

Generation Rent – Consultation Response:

Review of Property Conditions in the Private Rented Sector

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Generation Rent is a housing NGO that campaigns for professionally managed, secure, decent and affordable, privately rented homes in sustainable communities. We support the formation of local groups to undertake community organising in their local areas and to assist each other with housing issues.

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Research on property conditions in the private rented sector

Generation Rent recently conducted online polling of 1,004 private renters through ComRes, to find out their experiences of conditions within their homes. The major findings relating to the parameters of this consultation were as follows:

- One in three Britons renting private sector housing (33%) say that they are living in properties with “unacceptable” dampness.
- Nearly one in five (18%) private renters say that the general condition of their current property is unacceptable.
- A quarter of tenants (25%) say that their landlord’s responsiveness to requests for maintenance is unacceptable.
- Nearly one in six identify their biggest problem as being a lack of security and the threat of losing their housing at short notice (17%).

The full results of the polling, which include figures on the effect of rental costs on living standards as well as data indicating the voting intentions of private renters can be found at www.comres.co.uk

The poll adds to a wide body of evidence, including recent reports from Shelter¹, NUS² and Crisis³ that show conditions continue to be worst in the private rented sector compared to social housing or home ownership. Regardless of figures suggesting tenant satisfaction with private renting, one third of PRS homes fail to meet the Decent Homes Standard. This shows that poor conditions in the private rented sector are a significant problem, with associated costs in health, education and employment. With 9.1 million people now living in the private rented sector, there has also been an associated rise in non-professional landlords. These amateur landlords too often have a poor knowledge of the sector and can be harmful for tenants through their ignorance or misunderstanding of the law and the standards they need to maintain. Alongside the policy solutions outlined below, professionalization of the sector through the introduction of a national register of landlords is needed to change this culture.

¹http://england.shelter.org.uk/data/assets/pdf_file/0004/763087/6430_04_9_Million_Renters_Policy_Report_Proof_6_opt.pdf

² http://www.nus.org.uk/Global/Homes%20Fit%20For%20Study/Housing%20research%20report_web.pdf

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<http://www.crisis.org.uk/data/files/publications/A%20Roof%20Over%20My%20Head%20Sustain%20Final%20Report%202014.pdf>

Summary of Consultation Response

1. Informing and keeping tenants and landlords aware of their rights and responsibilities is a role that can be jointly shared by local authorities, local renters groups and the third sector, but needs appropriate resourcing and support for an area that is difficult to engage with.

2. Restrictions on use of section 21, both in the case of hazards in the home and disrepair, would be a positive development to respond to a wide and ongoing problem in the private rented sector. It would remove the fear of retaliatory eviction for vulnerable tenants and drive up standards across the private rented sector, while forcing rogue landlords out of the industry.

3. Rent Repayment Orders are a forceful and effective way of allowing redress for tenants who have suffered poor conditions or illegal eviction. They mean that complaints are more likely to be followed through on by tenants and they provide a strong deterrent against poor landlord practices. They also allow local authorities to recoup housing benefit from individuals who have exploited their positions as landlords, but should be used alongside restrictions on section 21, rather than as alternatives.

4. There are still too many privately rented households without smoke alarms and mandatory installation needs to be initiated to bring them into line with standards in all homes built since 1992. There is also very little uptake of carbon monoxide alarm installation so this also needs to be a legal requirement to make it universal across the PRS. Both measures involve a small financial outlay for landlords but strongly improve safety standards where they are installed.

5. Many private renters are in danger because of the lack of electrical safety in their homes, so mandatory periodic inspections of electrical equipment and installations need to be introduced, along with providing information reports for the tenants in the property. This would be a simple requirement to implement and would bring the law into line with that of gas safety.

6. Voluntary accreditation is not an effective way to drive up standards across the sector, with only minimal uptake amongst landlords meaning that coverage falls on the best, most compliant landlords. Furthermore, it currently does little to influence consumer behaviour in a market where housing is an essential need. In its current guise, accreditation also cannot achieve its stated aims because of the lack of consistency in standards across different local authorities.

7. Licensing is an important tool to combat rogue landlords, but requires universal coverage and should not just be targeted at the bad individuals in the market. Selective licensing is a non-onerous and inexpensive requirement of landlords, but universal registration or licensing would bring simplicity to the sector, allowing a clear understanding of who is fit to be a landlord as well as auxiliary benefits such as better in-sector communication and improved housing data for government.

Question 1: In addition to the production of the Tenant’s Charter, is there any further action that could be taken to raise awareness amongst tenants and landlords of their rights and responsibilities? Who needs to take this action?

Sharing information with tenants continues to be a great challenge and the routes listed below vary widely across different local authorities, particularly within a climate of reduced local government spending.

The formation of renters’ groups allows localised knowledge to be built and shared and relationships to foster between renters, local authorities and landlords. It also allows individuals and groups to focus on issues specific to their locality and to be the eyes and ears on the ground in regard to property conditions.

One way to practically raise awareness would be to produce a summary sheet of the Tenant’s Charter which could then be displayed in all advice centres, not just housing advice centres. It would also be good practice for any inspecting officers from local authorities to provide copies of the charter to any tenants where they carry out an inspection.

Further to this, it should be a legal requirement for a summary sheet to be displayed in the offices of all letting and managing agents and also newspapers that carry letting information should include information on the charter.

More generally, the industry groups (that is, the National Landlords Association and the Residential Landlords Association) are in a position to share best practice and legal information with their membership. The Association of Residential Lettings Agents can also have a role in keeping their members informed, which is important in that they interact with both landlords and tenants. For all three of these organisations though, there is a problem of reach, while their membership remains small.

Accrediting bodies, such as the National Landlord Accreditation Scheme, already make accreditation dependent on landlords being aware of their rights and responsibilities. The London Rental Standard, which plans to have 100,000 landlords accredited by 2016 can lead the way in showing how knowledge can be shared with large numbers through voluntary schemes.⁴ Evaluating the success of the London Rental Standard, and the level of awareness after 2016, should be a pointer to whether this kind of voluntary scheme can work for a large number of landlords.

On a borough level, local authorities can use their communications mechanisms to keep the greater public informed and more specifically, tenancy relations officers can play an important and focused role on the private rented sector. It should also be noted that for many years, on a local and national level, the third sector including groups like Shelter and Citizen’s Advice Bureau, have been vital in ensuring individuals are aware of their rights and responsibilities. Cuts to local Citizens Advice Bureaux have restricted this, but they remain a central go-to point for those wanting to be better informed.

Question 2: What is best practice in raising awareness amongst tenants of their right to seek help and advice from their council and how can this be shared between local authorities?

The three main bodies through which tenants should most easily find out about council processes for help and advice is through the local authority themselves, through local housing groups and through the charity and voluntary sector. Clearly the local authority has the first responsibility in this case, with the means to specifically target private housing with information and to run outreach sessions within their vicinity. Local authorities should be required to publicise how they use their powers to deal with housing conditions. There is also an urgent need for a review of the statutory enforcement guidance issued under Part 1 of the 2004 Housing Act. There is also power to provide a direction under s.3 of the 2004 Act on how the duty on LHAs to review housing conditions should be met; such

⁴ <http://www.london.gov.uk/media/mayor-press-releases/2013/07/mayor-sets-out-next-steps-to-improve-rental-standards-for>

direction is needed as most local authorities deal only with complaints. This means the most vulnerable tenants of the worst landlords are likely to go unprotected. Staff devoted to this role, both Tenancy Relations Officers and Environmental Health Officers, are key to making this happen and ensuring it is an ongoing process.

Nonetheless, it should be acknowledged that there are huge challenges for local authorities in reaching private tenants, who often do not see their transaction with a private landlord as a local authority matter. To reach the mass market of renters, providing information in places where the large majority of rental searches take place is key. This means working with well-used property search websites to share information, for example Rightmove, Zoopla, Gumtree and Sparreroom.

Local tenants' groups can provide their own forms of outreach within communities that are less accessible to council officers, and build a reputation that can be passed on through other institutions like churches, working men's and youth clubs, colleges and local community centres. The third sector can support these efforts financially and logistically and could focus specific materials on interacting with the local authority, as Shelter currently does.

Sharing best practice can be undertaken through the appropriate forums and bodies, such as the Local Government Authority and the Local Government Information Unit and at their respective events. Local authorities in a region need to share intelligence on the worst landlords. In developing enforcement strategies, local authorities should also be obliged to consult with housing and other advice agencies and legal practices. Local authorities should be required to provide such agencies with their PRS strategy and enforcement policy, as well as information on any licensing or accreditation schemes, for instance where a landlord has been deemed not 'fit and proper'.

Question 3: What is best practice in dealing with requests for help and advice from private sector tenants and how can this be shared between local authorities?

Local authority organisation can be complex and the use of call centres to deal with complaints means that the experience of tenants is mixed, as the quality of advice and service depends upon the quality of the script. Local housing authorities within the same region need to liaise better, particularly where use is being made of the private rented sector for discharge of the main homelessness duty. There is some evidence that there is little liaison between the placing local authority and the receiving local authority on conditions and this needs to improve. In the scenario of discharging the homelessness duty, it is vital that an officer who is HHSRS-trained inspects the property before it is allocated, to ensure quality and protect vulnerable tenants.

Best practice depends on the individual authorities seeing the PRS as a priority area. However, Generation Rent strongly supports the need for proactive inspection and enforcement, so that work can be prioritised and tenants who are afraid to complain are still supported.

The Regulator's Code sees the landlord as the 'customer', overlooking the tenant, so local authorities should have a procedure for ensuring tenants who are dissatisfied with the service can complain and have their complaint examined. It is suggested that this should be independent of the department or service concerned. At the moment the only route generally available is via the Housing Ombudsman Service.

Question 4: Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?

This guidance (the only such guidance produced for landlords) was prepared and tested with landlords. It sets out the basic information on the Housing Health and Safety Rating System in that it explains what matters should be taken into account for the various hazards. It is the landlord's responsibility to ensure there are no serious hazards in the property, so it is not clear whether such guidance should include anything for tenants. Nonetheless, it was

drafted to be understood easily, so tenants could use it in its current form to decide whether any serious hazards exist in their property. A more relevant approach would be to provide information to tenants on the powers available to local authorities under Part 1 of the Housing Act 2004 and how they can get local authorities to use them. There have been problems getting the Justice's Clerks in certain areas to understand what an official complaint is and to get access to a justice of the peace so action to address this area would be helpful.

Question 5: Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?

Shelter's recent report, *Can't complain: why poor conditions prevail in private rented homes*⁵ recommends restrictions on section 21 as a policy solution to overcome retaliatory eviction and fears of eviction from tenants. We believe it is important for tenants to have this protection in place for this reason. Currently the widespread use of section 21 means that only a very small group of tenants complain to their local authorities about hazards, and where retaliatory eviction does take place, the new tenants then still have to contend with the same poor conditions. As losing a PRS tenancy is now the single biggest cause of homelessness, and a very real problem for vulnerable tenants, we believe that this is a vital measure that could help to drive up standards in the PRS and ensure that vulnerable tenants are not left to suffer their poor conditions with no way of enforcing improvements. Given that section 21 notices are already invalid where a landlord has failed to properly protect a deposit, extending the law to this area should be relatively easy.

To give context to this measure, it should be noted that if longer-term tenancies were made available to tenants (e.g. 3-5 years), then fears of retaliatory eviction would in most cases be overcome. Tenants could ask for improvements knowing that could not be evicted and that they would enjoy the benefits of an improved home for defined periods of time. Until mechanisms are brought in that can provide these longer tenancies, however, restrictions on section 21 would be valuable for driving up conditions across the sector.

Question 6: What would be an appropriate trigger point for introducing such a restriction?

We support the positions outlined in Shelter's recent report, that there should be three trigger points, dependent on the course of action taken by the local authority around hazards and disrepair. These are:

- *Renters who report poor conditions to their landlord and are subsequently served with a section 21 Notice, should have the right to appeal the eviction notice.*

In this case, proof that a report had taken place would consist of showing there are category 1 or 2 hazards in the property (as assessed by a HHSRS inspector), and that a complaint was made to the agent or landlord before the notice was served. A successful appeal would mean that a new Section 21 Notice could not be served for 6 months following.

- *An Improvement Notice or Emergency Remedial Action served by a local authority should automatically prohibit a Section 21 Notice.*

To counter fears of retaliatory eviction, landlords should not be able to serve a section 21 notice after a complaint has been made that leads to the above course of action being taken by the local authority. This prohibition should remain in place for 6 months subsequently.

⁵http://england.shelter.org.uk/data/assets/pdf/file/0004/763087/6430_04_9_Million_Renters_Policy_Report_Proof_6_opt.pdf

- *A Hazard Awareness Notice served by the local authority should also automatically prohibit a Section 21 Notice from being served.*

Where local authorities have served such a notice, as an alternative to an Improvement Notice, then issuing a Section 21 Notice should be prohibited for 6 months. If the Section 21 Notice is served prior to the Hazard Awareness Notice, it should be treated as invalid.

Taken together, these proposals would mean that landlords would not be able to immediately respond to conditions complaints by issuing a section 21. Furthermore, renters would be reassured that they could complain, and the council take action, without facing eviction, so many problems would be highlighted earlier. There would be a break clause within the 6 month prohibition stated above for landlords who could prove that they were selling the property.

Question 7: How could we prevent spurious or vexatious complaints?

As outlined in the policy above, complaints themselves would not automatically trigger restrictions on section 21 notices – it would be necessary for the local authority to have recognised and taken some form of action around hazards for this trigger to apply. Therefore, there would be little incentive for tenants to bring spurious complaints, which would not provide them with greater security or delay section 21 proceedings.

Currently very few tenants complain to local authorities about their conditions in any case. There should certainly be appropriate resourcing in place to ensure local authorities can inspect hazards appropriately but they should have the resources in place to manage an uplift in complaints anyway if this policy is enacted.

The First-tier Tribunal (Property Chamber) is the obvious place to deal with any vexatious complaints. The important thing however is that the person undertaking the hazards inspection is competent and certificated accordingly. Many inspection officers who had benefited from free training for local authority officers before the Housing Act came into force have now left local government, leading to a current skills shortage in this area.

Question 8: Do you think Government should introduce Rent Repayment Orders where a landlord has been convicted of illegally evicting a tenant?

Rent Repayment Orders are a powerful tool to act as a deterrent for landlords who would consider illegally evicting tenants, as well as providing redress and justice for tenants who have to undergo these often-traumatic ordeals. Rent Repayment Orders make it more likely that tenants will pursue complaints after eviction and therefore mean more illegal landlords are targeted and ultimately forced out of the sector. Pursuing such complaints needs resourcing and this remains vital for enforcement of any kind. There is not currently any detailed research on how rent repayment orders work for unlicensed HMOs and this research should be part of a process to find out the best way to implement Rent Repayment Orders for illegal eviction.

Rent repayment orders are only infrequently used by local authorities and even less regularly by renters, who are often unaware of them and also require a high burden of proof – conviction for failing to license a property – in order to pursue them. More action should be taken by local authorities, though their environmental health teams, to provide information to tenants when they carry out inspections or works and when they serve notices.

Question 9: Should this be in addition to, or instead of, any damages the tenant may have received, or action taken by the local authority, for example a prohibition on renting out the property?

Illegal eviction is a very serious offence that is also easily avoided. Those who undertake it show no regard for the rule of law or the welfare of their tenants. It seems appropriate therefore that a Rent Repayment Order should exist in addition to any further action taken by the local authority or tenant. Prohibiting the renting out of property is problematic in that it limits the supply of housing in the private rented sector with no process to ensure that property can later be used for privately rented housing again. Furthermore, a prohibition order does not provide material compensation for the wronged tenant, so these should certainly exist alongside each other, rather than as alternatives.

Question 11: Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?

For rent repayment orders to work, they need to be enforced to make it worthwhile for tenants to take forward complaints and to provide a genuine deterrent to landlords who are willing to break the law. Making Rent Repayment Orders automatic after illegal eviction would achieve this and would mean that monitoring and evaluation of their efficacy would be easier. Furthermore, they would allow local authorities to budget their enforcement actions more certainly and mean that there would be guaranteed redress after an illegal eviction. It should be noted that in this instance a conviction would have to take place, as this is the only way to determine that the eviction was unlawful.

Question 12: Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?

Rent Repayment Orders can act as a serious deterrent to those landlords who rent out poorly maintained properties, as well as providing appropriate compensation for tenants living in those conditions. However, the linking of Rent Repayment Orders to the presence of serious hazards needs to begin with understanding how a serious hazard is identified. Until a property has been inspected, it would not be appropriate to suggest a Rent Repayment Order. Perceptions of risk are notoriously difficult and without advice it would be difficult for tenants. It would however be reasonable for a Rent Repayment Order to be available where the landlord has failed to undertake the works set out in the action taken after the local authority has undertaken inspection including a Hazard Awareness Notice.

Question 13: What should the trigger point be?

If the trigger point depended on successful prosecution by the LHA for failure to comply with an Improvement Notice, that would not allow a Rent Repayment Order to be made in many instances where there are serious hazards. The making of the Rent Repayment Order should not be dependent on the local authority prosecuting the landlord successfully, although such a prosecution could be evidence to justify the making of the Rent Repayment Order.

Rent Repayment Orders should be available where the property has been let in breach of a Prohibition Order or where an Improvement Notice has not been complied with (that is, has not been revoked). It should not be necessary for the local authority to have prosecuted the landlord for the offence, unlike in cases of HMO licensing. This provision should be in addition to any compensation although it would be open to the Courts (or First-tier Tribunal) to take into account any compensation awarded or the Rent Repayment Order made when deciding on the other.

A Rent Repayment Order cannot be justified merely where an Improvement Notice has been served as no offence has been committed and one of the problems already is that ‘formal’ Improvement Notices are seen as a heavy approach by both landlords and LHAs, although they are not. Making a Rent Repayment Order available just because a notice has been served would make that attitude worse. It should be sufficient that the landlord should not be able to evict a tenant, as suggested above.

Where there is Housing Benefit being paid, sufficient grounds for a Rent Repayment Order would be the identification of serious hazards by the LHA, followed by non-compliance with the notices or order by the landlord, as now happens under HMO licensing. It should be the same standard as applies to tenants, with non-compliance rather than prosecution being sufficient, as the LHA may have chosen to carry out work in default as it is entitled to do, and not prosecuted.

Question 14: Should a Rent Repayment Order be in addition to, or instead of, any damages that the tenant may also be awarded, or other action taken by the local authority, for example a prohibition on renting out the property?

The power to make a Prohibition Order already exists and it is a matter for the LHA whether that is the best approach for dealing with the risks. It seems unnecessary to introduce another approach to prohibition, but underlines why the Enforcement Guidance should be reviewed.

A different approach, involving licensing or registration of all landlords, would mean that people who should not be involved in the business would not be fit and proper and they could be prohibited from being landlords. Within the current licensing model, there should be a national register of all those people who have been found not “Fit and Proper” by any LHA and LHAs should be able to access that.

Given that in many cases the tenant could be in receipt of Housing Benefit (or Universal Credit), any Rent Repayment Order will be aimed at recovering that benefit paid, though it will have been the tenant who suffered as a consequence of the existence of hazards and breach of the LHA’s notice or order, so any claim for damages should be in addition to the Rent Repayment Order. It would be for the Court or First-tier tribunal to decide whether the existence of the Rent Repayment Order should lead to a reduction in damages. Given that any action for damages might be under different legislation, such as the Landlord and Tenant Act 1985 where some deficiencies are matters of disrepair, as well as the limitations on legal aid, it would be not be right or equitable to have damages and Rent Repayment Orders as alternatives to each other.

Question 15: Is there a need to review the sanctions currently available to local authorities when dealing with less serious housing condition breaches?

Rather than reviewing current sanctions, there is instead a need to look at the drafting of the legislation, particularly to address how hazards should be addressed in HMOs that meet the standard test. Local authorities can use the Hazard Awareness Notice where there are less serious hazards or the landlord is agreeable to the remedial action. As for sanctions, the local authority has the choice whether to prosecute or not, or to caution the landlord so there is no need to review the sanctions available. The only possible additional route would be fixed penalty notices but there seems to be little purpose in them in this context. The bigger problem facing tenants and indeed landlords is the failure of many local authorities to use the powers that are available, which is also often a due to a lack of resources.

Question 15: Should private sector landlords be required to install, and maintain, smoke alarms in their properties, or would a non-regulatory approach to encourage greater take-up be a better option?

As the consultation identifies, 18% of PRS homes are still without even one smoke alarm, despite strong efforts put into non-regulatory approaches over the last twenty years. Indeed, all homes built since 1992 are required to install and maintain smoke alarms, so this measure is already mandatory across much of the private rented sector. Nonetheless, there were still 211 deaths from fires in 2012-2013 and it is clear that smoke alarms greatly reduce the likelihood of fire deaths.

It should also be noted that the absence of smoke and or heat detectors with alarms is a deficiency that affects the likelihood and outcome of the hazard of fire under the Housing Health and Safety Rating System, so local authority surveyors or enforcement officers could take this into account now. It is also referred to in the guidance for landlords and property-related professionals so there is no reasonable excuse for the lack of them in so many homes.

DCLG have identified the minimal cost to landlords (£5-£25) of this measure and this indicates it is both an inexpensive and non-onerous requirement, and would make fire safety measures consistent across the private rented sector. This should be a quick and easy measure to bring all of the private rented sector stock up to safe standards almost immediately, rather than waiting many more years with the attendant risk to life.

Question 16: Should private sector landlords be required to install, and maintain, carbon monoxide alarms in their properties or would a non-regulatory approach be a better option?

The consultation paper identifies the low cost of installing a carbon monoxide alarm as well as the deaths and injuries caused each year by carbon monoxide poisoning. There is only a small minority of households in the private rented sector with carbon monoxide alarms and to make a large difference to this, compulsory installation is required. Although landlords within the industry will take forward best practice voluntarily, the fact that the numbers of homes without alarms is so high points the fact that voluntarism cannot solve this problem in its entirety. To protect private sector tenants, particularly those who are vulnerable, it is necessary to ensure carbon monoxide alarms are installed across the private rented sector as soon as possible.

Question 17: Does the Landlord & Tenant Act 1985 cover the right areas, or should it be broadened to cover other issues?

The 1985 Act has one major failing in that sections 8 and 10 refer to the pre 1989 standard of fitness. It would be sensible for section 8 to refer to implied terms as to no serious hazards, and remove the outdated rent limits while section 10 should refer to the Housing Health and Safety Rating System and the relevant SI. This should apply to more than just Category 1 hazards, perhaps changing the obligation on landlords not to have hazards in Bands A-D. The risks even in Band D are substantially greater than in the housing stock as a whole and the deficiencies will be apparent, so it is not unduly strict.

The repairing obligation in section 11 applies specifically to repair (and working order) of exterior and structure and specific amenities. Disrepair has a specific meaning as set out in Case Law, but many hazards arise for reasons other than disrepair. If sections 8 and 10 were amended as suggested then section 11 could remain as a specific matter of disrepair and the claim would be limited to those matters only. Given that the Housing Health and Safety Rating System is mentioned in the context of guidance on the scope of public funding under LASPO 2012 and risk, then it would make sense to make the amendments suggested above.

As the Law Commission has previously recommended, it would make sense for disrepair claims and indeed those under section 4 of the Defective Premises Act 1972 to be dealt with by the First-tier Tribunal (Property Chamber).

Question 18: Do you think that the current approach strikes the right balance or should there be a statutory requirement on landlords to have electrical installations regularly checked?

1,000 people are seriously injured every day and one person killed each week by electricity in the home. Of these, tenants in the private rented sector are disproportionately affected, receiving 20% of electric shocks despite making up 16% of the UK population.⁶ Annual mandatory testing of gas installations is already in place so the lack of similar provisions for electricity is a gap in the law. Furthermore, the Electrical Safety Council found that 78% of the public supported mandatory electrical testing within the private rented sector.⁷

Landlords have an obligation to keep in repair and working order the installations in the dwelling for the supply of water, gas, electricity and sanitation (s.11) but that does not mean they do, and it is for the tenant to litigate to ensure the obligation is met.

Landlords of HMOs already have a legal duty to inspect electrical installations every five years, and this model should be applied across the entirety of the private rented sector, with the inclusion of inspection of electrical equipment, which cause 17,000 fires per year, according to the Electrical Safety Council.⁸

There is therefore a clear case to introduce a statutory requirement on landlords to have electrical installations regularly checked and tenants to be made aware of their conditions. This should take the form of:

- a)** New legislation to make appropriate periodic inspection and testing of electrical installations and appliances compulsory in all types of private rented homes in accordance with the IET Guidance Note 3: Inspection and Testing: BS7671 2008 (6th Edition) and the IET Code of Practice for In-Service Inspection and Testing of Electrical Equipment (4th edition, 2012).
- b)** A legal requirement to provide tenants with full copies of all inspection and testing reports free of charge and information on Residual Current Device protection in properties. This could form part of a tenancy agreement or tenant information pack.

Landlords should also be encouraged and incentivised (e.g. via tax incentives and grants) by Government to upgrade to modern consumer units with Residual Current Device (RCD) (costing less than £100 plus installation) protection and to provide plug-in RCDs (around £10 each) for appliances, particularly any likely to be used outside. In addition landlords should be encouraged and incentivised by Government to have annual routine check reports (and on a change of tenant) conducted in accordance with IET BS7671 Guidance Note 3 (6th Edition).

Question 19: How effective is voluntary accreditation as a way of driving up standards?

There is very little evidence to suggest that voluntary accreditation drives up standards. Uptake of the various accreditation schemes, run by landlords groups and local authorities, is low and the numbers that are accredited only amount to a very small percentage of the sector as a whole. Furthermore, there is currently no evidence to suggest that the existence of these schemes causes other landlords to follow those who are accredited. Rather, the primary relationship that most landlords concentrate on is not with their peers but with their tenants.

⁶ <http://www.esc.org.uk/industry/news-and-campaigns/press-releases/press-releases-archive/news/article/confusion-between-landlords-and-tenants-exposes-millions-to-serious-electrical-dangers/>

⁷ <http://www.cieh.org/ehn/ehn3.aspx?id=36058>

⁸ ESC Core Data Set, derived from GB-wide DCLG fire statistics, available at <http://www.esc.org.uk/industry/policies-and-research/statistics/>

With regards to the relationship between renters and landlords, accreditation does not generally influence the choices that renters make, and therefore means they do not assert their consumer power against certain landlords in the way they might in other industries and with other products. Choosing a property to rent is not analogous to other consumer choices for a number of reasons. First, it is demand-driven, even when there is an adequate housing supply, in that everyone needs a home so renters remain in a weaker position, even when choosing between multiple properties. This is further exacerbated in the current market where there is a massive shortfall of housing across the country. Secondly, it is a longer-term commitment that is made on an infrequent basis by individuals, so trends in consumer choice are less apparent and will affect the market more gradually. Third, there are too many other factors outside of the status of a landlord that influence renter choice, such as price, size of property, proximity to infrastructure (schools, shops, transport), type of area, proximity to friends and family and so on.

Leaving aside these fundamental issues, the practical functioning of accreditation schemes is currently problematic. The content and type of accreditation scheme varies so much nationally that there is no consistency and agreed model of what a 'good' landlord is; many schemes approximate the legal minimum in terms of landlord responsibilities. Without consistency of standards across local authorities, private renters cannot make informed choices, even about the minimal number of landlords who are accredited.

For government, accreditation would be an improvement on the current situation if every local authority was required to recognise at least one accreditation scheme within its boundary (not necessarily one operated by itself). Nonetheless, voluntary accreditation only really improves standards when the market or specific sector of the market has an oversupply or there are other issues, e.g. the student market, and this enables landlords to ensure a steady income stream. In the present market it will not work to improve standards unless it were to be seen as a way of reducing local authority intervention, but given the current level of local authority interventions, that is not much incentive either. From a local authority perspective it is a way of sorting the more responsible landlords from the rest, and for setting priorities, but the worst or non-accredited landlords and their properties would still have to be found.

The Law Commission proposed the enforced self-regulation approach. It was recommended to impose a legal requirement on landlords and/or agents to join either a professional association or accreditation scheme. Landlords and agents would be able to choose which association or scheme to join. Landlords would not personally have to be members of a professional association or accreditation scheme so long as they used a letting agent who was a member of an association or scheme. Within the terms of accreditation, that seems a much better approach.

Question 20: Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?

The burdens placed on landlords by selective licensing are overstated and such schemes do not need further restrictions on their use, which already exist within relatively narrow parameters. The typical cost of licensing to a landlord, dependent on local authority, is £50-100 per annum and a license can be gained through a simple and timely application process. It is inevitable in any kind of licensing scheme that some good landlords will already be compliant with the law and their obligations but for these schemes to work, it is necessary that they cover everyone in a particular area, to provide transparency on the market, give reassurance to tenants and allow local authorities to focus their enforcement efforts on those bad landlords operating without licenses.

Any potential burden comes from the drafting of the legislation and the bureaucracy involved, not the principle of licensing. It would be less burdensome with a better drafted licensing regime, which can be redrawn once the licensing regime was in place. It would also be fairer to tenants and landlords alike if more local authorities used additional or selective licensing as appropriate.

Question 21: Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?

For licensing to fully work, coverage needs to be universal so that local authorities can focus their efforts on those unlicensed landlords. This is by far the most practical and cost-effective way to ensure rogue and illegal activity is actually captured, rather than relying on complaints-driven procedures or exploratory enforcement to try to find landlords in the first place. A scheme that attempted to focus solely on rogue landlords would immediately face the problem of how to identify them, a process which would be resource intensive for any local authority.

The licensing framework as drafted is unnecessarily complex, but rogue landlords will still try to keep below the radar, regardless of how simple licensing is. Licensing itself is a means of excluding rogue or bad landlords, stretching from those who are actively criminal to those who harm their tenants through ignorance or inability to manage a property.

A more effective alternative would be a national licensing or registration regime for all private landlords, linked to already existing local authority schemes. A simple system that also allowed for landlords to be struck off a register would be a better approach for dealing with the worst landlords. The problem with the licensing regime as currently drafted is that it is not clear whether it is focused on management issues, or the physical condition of the property. Any system is dependent upon proper policing and effective sanctions to maintain quality. Given the level of rents and income landlords receive, the costs of such a scheme would not be unreasonable to lead to a better-regulated private rented sector.

A comparison with Scotland on the percentage of revocations or refusals seems slightly spurious. A figure of 0.5% in England would mean of the order of 20,000 revocations and refusals, which would send out an important signal.

Question 23: Do you think the methodology that underpins the Housing Health and Safety Rating System and/or the accompanying operational guidance need to be updated?

The methodology is sound and was well tested before being incorporated into legislation. The soundness of the methodology can be gauged by its adoption by the US Department of Housing & Urban Development, although they call it the Healthy Homes Rating System.⁹ This adoption also illustrates the point that the statistics in the guidance are not essential for the methodology to be an effective way of assessing risks. As a risk assessment approach, it is more in keeping with better regulation than the HMO licensing provisions. As has been said previously, the Enforcement Guidance is in greater need of revision.

The Operating Guidance may need to be reviewed and revised slightly in light of experience and decisions in the RPT/First-tier Tribunal and Upper Tribunal. It could also be updated to provide advice on how to gather local data to enable local averages for the likelihood and spread of harm for hazards to be developed. It should be noted that although questions are often raised about updating the statistics, these are not essential for the methodology but are merely to set the context.

An area in which the HHSRS could be more widely used is in recommending energy efficiency improvements for homes that contain the level one hazard 'excess cold' (which is the most common category 1 hazard). How 'excess cold' is defined has never been fully clarified by DCLG for local authorities. By linking this definition to energy performance certificates (i.e. by making the lowest energy efficiency ratings part of the definition of 'excess cold'), energy efficiency could be driven up in the PRS and the rating system for this kind of hazard would be clarified, freeing up local authority resources.

⁹ See http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/hhrs