) Select Committee recommended that 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 standards. These standards should be higher than those in the HHSRS, reflecting an improvement in housing quality since the system was introduced.**<sup>56</sup>

<sup>54</sup> See for example, HomeLet Direct, [Memorandum to the Communities and Local Government Select Committee](#), January 2013

<sup>55</sup> Legal Research Unit, University of Warwick, Controlling Minimum Standards in Existing Housing, January 1998, para 2.11

<sup>56</sup> House of Commons Housing, Communities and Local Government Committee, [Private rented sector: Fourth report of Session 2017-19](#), HC 440, 19 April 2018, para 70



In its response the Government asserted that “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 did, however, recognise that the methodology and associated guidance for the HHSRS was several years old and agreed to consider whether it needed updating.<sup>57</sup>

In October 2018 the Government [announced](#) a review of the HHSRS.<sup>58</sup> 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”.<sup>59</sup>

The Commons Library briefing paper, [Housing Health and Safety Rating System \(HHSRS\)](#) (SN01917) 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 private rented sector. However, there is widespread concern about low levels of enforcement by local authorities and inconsistent enforcement between local authorities.

Research commissioned by the Residential Landlords Association in 2018, based on Freedom of Information requests to local authorities in England and Wales, found that:

- Our research found Enforcement activities by Local Authorities differ right across England and Wales. While in 2017/18 the number of improvement notices served increased by 7% in comparison to 2012/13, 18% of Local Authorities reported they had not served a single Improvement Notice.
- This finding is even more striking for landlord prosecutions which are sporadic across England and Wales, with 67% of Local Authorities not commencing a single prosecution against a private landlord in 2017/18. This is despite the number of prosecutions commenced increasing by 460% in 2017/18 in comparison to 2012/13.
- The postcode lottery of local authority enforcement in the private rented sector is further evidenced through the low take up of new Civil Penalty powers. 89% of Local Authorities reported they had not used the new powers, and 53% reported that they did not have a policy in place

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<sup>57</sup> HM Government, [Government response to the Housing, Communities and Local Government Select Committee Report: Private rented sector](#), Cm 9639, 4 July 2018, paras 12-13

<sup>58</sup> MHCLG, [Greater protection for renters thanks to plans to tighten tenant safety](#), 26 October 2018

<sup>59</sup> MHCLG, [Outcomes of report on Housing Health and Safety Rating System \(HHSRS\) scoping review](#), 11 July 2019

to use the powers. Of those that had issued a Civil Penalty Notice, of which only 332 were served in 2017/18, 82% of these were from Local Authorities in London.<sup>60</sup>

The House of Commons Housing, Communities and Local Government (HCLG) Select Committee 2018 inquiry into the private rented sector concluded that "... the evidence is clear that enforcement levels – formal or otherwise – are far too low in the vast majority of local authorities. This strongly suggests that vulnerable tenants are being left without the protection to which they are legally entitled..."<sup>61</sup>

The Committee concluded that low levels of local authority enforcement activity were a result of a combination of factors:

- insufficient local authority resources to undertake enforcement activity;
- complexity of the legislation; and
- lack of political will to address low standards in the sector.

The Committee recommended that a new fund should be established to support local authorities with enforcement work, especially those that prioritise informal approaches to enforcement. It also suggested that local authorities could be supported through a national benchmarking scheme and the sharing of best practice.<sup>62</sup>

Organisations such as Shelter have also called for additional funding for local authority enforcement:

Even as their powers have increased, the capacity and resources of local councils to continue to improve standards in the PRS has reduced, in the face of funding reductions and increasing demand. Their increased powers must be coupled with increased resources for PRS enforcement teams.<sup>63</sup>

The Government's response to the HCLG Committee report said that it was carefully considering how best to support local authorities in carrying out their enforcement activity on both a formal and informal basis and that it was working closely with the Local Government Association.<sup>64</sup> Subsequently, the 2017 Government created [Private Rented Sector Innovation and Enforcement Grants](#) to assist authorities with "effective and targeted action against criminal landlords".<sup>65</sup> In 2018/19, £2.4 million was allocated to 56 targeted local authority

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<sup>60</sup> Residential Landlords Association, [The Postcode Lottery of Local Authority Enforcement in the Private Rented Sector](#), Simcock, T., November 2018

<sup>61</sup> House of Commons Housing, Communities and Local Government Committee, [Private rented sector: Fourth report of Session 2017-19](#), HC 440, 19 April 2018, para 84

<sup>62</sup> House of Commons Housing, Communities and Local Government Committee, [Private rented sector: Fourth report of Session 2017-19](#), HC 440, 19 April 2018, Summary, p3

<sup>63</sup> Shelter, [Shelter Submission to CLG Committee inquiry: Role of Local Authorities in the PRS](#), July 2018

<sup>64</sup> HM Government, [Government response to the Housing, Communities and Local Government Select Committee Report: Private rented sector](#), Cm 9639, 4 July 2018, paras 56 and 76

<sup>65</sup> MHCLG, [Private Rented Sector Innovation and Enforcement Grant Fund 2019/20 - Prospectus](#), November 2019

projects.<sup>66</sup> A further £4 million has been awarded to 100 local authorities in 2019/20.<sup>67</sup>

The Residential Landlords Association welcomed this additional funding but said it was “nowhere near enough” to achieve effective enforcement:

Rather than throwing odd bits of cash around, the government needs to provide proper, multi-year funding to councils to enable them to plan and prepare clear strategies to find the crooks whilst supporting good landlords.

This includes ensuring enough funding is in place to recruit sufficient numbers of well-trained enforcement officers.<sup>68</sup>

### 3.3 Power imbalance between tenants and landlords

The regulatory system for housing standards primarily relies on tenants taking action against their landlord – by reporting breaches of their rights to their local authority or seeking redress through the courts. However, it is contended that this system cannot function properly with the existing imbalance of power between tenants and landlords.

Surveys indicate that many tenants are unwilling to pursue a complaint against their landlord for fear of suffering a retaliatory eviction or rent rise. For example, 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%) also said another concern was that their landlord would increase their rent if they continued complaining.<sup>69</sup>

The threat of eviction is even more severe when tenants' choice of alternative accommodation is constrained by a shortage of affordable accommodation. In [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

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<sup>66</sup> Ibid.

<sup>67</sup> MHCLG, [Housing Secretary pledges new funding to crackdown on criminal landlords](#), last updated 16 January 2020

<sup>68</sup> ['Funding to tackle criminals a step in the right direction'](#), RLA Press Release, 4 November 2019

<sup>69</sup> ['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

there were only local agency that accepted housing benefits. I stopped complaining".<sup>70</sup>

In research commissioned by Shelter, [Closing the Gaps: Health and Safety at Home](#) (2017), the authors note that "...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".<sup>71</sup>

Furthermore, tenants may lack the 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](#) (2017) 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.<sup>72</sup>

## Government proposals

Section 21 of the *Housing Act 1988* offers landlords a means of evicting assured shorthold tenants without having to prove any fault on the part of the tenant. In April 2019 the Government announced its intention to abolish Section 21.<sup>73</sup> Organisations representing tenants regard this as a welcome step in redressing the power imbalance between tenants and landlords. Landlord bodies, on the other hand, are opposed to it. The House of Commons Library briefing paper [The end of 'no fault' section 21 evictions](#) (CBP08658) examines the Government's proposals in more detail.

In the [Queen's Speech December 2019](#) the Government committed to bring forward a Renters' Reform Bill which will abolish the use of 'no fault' section 21 evictions and reform the grounds for possession.<sup>74</sup>

The Government has also committed to implement a range of measures intended to strengthen consumer redress in the housing market, including:

- a Housing Complaints Resolution Service - a new single point of access to redress that housing consumers can use.

<sup>70</sup> Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p11

<sup>71</sup> Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p14

<sup>72</sup> Ibid., p11

<sup>73</sup> MHCLG, [Government announces end to unfair evictions](#), 15 April 2019

<sup>74</sup> Prime Minister's Office, [Queen's Speech December 2019: background briefing notes](#), 19 December 2019, pp 46-47

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- to bring forward legislation to close the gaps in redress services for consumers including to require all private landlords to sign up to a redress scheme.<sup>75</sup>

Once implemented, these measures should make it easier for tenants to resolve disputes relating to repairs and maintenance without resorting to court action. Landlords' representatives had a mixed response to the Government's proposals, with some concern that a mandatory redress scheme could increase costs for landlords.<sup>76</sup>

In addition, the Government has sought views on whether a specialist Housing Court could make it easier for all users of court and tribunal services to resolve disputes, reduce delays and to secure justice in housing cases. The call for evidence closed on 22 January 2019 and the Government is currently analysing the responses.<sup>77</sup>

### 3.4 Complex and piecemeal legislation

The legal and regulatory framework within which the private rented sector 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 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.<sup>78</sup>

A recent review of the private rented sector 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.<sup>79</sup>

The Residential Landlords Association has identified that there are over 150 Acts of Parliament affecting the private rented sector.<sup>80</sup>

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<sup>75</sup> MHCLG, [Strengthening consumer redress in the housing market: summary of responses to the consultation and the government's response](#), 24 January 2019

<sup>76</sup> House of Commons Housing, Communities and Local Government Committee, [Private rented sector: Fourth report of Session 2017-19](#), HC 440, 19 April 2018, para 32

<sup>77</sup> MHCLG, [Considering the case for a Housing Court: call for evidence](#), 13 November 2018

<sup>78</sup> UK Collaborative Centre for Housing Evidence, [The private rented sector in the UK: An overview of the policy and regulatory landscape](#), Professor A. Marsh and Professor K. Gibb, 25 July 2019, p8

<sup>79</sup> [‘Landmark review slams successive governments for ‘unquestioning’ and ‘uncoordinated’ policy on private renting’](#), Nationwide Foundation News Release, 10 September 2018

<sup>80</sup> Residential Landlords Association, [Not under-regulated but under-enforced: A list of legislation affecting the private rented sector](#), last updated 1 November 2019

The piecemeal development of policy and legislation on housing standards in the private rented sector 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 private rented sector:

- 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.<sup>81</sup>

Research by the Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#) (2017), concluded that 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...<sup>82</sup>

The House of Commons HCLG Select Committee inquiry into the private rented sector heard a range of views on the merits of reforming the legislative framework and consequently recommended that "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".<sup>83</sup>

In its response to the Committee, the Government noted that to help people better understand the private rented sector, it had updated the [How To guides](#) for landlords and tenants which set out the rights and responsibilities derived from legislation. The Government did not consider that 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.<sup>84</sup> As previously noted, the 2017 Government announced in July 2019 that further work would be carried out on the HHSRS to:

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<sup>81</sup> Citizens Advice, [Getting the house in order: How to improve standards in the private rented sector](#), 26 June 2019

<sup>82</sup> Shelter, [Closing the Gaps: Health and Safety at Home](#), Universities of Kent and Bristol, Carr H. et al, 2017, p25

<sup>83</sup> House of Commons Housing, Communities and Local Government Select Committee, [Private rented sector: Fourth report of Session 2017-19](#), HC 440, 19 April 2018, para 58

<sup>84</sup> HM Government, [Government response to the Housing, Communities and Local Government Select Committee Report: Private rented sector](#), Cm 9639, 4 July 2018, paras 15-20



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...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.<sup>85</sup>

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<sup>85</sup> MHCLG, [Outcomes of report on Housing Health and Safety Rating System \(HHSRS\) the scoping review](#), 11 July 2019

## 4. 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.

### 4.1 Wales

At present, the provisions on housing fitness in the *Landlord and Tenant Act 1985* and the *Housing Act 2004* apply in Wales as they do in England.

However, when implemented, the *Renting Homes (Wales) Act 2016* (the 2016 Act), will replace most existing tenancies with one of two new types of occupation contract: secure contracts (modelled on the existing secure local authority contract and standard contracts (modelled on the existing assured shorthold contract).

Under these new contracts there will be an obligation on landlords to ensure the dwelling let is fit for human habitation at the commencement of, and throughout, the tenancy.<sup>86</sup>

Fitness for human habitation is not defined in the 2016 Act. However, under section 94 of that Act, Welsh Ministers “must prescribe matters and circumstances to which regard must be had when determining [...] whether a dwelling is fit for human habitation”.

The Welsh Government began a [consultation process](#) to seek views on the regulations determining a dwelling’s fitness for human habitation and the accompanying guidance on 11 October 2017.<sup>87</sup> The approach proposed in the consultation paper is similar to that taken by the *Homes (Fitness for Human Habitation) Act 2018* in England. The consultation closed on 12 January 2018, and the Government is currently analysing the responses.

### Repairs

The 2016 Act also imposes an obligation on landlords to keep dwellings in repair. In the case of fixed-term standard contracts, the obligation will only apply where the fixed-term is less than seven years. These repairing provisions are largely a restatement of section 11 of the *Landlord and Tenant Act 1985*.<sup>88</sup>

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<sup>86</sup> Section 91 of the *Renting Homes (Wales) Act 2016*

<sup>87</sup> Welsh Government, [Renting Homes \(Wales\) Act 2016 – Fitness for Human Habitation: Consultation document](#), 11 October 2017

<sup>88</sup> Section 92 of the *Renting Homes (Wales) Act 2016* – not in force at 15 November 2019

## 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 that applies 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.<sup>89</sup> 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 that a rented house 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*, amend and extend 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 Parliament Information Centre's (SPICe) research briefing on [Housing conditions and standards](#) provides information on current housing conditions in Scotland and the standards that apply to the private rented sector.<sup>90</sup>

## 4.3 Northern Ireland

The statutory minimum standard for properties in the private rented sector 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 in order 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

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<sup>89</sup> Scottish Government, [Implementing the Housing \(Scotland\) Act 2006: Advisory and Statutory Guidance for Local Authorities](#), March 2009

<sup>90</sup> The Scottish Parliament Information Centre, [Research briefing SB 19-31: Housing conditions and standards](#), 29 May 2019

Ireland and this controlled rent applies until such times as the property is made fit.<sup>91</sup>

The Department for Social Development's<sup>92</sup> [Housing Strategy 2012-2017](#) committed to review and enhance the Fitness Standard. In March 2016, the Department published a [discussion paper](#) on the future of the 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<sup>93</sup>

The Department for Communities January 2017 consultation paper, [Private Rented Sector in Northern Ireland – Proposals for Change](#), included reference to the separate review of the Housing Fitness Standard. In addition, the paper included the following proposals:

- Introduce a requirement for landlords to provide smoke alarms, carbon monoxide detectors and carry out periodic electrical checks.
- Amend the Landlord Registration Regulations to incorporate a fitness declaration at the point of registration.
- Amend legislation so that all unfit properties built before 1956 are subject to rent control.<sup>94</sup>

The consultation closed on 3 April 2017.

The review of the Housing Fitness Standard has not progressed due to the suspension of the Northern Ireland Assembly.

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<sup>91</sup> Department for Social Development, [Review of the Role and Regulation of the Private Rented Sector](#), November 2015, p23

<sup>92</sup> The Department for Social Development is now part of the Department for Communities.

<sup>93</sup> Department for Social Development, [Review of the Statutory Minimum Housing Fitness Standard for all Tenures of Dwelling](#), March 2016

<sup>94</sup> Department for Communities, [Private Rented Sector in Northern Ireland – Proposals for Change](#), 10 January 2017

## 5. Further information

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

UK Collaborative Centre for Housing Evidence, [The private rented sector in the UK: An overview of the policy and regulatory landscape](#), Professor A. Marsh and Professor 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

Ministry of Housing, Communities and Local Government, [How to rent a safe home](#), last updated 31 May 2019

Ministry of Housing, Communities and Local Government, [How to let](#), last updated 31 May 2019

Ministry of Housing, Communities and Local Government, [Landlord and tenant rights and responsibilities in the private rented sector](#), 9 April 2019

Institute for Public Policy Research, [Sign on the dotted line? A new rental contract: Final report](#), January 2019

Residential Landlords Association, [The Postcode Lottery of Local Authority Enforcement in the Private Rented Sector](#), Dr 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: Fourth report of Session 2017-19](#), HC 440, 19 April 2018

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

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