Towards a 21st Century private rented sector

About CIH

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CIH welcomes this opportunity to contribute to the National Housing Taskforce’s work stream on the private rented sector (PRS). We have focused on the question areas which seem to be most relevant to our work rather than answering every question included in the discussion paper.

**Q1. What are your views on the growth of the PRS, and should Government policy be seeking to constrain that growth, support it, or be broadly neutral?**

The PRS has grown steadily since the early 1990s, when it housed less than 10 per cent of all households in England. It currently houses 19 per cent, more than the number who rent from a social landlord. This trend, along with a corresponding fall in levels of home ownership over the period since 2003, has been the focus of much political attention.

However we consider that overall levels of house building are more important than trends in tenure. It is widely accepted that in England we need to build around 240,000 new homes per year, but levels of house building have consistently been well short of this for several decades. The latest government figures show only 139,000 new homes completed in the last 12 months.

Government has indicated a desire to increase levels of new supply in order to better meet need in the future, setting out an ambition to complete 1 million new homes over the lifetime of this parliament. That ambition is welcome. However for it to be achievable we will need all parts of the industry to contribute – we do not consider that it will be possible to build new homes on that scale by building solely for owner occupation.

Historically few homes have been built directly for private rent, with the recent growth of the sector being driven more by the movement of existing homes between tenures. There is however some potential for this change with the establishment of a ‘build to rent’ market.

We are therefore supportive of attempts to grow the PRS, where this directly helps to increase overall levels of supply and provided that the homes being built are of a high quality and likely to be well managed.

**Standards**

**Q2. Are there better ways of ensuring that more landlords and tenants are knowledgeable of their rights and obligations and good practice?**

Along with a number of other organisations, CIH endorsed the cross-industry RICS private rented sector code which was published in 2015. The code, which is intended to promote best practice in the letting and management of PRS housing in England, is aimed at landlords and lettings and management agents. Rather than developing further guidance we think there is scope to promote the existing code more widely so that as many landlords and agents as possible are aware of it and use it.

We think there is also scope to develop information and guidance aimed specifically at tenants by reusing the material contained in the existing code.

**Q4. Do you support some form of registration, or licensing, of landlords? If so, at what level; national, or at local discretion?**

Experience of landlord registration and licensing is mixed.

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Our view is that this can be an effective way of improving standards but is perhaps best suited to high demand areas and must be supported with a strong commitment to carry out associated enforcement work.

A common criticism of registration/licensing schemes is that they place a regulatory burden on conscientious landlords, while those who act unlawfully sometimes continue to do so by evading the scheme’s attention. For this reason it is essential that landlords who do not engage with a scheme (or who do not adhere to their obligations under it) are pro-actively identified and prosecuted. This can be costly and resource intensive. However some local authorities, such as the London Borough of Newham where a borough-wide licensing scheme is in effect, have experience of doing this successfully.

In Scotland there is a national registration scheme for PRS landlords. It is administered by local authorities and includes a fit and proper person test. It runs alongside a separate licensing scheme for homes in multiple occupation (HMOs), which is similar to that also in place in England. In our view some elements of this scheme work well, but we are concerned that insufficient resources have been devoted to enforcing it and that enforcement work is still too reactive – i.e. it often relies on tenants coming forward with complaints about their landlord.

It is also worth considering the regulation of letting agents. Many part time or ‘accidental’ landlords understandably rely on high street letting agents as they themselves are not familiar with all of their legal obligations and/or lack the time, skills and knowledge to manage their properties effectively. However there is a significant body of evidence which suggests that poor practices are endemic in some parts of this industry.

There are opportunities to learn from other parts of the UK. For example, the Scottish Government intends to introduce mandatory regulation for letting agents by the end of 2017. This will be managed centrally by the Scottish Government. As with landlord registration in Scotland, letting agents will have to pass a fit and proper test but in addition, they will also have to adhere to a statutory Code of Practice (set out in regulations) and Ministers are also expected to introduce a mandatory training requirement. These additional requirements should make the scheme much more proactive than the existing landlord registration system.

We believe that in England letting agents should be regulated in the same way as estate agents.

**Q6. How could the legal requirements that landlords must follow be simplified, whilst retaining necessary protection for tenants?**

The PRS was substantially de-regulated in the 1980s, however there are still a variety of obligations with which landlords are required to comply. These include basic obligations to:

- carry out repairs
- give tenants reasonable notice when access is required
- give appropriate notice of any rent increase
- provide tenants with an Energy Performance Certificate
- place tenants’ deposits with a tenancy deposit protection scheme.

In addition there are also minimum safety standards for properties (assessed using the Housing Health and Safety Rating System) and additional requirements relating to gas safety.
Overall our view is that these arrangements are not working effectively and do not currently meet the needs of either tenants or landlords. The requirements have been introduced piecemeal over a period of time and as a result are enforced by a range of different bodies in an uncoordinated manner and inconsistent manner. They are also not widely understood by either landlords or tenants.

We recommend a complete review of the regulations to which private landlords are subject. The aim of this should be to set out a single, clearly defined set of minimum standards which are easy to understand and deliver and which ensure the protection of tenants.

Q7. Are there suggestions/innovations that you believe would help better police the sector’s standards?

A major issue here is a lack of resources for enforcement, particularly among local authorities.

Councils have powers to carry out inspections to ensure that properties are free from serious hazards and to take appropriate action where they are not, including by issuing improvement notices. However they frequently do not have the resources required to do this effectively and often can not, in practice, ensure that all rented properties in their area meet even these most basic standards.

It is vital in the future that properly resourced arrangements are put in place to enforce minimum standards and to enable action to be taken against landlords who do not adhere to them.

We also consider that regulation of letting agents would help to improve standards in the sector.

Q10. Should co-regulation be used more and if so, what is stopping that happening?

We consider that there is potential for co-regulation to help drive up standards in the sector and are broadly supportive of the Residential Landlords Association’s proposals to promote this approach.

We feel that a scheme which includes an element of alternative dispute resolution would greatly improve tenants’ ability to seek redress, where they have problems with their landlord. However, this will need to be designed in such a way that it doesn’t fetter tenants’ ultimate ability to go to the local authority with more serious or persistent concerns.

The most substantial obstacle to rolling out co-regulation is likely to be getting enough landlords to sign up. Local authorities’ experience of running accreditation schemes shows that this can be a challenge. In many areas the demand for rented housing greatly outstrips supply and so there is little need for landlords to seek the competitive advantage that accreditation, or co-regulation, might bring.

This problem could be addressed either by:

- making membership of a co-regulatory scheme mandatory (as is already the case for, for example, tenancy deposit schemes)
- adding an element of conditionality into landlords’ tax relief, in order to provide incentives to landlords to sign up. Our previous research into how incentives could be used to improve standards in the PRS suggests that a package of tax incentives could be offered to those landlords who are prepared to sign up to a recognised scheme. These could be applied to promote either accreditation or co-regulation.
Affordability

Q11. Do you believe there is a problem of affordability in the PRS, and if so how can it be resolved? Please give pros and cons if possible.

Although the extent of it varies considerably across different parts of the country, there is undoubtedly a problem of affordability in the PRS. Recent BBC analysis shows that the average rent of a one-bedroom property exceeds 30 per cent of the median local take-home salary in almost half of all English districts, boroughs and cities.

Of course this problem is not confined to the PRS and is symptomatic of a wider problem with the rising cost of housing across all tenures. Ultimately this will only be resolved by addressing our historic inability to build enough new homes to keep up with demand.

There is also a specific issue with the up-front costs associated with obtaining a tenancy in the PRS, which often involves paying for a credit check, letting agent fees and putting down a security deposit, as well as paying the first month’s rent in advance. In practice this can make it difficult for some people to obtain a tenancy in the first place.

Letting agents’ fees are a particular cause for concern and the industry has been heavily criticised in the past, including by a 2013 House of Commons Select Committee, for a lack of transparency around charges, for ‘drip charging’ (where fees are only revealed gradually to tenants over the course of the transaction) and for double charging (where both landlords and tenants are charged for providing the same service). Since May 2015 it has been a legal requirement that letting agents make information about their charges publically available, but it is not clear that this has resolved the problem.

We recommend an end to the practice of letting agents charging fees to tenants for their services.

Security of tenure

Q13. What are your views on current security of tenure and should it be changed?

At present PRS properties are typically let using an assured shorthold tenancy (AST) for an initial period of either six or 12 months. After this they are usually allowed to roll on until either the landlord or the tenant gives notice that they intend to end the tenancy.

It is often argued that this flexibility is one of the sector’s greatest strengths and that, in particular, young and mobile tenants benefit from the ability to move around easily to maximise their employment opportunities. It is certainly true that some tenants do value and benefit from this flexibility.

However, as the sector grows, not only is it housing a larger number of households, it is also increasingly becoming a long term tenure for many of them. For example, more than a third (36 per cent) of private renters are now families with children – so there is a growing need for some tenants to be able to access a greater level of security than is currently generally available.

A further concern lies in the growing number of people becoming homeless as the result of their ASTs ending. In England, it has been the single biggest reason for people losing their last settled home in the past year, accounting for 31 per cent of all households accepted as homeless – an increase from 13 per cent in 2008/09. The PRS is an expanding sector and this is expected to continue. At the same time as local authorities are increasingly
forced to consider options in the PRS to both help prevent homelessness but also to meet their legal obligations, the sector is producing the largest number of households entitled to homelessness assistance from councils.

The housing market, and the role and size of the PRS within it, has changed dramatically since ASTs were first introduced in the Housing Act 1988 and, arguably, this form of tenancy is no longer fit for purpose and there is some merit in exploring different options.

For example, the Scottish Government is in the process of ending no fault evictions (commonly referred to in England as section 21) through the Private Housing (Tenancies) (Scotland) Act. In future, PRS tenancies will not cover a specified period. Instead, the tenancy will only come to an end if the tenant gives notice to leave or if the landlord seeks to end the tenancy under one of 18 grounds for eviction specified in the Act. The new grounds include the landlord’s intention to sell the home or to move back into the home.

Another option might be to introduce a tenancy which lasts for a longer fixed period, along the lines of the stable rental contract proposed by Shelter, with the opportunity for a landlord to apply for possession within that fixed period if they need the property for their own possession or to sell. This approach could also include provision for an annual rent increase in line with inflation.

**Concluding remarks**

**Q19.** What are therefore the key priorities for the sector? If you were limited to one or two recommendations what would they be?

We have concerns around inconsistent levels of quality (both in terms of the physical standard of homes being let and the way in which it is managed) in the PRS as well as its affordability. There is also a growing demand from some tenants for greater security than is currently on offer.

In summary, we would recommend:

- making the statutory minimum standards to which landlords are subject clearer without reducing protection for tenants and increasing the level of resources available to enforce them
- regulating letting agents and banning them from charging fees to tenants
- developing a nationally agreed set of standards for accreditation or co-regulation, together with a package of tax incentives for landlords who sign up
- consider the potential to offer increased security for tenants.

**Q20.** Where is there consensus?

We believe that there is a high degree of agreement around the need to:

- regulate letting agents
- simplify the statutory minimum standards to which landlords are subject without reducing the level of protection for tenants
- increase the level of resources devoted to enforcement work.