



Department for  
Communities and  
Local Government

# Review of Property Conditions in the Private Rented Sector

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Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000

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# Property conditions review

## Introduction

The private rented sector is an important and growing part of our housing market, housing 3.8 million households in England. The quality of privately rented housing has improved rapidly over the past decade.

The overwhelming majority of landlords are reputable and provide decent well maintained homes. This is demonstrated by high levels of satisfaction with 83% of tenants happy with the service they receive from their landlord<sup>1</sup>. We want to support these landlords to continue to provide a good service and a safe home for their tenants. The Government is keen not to impose further regulation on these good landlords. Unnecessary regulation increases costs and red tape for landlords, and can stifle investment. It also pushes up rents and reduces the amount of choice and supply for tenants. We believe that non-regulatory alternatives, e.g. incentives or peer pressure, can be as effective as regulation.

Good landlords, who are approachable and offer help and support, can have an incredibly positive impact on their tenants, including on some of the more vulnerable members of our society who have turned to the private rented sector to meet their housing needs.

However, there is a small proportion of landlords who neglect their properties and exploit their tenants. While good landlords can have an extremely positive impact on the lives of their tenants, the small minority of bad landlords can have an equally negative impact. These rogue landlords give the whole sector a bad name. We are determined to crack down on them, so that they either improve the service they provide or leave the sector. We are already doing this. We have provided over £4m to a number of local authorities who bid for funds to help them tackle acute and complex problems with the small minority of rogue landlords in their area. This money will be used to build on the Government's ongoing success in tackling 'beds in sheds'. Backed by £2.6 million government funding, this initiative has resulted in the discovery of more than 900 illegally rented outbuildings and overcrowded homes since 2011. Action is now being taken against the owners.

We are also tackling the small minority of letting agents who provide a poor service and engage in unacceptable practices. Letting agents are already subject to consumer protection legislation and where agents are in breach of this legislation, such as by charging unfair fees, action can be taken against them by trading standards who have civil and criminal enforcement powers. While the recent ruling from the Advertising Standards Authority means that all non-optional lettings agent's fees should be prominently included in advertisements for rental properties.

The Government wants to strengthen the hand of consumers in cases like these. That is why, as part of the Enterprise and Regulatory Reform Act 2013, we have introduced new legislation which will require all letting and managing agents in England to belong to an

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approved redress scheme. This will offer a clear route for landlords and tenants to pursue complaints; weed out the agents that give the whole sector a bad name, and drive up standards.

The main objective of this discussion paper is to consider what more can be done and how best to tackle bad landlords without negatively impacting on the good ones. The Government announced a package of measures on 16 October to help ensure that tenants get a good deal when they rent a home. The measures included a commitment to undertake a review into property conditions in the private rented sector.

This discussion document is the first stage of the review. We have set out the issues that the review will cover and are inviting comments. To stimulate debate, we have sought to ask open questions. The document does not recommend any policy or legal changes and the inclusion of particular issues or questions in the document should not be taken to imply that Government has decided to introduce any new requirements on the sector.

The closing date for responses is **28 March 2014**. All responses will be carefully considered.

Responses should be sent to: [PRSReview@communities.gsi.gov.uk](mailto:PRSReview@communities.gsi.gov.uk)

# Section 1: Property conditions review

## Rights and responsibilities of tenants and landlords

### Property conditions

1. This section is concerned with the rights and responsibilities of tenants and landlords in respect of the condition of the property. The quality of privately rented housing has improved rapidly over the past decade, and levels of satisfaction compare well to other tenures. According to the English Housing Survey 2010-11 Household Report, over 83% of private tenants are very or fairly satisfied with their accommodation. The survey also found that over 71% of private tenants are satisfied with the way their landlord carries out repairs and maintenance. The powers available to local authorities are wide-ranging and we encourage them to use those powers where appropriate. Amongst other things, they can require landlords to repair properties that are in a hazardous condition, introduce licensing schemes, and take over the management of poorly managed licensable properties.
2. However, a small minority of properties in the sector are in poor condition. Tenants have a right to live in safe and well maintained homes. They do not always understand the standards that they should expect with regard, for example, to issues such as safety, excess heat and cold, pollutants, protection against infections and accidents, and their right to expect that any necessary repairs are carried out promptly.
3. The Government published a draft Tenants' Charter in October. The Charter aims to help the more than nine million people who live in the private rented sector in England have a better understanding of what they can expect and, if something goes wrong, where to go for help.
4. The vast majority of private sector landlords provide decent accommodation that is free from hazards to health. It should go without saying that tenants have a right to expect that their landlord will be aware of, and comply with, the law.
5. However, there is unfortunately a small minority of landlords that are not always aware of the various legal requirements with which they must comply. One of the objectives of the private rented sector Task Force we created is to improve professionalism across the industry and the creation of more purpose built, professionally managed rented properties will help us achieve this.
6. In addition to situations where landlords rent out substandard accommodation because they are unaware of their responsibilities, there is a smaller sub-set of landlords who deliberately rent out unsafe, overcrowded and frequently squalid accommodation. This group of landlords – rogue landlords – are fully aware of their legal duties but deliberately flout them. The vast majority of landlords do not fall into that category but we will pursue those that do and require them to either improve or leave the sector.

**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?

7. Local authorities have an important role to play in helping ensure that privately rented properties in their area are of a good standard, in addition to raising tenant and landlord awareness of their rights and responsibilities. Where a tenant has concerns about the condition of their property, they may not know that they can obtain appropriate help and advice from their local authority. Even where they do know that the local authority has a legitimate role, they may not know what to expect from the authority in terms of likely response times and the action that will be taken. We are taking action to address this through the Tenants' Charter but we would welcome views on whether there is more that could be done to raise awareness.

**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

8. There is some anecdotal evidence to suggest that the response from local authorities when approached by private sector tenants can be variable, thereby creating additional uncertainty. It is clearly unacceptable for a local authority not to respond to complaints at all. They will, of course, want to prioritise requests for assistance so one possibility might be for local authorities to publish details of the response times to which they work, in accordance with the seriousness of the complaint. They could also make clear what tenants can do next if they are unhappy with the way in which the local authority has dealt with their query.

**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?

9. Where a tenant has complained to their local authority that the property, in their view, contains hazards to their health and which the landlord has failed to rectify, the authority will normally carry out an assessment of the property. This involves using a standard methodology – the Housing Health and Safety Rating System – which provides an objective assessment of the extent to which a property contains hazards and the likelihood of harm occurring to the occupier(s) as a result. This is underpinned by operational<sup>2</sup> and enforcement<sup>3</sup> guidance for local authorities. Guidance for landlords and property related professionals is also available<sup>4</sup> However, many

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<sup>2</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/15810/142631.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/142631.pdf)

<sup>3</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7853/safetyratingsystem.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf)

<sup>4</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/9425/150940.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf)

landlords and tenants do not understand how the system works or how an assessment is produced. While the Tenants' Charter will help to increase overall awareness and understanding, there may be some benefit in having the guidance for landlords updated and possibly widened to include information for tenants on the hazards that they should look out for in a property.

**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?

# Section 2: Property conditions review

## Retaliatory eviction

10. There is anecdotal evidence to suggest that some tenants are concerned that if they request a repair or improvement to the property, their landlord will decide that the easiest course of action is to simply evict the tenant, rather than carrying out the repair or improvement. Responding to a request for a repair to be carried out by issuing a possession notice under section 21 of the Housing Act 1988 is known as 'retaliatory' eviction'. Of course, no reputable landlord would respond in this way to a reasonable request for repairs or improvements.
11. While such behaviour is likely to be relatively rare, and will be limited to rogue landlords, even the fear of being served with such a notice can act as a powerful disincentive to tenants, deterring them from asking their landlord to carry out a repair or improvement. However, most landlords will want to know whether a repair is needed, and if so, to have the problem fixed so that it does not deteriorate further to the detriment of their property. It is recognised that there will be incidences of tenants making repeated repair requests which are not merited but this can normally be addressed through a professional approach to property management.
12. It is clearly unacceptable that a tenant should feel that they cannot request a repair because they are afraid they might be evicted as a result. In such cases, the tenant will be in the unsatisfactory position of either having to continue renting a property that is in need of repair, make the repair themselves, or having to move and find alternative accommodation, with consequent costs and disruption. Sometimes the property is subsequently re-let without the repairs having been carried out.

## Tackling retaliatory eviction

13. One way of helping to reduce retaliatory evictions may be to introduce restrictions on the use of the section 21 possession procedure by the landlord in certain situations. For example, a restriction could be brought in providing that a section 21 possession notice has no legal force where repairs or improvements have not been carried out to a property. Such a restriction would not have any impact on reputable landlords as they will want to keep their properties in good repair.
14. There are precedents for placing restrictions on the issuing of section 21 notices. Currently, a section 21 notice has no legal force where:
  - a landlord or letting agent has not put the tenant's deposit in an approved tenancy deposit scheme;
  - the landlord fails to license the property where legally it should have been licensed.

15. Any change would require very careful consideration as to when the trigger point should be for the introduction of a restriction on these lines and whether it should only apply to more serious cases of disrepair (e.g. where a category 1 hazard under the Housing Health and Safety Rating System has been identified).
16. We would also need to carefully consider how to prevent spurious or vexatious complaints being made by tenants as a way of preventing landlords from regaining possession using section 21. This may suggest that the trigger point for such a restriction should be following a local authority inspection or even later in the enforcement process. Placing restrictions on the ability of a landlord to issue or rely on a possession notice under section 21 would not, however, prevent the landlord from seeking possession on other grounds where these can be made out. Section 8 of the Housing Act 1988 provides that a landlord may seek possession on a number of grounds, for example, where a tenant is more than 8 weeks in arrears on their rent. None of the landlord's rights under section 8 would be affected by any restriction on using section 21.

**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?

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

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

## Section 3: Property conditions review

### Illegal evictions and hazards in the home: rent repayment orders

#### Illegal eviction

17. This section is concerned with illegal evictions covered by the Protection from Eviction Act 1977. An illegal eviction occurs when a landlord forces a tenant to leave their home without following the correct legal procedure, which generally includes serving a possession notice and obtaining a court order. It may also involve harassment of the tenant accompanied by threatened or actual violence. This behaviour is not widespread and is normally associated with rogue landlord activity. Illegal eviction is a criminal offence under the Protection from Eviction Act 1977 and is punishable with up to 2 years imprisonment, or a fine, or both. We will produce guidance for public sector authorities on their role in supporting tenants who find themselves being threatened with, or are the victims of, illegal eviction.

#### Rent Repayment Orders

18. While illegal evictions are relatively rare, when they do occur, they can be a frightening and traumatic experience for tenants. We are inviting views on what further steps we should consider taking to minimise the incidence of illegal eviction. One option could be to give the courts power to impose a Rent Repayment Order where a tenant has been illegally evicted and the landlord found guilty of a criminal offence under the Protection from Eviction Act 1977. This may be in addition to any damages that the tenant may receive and any criminal penalty imposed on the landlord.

19. A Rent Repayment Order is an order by a First Tier Tribunal requiring a landlord to repay some or all of any rent they have received. Where Housing Benefit has been received, then a tribunal can order repayment of the money to the local authority. Rent Repayment Orders are currently only available in situations where a landlord has failed to license a property which legally should have been licensed or has not put the deposit in an approved tenancy deposit scheme.

20. Extending Rent Repayment Orders to incidences of illegal eviction would provide some degree of financial recompense to the tenant where they have paid rent. It would also act as a strong additional deterrent to the small minority of landlords who may be considering ignoring the correct legal procedures and evicting a tenant illegally.

21. An alternative to a Rent Repayment Order could be to consider permitting a local authority to prohibit the property being rented out on the grounds that by illegally evicting their tenant, the landlord had demonstrated they should not be involved in the business of renting out property.

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

**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?

**Question 10:** Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?

## **Rent Repayment Orders where a property contains serious hazards**

22. As part of the package announced on 16 October, we stated that we would consider the scope for extending Rent Repayment Orders where a property has serious hazards. This could be done by providing that where a landlord is found to have rented out a property that contains serious hazards, they may be made subject to a Rent Repayment Order.
23. Landlords are already liable to pay a heavy fine if they rent out a property containing serious hazards to health and fail to comply with notices issued by the local authority requiring improvements to be made. However Rent Repayment Orders would provide the hard-working tenant with money back if they have been living in sub-standard accommodation.
24. If it was decided to introduce Rent Repayment Orders where a property contains serious hazards, we would need to carefully consider when the trigger point should be for the introduction of such an Order. Options include failing to comply with an improvement notice or following successful prosecution in the magistrates' court. It would need to be decided whether such an Order should only apply to more serious cases of disrepair (e.g. serious hazards under the Housing Health and Safety Rating System). In doing so, we could also consider whether there is a need to review the sanctions currently available to local authorities when dealing with less serious housing condition breaches (for example, Category 2 hazards under the Housing Health and Safety Rating System).
25. It would also be important to put safeguards in place to prevent spurious or vexatious complaints been made by tenants as a way of attempting to unfairly benefit from a Rent Repayment Order
26. An alternative to a Rent Repayment Order could be to consider permitting a local authority to prohibit the property being rented out on the grounds that as they had let a property which contained hazards, the landlord should not be involved in the business of renting out property.

**Question 11:** Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?

**Question 12:** What should the trigger point be?

**Question 13:** 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?

**Question 14:** Is there a need to review the sanctions currently available to local authorities when dealing with less serious housing condition breaches?

# Section 4: Property conditions review

## Safety conditions

27. This section of the discussion paper sets out some of the issues relating to property conditions and safety that the review will cover and invites views. As with the previous section, the issues that are raised here are intended to prompt debate and the inclusion of particular questions or issues should not be taken to imply that the Government intends to introduce any policy or legislative changes.

### Smoke alarms

28. Building Regulations require the provision of smoke alarms in all new dwellings but at present, landlords are not legally required to install or maintain smoke alarms in their properties<sup>5</sup>. Working smoke alarms are known to be an effective life safety device, and analysis suggests a person is at least 4 times more likely to die in a fire in the home if they do not have a working smoke alarm<sup>6</sup>. The number of properties across all tenures with a smoke alarm has increased rapidly over the past few decades - from 8% in 1988 to 74% by 2001. The latest English Housing Survey reports that 88% of all households now have at least one working smoke alarm. In the private rented sector, the rate of ownership of smoke alarms is growing at a faster rate than other tenures with 82% of properties now having at least one working smoke alarm, a figure that has increased from 62% in 2001<sup>7</sup>.

29. More generally, fire statistics show a downward trend in dwelling fire deaths and injuries in England. A non-regulatory approach to increase smoke alarm installation in the private rented sector has been deployed, including targeted national awareness activity, and direct retrofitting of smoke alarms by fire authorities and their partners. This approach has seen deaths in the home reduced by 60% in the last 30 years to 211 in 2012-13 and are now the lowest level ever recorded.

30. However, requiring the installation of smoke alarms in all privately rented homes would impose additional costs on landlords. The actual cost would depend on the type and number of alarms that had to be installed. In England, there are three main types of smoke alarms available on the market, ranging from the most basic 1-year battery alarms (retail at approx £5); 10-year battery alarms (retail at approx £15); and hard-wired (battery back-up) devices (retail at approx £25). Hard-wired detectors will also require a qualified electrician to install the device.

31. The Government has taken powers which would enable it to make regulations requiring the installation of smoke alarms in rented homes, with financial civil penalties for those

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<sup>5</sup> Except landlords of HMOs subject to mandatory licensing

<sup>6</sup> Analysis of English Housing Survey 2009-10 and GB Fire Statistics 2012/13

<sup>7</sup> English Housing Survey Home Report 2011 (published July 2013)

landlords who fail to comply. It was made clear at the time those powers were taken that Government would only regulate if, following a review of property conditions in the sector, it concluded that there was a clear need for regulation in this area and the costs of doing so were clearly outweighed by the benefits. Regulation is always a last resort and, as part of the review, we will also explore the scope for non-regulatory alternatives to promote further take-up.

**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?

### Carbon monoxide alarms

32. It is a requirement of the Building Regulations that a carbon monoxide alarm must be installed in any property when a solid fuel heating system, for example, a wood burning stove, is first installed. There is no requirement for any other property to have a carbon monoxide alarm. Carbon monoxide poisoning causes approximately 40 deaths and 200 serious injuries per year.

33. The cost of a carbon monoxide alarm starts at about £15 for the most basic model. Research by the Gas Safe Register suggests that about 15% of homes across all tenures have a carbon monoxide alarm. So introducing such a requirement could have significant financial implications for landlords. Combined smoke and carbon monoxide alarms could offer a more cost effective approach. However, this is not always a practical option as the most appropriate location for a smoke alarm may not also be the optimum place to fit a carbon monoxide alarm. As with smoke alarms, the Government has taken powers which would enable it to require landlords of rented properties to install carbon monoxide alarms. However, regulation is always a last resort. As part of the review, we will explore the scope for non-regulatory alternatives to promote voluntary take up of carbon monoxide alarms. The current powers would only be used to introduce regulations if the review into property conditions concludes that there is a clear need to do so and the benefits clearly outweigh the costs.

**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?

### Landlord & Tenant Act 1985

34. The Landlord & Tenant Act 1985 places a general duty on landlords to keep in repair the structure and exterior<sup>8</sup> of properties they rent out. It also requires them to keep in repair and proper working order, certain installations in the property<sup>9</sup>.

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<sup>8</sup> This includes drains, gutters and external pipes

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

## Inspection of electrical installations

35. Landlords are under a general legal duty to ensure that electrical installations in the property are safe and kept in good working order. The Electrical Safety Council recommends that electrical installations in rented dwellings should be checked by a qualified electrician every 5 years and that a visual inspection of electrical sockets etc should be undertaken on a change of tenancy. An inspection by an electrician will cost in the region of £100 – 150.
36. We believe the current approach strikes the right balance between ensuring that homes are safe from the risk of electrical faults and not putting an undue burden on landlords.

**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?

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<sup>9</sup> This includes installations for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas and electricity). It also includes installations for space heating and heating water.

# Section 5: Property conditions review

## Licensing of rented housing

37. The current licensing arrangements for the private rented sector were introduced to give local authorities the ability to deal with problems that may arise in connection with rented property and provides for three types of licensing:
- Mandatory licensing of larger Houses in Multiple Occupation
  - Additional licensing of smaller Houses in Multiple Occupation
  - Selective licensing of all types of private rented housing
38. Additional and selective licensing are discretionary powers. Additional licensing may be introduced by a local authority for smaller Houses in Multiple Occupation in all or part of their area where there are significant management issues or the properties are in a poor condition.
39. Selective licensing allows local authorities to license all privately rented housing in a designated area that suffers from low housing demand and/or significant anti-social behaviour. For both additional and selective licensing, local residents, landlords and tenants must be consulted prior to their introduction.
40. Last year, we contacted all local housing authorities requesting details of their practical experience of using licensing in their area, the reasons for introducing the schemes and their impact. In the case of authorities who had considered introducing licensing in their area but had decided not to do so, we asked them whether there were any particular reasons for deciding not to go down that route. Responses were received from 194 local housing authorities. A summary of responses is set out at Annex A.
41. A major drawback of licensing is that it impacts on all landlords and places additional burdens on reputable landlords who are already fully compliant with their obligations. This creates additional unnecessary costs for reputable landlords which tend to be passed on to tenants. The majority of landlords provide a good service and the Government does not want to impose unnecessary additional costs on them or tenants who may see their rents rise as landlord costs rise.
42. There is also an increased risk of putting unnecessary costs on landlords who provide a good service where the designated area is not strictly limited to the locality which is directly experiencing low housing demand and/or anti social behaviour. The Government does not support the use of licensing across an entire local authority area. Such an approach is disproportionate and unfairly penalises good landlords. Authority wide licensing is reportedly having an adverse impact on landlords' ability to obtain mortgage finance<sup>10</sup>. In addition, we believe that it goes against the policy intention of the original legislation (Housing Act 2004) which was designed to tackle problems in specific and strictly defined parts of a local authority area. One way of addressing this

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<sup>10</sup> Sunday Times article by Anna Mikhailova - Published 15 December 2013

issue may be to introduce tighter restrictions on the use of selective licensing. For example, there could be a restriction on the geographic size of a designated area or on the type of property to which the designation relates.

43. The Government does not support a nationwide licensing scheme or a national register of landlords. A national licensing scheme would be inflexible and would push up regulatory costs for landlords, ultimately increasing rents and reducing choice for tenants. A national register of landlords would be a financial burden on all landlords and cost £40m per year (excluding set up costs), with a ten year total cost of £330m at current prices. Those costs would be passed on to tenants. In addition, it is unclear what a national register would achieve. In Scotland, for example, after over five years, just 0.5% of licensed landlords have had their licence revoked or refused.
44. As an alternative to licensing, many local authorities have introduced a voluntary accreditation scheme for landlords in their area. This is an approach that we encourage. The schemes aim to raise standards by providing education and training to landlords, identifying poor practice and generally increasing levels of professionalism amongst landlords.
45. Most accreditation schemes accredit the landlord rather than the property. The conditions the landlord is required to adhere to include being a fit and proper person, signing up to a code of conduct and attending training and development courses. Other conditions include compliance with statutory conditions, meeting decent home standards, maintaining gas and electricity supplies, provision and checking of smoke alarms, and working with the council and its partners.
46. While voluntary accreditation has generally been well received by landlords and has increased landlords' awareness of their responsibilities, its impact has been fairly limited. As there is no requirement on landlords to join such schemes, accreditation tends to be taken up mainly by the reputable landlords. On the other hand, knowing which landlords are accredited may help local authorities target action against non-accredited landlords who are failing to meet their responsibilities.
47. A proposal put forward by the Department for Communities and Local Government Select Committee was to permit local authorities to introduce a licensing scheme which related to the individual landlord, rather than the property. The purpose of such an approach would be to enable local authorities to specifically target rogue landlords in their area. Such an approach would not affect the vast majority of landlords. Criteria would need to be developed to ensure that any such scheme did not inadvertently impact on reputable landlords.

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

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

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

48. In England, the planning system groups common uses of land and buildings into specific classes<sup>11</sup>. Planning legislation specifies that the change of use of land or buildings requires planning permission if it constitutes a material change of use<sup>12</sup>.
49. In the short-term letting sector this means that a person may be able to rent their residential property provided that it does not amount to a material change in use i.e. provided that a house is primarily used as a home first and short-term letting accommodation second. Local planning authorities will consider each case taking into account, for example, the amount of a property which is used as a short-term let, frequency of use, whether the property owners live in the property whilst it is used as a short term let.
50. Greater London, is subject to different rules and people are prevented from letting their property in Greater London on a short term basis<sup>13</sup>. This means that if a person were to rent a property in London for less than 90 consecutive nights it would amount to a material change of use that would require a planning application to be submitted. Local authorities in Greater London currently have discretion to take enforcement action against short-term letting whenever they consider it expedient to do so. These London provisions from the 1970s have attracted controversy more recently, such as during the recent London Olympics. The internet has also seen changing patterns in short-term lets, as new technologies are helping facilitate householders rent out their homes for short periods of time without recourse to traditional letting agencies.

**Question 22:** Should the relevant provisions of the Greater London Powers Act 1973 be reviewed or updated, does London need separate rules from the rest of England, and what comments would you have on how regulations could better support and reflect modern technology?

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<sup>11</sup> Under the Town and Country Planning (Use Classes) Order 1987 Houses are grouped into use class C3, whereas guest houses and boarding houses are grouped into use class C1.

<sup>12</sup> There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings.

<sup>13</sup> Section 25 of the Greater London Powers Act 1973 states that the "use as temporary sleeping accommodation of any residential premises in Greater London involves a material change of use of the premises and of each part thereof which is so used".

# Section 6: Property conditions review

## Housing Health & Safety Rating System

51. In section 1 of this paper, we invited views on the need for a tenant's guide to identifying hazards in their homes. The methodology which underpins the Housing Health and Safety Rating System is now several years old and we are considering whether it needs to be updated. The operational guidance was published in 2006 and may also need to be revised.

**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?

## Conclusion

52. A number of possible options on ways to improve property conditions in the private rented sector have been set out in this document. However, we recognise that there may be other options which have not been considered here. Alternative suggestions of ways to improve the sector would, therefore, be welcome.

53. All responses to this discussion paper will be carefully considered and will feed into the next stage of our review of property conditions in the sector.

# ANNEX A

## Summary of responses to information gathering exercise on licensing

1. There were 194 responses from local authorities;
  - 14 local authorities introduced a total of 23 licensing schemes since 2010, of which:
    - 9 authorities introduced 1 scheme;
    - 2 authorities introduced 2 schemes;
    - 2 authorities introduced 3 schemes;
    - 1 authority introduced 4 schemes.
  - The main reasons for introducing licensing schemes were;
    - low housing demand (3 authorities);
    - anti social behaviour (4 authorities);
    - anti social behaviour and low housing demand (7 authorities).
  - A range of conditions were attached to the licences, of which the main ones were:
    - restrictions on the use or occupation of particular parts of the property by people occupying it;
    - requirement on the licence holder to take reasonable steps to prevent or reduce anti social behaviour;
    - supply of facilities and equipment and a requirement to keep them in repair and good working order;
    - compliance with the Tenancy Deposit Scheme;
    - requirement to inform the council of changes of circumstances;
    - requirement to supply the occupiers with a signed, written statement of the terms on which they occupy it;
    - conditions relating to security, refuse and waste disposal, training and management of the property.
2. A total of 59 other local housing authorities had considered introducing licensing in their area. About 60% did not proceed, either because they felt unable to meet the criteria or there were no areas within their area which would meet the criteria. The other 40% had not proceeded either because they were in the process of gathering evidence or consulting or because they lacked the resources to do so.
3. The information gathering exercise found that 110 local authorities had introduced or supported voluntary accreditation schemes for landlords in their area. The schemes were mainly introduced to improve the condition and management of the private rented sector and to engage better with landlords.