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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; 4.4 million households rented their home from a private landlord in 2019/20, 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 rather than short-term accommodation.

### The PRS has the worst housing conditions

The expansion of the PRS has focused attention on the need to improve conditions in the sector. The English Housing Survey (EHS) estimates that in 2019 23% of PRS homes did not meet the Decent Home Standard – around 1.1 million homes. This compares with 18% of owner-occupied homes and 12% of social-rented homes. PRS homes were more likely to have at least one Category 1 hazard under the Housing Health and Safety Rating System (HHSRS).

**Section 1** of this paper gives an overview of housing conditions 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 [Queen’s Speech 2021](#) committed the Government to:

- publish its consultation response on abolishing Section 21 ‘no fault’ evictions; and
- bring forward reforms to drive improvements in standards in the PRS, including by ensuring all tenants have a right to redress, and ensuring well targeted, effective enforcement.

A PRS White Paper is expected in autumn 2021, with legislation to follow in due course.

### 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: 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 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 what their obligations are and tenants uncertain about who is responsible for resolving problems.

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** of the briefing paper.

# 1 Background

## 1.1 Data on housing fitness

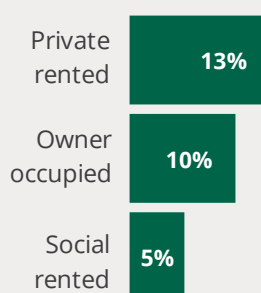
In recent years the extent and role of the private rented sector (PRS) in the housing market has seen significant changes. 4.4 million households in England rented their home from a private landlord in 2019/20, representing 19% of all households. The number of households renting privately has more than 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 2019, 23% of homes in the PRS in England were in a condition that would fail the Decent Homes Standard – around 1.1 million homes.<sup>4</sup> This was the highest proportion of all tenure groups, compared with 18% 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). 13% of privately-rented homes had a Category 1 hazard in 2019, compared with 10% 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 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 Category 1 HHSRS hazard, 2019



Source: MHCLG

<sup>1</sup> MHCLG, [English Housing Survey 2019 to 2020: headline report](#), 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](#), Marsh, A., and Gibb, K., 25 July 2019

<sup>3</sup> MHCLG, [English Housing Survey 2019 to 2020: headline report](#), 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 2019 to 2020: headline report](#), Annex Table 2.4

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

Most privately-renting tenants say 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 with 66% of social renters.<sup>8</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>9</sup>

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 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>10</sup>

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

<sup>7</sup> 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

<sup>8</sup> MHCLG, [English Housing Survey 2017 to 2018: private rented sector](#), p12, 17 July 2019

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

<sup>10</sup> Citizens Advice, [Getting the house in order: How to improve standards in the private rented sector](#), 26 June 2019, pp8-9



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) 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 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 Housing Fitness Standard, particularly that several of the most serious hazards, including fire and fall hazards, were not covered. In addition, it was seen by some as a blunt instrument that could only pass or fail a property, and therefore sometimes did not distinguish between more minor risks to health in dwellings and genuine or immediate health and safety hazards.<sup>11</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>12</sup> It also called on the Government to raise awareness of tenants’ and landlords’ respective rights and responsibilities.<sup>13</sup>

In its response to the Committee’s recommendations, the Coalition Government said it would consult on measures to improve standards, including a review of the HHSRS and the extension of Rent Repayment Orders<sup>14</sup> to apply to landlords who rent out properties containing serious hazards.<sup>15</sup>

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<sup>11</sup> See for example: Department of the Environment, Transport and the Regions, *Housing Health and Safety Rating System: Report on Development*, July 2000

<sup>12</sup> House of Commons Communities and Local Government Select Committee, [The Private Rented Sector](#), 8 July 2013, HC 50 2013-14, para 18

<sup>13</sup> *Ibid.*, para 24

<sup>14</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>15</sup> DCLG, [Government Response to the Communities and Local Government Select Committee Report](#), Cm 8370, October 2013

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, the Landlord and Tenant Act 1985 (which includes repair and maintenance obligations for landlords) or to the scope of Rent Repayment Orders.<sup>16</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 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 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 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>17</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:

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<sup>16</sup> DCLG, [Review of Property Conditions in the Private Rented Sector: Government Response](#), March 2015

<sup>17</sup> MHCLG, [Rogue Landlord Enforcement: guidance for local authorities](#), 9 April 2019

- 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.<sup>18</sup>
- 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.<sup>19</sup> It also proposed to legislate to require all private landlords to sign up to a redress scheme.<sup>20</sup>
- 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 the [Queen’s Speech December 2019](#) the Government committed to introduce a Renters’ Reform Bill to strengthen protections for tenants in the PRS.<sup>21</sup> 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:

- Publish its consultation response on reforming tenancy law to abolish Section 21 ‘no fault’ evictions; and
- Bring forward reforms to drive improvements in standards in the PRS, including by ensuring all tenants have a right to redress, and ensuring well targeted, effective enforcement that drives out criminal landlords, for example exploring the merits of a landlord register.<sup>22</sup>

**A White Paper setting out this reform package is expected in autumn 2021, with legislation to follow in due course.**

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<sup>18</sup> The House of Commons Library briefing paper SN00708: [Houses in multiple occupation \(HMOs\) England and Wales](#) provides further information.

<sup>19</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>20</sup> MHCLG, [Strengthening consumer redress in the housing market: summary of responses to the consultation and the government’s response](#), 24 January 2019

<sup>21</sup> Prime Minister’s Office, [Queen’s Speech December 2019: background briefing notes](#), 19 December 2019, pp46-47

<sup>22</sup> The Prime Minister’s Office, [Queen’s Speech 2021: background briefing notes](#), 11 May 2021, p113

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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## 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**, 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>23</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>24</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);

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<sup>23</sup> Legal Action Group, *Housing Law Handbook*, Diane Astin, Fourth Edition, 2018, para 9.7

<sup>24</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.

- 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>25</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 enter at reasonable times of the day having given 24 hours' notice in writing to the tenant.<sup>26</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>27</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>28</sup>

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

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<sup>25</sup> Section 11(1) of the Landlord and Tenant Act 1985

<sup>26</sup> Section 11(6) of the Landlord and Tenant Act 1985

<sup>27</sup> Legal Action Group, *Housing Law Handbook*, Diane Astin, Fourth Edition, 2018, paras 9.62-9.64

<sup>28</sup> 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 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>29</sup> In collaboration with the Ministry for Housing, Communities and Local Government (MHCLG), the Ministry of Justice (MOJ) has launched an [online legal support signposting pilot](#) to help individuals resolve housing disrepair issues in private rented accommodation.

**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 annual rent was no more than £52 (or £80 in London). In England, the Homes (Fitness for Human Habitation) Act 2018 has amended the 1985 Act to introduce a new housing fitness standard (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 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>30</sup>

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<sup>29</sup> [Landlord and tenant responsibilities for repairs. Who's responsible for repairs in your rented home?](#) [accessed on 17 June 2021]

<sup>30</sup> The Shelter Legal webpage on [Duty of care under the Defective Premises Act 1972](#) provides further information.

## 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>31</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 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. 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;
- 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>32</sup> (discussed further in section 3.1)

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

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<sup>31</sup> Section 3 of the Housing Act 2004

<sup>32</sup> MHCLG, [Greater protection for renters thanks to plans to tighten tenant safety](#), 26 October 2018



## 2.4

## Fitness for human habitation

The [Homes \(Fitness for Human Habitation\) Act 2018](#) (the 2018 Act),<sup>33</sup> which came into force on 20 March 2019, 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 habitation at the beginning of the tenancy and throughout. The Act achieves this by implying a covenant to this effect in the tenancy agreement.

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

- all new tenancies with a fixed term of less than seven years that began **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>34</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
- 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>35</sup>

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<sup>33</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>34</sup> Nearly Legal: Housing Law, [Fitness for Habitation – a thumbnail guide](#), Giles Peaker, 21 December 2018

<sup>35</sup> Section 10 of the Landlord and Tenant Act 1985 (as amended). The HHSRS recognises [29 'matters and circumstances' that give rise to hazards](#).

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>36</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>37</sup>

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 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, including: “... any premises in such a state as to be prejudicial to health or a nuisance”.<sup>38</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

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<sup>36</sup> Section 10(1) of the Landlord and Tenant Act 1985 (as amended)

<sup>37</sup> Ibid., Section 9A(2)

<sup>38</sup> [Section 79\(1\)\(a\) of the Environmental Protection Act 1990](#)

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.<sup>39</sup>

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.

## 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.<sup>40</sup>

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<sup>39</sup> Shelter Legal, [Statutory nuisance under Environmental Protection Act 1990](#) (accessed 17 June 2021)

<sup>40</sup> [The Housing and Planning Act 2016 \(Commencement No. 11\) Regulations 2019 \(SI 2019/1359\)](#)

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.<sup>41</sup>

The [Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#) 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 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; and
- 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

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 check 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.

The Government launched a review of smoke and carbon monoxide alarm requirements in 2017.<sup>42</sup> In November 2020, it published a [consultation paper](#)

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<sup>41</sup> MHCLG, [Electrical safety in the private rented sector: government response](#), 29 January 2019

<sup>42</sup> MHCLG, [Review of the Smoke and Carbon Monoxide Alarm Regulations 2015: government response](#), 20 July 2018

[on domestic smoke and carbon monoxide alarms](#), which includes a proposal to amend the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to require private and social landlords to install a carbon monoxide alarm in any room used as living accommodation where there is a fixed combustion appliance of any fuel, excluding gas cookers. It is also proposed to require landlords to ensure alarms are in working order on the first day of each new tenancy, and to repair or replace a faulty alarm during the tenancy, where a fault is reported. The consultation closed on 11 January 2021 and the Government is currently analysing responses.

## 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 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>43</sup>

## Energy 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.

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. The Government has made £2 million funding available to help local authorities build their capacity and capability to enforce the energy efficiency regulations.<sup>44</sup>

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<sup>43</sup> Health and Safety Executive, [Legionella and landlords' responsibilities](#) (accessed 17 June 2021)

<sup>44</sup> BEIS, [Apply for private rented sector Minimum Energy Efficiency Standard \(MEES\) compliance and enforcement funding](#), 24 May 2021

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 currently analysing responses.<sup>45</sup>

## 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 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>46</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>47</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.

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<sup>45</sup> BEIS, [Improving the energy performance of privately rented homes](#), 30 September 2020

<sup>46</sup> Shelter, [Doing the repairs if your landlord won't](#) (accessed 17 June 2021)

<sup>47</sup> For further information see: The Law Society webpage on [Legal Aid](#) (accessed 17 June 2021)

GOV.UK provides further information on legal aid, [Overview of legal aid](#),<sup>48</sup> and an online eligibility checker (guidance but not a decision on eligibility for legal aid), [Check if you can get legal aid](#).<sup>49</sup>

The Library briefing paper [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>50</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, 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 Department for Communities and Local Government (DCLG) published guidance on the measures: [Guidance note: Retaliatory Eviction and the Deregulation Act 2015](#).<sup>51</sup>

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 is contended that this left large numbers of tenants unprotected from retaliatory eviction.<sup>52</sup>

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

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<sup>48</sup> [Overview of legal aid](#) (accessed 17 June 2021)

<sup>49</sup> [Check if you can get legal aid](#) (accessed 17 June 2021)

<sup>50</sup> See for example: Citizens Advice Bureau, [The tenant’s dilemma](#), June 2007

<sup>51</sup> DCLG, [Retaliatory Eviction and the Deregulation Act 2015: guidance note](#), 1 October 2015

<sup>52</sup> [‘Three quarters of tenants in unsafe homes go unprotected’](#), Generation Rent, 28 April 2021

working with landlords to remedy hazards.<sup>53</sup> 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 paper [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.<sup>54</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 Library briefing paper [The end of 'no fault' section 21 evictions](#) examines the proposals in more detail.

In the [Queen's Speech December 2019](#) the Government committed to introducing a Renters' Reform Bill to strengthen protections for tenants in the PRS.<sup>55</sup> 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 publish its consultation response on abolishing section 21 'no fault' evictions. A White Paper setting out a package of PRS reforms is expected in autumn 2021.<sup>56</sup>

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<sup>53</sup> Rugg J, Rhodes D, University of York, [The Evolving Private Rented Sector: Its Contribution and Potential](#), 2018, p99

<sup>54</sup> MHCLG, [Government announces end to unfair evictions](#), 15 April 2019

<sup>55</sup> The Prime Minister's Office, [Queen's Speech December 2019: background briefing notes](#), 19 December 2019, pp46-47

<sup>56</sup> The Prime Minister's Office, [Queen's Speech 2021: background briefing notes](#), 11 May 2021, p113



## 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 based 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.<sup>57</sup> It is noteworthy that despite having prescribed minimum property standards, the Housing Fitness Standard faced similar criticisms.<sup>58</sup>

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 of 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 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**

<sup>57</sup> See for example: HomeLet Direct, Memorandum to the Communities and Local Government Select Committee, January 2013

<sup>58</sup> Legal Research Unit, University of Warwick, Controlling Minimum Standards in Existing Housing, January 1998, para 2.11

**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>59</sup>

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 did, however, recognise the methodology and associated guidance for the HHSRS was several years old and agreed to consider whether it needed updating.<sup>60</sup>

In October 2018 the Government [announced](#) a review of the HHSRS.<sup>61</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>62</sup> The review is currently underway and looking into new minimum standards for all hazards, including fire, damp and excess cold.<sup>63</sup>

The Library briefing paper [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 levels of enforcement by local authorities and inconsistent enforcement between local authorities.

Research commissioned by the Residential Landlords Association<sup>64</sup> in 2018, based on Freedom of Information requests to local authorities in England and Wales, found:

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<sup>59</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

<sup>60</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>61</sup> MHCLG, [Greater protection for renters thanks to plans to tighten tenant safety](#), 26 October 2018

<sup>62</sup> MHCLG, [Outcomes of report on Housing Health and Safety Rating System \(HHSRS\) scoping review](#), 11 July 2019

<sup>63</sup> [PQ 109707 \[Private Rented Housing: Standards\]. 9 November 2020](#)

<sup>64</sup> The RLA has now merged with the National Landlords Association to form the National Residential Landlords Association (NRLA).

- 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 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>65</sup>

The HCLG Select Committee's 2018 [private rented sector inquiry](#) concluded: "... 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>66</sup>

The Committee concluded 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 a new fund be established to support local authorities with enforcement work, especially those that prioritise informal approaches to enforcement. It also suggested local authorities could be supported through a national benchmarking scheme and the sharing of best practice.<sup>67</sup>

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<sup>65</sup> Residential Landlords Association, [The Postcode Lottery of Local Authority Enforcement in the Private Rented Sector](#), Simcock, T., November 2018

<sup>66</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>67</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

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>68</sup>

The Government's response to the HCLG Committee report said it was carefully considering how best to support local authorities in carrying out their enforcement activity on both a formal and informal basis and it was working closely with the Local Government Association.<sup>69</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>70</sup> In 2018/19, £2.4 million was allocated to 56 targeted local authority projects.<sup>71</sup> A further £4 million was awarded to 100 local authorities in 2019/20.<sup>72</sup> The Residential Landlords Association welcomed this additional funding but said it was "nowhere near enough" to achieve effective enforcement.<sup>73</sup>

A research report by the UK Collaborative Centre for Housing Research, published in August 2020, made several recommendations for improving enforcement, and therefore standards, in the PRS, including:

- The advice and guidance available to local authorities on regulating the PRS should be improved.
- Local authorities need better data on the PRS. In England, a national registration system of all landlords as well as letting agents should be introduced.
- Local authorities should receive, and allocate, adequate funding to develop appropriate and effective responses to the changing nature and context of the PRS.

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<sup>68</sup> Shelter, [Shelter Submission to CLG Committee inquiry: Role of Local Authorities in the PRS](#), July 2018

<sup>69</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>70</sup> MHCLG, [Private Rented Sector Innovation and Enforcement Grant Fund 2019/20 -Prospectus](#), November 2019

<sup>71</sup> Ibid.

<sup>72</sup> MHCLG, [Housing Secretary pledges new funding to crackdown on criminal landlords](#), last updated 16 January 2020

<sup>73</sup> 'Funding to tackle criminals a step in the right direction', RLA Press Release, 4 November 2019 (the RLA has now merged with the National Landlords Association to form the National Residential Landlords Association (NRLA)).

- Clearer sentencing guidelines need to be provided to criminal courts and tribunals to ensure punishment is proportionate to the nature of the offence.
- Trading standards should have the power to serve civil penalties against company directors who are the controlling figures behind a non-compliant company.<sup>74</sup>

As previously noted, the [Queen's Speech 2021](#) included a commitment to bring forward reforms to drive improvements in standards in the PRS, including “well targeted, effective enforcement”. A White Paper setting out a package of PRS reforms is expected in autumn 2021.<sup>75</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 poor conditions to their local authority or seeking redress through the courts. It is contended that this system cannot function properly with the existing 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.<sup>76</sup> 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.<sup>77</sup>

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

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<sup>74</sup> UKCCHE Policy briefing, [Improving compliance and enforcement in the private rented sector: Information for UK and devolved governments](#), Harris, J., Marsh A., and Cowan, D., 5 August 2020

<sup>75</sup> The Prime Minister's Office, [Queen's Speech 2021: background briefing notes](#), 11 May 2021, p113

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

<sup>77</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

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 there were only local agency that accepted housing benefits. I stopped complaining".<sup>78</sup>

In research commissioned by Shelter, [Closing the Gaps: Health and Safety at Home](#) (2017), the authors note: "...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>79</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>80</sup>

As previously noted in sections 1.2 and 2.9, the Government has committed to abolishing section 21 'no fault' evictions and requiring all private landlords to sign up to a redress scheme. Once implemented, these measures should make it easier for tenants to resolve disputes over repairs and maintenance without fear of eviction. A White Paper setting out a package of PRS reforms is expected in autumn 2021.

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 Library briefing paper [The](#)

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

<sup>79</sup> Universities of Kent and Bristol, [Closing the Gaps: Health and Safety at Home](#), 2017, p14

<sup>80</sup> Ibid., p11

[end of 'no fault' section 21 evictions](#) examines the Government's proposals in more detail.

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>81</sup>

## 3.4 Complex and piecemeal legislation

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 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>82</sup>

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.<sup>83</sup>

The Residential Landlords Association has identified that there are over 150 Acts of Parliament affecting the PRS.<sup>84</sup>

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:

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<sup>81</sup> MHCLG, [Considering the case for a Housing Court: call for evidence](#), 13 November 2018

<sup>82</sup> UK Collaborative Centre for Housing Evidence, [The private rented sector in the UK: An overview of the policy and regulatory landscape](#), Marsh, A. and Gibb, K., 25 July 2019, p8

<sup>83</sup> [‘Landmark review slams successive governments for ‘unquestioning’ and ‘uncoordinated’ policy on private renting’](#), Nationwide Foundation News Release, 10 September 2018

<sup>84</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 RLA has now merged with the National Landlords Association to form the National Residential Landlords Association (NRLA).

- 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>85</sup>

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...<sup>86</sup>

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".<sup>87</sup>

In its response to the Committee, the Government noted that to help people better understand the PRS, 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 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>88</sup>

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

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

<sup>87</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>88</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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## 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

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>89</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 published a [consultation](#) on the draft fitness for human habitation regulations and accompanying guidance on 11 October 2017.<sup>90</sup> The proposed approach is similar to that taken by the Homes (Fitness for Human Habitation) Act 2018 in England. The Government’s [consultation response](#), published in March 2021, confirmed the final detail of the regulations, taking into account the consultation responses. The regulations will come into force at the same time as the 2016 Act. The Welsh Government has indicated its intention for the 2016 Act to come into force in the spring of 2022.<sup>91</sup>

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<sup>89</sup> Section 91 of the Renting Homes (Wales) Act 2016

<sup>90</sup> Welsh Government, [Renting Homes \(Wales\) Act 2016 – Fitness for Human Habitation: Consultation document](#), 11 October 2017

<sup>91</sup> Welsh Government, [Regulations relating to Fitness for Human Habitation: Consultation – summary of responses](#), 23 March 2021

## Repairs

The 2016 Act also imposes an obligation on landlords to keep dwellings in repair. These repairing provisions are largely a restatement of section 11 of the Landlord and Tenant Act 1985.<sup>92</sup>

## 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>93</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 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, 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 Government has also committed to improve the energy efficiency of the PRS and intends to bring forward legislation in due course.<sup>94</sup>

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 PRS.<sup>95</sup>

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<sup>92</sup> Section 92 of the Renting Homes (Wales) Act 2016 – not in force at 15 June 2021

<sup>93</sup> Scottish Government, Implementing the Housing (Scotland) Act 2006: Advisory and Statutory Guidance for Local Authorities, March 2009

<sup>94</sup> Scottish Government, [Energy efficiency in private rented housing](#) (accessed 17 June 2021)

<sup>95</sup> The Scottish Parliament Information Centre, [Research briefing SB 19-31: Housing conditions and standards](#), 29 May 2019

## 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.<sup>96</sup>

The Department for Social Development's<sup>97</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>98</sup>

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.<sup>99</sup>

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<sup>96</sup> Department for Social Development, [Review of the Role and Regulation of the Private Rented Sector](#), November 2015, p23

<sup>97</sup> The Department for Social Development is now part of the Department for Communities.

<sup>98</sup> Department for Social Development, [Review of the Statutory Minimum Housing Fitness Standard for all Tenures of Dwelling](#), March 2016

<sup>99</sup> Department for Communities, [Departmental Response Consultation on the Review of the Role and Regulation of the Private Rented Sector](#), 4 May 2021

A PRS Bill will be brought forward in due course. The review of the current Housing Fitness Standard will be addressed in the longer-term.<sup>100</sup>

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<sup>100</sup> Department for Communities, [Minister Hargrey outlines plan to improve protections in private rented sector](#), 4 May 2021

## 5

## Further information

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

Centre for Ageing Better, [Past, Present and Future: Housing policy and poor-quality homes](#), Preece, J. et al, May 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](#), Brown, P. et al, October 2020

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

UK Collaborative Centre for Housing Evidence (UKCCHE) - [Improving compliance with private rented sector legislation: Local authority regulation and enforcement](#), Harris, J., Marsh A., and Cowan, D., 5 August 2020

UKCCHE Policy briefing, [Improving compliance and enforcement in the private rented sector: Information for UK and devolved governments](#), Harris, J., Marsh A., and Cowan, D., 5 August 2020

UKCCHE Practice briefing, [Improving compliance in the private rented sector: Information for local authorities](#), Harris, J., Marsh A., and Cowan, D., 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

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

Citizens Advice, [Getting the house in order: How to improve standards in the private rented sector](#), Poll, H. and Rogers, C., 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](#), Simcock, T. and Mykkanen, N., November 2018

Centre for Housing Policy University of York, [The Evolving Private Rented Sector: Its Contribution and Potential](#), Rugg, J. and Rhodes, D., 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, Carr, H. et al, November 2017

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

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