



BRIEFING PAPER

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Overcrowded housing (England)

By Wendy Wilson and
Cassie Barton

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Summary

The statutory overcrowding standard in Part X of the *Housing Act 1985* has not been updated since 1935, although when originally introduced it was viewed as a threshold that could be strengthened. The standard is not generous, relatively few households are statutorily overcrowded.

The English Housing Survey 2018-19 (EHS), using a different measure of overcrowding from the statutory standard, found that around 3% of all households in England are overcrowded (around 788,000 households). Overcrowding is more common for renters than owner-occupiers: 1% of owner-occupiers are overcrowded compared to 8% of social-renting households and 6% of private-renting households. The EHS also found that overcrowding is more common in ethnic minority households compared to White British households, and is more prevalent in London.

Evidence suggests that overcrowding has a detrimental effect on household members' physical and mental health.

Government amendments to the *Housing Act 2004* provided for the statutory overcrowding standard to be amended by secondary legislation after the Labour Government of the day declared that it was "no longer defensible in a modern society." However, this legislation has not been introduced.

In December 2007, the Labour Government published an action plan to tackle overcrowding. As part of this plan a new standard of overcrowding was piloted in 38 local authorities alongside various other initiatives. The then Government said that evidence from the pathfinder areas would be considered before the statutory standard would be updated by legislation. A key concern was that simply updating the standard in the absence of a significant increase in housing supply would place intolerable pressure on local housing authorities.

The 2010 Coalition Government issued a consultation paper, [Local decisions: a fairer future for social housing](#), on 30 November 2010. In section 7 of this paper the Government said it was "seeking views on the reforms needed to enable local authorities and social landlords to tackle overcrowding." Subsequently, the *Localism Act 2011* gave these landlords various tools aimed at assisting them in tackling overcrowded housing. Measures such as the under-occupation deduction from Housing Benefit for claimants in social housing had, the Government argued, provided an added incentive for tenants to downsize, thus freeing up properties for overcrowded families.

There were attempts to bring in new provisions on overcrowding during the Lords stages of the *Housing and Planning Act 2016*, although these were subsequently withdrawn. It was argued that new measures were not needed as local authorities already had powers to tackle overcrowding under Part X of the *Housing Act 1985*.

In October 2016 the then Housing Minister, Gavin Barwell, announced an intention to introduce national minimum room sizes in certain HMOs. Regulations introducing minimum room sizes came into force on 1 October 2018.

1. The statutory overcrowding standard

There are two standards in Part X of the *Housing Act 1985* (which have remained unchanged since 1935) that are used to assess whether a home is 'statutorily overcrowded.' If either or both standards are breached a dwelling will be statutorily overcrowded.

When originally introduced in 1935 the standards were viewed as a threshold that could be strengthened:

The standard laid down need not be regarded as the ultimate ideal to which we should work. It is one upon which it is possible to begin to get this reform underway.¹

The statutory overcrowding standard is not generous; relatively few households 'pass the test' – a point which was recognised in research published by the Office of the Deputy Prime Minister (ODPM) in May 2004:

Households that are statutorily overcrowded are so rare that a reliable estimate of numbers cannot be produced at a national (England) level even using data from the Survey of English Housing and the 2001 English House Condition Survey, which are relatively large surveys.²

The statutory overcrowding standard has not been updated since 1935. It is not a generous standard.

1.1 The room standard

Section 325 of the *Housing Act 1985* provides that there is overcrowding wherever there are so many people in a house that any two or more of those persons, being ten or more years old, and of opposite sexes, not being persons living together as husband and wife, have to sleep in the same room.

For these purposes, children under ten may be disregarded and a room means any room normally used as *either* a bedroom *or* a living room. A kitchen can be treated as a living room provided it is big enough to accommodate a bed.

When interpreting this definition, a local authority looks at *how* the sleeping arrangements within the premises *could* be organised, rather than how they *are actually* organised.³ Thus, a couple, with two children of opposite sexes and aged ten years or more, with two living rooms (e.g. bedrooms), may not be statutorily overcrowded because the couple could occupy separate rooms, with one each of the children (of the appropriate sex).

There is no limit on the number of people of the same sex who can live in the same room under section 325 although there may be a contravention of the space standard (see below).

¹ HC Deb 30 January 1935 c364 (Minister for Health, Sir Hilton Young)

² ODPM, *Overcrowding in England – The national and regional picture*, May 2004, para 7

³ The assessment of overcrowding is usually carried out by an Environmental Health Officer.

1.2 The space standard

This standard works by calculating the permitted number of people for a dwelling in one of two ways. The lower number thus calculated is the permitted number for the dwelling.⁴ One test is based on the number of living rooms in the dwelling (disregarding rooms of less than 50 square feet):

one room = two persons

two rooms = three persons

three rooms = five persons

four rooms = seven and a half persons

five rooms or more = ten persons plus two for each room in excess of five rooms.

A child below the age of one does not count and a child between the age of one and ten counts as a half person.

The other test is based on floor areas of each room size:

less than 50 square feet = no one

50 to less than 70 square feet = half a person

70 to less than 90 square feet = one person

90 to less than 110 square feet = one and a half persons

110 square feet or larger = two persons.

1.3 Enforcement

Breach of the statutory overcrowding standard is a criminal offence. When the standard was originally devised it was aimed at dealing with overcrowded conditions in the private rented sector before the Second World War.

Local authorities have the power to act against landlords of overcrowded properties on a tenant's behalf. However, where a statutorily overcrowded household lives in council housing, the local authority landlord cannot take legal action against itself without the express consent of the Attorney General. Shelter has noted that the Attorney General has never agreed to let a case of overcrowding by a local authority proceed to court.⁵

Local authorities have also failed to use their powers under section 334 of the *Housing Act 1985* to prepare and submit a report on the extent of overcrowding in their areas, nor have Governments used their powers to direct that such a report should be prepared.⁶

⁴ Section 326 *Housing Act 1985*

⁵ Shelter's briefing on The Housing (Overcrowding) Bill, January 2003

⁶ HC Deb 19 December 2002 c956-7W

2. The extent and impact of overcrowding

2.1 Extent

Official statistics on the number of households that are statutorily overcrowded are not routinely collected. A one-off estimate made in 2003 concluded that there were around 20,000 statutorily overcrowded households in England.⁷

The English Housing Survey (EHS) produces an annual estimate of overcrowding based on the number of households living in properties that are one or more bedrooms below the 'bedroom standard'. This standard, which differs considerably from the statutory room/space standards, has been used to measure overcrowding since the 1960s.⁸

The 2011 Census also collected occupancy ratings based on rooms and bedrooms.

Overcrowding and tenure

The 2018-19 EHS includes estimates of overcrowding and under-occupation based on the bedroom standard. Overcrowded households have fewer bedrooms than the bedroom standard indicates that they need, while under-occupying households have more.

Estimates are three-year averages of survey data as single-year estimates are not sufficiently reliable. An estimated 788,000 households were overcrowded the 2016-17 to 2018-19 period. This represents 3.4% of the population.⁹

As the chart overleaf shows, overcrowding is more common in the private and social rented sectors and has risen in both since the 1990s. 8% of social-renting households (318,000 households) and 6% of private-renting households (231,000) were overcrowded, compared to 1% of owner-occupying households (187,000).

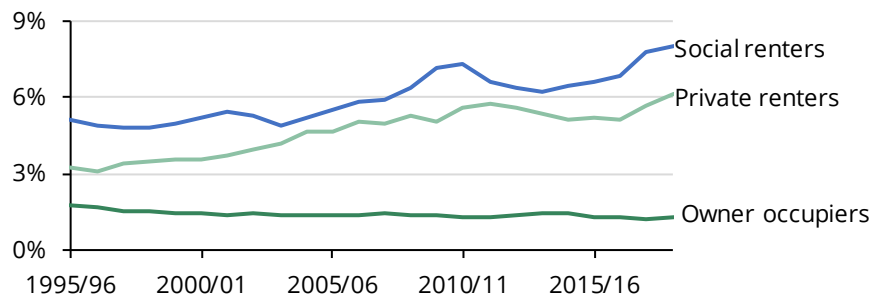
Under-occupation is most common amongst owner-occupiers: over half (52%) are under-occupying compared to 14% of private renters and 8% of social renters.

⁷ HC Deb 6 November 2006 c885W

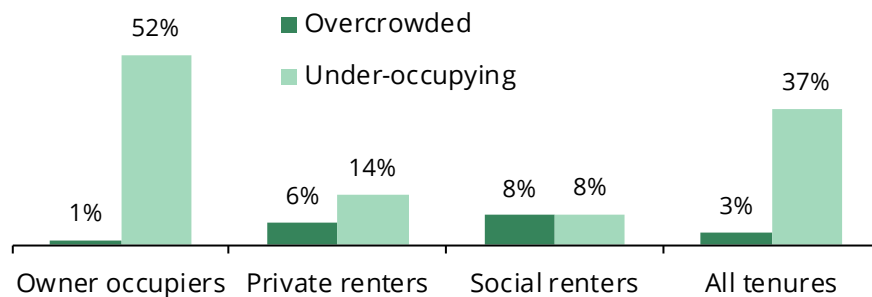
⁸ The survey uses this standard as an indicator of occupation density. A standard number of bedrooms is allocated to each household in accordance with its age/sex/marital status composition and the relationship of the members to one another. A separate bedroom is allocated to each married or cohabiting couple, any other person aged 21 or over, each pair of adolescents aged 10-20 of the same sex, and each pair of children under 10. Any unpaired person aged 10-20 is paired, if possible, with a child under 10 of the same sex, or, if that is not possible, he or she is given a separate bedroom, as is any unpaired child under 10. This standard is then compared with the actual number of bedrooms available for the sole use of the household and differences are tabulated. Bedrooms converted to other uses are not counted as available unless they have been denoted as bedrooms by the informants; bedrooms not actually in use are counted unless uninhabitable.

⁹ MHCLG, [English Housing Survey headline report 2018-19](#), Annex Table 1.21

Overcrowding has risen for social and private renters
Household overcrowding rate by tenure, England 1995/96-2018/19



Owners are most likely to under-occupy
Overcrowding and under-occupation by tenure, England, 2018/19



Notes: Figures are the average of the three years up to and including the labelled date.

Source: [MHCLG, English Housing Survey headline report 2018/19, Annex Table 1.21 and 1.22](#)

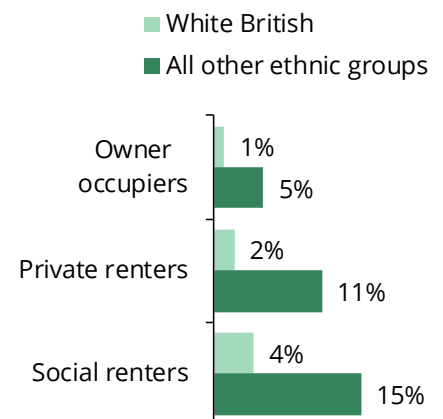
Overcrowding and ethnicity

The EHS was also used to analyse overcrowding by ethnicity as part of the current Government’s Race Disparity Audit, launched in October 2017. The housing section of the [Ethnicity Facts and Figures](#) website published by the Cabinet Office includes [overcrowding figures](#) for the three year period from 2014/15 to 2016/17.

The analysis looks at ethnicity and socio-economic group, income, region and tenure. Households from ethnic minority groups were more likely to be overcrowded than White British households...

- ...in all tenure groups (see chart, right).
- ...in all socio-economic groups, particularly amongst those in intermediate occupations (1% of White British households versus 10% of other ethnic groups) and routine/manual occupations (3% of White British households versus 12% of others).
- ...in almost every region. The difference was greatest in London (3% of White British households compared to 12% of other ethnic groups).

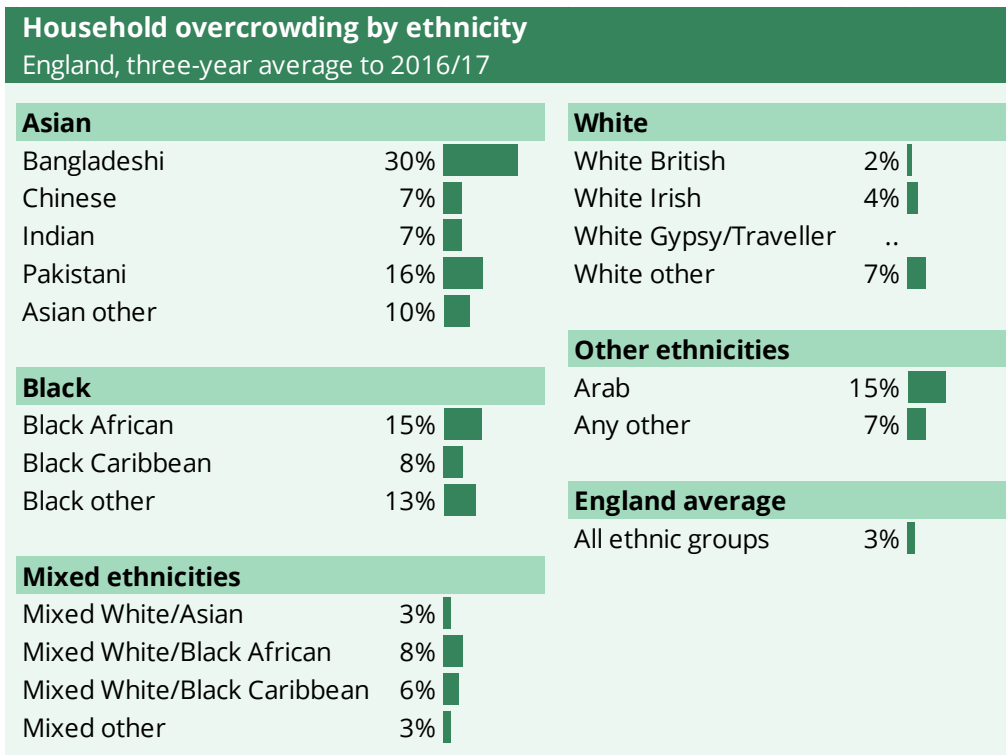
Ethnic minority households are more likely to be overcrowded



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- ...in all age groups, with the biggest differences in households led by people aged 35-44 or 45-54.
- ...in almost every income band.¹⁰

The table below breaks down overcrowding by specific ethnic groups. Overcrowding was more common in almost all minority ethnic households compared to White British households. Overcrowding was most common for Bangladeshi households (30% were overcrowded), Pakistani households (16%), and Black African households (15%).



Notes: Figures are the average of the three years up to and including 2015/17.

A household's ethnicity is based on the ethnicity of the 'household reference person': the person responsible for the accommodation, or the highest earner in cases of joint owners and tenants.

.. indicates a reliable estimate could not be produced.

Source: UK Government, [Ethnicity facts and figures, Overcrowded households](#), 14 May 2019

Overcrowding by region

The table below shows the number and proportion of households in each region that are overcrowded. Figures are averages for the three-year period from 2015/16 to 2017/18. While around 3% of households in most English regions are overcrowded, the rate of overcrowding is considerably higher in London at 8%.

¹⁰ UK Government, [Ethnicity facts and figures, Overcrowded households](#), 14 May 2019

Household overcrowding by region		
England, three-year average to 2017-18		
Region	Number of households	% of all households
North East	19,000	1.7%
North West	69,000	2.2%
Yorks. & the Humber	47,000	2.1%
East Midlands	49,000	2.5%
West Midlands	74,000	3.1%
East	64,000	2.5%
London	275,000	8.0%
South East	102,000	2.7%
South West	46,000	1.9%

Notes: Figures are the average of the three years up to and including the labelled date, and are rounded to the nearest thousand.

Source: English Housing Survey Household Datasets 2015/16, 2016/17 and 2017/18 [data collections]. UK Data Service.

Regional analysis can hide substantial differences between small areas. The most recent available data for exploring overcrowding at local level is from the 2011 Census.

2011 Census data

The 2011 Census collected occupancy ratings for bedrooms using the same bedroom standard as the EHS. According to analysis by the Office for National Statistics (ONS):

..out of 23.4 million households in England and Wales in 2011, 1.1 million (4.5%) were overcrowded and overcrowding was most likely to occur in socially rented (8.7%) and privately rented households (8.6%), compared with owner occupied (2.3%). However, most households (16.1 million) were under-occupied and under-occupancy was most likely to occur in owner occupied households (82.7%), compared with privately rented (49.5%) and socially rented households (39.4%). Overall, there were 6.2 million households that matched the bedroom standard.¹¹

Of the 1.1m overcrowded households, 68% contained dependent children. London had the highest percentage of overcrowded households, 11.3% compared with 4.5% in the West Midlands (the area with the next highest percentage). Within London, Newham had the highest proportion (25.2%).¹²

ONS produced an infographic on its occupancy findings from the 2011 Census ([Overcrowding & under-occupation in England and Wales 2011, infographic](#)) while the full report, [Overcrowding and under-occupation in England and Wales](#), can be accessed online.

The 2011 Census is the most recent source of local-level data on overcrowding, including data for Parliamentary constituencies. The map

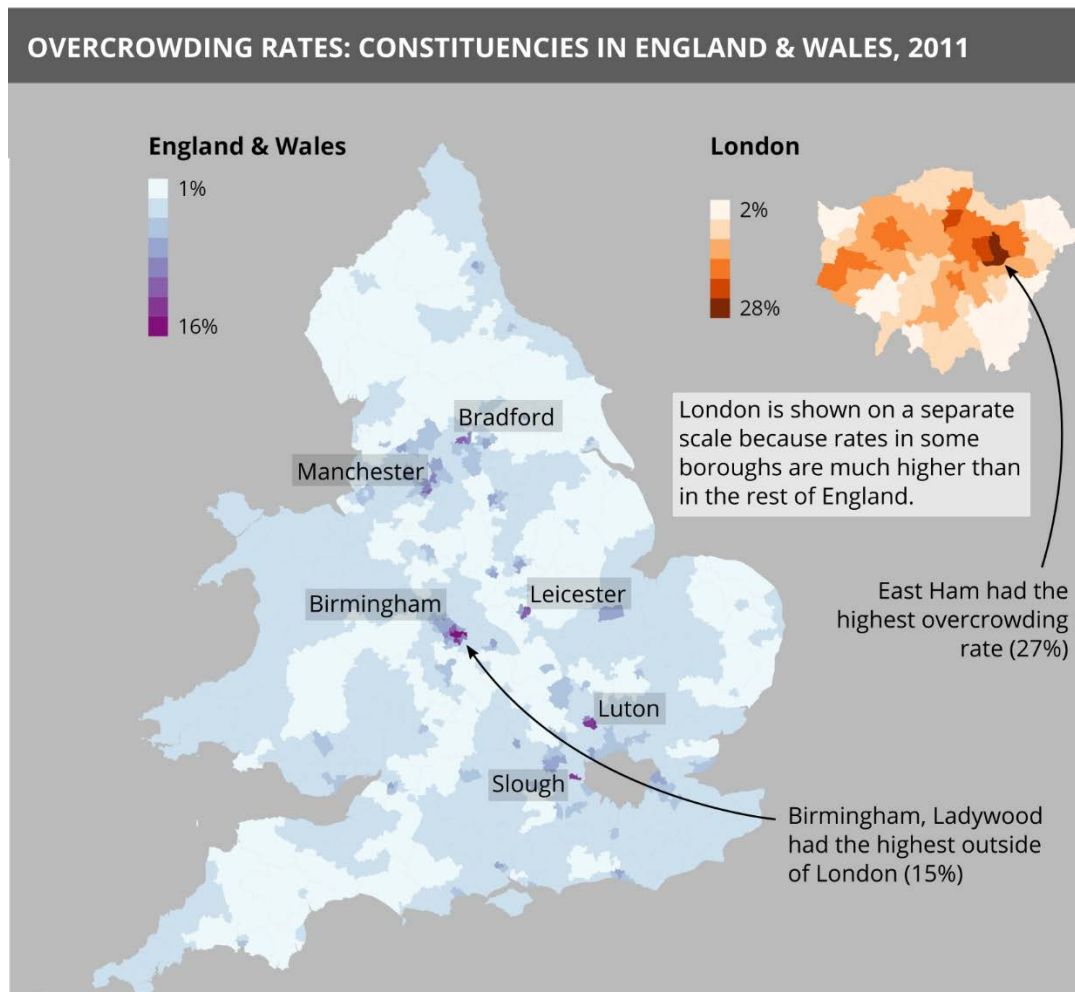
¹¹ ONS, [Census suggests 1.1m households in England and Wales were overcrowded](#), 17 April 2014

¹² Ibid.

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below shows overcrowding in constituencies in England and Wales. The constituencies with the 14 highest rates of household overcrowding were all in London, with rates highest in East Ham (27%), West Ham (24%) and Tottenham (21%). The highest rates of overcrowding outside of London were in Birmingham Ladywood (15%), Birmingham Hodge Hill (15%) and Slough (13%).

Full data on overcrowding by constituency is available in the accompanying tables to this briefing, available for download from the [landing page](#).



Source: 2011 Census, Table QS412EW

Constituency data for Scotland and Northern Ireland is not included here because the Census in those countries did not measure overcrowding using the bedroom standard. Statistics on overcrowding in Scotland using the 'room standard' occupancy rating (which allocates on the basis of number of rooms, rather than bedrooms, available) can be accessed from the [Scotland's Census website](#). The same measure for some local geographies in Northern Ireland can be accessed from the [Northern Ireland Neighbourhood Information Service](#).

2.2 Evidence of impact

In May 2004, the Labour Government published [The Impact of Overcrowding on Health and Education: A Review of the Evidence and Literature](#).

Shelter, the housing and homelessness charity, carried out a survey in June 2005 on the impact of overcrowding in social housing. 505 overcrowded households living in social housing in Luton, Leicester, Bradford and the London Boroughs of Tower Hamlets, Hackney, Islington & Southwark responded to Shelter's questionnaire, the results of which were published in October 2005. The summary of survey findings showed:

- At least one child shared a bedroom with their parent(s) in 74 per cent of overcrowded families.
- Children sleep in rooms other than bedrooms in 27 per cent of overcrowded families.
- 10 per cent of overcrowded families paired teenagers of opposite sexes in the same bedroom.
- BME families were twice as likely to be severely overcrowded.

Nine out of ten families who responded to Shelter's survey also reported that:

- Being overcrowded made it more difficult for their children to study.
- Being overcrowded harmed the health of their children.
- Being overcrowded caused depression, anxiety or stress in the home.¹³

Shelter has continued to highlight the impact of overcrowding on children in London.¹⁴

The Parliamentary Office of Science & Technology (POST) published a [POSTnote on health in private rented housing](#) (2018) which summarised evidence on the health effects of overcrowding and lack of space:

2005 survey by Shelter showed that most families living in overcrowded homes said their living conditions affected their mental health, stress, privacy and sleep quality. Concerns about children's physical health, as well as their ability to play and study, were frequently raised. The Housing Health and Safety Rating System¹⁵ also refers to the increased risk, from overcrowding and lack of space, of accidents, infectious diseases, condensation and mould. Living in overcrowded housing negatively affects children, including being associated with respiratory issues.¹⁶

¹³ Shelter, [Full House?](#) October 2005

¹⁴ For example, see: [1 in 4 London children are overcrowded](#), July 2011

¹⁵ The Housing Health and Safety Rating System is a tool used by environmental health officers to assess the risk posed by a hazard to health and safety. Overcrowding in the HHSRS is discussed in sections 4-6 of this briefing. See Commons Library briefing [SN01917](#) for more.

¹⁶ See POSTnote PN0573 for full references.

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[The homeless monitor: England 2018](#) (Crisis) referred to the “persistent experience” of overcrowding for certain households:

Overcrowding can be quite a persistent experience for the households affected. As reported previously in the Monitor, analysis of the longitudinal surveys shows that a majority of overcrowded households in a particular year had been overcrowded the previous year, with many crowded for at least two years. Econometric modelling of overcrowding showed that this was clearly related to housing market conditions, employment, and poverty as well as demographic factors.¹⁷

In 2019, the National Housing Federation (NHF), the representative body of housing associations, commissioned ComRes to conduct a survey of households living in overcrowded homes which focused on the impact of overcrowding on their lives. The sample size was small at 102 and, as a result, the results should be treated as indicative. The findings reinforced those of earlier surveys – the NHF found:

- In just under half (46%) of overcrowded homes, children are sharing a bedroom with an adult.
- In more than a quarter (27%) of overcrowded homes, children are having to share a bed with someone else.
- In more than a quarter (26%) of overcrowded homes, adults always or quite often have to sleep in places such as a living room, bathroom, corridor or kitchen due to overcrowding.
- In more than half (51%) of overcrowded families, parents worry that their children don't want to come home because of how crowded it is.
- In more than half (55%) of overcrowded homes, children struggle to do their homework because of the lack of space.
- 45% of overcrowded families argue a lot because their home is crowded.
- 87% of overcrowded families have had their health negatively affected by overcrowding.
- 85% of overcrowded families have had their mental health negatively affected by overcrowding.
- Adults in 81% of overcrowded families have had their personal relationships negatively affected by overcrowding.
- Almost two thirds (64%) of parents in overcrowded homes worry their children are too embarrassed to bring friends home.
- More than half (58%) of parents in overcrowded homes worry their children are getting into trouble more.¹⁸

¹⁷ Crisis, [The homeless monitor: England 2018](#), p75

¹⁸ NHF Briefing, [Overcrowding in England](#), June 2019

3. Overcrowded households and re-housing

A household that is statutorily overcrowded will have this taken into account if they apply for assistance from the local housing authority, but statutory overcrowding does not give rise to an automatic right to rehousing. The law which applies in these circumstances was summarised in answer to a PQ:

Ms Oona King: To ask the Deputy Prime Minister what obligations a local housing authority has to a household deemed to be statutorily overcrowded.

Keith Hill: Under section 167 of the Housing Act 1996, a local housing authority is required to have an allocation scheme for determining priorities in the allocation of housing accommodation. That scheme must ensure that reasonable preference is given to: "people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions".¹⁹

Even if a household is statutorily overcrowded, this will not necessarily trigger a rehousing duty on the part of a local authority.

In many instances local authorities' housing allocation schemes are more generous than the statutory overcrowding provisions set out in section 1 of this paper, i.e. a family may be recognised as living in overcrowded conditions according to an authority's policy but may not actually be statutorily overcrowded.

New statutory guidance, to which authorities must have regard when exercising their functions under Part 6 of the *Housing Act 1996* (as amended), was issued by The Department for Communities and Local Government (DCLG, now MHCLG) in 2012.²⁰ This Guidance, [Allocation of accommodation: Guidance for local housing authorities in England](#), recommends that authorities should use the bedroom standard when assessing whether or not households are overcrowded for the purposes of assessing housing need:

4.8 The Secretary of State takes the view that the bedroom standard is an appropriate measure of overcrowding for allocation purposes, and recommends that all housing authorities should adopt this as a minimum. The bedroom standard allocates a separate bedroom to each:

- married or cohabiting couple
- adult aged 21 years or more
- pair of adolescents aged 10-20 years of the same sex
- pair of children aged under 10 years regardless of sex

Even if a household is overcrowded according to the bedroom standard, this will not give rise to an automatic duty on the local authority to provide the household with larger accommodation.

¹⁹ HC Deb 18 November 2003 c807W

²⁰ The Department was renamed the Ministry of Housing, Communities and Local Government (MHCLG) in January 2018

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Measures in the *Localism Act 2011* gave local authorities additional freedom over their housing allocation policies (see section **7** of this note).

Statutory overcrowding will also be taken into account if a household applies to a local authority for housing assistance under the homelessness provisions of the *Housing Act 1996* (as amended):

Where a person applies to a local housing authority as homeless, the authority must decide whether or not he is homeless under section 175 of the Housing Act 1996. In reaching their decision, the local housing authority must not treat the applicant as having accommodation (if he does) unless it is accommodation which it would be reasonable for him to continue to occupy. Where statutory overcrowding exists, it will be a relevant consideration in reaching this decision, but under section 177(2) the local housing authority may also have regard to the general circumstances prevailing in relation to housing in the district.²¹

²¹ HC Deb 18 November 2003 c807W

4. Attempts to update the statutory standard

In July 2001, Karen Buck moved an amendment to the *Homelessness Bill* which would have required local authorities to treat overcrowded households as automatically homeless. This amendment was not accepted but on 15 November 2001, the then Minister for Housing, Sally Keeble, announced that the Government was reviewing options for updating the overcrowding standard.²² Since this announcement, the issue of modernising the statutory overcrowding standard has been raised in the House on several occasions.

4.1 The Housing (Overcrowding) Bill 2003

In January 2003, Andy Love MP introduced a Ten-Minute Rule Bill, *The Housing (Overcrowding) Bill*, to replace the room standard and the space standard with a new 'bedroom standard' modelled on that used in the English Housing Survey:

Rooms available as living rooms or kitchens would not count. Any single person aged 21 years or more would be allocated a bedroom, and young people aged between 10 and 20 would be allocated a bedroom together only if they are of the same sex. Two young people under the age of 10 of different sexes could be paired in the same room. The new bedroom standard would take account of the changing nature of family life, recognising the needs of adults, children and infants alike by identifying a suitable number of bedrooms for their use.

The current space standard is based on the number of people who may sleep in a dwelling of a particular size. Children are partially or totally excluded from the count. As a result, four children under the age of 10 could share a room without statutory overcrowding occurring. Under my Bill, all children would be counted in deciding whether overcrowding occurred. That would ensure proper recognition of the impact that they have, in the same way as adults, on overcrowding.²³

The Bill would also have placed a duty on local authorities to undertake periodic surveys of overcrowding in their areas and to estimate the number of dwellings necessary to abate overcrowding. The Bill, which did not proceed, attracted cross-party support and was backed by Shelter.²⁴

4.2 The draft Housing Bill 2003

In December 2002, when questioned on progress in reviewing the overcrowding standard following Sally Keeble's announcement in November 2001, the Labour Government referred to the possibility of tackling overcrowding through a new housing fitness standard:

We are considering whether overcrowding is best tackled through a modern set of standards - updating the present legislative

²² HC Deb 15 November 2001 c315WH

²³ HC Deb 22 January 2003 cc323-5

²⁴ "Bill would spell end of Victorian overcrowding," *Inside Housing*, 24 January 2003

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framework or through the new Housing Health and Safety Rating System (HHSRS), which we hope to introduce as a replacement for the housing fitness standard when parliamentary time allows. Our consideration of options will take account of our understanding of the underlying causes of household overcrowding.²⁵

The Housing Bill – consultation on draft legislation, was published in March 2003²⁶ and was subject to pre-legislative scrutiny by the ODPM: Housing, Planning, Local Government and the Regions Select Committee. The draft Bill did not contain provisions to amend the overcrowding standard, but the Committee received evidence from housing bodies arguing for the inclusion of such measures in the final version of the Bill. When giving oral evidence to the Committee, the Shelter representative said that problems of overcrowding outside of houses in multiple occupation would not be identified by the new Housing Health and Safety Rating System:

The housing health and safety rating system will only help in cases where overcrowding is so severe that it causes a serious hazard to the occupants. That is not the case with much overcrowding ... If you took, for example, a family which is so overcrowded that the children have nowhere to do their homework or are forced to play out on the streets because there is nowhere to play in the flat, that is not in itself going to create a serious hazard. It is going to create huge emotional and developmental difficulties for those children and it is going to militate against other government objectives such as trying to improve basic standards of education. What we are looking for is another mechanism to pick up that sort of impact of overcrowding which lies short of a serious, immediate hazard.²⁷

The ODPM Committee recommended that the Bill should be used to modernise the statutory overcrowding standard.²⁸

Responding to a Westminster Hall debate on overcrowding in October 2003, Yvette Cooper, then Parliamentary Under-Secretary of State at the ODPM, expressed “some sympathy” with points raised during the debate and set out the Labour Government’s concerns over modernising the standard:

We are investing resources in the London housing problem as fast as we are able. Changing the overcrowding standards will not create any extra homes or expand the housing supply any faster. The concern is that to set statutory definitions at a particular level would be to divert resources away from addressing the issue of bed and breakfasts, the homelessness problem and the wider problem of decent homes. As we invest in the London housing market, we need to ensure that, as well as tackling problems surrounding the bed and breakfasts and homelessness, we tackle overcrowding problems. We need to consider further how we can ensure that overcrowding is addressed alongside bed and breakfasts and homelessness.

...We recognise the strengths of hon. Members' arguments. As we try to expand the affordable housing supply in London and the

²⁵ HC Deb 16 December 2002 c612W

²⁶ Cm 5793

²⁷ ODPM: Housing, Planning, Local Government and the Regions Committee, Tenth Report of Session 2002-03, The Draft Housing Bill, HC 751-I, para 32

²⁸ Ibid.

south-east, we must recognise the needs of all the different groups. We will be having further discussions about these issues over the next few months. Our approach has been to say that all the issues should be addressed together as part of local homelessness and housing strategies. We need to consider further how overcrowding is addressed as part of those strategies. Certainly, putting those strategies on a statutory footing will strengthen the case for that.

We are also considering the matter as part of the housing health and safety rating system (HHSRS). I recognise that hon. Members have raised concerns about that, but it is important to bring overcrowding into the health and safety system in a stronger way than before. The guidance to local authorities will make it clear that, for example, GP or hospital referrals will be relevant to the hazard assessment.²⁹

Subsequently, the Labour Government rejected the ODPM Committee's recommendation that the overcrowding standard should be amended by the forthcoming *Housing Bill*:

The Bill enables overcrowding to be dealt with through HHSRS, with the statutory standards remaining in place as a fall-back. The Government takes the view that to raise the overcrowding standards in isolation from other factors would be essentially symbolic and would lead to increased demand for housing, to the detriment of other people whose living conditions may be worse; and would make it more difficult for authorities to juggle their priorities. The Government believes that the better approach to the problem of overcrowding is to improve housing supply through the substantial resources which are being provided, rather than try to tackle a single symptom of housing pressure.³⁰

²⁹ HC Deb 29 October 2003 c128WH

³⁰ *The Draft Housing Bill – Government Response Paper*, Cm 2000, November 2003 para 15

5. The Housing Act 2004

5.1 Background

The *Housing Bill* (Bill 11 of 2003-04) was presented on 8 December 2003. The Bill did not, initially, contain measures to amend the statutory overcrowding standard. During the Commons Committee stage of the Bill Karen Buck moved an amendment to replace the definition of overcrowding in section 324 of the *Housing Act 1985* with one that would include a 'bedroom standard' in addition to the existing space standard, and which would have abolished the room standard.³¹ The then Minister for Housing, Keith Hill, responded:

I absolutely understand from where my hon. Friend and the hon.

Members for Chipping Barnet (Sir Sydney Chapman) and for Kingston and Surbiton are coming. The hundreds of advice surgeries that I have held as a Member of Parliament and the thousands of constituents whom I have met have shown that overcrowding has been a consistent worry. Frankly, and for what it is worth, it is a matter of great personal anguish to me to hear of the circumstances in which some of my constituents are forced to live. In particular, my heart goes out to those good, decent families who, although they always paid their rent up to date, moved into their flat when there was one child in the family, have since had one or two more, and are now forced to live in an unsatisfactory situation.

There are cases of parents sleeping apart, and sometimes of living rooms and other parts of the household being used as bedrooms. On occasion, even the kitchen may be used as a place to sleep. That is unacceptable and we need to do something about that, but there are really difficult issues of prioritisation and resources. I want to refer to them, at least briefly.

My hon. Friend the Member for Regent's Park and Kensington, North and I are familiar with each other's position on the issues. I know that she is aware of the Government's anxieties about the effect of bringing in a step change in the overcrowding standards.

Indeed, so are the other members of the gang of four, my hon. Friends the Members for Bethnal Green and Bow and for

Edmonton. They, of course, introduced a Bill on the subject last Session³² and are familiar with my responses to them in discussions on those issues.

I have to make it clear that the Government do not defend the current overcrowding standards to the letter; those standards are obviously out of date. However, we need to consider what purpose would be served by raising the standards right now, and what the effect would be. Do we want an effect, or are we simply making a symbolic gesture? The issue is one of resources and priorities. Local authorities already have a pretty good idea of the degree of overcrowding in their area, but they have to balance the needs of overcrowded people against those of the homeless and those in poor temporary accommodation whose needs are more urgent. If we raise the standards, we sharpen the issue of

³¹ SC(E) 20 January 2004 cc13-16

³² This refers to Andy Love's Ten-Minute Rule Bill introduced in January 2003 (see section 4.1 above)

priorities for local authorities. Even with current resources, the number of more affordable lettings means that local authorities have to tackle the worst cases first.³³

He went on to explain how overcrowding would be covered by the Housing Health and Safety Rating System.³⁴

This debate takes place specifically in the context of the health and safety rating system. As has been pointed out, overcrowding may be severe enough to be hazardous in health and safety terms. That is where the health and safety rating system comes in. It will not solve the problem, but it will bring overcrowding into the mainstream of matters that authorities need to consider when looking at the condition of properties and the hazards that they contain. The housing health and safety rating system will give authorities a tool to help them judge circumstances and say, "This person's RSL flat is more damaging to their health than another's bed and breakfast".³⁵

Information on how the Labour Government envisaged the HHSRS would address overcrowded housing can be found in paragraphs 2.12-2.16 of [Tackling Overcrowding in England: a discussion paper.35](#).³⁶

Keith Hill gave a commitment to "consider whether it is possible to devise an approach to overcrowding that allows some incremental improvement over a period;" he said he would undertake to pursue this in time for it to be considered in Committee.³⁷ Karen Buck withdrew her amendment to the Bill.

5.2 A new section on overcrowding

During the Report Stage of the Bill in the Commons the Labour Government tabled an amendment on overcrowding:

- (1) The appropriate national authority may by order make such provision as it considers appropriate for and in connection with—
 - a) determining whether a dwelling is overcrowded for the purposes of Part 10 of the Housing Act 1985 (c. 68) (overcrowding);
 - b) introducing for the purposes of sections 123 to 128 of this Act a concept of overcrowding similar to that applying for the purposes of Part 10 (and accordingly removing the discretion of local housing authorities to decide particular issues arising under those sections);
 - c) securing that overcrowding in premises to which sections 123 to 128 of this Act would otherwise apply, or any description of such premises, is regulated only by provisions of Part 10.
- (2) An order under this section may, in particular, make provision for regulating the making by local housing authorities of

³³ SC(E) 20 January 2004 cc26-27

³⁴ The HHSRS was introduced by Part 1 of the 2004 Act.

³⁵ SC(E) 20 January 2004 cc28-29

³⁶ DCLG, July 2006

³⁷ SC(E) 20 January 2004 c29

determinations as to whether premises are overcrowded, including provision prescribing—

- a) factors that must be taken into account by such authorities when making such determinations;
- b) the procedure that is to be followed by them in connection with making such determinations.

(3) An order under this section may modify any enactment (including this Act).

(4) In this section—

- a) any reference to Part 10 of the Housing Act 1985 (c. 68) includes a reference to Part 10 as modified by an order under this section; and
- b) ("enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

Keith Hill explained that the new clause would allow the universal statutory overcrowding standards in Part X of the *Housing Act 1985* to be amended by secondary legislation.³⁸ The overcrowding provisions are contained in section 216 of the *Housing Act 2004*. **The necessary secondary legislation has not been introduced.**

5.3 The Labour Government's action plan (December 2007 - 2010)

In July 2006 the Department for Communities and Local Government, which took over responsibility for housing matters on the disbandment of the ODPM in early 2006, published [Tackling Overcrowding in England: a discussion paper](#). In this document DCLG posed questions about the best way to tackle overcrowding while recognising that "there is no point raising aspirations we cannot meet."³⁹ The aim of the discussion paper was to generate debate and stimulate ideas to help the Department "shape a realistic set of proposals for the then forthcoming Comprehensive Spending Review."⁴⁰ The suggested options for a new definition of overcrowding are reproduced below:

- a) We might adopt and move to the bedroom standard. Such a move might be implemented in one or more stages over a period of time. For example, a first stage in improving the standard might be to remove the worst excesses immediately by ceasing to designate kitchens and bathrooms as sleeping areas, not requiring couples to sleep separately and lowering the age at which children need to be split by gender. We might then move to a second stage by bringing the rules on children in line with the bedroom standard and designating only bedrooms for sleeping rather than living rooms, with a view to implementing the full standard. Other timescales and mixes of options could be considered.

³⁸ HC Deb 11 April 2004 c275

³⁹ [Tackling Overcrowding in England: a discussion paper](#), para 1.8

⁴⁰ *Ibid.*, para 1.9

b) We could align the definition of overcrowding with the ideal set out in the Housing Health and Safety Rating System Operating Guidance.

c) We could create a new definition of overcrowding, although this would need wide discussion and consultation.⁴¹

One of the issues raised by amending the statutory overcrowding definition includes the impact that this might have on local authorities' allocation policies. The discussion paper suggested that an amendment to the requirement to give overcrowded households 'reasonable preference' in allocation schemes might be necessary to enable authorities to balance competing demands from households in housing need.⁴² The consultation period closed on 15 September 2006.

On 12 December 2007 the Labour Government published [Tackling Overcrowding in England: An Action Plan](#). In this document, the then Government advised that it was committed to updating the overcrowding standard to the Bedroom Standard:

The Bedroom Standard is based on the ages and composition of the family. A notional number of bedrooms is allocated to each household in accordance with its composition by age, sex and marital status and relationships of family members. A separate bedroom is allocated to each:

- married or cohabiting couple;
- adult aged 21 years or more;
- pair of adolescents aged 10-20 years of the same sex;
- pair of children aged under 10 years regardless of sex.

Any unpaired person aged 10-20 years is paired, if possible, with a child aged under 10 years of the same sex or, if that is not possible given a separate bedroom. The same applies to any unpaired child aged under 10 years.

This standard is then compared with the number of bedrooms available for the sole use of the household. Bedrooms converted to other uses are not included; bedrooms not in use are included unless they are uninhabitable.

A majority of respondents favoured an incremental move to the Bedroom Standard. Initially at least, the then Government said it did not intend to implement this standard across the board. The standard was initially piloted in 38 pathfinder authorities, including those with the highest levels of overcrowding and which comprised the London authorities together with Birmingham, Bradford, Leicester, Liverpool and Manchester.⁴³ Subsequently, additional authorities were added to the pilot. The work of the pathfinders was to be used to assess the timeframe for implementation of a new statutory standard across the country.

⁴¹ Ibid., para 3.4

⁴² Ibid., para 3.5

⁴³ It was estimated that these 38 authorities accounted for 60% of overcrowded households in the social rented sector at that time.

When questioned on the timescale for introducing secondary legislation to update the statutory overcrowding standard during the committee stages of the *Housing and Regeneration Bill* in January 2008, the then Parliamentary Under-Secretary of State at DCLG, Iain Wright, said that evidence from the pathfinders would have to be considered and that this evidence was expected around 2009:

Once we have that evidence, we will be able to devise a phased and manageable move to a new national standard with authorities well positioned to manage a new definition positively and proactively. I do not want to box myself in, but I hope that that will be in 2009.⁴⁴

In November 2009, Ian Austin gave the following response to a PQ concerning the timing of an update to the statutory overcrowding standard:

Prior to making any change to the statutory standards we want to establish the impact, timing and cost of undertaking a phased and manageable move to a new statutory standard. Evidence is being generated through the 54 overcrowding pathfinders.⁴⁵

Also, in November 2009, Ian Austin reported that since April 2008 the 54 authorities in the pathfinder programme had re-housed around 30,000 overcrowded households.⁴⁶ Funding for the pathfinders beyond 2011 was to be considered as part of the next spending review.⁴⁷

Aside from setting out proposed amendments to the statutory overcrowding standard the [Action Plan](#) listed a series of other initiatives to reduce severe overcrowding.⁴⁸

5.4 The Housing and Regeneration Act 2008

Further attempts were made to update the statutory overcrowding standard during the Commons committee stages of the *Housing and Regeneration Bill*.⁴⁹ Responding, Iain Wright pointed out that the Government already had the power to amend the standard through secondary legislation – he emphasised that the real need was to increase the overall supply of housing:

Housing is sorely needed in some parts of the country to tackle the overcrowding problem. We have already announced the target of 240,000 additional homes a year by 2016, with the delivery of 2 million homes by that date and 3 million by 2020. In order to achieve that we are providing unprecedented levels of investment.⁵⁰

He also responded to questions on the need for larger properties:

... we need larger properties, and housing developers need to ensure that family houses are being built, because that is what people sorely need. Local authorities working with the Housing Corporation and, in future, the agency, and developers have an

⁴⁴ PBC 24 January 2008 c512

⁴⁵ HC Deb 26 November 2009 c311W

⁴⁶ HC Deb 25 November 2009 c183W

⁴⁷ HC Deb 26 November 2009 c311W

⁴⁸ DCLG, *Tackling Overcrowding in England: An Action Plan*, 2007, paras 16-23

⁴⁹ PCB 24 January 2008 cc492-504

⁵⁰ PCB 24 January 2008 c500

important role to play, through both the planning system and their strategic housing role. My hon. Friend will be aware of planning policy statement 3, "Housing", which was published in November 2006. It sets out the national planning framework for delivering the Government's housing objectives. It states that the:

"key housing policy goal is to ensure that everyone has the opportunity of living in a decent home, which they can afford, in a community where they want to live."

Crucially, PPS3 asks for more support for family homes. It explicitly provides a requirement that the housing needs of children be considered, and it places an emphasis on family-friendly developments including access to gardens.⁵¹

Responding to issues raised by the Communities and Local Government Select Committee Report, [The Supply of Rented Housing](#) (May 2008), the Labour Government said that the Homes and Communities Agency (HCA)⁵² would inherit the Housing Corporation's existing target that 30% of all new social rented homes should be for families (3+ bedrooms) in 2008-09 rising to 33% by 2010-11. The Labour Government brought forward £400 million from the 2010-11 affordable housing budget to deliver an additional 5,500 social rented homes as a response to market pressures. The then Government said it would consider the need for a minimum space standard when reviewing the definition of overcrowding and would "consult on these proposals in due course."⁵³

⁵¹ PCB 24 January 2008 c501

⁵² The HCA was created by the *Housing and Regeneration Act 2008* through a merger of the Housing Corporation and English Partnerships.

⁵³ [Cm 7326](#), p12

6. Policy developments since 2010

The Coalition Government did not extend the previous Government's pathfinders initiative:

Asked by Baroness King of Bow

To ask Her Majesty's Government, further to the Written Answer by Baroness Hanham on 6 July (WA 74), why they have discontinued the Overcrowded Housing Pathfinder Initiative to support local authorities develop innovative approaches to helping families living in overcrowded conditions.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):

The pathfinder programme was time-limited and was always scheduled to end in 2010-11.

We are providing £13 million over the next four years (2011-12 to 2015-16) to help local authorities support under-occupying social tenants who wish to move, thus freeing up stock for overcrowded families. These monies are also helping to fund an action team within the Chartered Institute of Housing to work with all social landlords to help them promote moves.

In addition, the reforms to social housing allocations, homelessness and tenure which are being taken forward in the Localism Bill will make it much easier for social landlords to manage their stock to reduce overcrowding.⁵⁴

The Coalition Government issued a consultation paper, [Local decisions: a fairer future for social housing](#), on 30 November 2010 with a closing date of 17 January 2011. In section 7 of the paper the Government said it was "seeking views on the reforms needed to enable local authorities and landlords to tackle overcrowding."

The document set out proposals to amend local authorities' powers in relation to the allocation of social housing, including a proposal to enable authorities to offer flexible (fixed-term) tenancies to new tenants. These measures were included in the *Localism Act 2011*.⁵⁵ The measures were described by the Government as aimed at "removing inflexible barriers and equipping local authorities and landlords with the tools they need to support local strategies to reduce overcrowding."⁵⁶ Briefly, the measures included:

- removing transferring tenants from the allocation rules to make it easier for landlords to support move requests by people under-occupying properties;
- strengthening "home-swap" provisions to enable overcrowded and under-occupying households to "help each other";
- reforming the homelessness rules to allow authorities to house homeless households in suitable private sector accommodation;

⁵⁴ HL Deb 19 July 2011 cc270-1WA

⁵⁵ For more information see Library Research paper 11/03.

⁵⁶ DCLG, [Local decisions: a fairer future for social housing](#), November 2010

- retaining the “reasonable preference categories” to ensure “that overcrowded households continue to receive priority;” and
- giving authorities discretion to offer new tenants a flexible tenancy with a minimum fixed term. Prior to the expiry of the tenancy the landlord would review whether the household still needed the housing or whether they could be expected to find alternative housing.

The consultation document asked for responses to the following questions:

Question 28: What powers do local authorities and landlords need to address overcrowding?

Question 29: Is the framework set out in the 1985 Housing Act fit for purpose? Are any detailed changes needed to the enforcement provisions in the 1985 Act?

Question 30: Should the Housing Health and Safety Rating System provide the foundation for measures to tackle overcrowding across all tenures and landlords?⁵⁷

A summary of responses to the consultation document, together with the Government’s intentions on next steps was published in February 2011, [Local decisions: next steps towards a fairer future for social housing - Summary of responses to consultation](#). Responses to overcrowding were summarised as follows:

2.8 Four hundred and six respondents commented on overcrowding. Those who commented on the impacts of overcrowding agreed, in the main, that it was detrimental to the health and well-being of those who experienced it.

2.9 A significant number of respondents considered that overcrowding was primarily a result of a lack of supply of large family homes, and that attention should therefore be focused on making better use of existing stock through tackling under-occupation, and on increasing the supply of larger homes.

2.10 It is clear from the responses to the consultation that many authorities and providers believed that tackling overcrowding is a complex issue and that careful consideration needs to be given to the best mechanisms to address it.⁵⁸

On the three specific questions concerning overcrowding, most respondents indicated that the key to tackling the issue would be dealing with under-occupation through allocation policies and incentives. Tenant respondents observed the need for sensitivity around the circumstances of under-occupiers. A majority of respondents who mentioned existing powers believed that those powers were sufficient to deal with overcrowding.

The overwhelming majority of respondents said that Part X of the *Housing Act 1985* was no longer fit for purpose, commenting that it failed to reflect what was acceptable for modern living standards and that it needed to be reviewed. Some suggested that there needed to be more clarity and consistency around the various definitions of

⁵⁷ Ibid.

⁵⁸ DCLG, , [Local decisions: next steps towards a fairer future for social housing - Summary of responses to consultation](#), February 2011

overcrowding and the use of the Housing Health and Safety Rating System and the statutory standards.⁵⁹ The Government's approach to tackling overcrowding was set out in section 8 of the paper:

8.41 We believe that our reforms to tenure, allocations and homelessness will go a long way to help local authorities and landlords to tackle overcrowding. The changes which we are introducing through the Localism Bill will contribute to the better use of our social housing stock and contribute to the reduction of overcrowding.

8.42 In January 2011, we announced an additional £13m to assist the 50 authorities with most social housing to tackle underoccupation. At the same time we announced the intention to establish a new national team, based at the Chartered Institute of Housing, available to offer support to councils looking to help tenants downsize.

8.43 We will continue work with local authorities, landlords and interested parties to assess the effectiveness of the reforms set out in this paper and to consider the need for new practical approaches to tackling overcrowding.

The then Housing Minister, Kris Hopkins, responded to a PQ on overcrowding in December 2013:

Steve McCabe: To ask the Secretary of State for Communities and Local Government what support his Department gives to a large family in overcrowded housing who cannot access the recommended size of property due to a lack of supply.

Kris Hopkins: The social housing reforms in the Localism Act have given local authorities and social landlords the tools they need to tackle overcrowding, while retaining the 'reasonable preference' provisions in the allocation legislation which ensure that overcrowded families continue to get priority for social housing. HomeSwap Direct is there to make it easier for overcrowded social tenants to swap with those who want to downsize.

The removal of the spare room subsidy also encourages the more effective use of social housing, by addressing the underoccupation of family homes.

Our Affordable Homes programme is on track to deliver 170,000 new affordable homes between 2011 and 2015, with £19.5 billion of public and private funding—half way through 98,700 homes have already been delivered. A further £23 billion will help ensure another 165,000 new affordable homes are started between 2015 and 2018. This will be the fastest annual rate of building for at least 20 years.⁶⁰

6.1 Housing and Planning Act 2016: proposed amendments

There were further attempts to bring in new provisions on overcrowding aimed particularly at the private rented sector during the Lords stages of the *Housing and Planning Bill 2015-16*, although these were

⁵⁹ Ibid.

⁶⁰ HC Deb 3 December 2013 cc632-3W

subsequently withdrawn. Amendment 84A was moved by Baroness Gardner of Parkes:

Overcrowding in shared residential buildings

(1) Local authorities may set limits for the number of residents that may lawfully reside in each rented property in a shared residential building.(2) Local authorities may set limits under subsection (1) for each relevant rented property whenever the contract for renting the property changes at any point after the day on which this section is brought into effect.(3) If a complaint is made to a local authority about overcrowding in a rented property for which a limit has been set under subsection (1), the local authority may investigate whether the limit is being exceeded and, if so, order the landlord of the property to take action to end the overcrowding.(4) Where the local authority orders a landlord to take action under subsection (3), the local authority may charge the landlord a fee to cover the reasonable costs of the investigation and action undertaken by the local authority.⁶¹

The proposed new clause would have allowed authorities to set occupation limits, investigate complaints and charge reasonable costs for investigation and any required resulting action.⁶²

It was argued that new measures were not needed as local authorities already had powers to tackle overcrowding as defined under Part X of the *Housing Act 1985*. Existing powers include: gaining entry to measure rooms to work out the permitted number of occupants; accessing information about the number of people sleeping in a dwelling; and inspecting, reporting and preparing proposals on overcrowding.⁶³

In deciding whether a dwelling is overcrowded, a local authority must apply an objective test and not its own perceptions or those of others. My noble friend's amendment would enable local authorities to set standards in individual cases in addition to the national standards and existing hazard rating systems. This would cause confusion and uncertainty.⁶⁴

In a subsequent session on 20 April 2016, the topics were raised again, with Baroness Gardner of Parkes proposing amendment 98, which covered the same issues as amendment 84A:⁶⁵

But clearly we now need to update the legislation, in particular because, even if the percentage of overcrowded accommodation has stayed reasonably static, the net amount is increasing because the private rented sector is increasing, and as the private rented sector grows, this becomes more of a problem.⁶⁶

⁶¹ [HL Deb](#), 17 March 2016, c1961

⁶² *Ibid.*, c1963

⁶³ *Ibid.*, c1965

⁶⁴ *Ibid.*, c1966

⁶⁵ [HL Deb](#), 20 April 2016, c633

⁶⁶ [HL Deb](#), 20 April 2016, cc633-4

Baroness Evans of Bowes Park, for the Government, repeated earlier arguments that amendments were not necessary as powers were already in existence:

- Clause 118, dealing with the contravention of an overcrowding notice for an HMO under Section 139 of the Housing Act 2004, would take the level of fine to unlimited, removing the restriction on the fine that may be imposed.
- Under Section 49 of the Housing Act 2004, local authorities can already recover administrative and other expenses incurred by them in making a prohibition order (limiting the number of persons who can occupy a property).
- Through the new civil penalty measures outlined in the Bill, the ability of local authorities to enforce these measures will be strengthened as they will be able to retain penalties of up to £30,000 to use for housing-related activities.⁶⁷

6.2 Fixed-term council tenancies

In the Summer Budget 2015 the Government announced that it would “review the use of lifetime tenancies in social housing to limit their use...and ensure the best use is made of the social housing stock.”⁶⁸

Amendments to the *Housing and Planning Bill 2015-16* were introduced as it progressed through Parliament to prevent local authorities in England from offering secure tenancies for life in most circumstances. The Minister noted that social landlords had not taken advantage of the discretionary powers introduced by the *Localism Act 2011* to offer flexible tenancies with a minimum fixed-term of at least two years, and went on:

...we believe that continuing to offer social tenancies on a lifetime basis is not an efficient use of scarce social housing. The new clauses will significantly improve landlords’ ability to get the best use out of social housing by focusing it on those who need it most for as long as they need it. That will ensure that people who need long-term support are provided with more appropriate tenancies as their needs change over time and will support households to make the transition into home ownership where they can. In future, with limited exceptions, local authority landlords will only be able to grant tenancies with a fixed term of between two and five years, and will be required to use tenancy review points to support tenants’ move towards home ownership where appropriate.⁶⁹

On publication of the social housing Green paper on 14 August 2018, [A new deal for social housing](#), the May Government announced that **it would not implement these provisions “at this time”**.

6.3 Shelter’s Living Home Standard 2016

Shelter, in consultation with the public, developed the [Living Home Standard](#) as an understanding of what the British public need in a

⁶⁷ Ibid., cc636-6

⁶⁸ Summer Budget 2015, para 1.155

⁶⁹ PCB Deb 10 December 2015 (morning) c650

home. Shelter committed to an annual measure to show how many people live in homes that meet the Standard and to track progress on a national and regional scale.⁷⁰ The 39 statements which make up the Standard are split across five different dimensions: Affordability, Decent conditions, Space, Stability and Neighbourhood. Within each dimension some attributes are classed as essentials; conditions that every home must meet. Other attributes are classed as tradables; important features but not applicable or essential to everyone.⁷¹ Space was considered in terms of functional and social requirements:

The number of bedrooms in the home is adequate for all members of the household

Having somewhere to sleep was seen as one of the most basic aspects of a home. The ability to have a good night's sleep was widely understood to be essential for physical and mental wellbeing.

Amongst households with children, the extent to which siblings should be required to share bedrooms was much debated. By and large, some degree of sharing was felt to be acceptable but circumstances such as the genders and ages of the children had to be considered. They also discussed other factors such as differing personalities and additional needs such as behavioural issues that meant it was difficult to develop a 'one size fits all' consensus.⁷²

Other factors considered essential include:

- There is enough space to allow all members of the household to have privacy, for example when they wish to be alone.
- There is enough space for all members of the household to comfortably spend time together in the same room.
- There is adequate space to prepare and cook food.
- There is adequate space to store essential items, such as a reasonable amount of clothes, towels and bedding.⁷³

6.4 Minimum room sizes for licensed HMOs

In October 2016, then Housing Minister, Gavin Barwell, announced an intention to amend the HMO regulations to insert a new compulsory condition in every licence granted in England that local housing authorities are to disregard rooms of less than a prescribed size from being included as a room suitable for sleeping accommodation, whether or not it is used for any other purpose.⁷⁴ A consultation paper on this and other proposals, [Houses in multiple occupation and residential property licensing reforms](#), was open until 13 December 2016. The aim of the measure is to reduce overcrowding in smaller HMOs.

The prescribed room size is 6.51 square metres for one person aged over 10 years of age and 10.22 square metres for two people aged over

⁷⁰ Shelter, [Living Home Standard](#), 17 October 2016, p4

⁷¹ Ibid., p6

⁷² Ibid., p23

⁷³ Ibid., p23-24

⁷⁴ [New measures tackle overcrowded housing](#), 18 October 2016

10 years.⁷⁵ A room used as sleeping accommodation by one person aged under 10 years must not be less than 4.64 square metres.

Since 1 October 2018,⁷⁶ the provision means that where a landlord lets a room in breach of the licence condition, an offence will be committed which renders the landlord liable on conviction to an unlimited fine or financial penalty of up to £30,000.⁷⁷ **The measure applies to new licences issued after 1 October 2018.** The Regulations provide for an 18-month period, which applies in certain circumstances, during which landlords can be given time to comply with a breach:

We will make transitional arrangements, where licensed HMOs do not immediately comply with the maximum occupancy mandatory condition, to enable landlord to regulate the number of occupiers permitted under the licence within a reasonable time allowed by the local authority, up to a maximum of 18 months from the grant of the licence. During the transitional period, providing the landlord is taking steps to reduce the number of occupiers which exceed the permitted number, no offence of breaching the condition will be committed.⁷⁸

The room sizes are a statutory minimum. **Local housing authorities can use their discretion to set standards based on housing conditions in their areas.**

Concerns were raised about the position where a pregnant woman gives birth when living in a licensable HMO in a room measuring 6.51 square metres (i.e. suitable for only one person aged over 10 years). The statutory overcrowding standard disregards children under one year of age. The Government response to the consultation exercise said:

There is no intention to criminalise landlords who do not create overcrowding, or require tenants to be evicted immediately because they have given birth since moving into the HMO. However, overcrowding whether deliberate or accidental cannot go unchecked.

[...]

...where a room becomes unsuitable to be used as sleeping accommodation for the number of occupiers because it does not meet the minimum size requirement in the regulations, the local authority must allow a reasonable period (of up to 18 months) for the overcrowding to be remedied, before it is able to prosecute the landlord for breach of the licence condition.

In the case of a tenant giving birth and the arrival of the child causing a room to be overcrowded, potential remedies could include securing alternative accommodation in the HMO or elsewhere. Alternatively, and if practicable, the overcrowding might be remedied by the enlargement of the room or the

⁷⁵ [Licensing of Houses in Multiple Occupation \(Mandatory Conditions of Licences\) \(England\) Regulations 2018](#)

⁷⁶ 1 October 2018 was also the date on which mandatory licensing of HMOs was extended in England to all HMOs with five or more occupants who do not form a single household.

⁷⁷ DCLG, [Houses in Multiple Occupation and residential property licensing reforms: A consultation paper](#), October 2016, p11

⁷⁸ DCLG, [Houses in Multiple Occupation and residential property management reforms – Government response](#), December 2017

provision of an additional room (of not less than 4.64 sqm) for use as sleeping accommodation by the child.⁷⁹

6.5 The Homes (Fitness for Human Habitation) Act 2018

Overcrowding and lack of space *might* render a property unfit for human habitation.

The [Homes \(Fitness for Human Habitation\) Act 2018](#) (the 2018 Act),⁸⁰ which came into force on 20 March 2019, amended the *Landlord and Tenant Act 1985* to require 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 was phased in. The Act applied 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**.

And extended to

- all periodic tenancies in existence on 20 March 2019 **from 20 March 2020**.⁸¹

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 several factors including:

- any 'prescribed hazard' - defined as any matter or circumstance amounting to a category 1 or 2 hazard under the [Housing Health and Safety Rating System \(HHSRS\)](#).⁸²

The HHSRS includes an assessment of crowding and space:

Includes all the hazards associated with lack of space and crowding. It takes into account the psychological needs for both social interaction/privacy. It also looks at the effects of crowding on space requirements for household activity.

Health effects

Crowding and lack of space has been linked to psychological distress and various mental disorders. It is also linked to increased heart rate, increased perspiration, intolerance, inability to

⁷⁹ DCLG, [Houses in Multiple Occupation and residential property management reforms – Government response](#), December 2017

⁸⁰ 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.

⁸¹ Nearly Legal: Housing Law, [Fitness for Habitation – a thumbnail guide](#), Giles Peaker, 21 December 2018

⁸² Section 10 of the *Landlord and Tenant Act 1985* (as amended). The HHSRS recognises [29 'matters and circumstances' that give rise to hazards](#).

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concentrate, hygiene risks, accidents and spread of contagious disease.⁸³

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”.⁸⁴

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.

In October 2018 the May Government [announced](#) a review of the HHSRS.⁸⁵ 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”.⁸⁶

⁸³ DCLG, [Housing Health and Safety Rating System - Guidance for Landlords and Property Related Professionals](#), May 2006, p33

⁸⁴ Section 10(1) of the *Landlord and Tenant Act 1985* (as amended)

⁸⁵ MHCLG, [Greater protection for renters thanks to plans to tighten tenant safety](#), 26 October 2018

⁸⁶ MHCLG, [Outcomes of report on Housing Health and Safety Rating System \(HHSRS\) scoping review](#), 11 July 2019

7. London Housing Strategy

London has the highest rates of overcrowding in the country. [The 2017 London Strategic Housing Market Assessment](#) said:

Overcrowding in London has also increased since the start of the century, peaking around five years ago. Around 7.6% of households in London are overcrowded, but this rate varies widely by tenure, from just 3.3% of homeowners to 12.9% of households in social housing.⁸⁷

The current [London Housing Strategy](#) (May 2018) states:

In total, around 250,000 homes in London are overcrowded, including around one in nine private renting and one in seven social renting households. These 250,000 homes contain around 380,000 distinct 'family units', suggesting a mix of those with a single family who need a bigger home, and those in which overcrowding is caused by there being more than one family.⁸⁸

[Housing in London: 2019](#) provides the evidence base for the Mayor's housing strategy. This report states:

- 8% of households in London are estimated to be overcrowded according to the 'bedroom standard', which compares the size and composition of households to the bedrooms available.
- The overall overcrowding rate is above its level in the 1980s and 1990s, primarily due to rising overcrowding in social housing, with overcrowding in private renting following a more cyclical pattern. The proportion of overcrowded homeowner households has declined slightly over the same period.
- As of 2017/18, 15% of households in social housing, 12% of those in private rented housing, and 3% of homeowners were overcrowded.⁸⁹

Boris Johnson: 2008-16

In February 2010, the then Mayor, Boris Johnson, published the London Housing Strategy which contained a commitment to halve severe overcrowding in the capital's social housing by 2016 "with 12,000 under-occupiers having moved to a smaller home."

The London Assembly's Planning and Housing Committee published [Crowded Houses](#) in March 2011 in which it focused on overcrowding in London's social housing. The report's key recommendations included:

The Mayor should base his headline target on the number of new bedrooms provided and measure his success on the number of people taken out of housing need, instead of the number of units built. He should also include a specific requirement for 4+ bedroom homes in his targets – instead of his current 3+ target - and lobby for changes to HCA grant rates so they provide an incentive to build bigger.

⁸⁷ GLA, [The 2017 London Strategic Housing Market Assessment](#), 2017, para 5.25

⁸⁸ GLA, [London Housing Strategy](#), May 2018, para 2.18

⁸⁹ GLA, [Housing in London: 2019](#), September 2019, p97

Boroughs should give people applying for social housing more “points” for overcrowding, and give under-occupiers greater priority to encourage downsizing. Boroughs should also amend their allocations policies to give housing associations the flexibility to move existing under-occupied or overcrowded households when vacancies become available, instead of always filling voids with a single household from the waiting list.

The Government should use its forthcoming social housing reform legislation to make the more ‘human’ bedroom standard the statutory requirement for measuring overcrowding.

A revised draft of the London Housing Strategy, [Homes for London](#), was published in November 2013 for consultation. The strategy identified a need to make better use of the existing affordable housing stock in London and deliver more family sized homes.⁹⁰ The strategy pointed to the introduction of size criteria for Housing Benefit claimants in social housing as having potential to reduce overcrowding:

Reforms to introduce greater fairness in the welfare system will encourage more working age tenants to find homes that better meet their needs. By introducing the social sector size criteria for working age social tenants, the government has brought these households in line with those supported to rent privately. In doing so, it will free up under-occupied properties as households find homes that better reflect their needs. The Mayor will also continue to support opportunities for downsizing through the Housing Moves and Seaside & Country Homes schemes.⁹¹

The strategy also referred to planning guidance issued by the Mayor which required all new houses built in London to meet the lifetime homes standard:

For many, it will also provide an opportunity to downsize to a more manageable home which will, in turn, improve the wider housing market by freeing up larger properties, helping to tackle overcrowding.⁹²

The Mayor established the London Overcrowding Board in 2012 to help tackle overcrowding in the capital. The Board was jointly chaired by London Councils and the GLA and brought together a range of organisations “to initiate and co-ordinate action, and develop solutions, to tackle overcrowding and reduce under-occupation in social housing in London.”

The revised housing strategy published in June 2014, [Homes for London](#), reiterated the Mayor’s commitment to tackle London’s overcrowded housing:

The strategy reiterates the Mayor’s priority to tackle overcrowding and the ambitious target to halve severe overcrowding in social rented housing by 2016. Alongside making funding available for larger homes, with at least four bedrooms, and a long-term commitment to deliver the family-sized affordable homes identified in the Strategic Housing Market Assessment, there is a stronger focus on freeing up more of the capital’s existing family sized housing. The strategy will increase the provision of smaller

⁹⁰ [Homes for London](#), 2013, para 3.9

⁹¹ Ibid.

⁹² Ibid., para 3.8

affordable homes targeted at those downsizing, support purposebuilt older people's housing and offer better incentives for older people to downsize. The Mayor will be monitoring and reporting on the success of these initiatives in freeing up larger homes.⁹³

Sadiq Khan: 2016

During his election campaign, Sadiq Khan highlighted housing as a priority area:

...my single biggest priority will be to build thousands more homes every year, for you, your family and your friends – and to give first dibs to Londoners on new homes.⁹⁴

The [London Housing Strategy](#) was published, following consultation, in May 2018. The following extract set out how the Mayor planned to tackle overcrowded housing:

The Mayor is committed to doing all he can to end overcrowding as a critical strand of London's wide ranging work to address its housing crisis. We need a step change in investment and powers from Government to be able to build all the affordable homes Londoners need, and thereby be able to end overcrowding. In the meantime, the Mayor is using his existing resources to their fullest extent, as set out in a number of policies from across this strategy and the draft London Plan, including:

- **Housing targets and the level of affordable housing:** Tackling overcrowding is integral to the draft London Plan, since the principal evidence base for its housing targets, the SHMA, assumes that London needs to build enough of the right sort of homes to eradicate overcrowding. The Plan includes ambitious housing targets and strong policies to increase levels of affordable housing in new developments.
- **Low cost rented homes for overcrowded households:** As Policy 5.2 highlights, the Mayor's draft London Plan also includes – for the first time – a requirement that boroughs' planning policies set out guidance on the size mix of homes for low cost rent to be delivered in their area. Boroughs should determine local guidance by using evidence of local housing needs, including the numbers and types of overcrowded and under-occupying households. This guidance applies to all new low cost rented homes in a borough, irrespective of how they are funded or delivered, and should be used to help ensure the supply of new low cost rented homes is well suited to helping tackle overcrowding in a borough.
- **More homes in outer London:** Both the London Housing Strategy (policies 3.1 and 3.3) and the draft London Plan encourage a shift in development towards outer London. Market homes delivered in these areas are likely to be cheaper than those delivered on larger sites in inner London, and so building family-sized homes that families can afford will be more viable.
- **Helping people to downsize:** Enabling would-be downsizers to move out of larger homes is also important, as it frees up these homes for families who are currently in

⁹³ [Homes for London](#), November 2014

⁹⁴ [Sadiq Khan's 2016 Election Manifesto](#)

homes too small for their needs. Delivering high quality specialist homes for older people (Policy 5.2) will help here, along with local authorities' and housing associations' transfer policies and the Mayor's schemes that create opportunities for social housing tenants to move (Policy 4.3).

- **A welfare benefits system that helps to eradicate overcrowding:** By heeding the Mayor's call to review its welfare reform measures (Policies 6.2 and 7.1), Government could ease the affordability pressures that are preventing many overcrowded Londoners from moving. The Benefit Cap, in particular, can leave families with just two or three children where nobody is able to work with very little money to cover housing costs.⁹⁵

The strategy was reportedly criticised by some members of the London Assembly for failing to include specific targets for the delivery of family-sized homes.⁹⁶

⁹⁵ GLA. [London Housing Strategy](#), May 2018, pp149-150

⁹⁶ Government News, "[Overcrowding is a growing concern according to the London Assembly](#)," 12 February 2018

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