

LATEST DEVELOPMENTS IN THE REGULATION OF THE PRIVATE RENTED SECTOR IN ENGLAND

INTRODUCTION

1. The regulation of the private rented sector has been the subject of much debate in recent years and has been the topic of two motions in the Northern Ireland Assembly¹. With a shortage of social housing, the private rented sector is likely to continue to play an increasingly important role in the housing market. Major recommendations for the improvement and regulation of the private rented sector in England have just been published. The recommendations are contained within the independent [Review of Private Rented Sector Housing](#)², conducted by the Centre for Housing Policy at the University of York at the request of the Department of Communities and Local Government³.
2. The purpose of this briefing note is to provide an overview of the findings and recommendations of the report relating to the management and regulation of the private rented sector.

BACKGROUND TO THE REVIEW

3. The independent review of the private rented sector was announced by Housing and Planning Minister, Yvette Cooper, on 23 January 2008⁴. The purpose of the review was to build upon action already taken by the Government to improve the private rented sector which included the introduction of the [Tenancy Deposit Protection Scheme](#)⁵ and action on houses in multiple occupation. The Government will now consider the findings and recommendations of the review before deciding upon what action it will take.
4. The review had a broad terms of reference examining:

¹ A motion on the mandatory regulation of landlords in the private sector was debated on **1 October 2007** (see www.niassembly.gov.uk/record/reports2007/071001.htm#5); a motion on the regulation of private landlords was debated on **13 October 2008** (see www.niassembly.gov.uk/record/reports2008/081013.htm#3).

² Rugg, J. & Rhodes, D. (2008) *The Private Rented Sector: its contribution and potential*. www.york.ac.uk/inst/chp/publications/PDF/prsreviewweb.pdf

³ The Department of Communities and Local Government is responsible for setting Government policy on housing in England.

⁴ Department of Communities and Local Government. Press Release. 'Private Rented Sector to be focus of independent review'. 23 January 2008. www.communities.gov.uk/news/corporate/670940

⁵ The Tenancy Deposit Scheme came into force on 6 April 2007, under the scheme all deposits for rent up to £25,000 per annum taken by landlords and letting agents for Assured Shorthold tenancies in England and Wales must be protected by a tenancy deposit protection scheme. www.direct.gov.uk/en/TenancyDeposit/DG_066380

- The composition of the private rented sector and regional characteristics including an examination of the types of people who live in the sector and those who provide housing;
 - The impact of demographic and social changes on future demand and supply pressures and how key stakeholders should respond to this;
 - Action necessary to ensure the private rented sector provides good quality housing; and
 - Tenant and landlord views and experiences of the sector.
5. The review report states that at the *“heart of the review is the desire to see private renting as a less marginal, poorly regarded ‘third’ option that sits behind the preferred tenures of owner occupation and social renting”*. However, it acknowledges that the sector is currently presented with a number of policy challenges relating to issues such as property quality, management standards and security of tenure.
6. The review recommended a new drive to improve the quality of the private rented sector through the:
- introduction of a **light touch licensing system** for landlords and mandatory regulation for letting agencies to increase protection for both vulnerable tenants and good landlords;
 - introduction of a **new independent complaints and redress procedure** for consumers to help end long drawn out disputes; and
 - encouragement of local authorities to take steps to better understand the sector and support good landlords whilst **tackling poorly performing landlords** and **promoting tenant’s rights**.

KEY RECOMMENDATIONS OF THE REVIEW – COMPULSORY LICENSING

7. The review highlight that one of the most frequent criticisms of the private rented sector is the quality of landlord management practice and identifies different practices amongst different types of landlords:
- Landlords who act professionally and have formalised procedures for selecting tenants, setting up, tenancies collecting rents, managing repairs and maintenance, and bringing tenancies to an end.
 - Landlords who act in a largely informal manner, but do not necessarily have the intent to act illegally. Often these types of landlords have little experience in the sector and are unaware of the legal frameworks for renting such as the provision of tenancy agreements and rent books and the required notice period before repossession.
 - At the extreme end is a small group of landlords who are fully aware of their legislative responsibilities but who chose to maximise their profits by acting illegally. These landlords may operate without tenancy agreements or rent books to minimise evidence of their activities and to place tenants in a vulnerable position if they wish to defend their right to remain in a property.

8. Local authorities retain the principal responsibility for policing the private rented sector in England and the review highlights that there is a general consensus that their activities do not tend to target the worst landlord activity. In relation to sanctions for landlords found to be in breach of regulations, the level of sanction imposed on such a landlord is minor compared with the nature of the infraction and tend to require the local authority to invest substantial resources in pursuing a conviction through the courts. The review further highlights that some commentators have concluded that the new HMO regulations have lead Environmental Health Officers to become absorbed in house in multiple occupation (HMO) licenses that have been submitted to landlords who are complying with the regulations.
9. The review recommends '**light touch licensing with effective redress**' in relation to the regulation of private landlords. It recommends:
- The **introduction of a licensing scheme** and that landlords should not be permitted to let without a license. The licensing system should be as simple as possible, with no hurdle criteria. Landlords could be charged a low annual fee in return for a landlord number which should appear on all their official documentation. The licence application would be administered nationally by an autonomous agency and landlords would only need one license in irrespective of the number of properties they own. Landlords who chose not to respect the regulations should be excluded from the sector and where serious breaches of regulations have occurred should have their licenses withdrawn.
 - Landlord licence fees could contribute to the development of a **housing justice network**, which should be linked to the licensing framework. A single property tribunal could be easier for tenants to access and could be connected to a specialised housing court.
 - Local authority policing policies should concentrate on identifying and removing the worst landlords from the sector. A '**worst first**' policy persuades 'good' landlords that activity is being targeted appropriately.
10. However, the review also maintains that any scheme which is put in place must not stifle commercial activity or place an undue burden on statutory authorities in regards to its implementation.

OTHER KEY RECOMMENDATIONS

11. In addition to the introduction of mandatory licensing, the review also recommends:
- That a **social lettings agency** be developed in each local authority area, offering a competitive management fee to landlords in return for full property management. Tenants on housing benefit would comprise an attractive letting proposition to landlords where an intermediary agency mitigates the risk of rent arrears and deals with anti-social behaviour;

- Tenants on housing benefit seeking property in the private rented sector should be better supported through **mandatory assistance with deposits and rent in advance**; and
- Removing landlords from the register of landlords if they engage in **'retaliatory eviction'**⁶.

REACTION TO THE RECOMMENDATIONS

12. The Housing Minister Margaret Beckett has welcomed the report and has stated that the Government agrees with the need to improve the sector for both tenants and landlords and that the Government will consider the recommendations before setting out its next steps⁷.
13. The [National Landlords Association \(NLA\)](#)⁸ and the [Residential Landlords Association \(RLA\)](#)⁹ have welcomed the publication of the review with both praising the report for giving an accurate representation of the sector as a whole. However, both are cautious over the introduction of the proposals for a licensing system for landlords. The National Landlords Association has stated that the, *"Review's proposals on a 'light-touch licensing' will need further examination. Much further work is now needed to determine how a model could work and there is unlikely to be a quick fix solution. The NLA would wish to be at the centre of ongoing discussions"*¹⁰.
14. The Residential Landlords Association (RLA) has outlined a number of concerns with the recommendation for mandatory licensing. Firstly, they suggest that if there is to be licensing it would be better referred to as 'registration'. Secondly, the RLA are concerned that what starts out as a light touch could turn into a heavy handed approach. Thirdly, they are concerned that the cost associated with licensing could be another 'stealth tax' on landlords¹¹.
15. Some bodies, such as the homeless charity Shelter, have welcomed the proposals for mandatory licensing with the Chief Executive reported as stating that, *"Shelter has long called for mandatory landlord licensing ...licensing will provide greater protection for tenants and give local authorities a better picture of the scale of the private rented sector in their area"*¹².

13 November 2008

⁶ Retaliatory eviction occurs when a tenant is evicted for enforcing or attempting to enforce their rights, e.g. right to repairs on the property or requesting a rent book.

⁷ Department of Communities and Local Government. Press Release. 'Creating a less risky rental market for landlords and tenants'. 23 October 2008.

www.communities.gov.uk/news/housing/1000701

⁸ www.landlords.org.uk/index.htm

⁹ www.rla.org.uk

¹⁰ National Landlords Association. Press Release. 'Review marks major watershed in attitudes to PRS: renting is not second best'. 23 October 2008.

www.landlords.org.uk/news/pressreleases/2008/pressrelease-20081023ruggreview.htm

¹¹ Residential Landlords Association. RLA Response to the Rugg Review.

www.rla.org.uk/html/ruggreview/RLAresponse.shtml

¹² 'Rugg Review calls for licensing regime to drive out 'slum landlords'. 24dash.com. 23 October 2008. www.24dash.com/news/Housing/2008-10-23-Rugg-Review-calls-for-licensing-regime-to-drive-out-slum-landlords