

Draft briefing paper: Regulation of housing conditions in the private rented sector

Southampton City Council (SCC) Scrutiny Inquiry

18/1/2024

Dr Mark Jordan and Prof Helen Carr

Contents

Introduction	2
1. Historical development.....	2
2. The contemporary legal framework	4
2.1. The Housing Health and Safety Rating System (HHSRS).....	4
2.2. Landlords’ repairing obligation	6
2.3. Homes (fitness) for habitation	7
2.4. Retaliatory eviction	8
2.5. Gas, electric and fire safety and energy efficiency	8
2.6. Statutory Nuisance.....	9
2.7. Decent Homes Standard	9
3. Private rented housing conditions in England and in Southampton	10
4. Alternative approaches and instances of good practice.....	11
4.1. Renters Reform Bill	11
4.2. Proactive and responsive regulation by local authorities.....	11
4.3. The Good Landlord Charter	12
4.4. The Repairing Standard in Scotland	12
Conclusion.....	13
Bibliography	15
Appendix 1 29 hazards under the HHSRS	16

Introduction

In this briefing paper we describe and evaluate the law governing regulation of housing conditions in the private rented sector. There are two types of legal interventions which regulate the relationship between landlords and residential occupiers with a view to ensuring that rented housing is of an adequate standard. The first – which falls into the category of private law – is intervention in the contractual relationship between the landlord and tenant to ensure that certain terms about repair, fitness etc are contained in the contract. The second intervention, which we can categorise as public law, places the responsibility for the regulation of the condition of the property on local authorities.

There are limits on the effectiveness of both types of intervention. Private law is limited by a lack of legal aid, and available legal expertise in housing law. It is unrealistic to expect that tenants themselves will be aware of their rights and/or have the capacity to enforce them. Moreover, until the abolition of s.21 of the Housing Act 1988 if and when the Renters (Reform) Bill is implemented, the lack of security in the private rental sector is a serious impediment to taking legal action as tenants fear retaliatory eviction.¹ This also constrains public enforcement by local authorities as tenants are often reluctant to report defects or unsafe housing out of fear of retaliatory eviction or punitive rent increases.² Enforcement by local authorities is also constrained by lack of meaningful data on local housing conditions, a lack of resources and increasingly a lack of expertise in the workforce. There may also be a lack of political commitment to giving enforcement the priority it requires. Finally, the piecemeal and complex nature of the law in this area is also problematic and a significant barrier to justice.

Effective regulation of private rental housing conditions is urgently required. The private rented sector continues to have the worst conditions, and an increasing number of people are housed in the sector including the most vulnerable sections of society who tend to occupy the worst housing. Moreover, there is a desperate need to improve housing conditions for broader social goals to ensure energy efficiency and sustainability, cost effectiveness of private renting and to improve health outcomes across the population. As discussed below, local authorities have a vitally important role in regularly assessing housing conditions and taking proactive enforcement action to improve conditions.

We begin by briefly outlining the historical development of the law, drawing attention to the early public health interventions. We then outline the current legal framework governing rented housing. We describe and evaluate the Housing Health and Safety Rating System (HHSRS), the landlords repairing obligation, the fitness for human habitation obligation, retaliatory eviction provisions, specific obligations energy efficiency and around gas, electric and fire safety, statutory Nuisance and the Decent Homes Standard. We then outline some data on the problem of substandard housing conditions in the private rented sector in England and in Southampton. We conclude with a discussion of alternative approaches and instances of good practice.

1. Historical development

Intervention into housing standards started in Victorian times when it became apparent that Britain's rapid industrialisation and urbanisation had social consequences. In a political climate that was generally laissez faire, concerns about public health and market failure to provide decent housing were so serious that intervention was inevitable despite resistance from politicians and

¹ Statutory measures to prevent retaliatory eviction are discussed in section 2.4 below.

² See J Rugg and D Rhodes, *The Evolving Private Rented Sector: Its Contribution and Potential* (University of York, 2018) p 99.

property owners.³ Examples include s.12 of the Housing of the Working Classes Act 1885 which implied a term into lettings of houses a requirement that the property was fit for human habitation. The provision did not apply above a certain rental threshold and no definition was provided of fitness for human habitation. The second notable intervention was in the realm of public health. Building upon the Public Health Act 1848, which required houses to be built with access to water closets and drains, and the Public Health Act 1855 which introduced four categories of nuisance, the Public Health Act 1875 placed a duty upon local authorities to take action to abate nuisances including in relation to premises which were in such a state as to be a nuisance or injurious to health. Whilst the significance of the legislative interventions should not be underestimated, they were largely ineffective.

The complexity of the provisions, the inefficiency of local administration, the requirements for complaints from those who were least likely to complain, restrictive interpretations by the courts combined to undermine private and public law efforts to improve housing conditions. Amongst housing campaigners, the belief was that only large-scale state action to improve housing conditions would work and that meant slum clearance and council house building. Early twentieth century concerns with the creation of modern efficient cities and healthier populations facilitated legislation enabling local authorities to build housing for the working classes and to clear the slums. So, for instance the Housing and Town Planning Act 1919 (The Addison Act) subsidised council house building consolidating housing provision as part of the state's responsibility and the Housing Act 1930 required councils to prepare slum clearance plans and provided a government subsidy for local authorities to rehouse tenants.

The dominance of the belief in the primary role of the state in the provision of housing meant that there was little change in the legal framework for ensuring adequate housing in the private rented sector. The Public Health Act of 1936 provided a useful consolidation of public health provisions and s.32 of the Housing Act 1961 implied repairing obligations into tenancy agreements of seven years or less – the forerunner of s.11 of the Landlord and Tenant Act 1985 discussed below but in general the Victorian approach remained in law. The end of state provision marked by the introduction of the Right to Buy in the Housing Act 1980 and the deregulation of the private rented sector in the Housing Act 1988 replaced the belief in the state with a belief in the market as the best way of improving housing conditions.

Until the implementation of the Housing Act 2004 there was little change, other than updating and consolidating, to the law. As we have commented before, the Housing Act 2004 is part of the regulated deregulation that characterises the contemporary regulation of the private rented sector. The provisions relevant to conditions in the private rented sector are set out below.

³ For further background to Victorian concerns about housing conditions see E Gaudie (1974), *Cruel Habitations*, London: Unwin. Contemporary sources include A. Mearns (1883), *The Bitter Cry of Outcast London*, London: Review of Reviews and the Report of The Royal Commission on the Housing of the Working Classes 1885 available from [First report of Her Majesty's Commissioners for inquiring into the housing of the working classes.](#) | [Wellcome Collection](#).

2. The contemporary legal framework

2.1. The Housing Health and Safety Rating System (HHSRS)

Part 1 of the Housing Act 2004 (HA 2004) makes provision for the HHSRS which replaced the Housing Fitness Standard set out in the Housing Act 1985. The fitness standard had provided the primary method of ensuring minimum health and safety standards in housing since the early twentieth century but its prescriptive nature was considered an inappropriately blunt instrument for effective regulation of housing standards.

The HHSRS is 'a risk-based assessment tool which is used by environmental health officers to assess the risk (the likelihood and severity) of a hazard in residential housing to the health and safety of occupants or visitors that arises from deficiencies which can be design, disrepair etc. The HHSRS is tenure neutral; it can be used to assess hazards in private and social rented housing and in owner occupied housing. It has however been primarily used to improve standards in the private rented sector. The HHSRS works by placing a strategic responsibility upon local authorities to keep housing conditions under review with a view to identifying any necessary enforcement action. If a local housing authority become aware of potential hazards in residential premises, either because of its own review of housing conditions, or for any other reason, for instance a complaint by an occupier, then they are required to inspect those premises. The inspection can include the inspection and assessment of the common parts. The purpose of the inspection is to determine whether a category 1 or category 2 hazard exists. Categorising the hazards in this way introduces an element of 'triage' into decisions about taking enforcement action.

If a category 1 hazard — a serious hazard causing serious risk to life — is found following an inspection the local authority is under a duty to take enforcement action. If a category 2 hazard — that is anything other than a category 1 hazard — is found, then it has the power to act. There is a range of enforcement actions available to environmental health officers including serving an improvement notice, making a prohibition order, serving a hazard awareness notice, taking emergency remedial action, making an emergency prohibition order, making a demolition order or declaring the area in which the premises concerned are situated to be a clearance area. The most common enforcement action is service of an improvement notice. The HA 2004 enables landlords to appeal against decisions to impose improvement or prohibition notices.

The HHSRS recognises 29 types of housing hazard. Each hazard has a weighting which helps determine whether the property is rated as having a category 1 hazard or as category 2. We have attached the complete list of hazards as Appendix 1. They include damp and mould growth, excess cold and excess heat.

In 2018, following the Grenfell Tower fire, an addendum to the HHSRS operating guidance was published to provide guidance on the assessment of high-rise residential buildings with unsafe cladding. Whilst the addendum deals specifically with high rise residential buildings the guidance points out that some aspects of the addendum will be relevant for other issues relating to the exterior of a building or to other residential buildings containing flats or apartments.

Evaluation of the HHSRS

The HHSRS is a very valuable tool for the improvement of housing standards and the elimination of serious risks within people's homes. It has particular importance because rights under the Landlord and Tenant Act 1985 are dependent upon a tenant's knowledge of the law and public funding. It also allows local authorities to effectively 'triage' complaints about housing. However, there are currently several limits on its effectiveness.

First, there are concerns that the HHSRS is not fulfilling its potential. There is a lack of awareness of the HHSRS, legislative tools are not used as often as they should be, the power to take action on Category 2 hazards is not often used, there is unacceptable delay in taking action once hazards are found in premises, and, probably linked with both of these, local authorities lack sufficient resources to take full advantage of the legislative provisions.

Secondly there appears to be a lack of confidence in the HHSRS amongst stakeholders in the private rented sector. Some Environmental Health Officers in particular argue for a return to fitness standards because they see the HHSRS as subjective. What they want is a clear set of standards that everyone, landlords, tenants, and regulators can easily understand. The counter argument to this, and the reason why the HHSRS replaced fitness standards is that there is a need for professional judgment to be exercised in determining priorities for enforcement. Moreover, unlike the fitness standard, the HHSRS is underpinned by scientific and statistical data. There is also a risk that any statement of minimum standards quickly becomes a threshold with enforcement action only taking place when standards fall below those levels – minimum room sizes being an obvious example. It is worth noting however that the guidance has not been updated, other than to respond to the cladding crisis – inevitably affecting the value of the system.

Third it is unclear how deep an investigation by an environmental health officer should be. The HHSRS does not require anything more than visual inspection, dismantling and testing is not required. There appears to be a tendency for HHSRS inspections to be reactive, no doubt because of limited local authority resources.

Finally residential occupiers have very little say in the system, for instance when a complaint does not lead to any enforcement action. Tenants can however claim RROs for breach of improvement notices and prohibition orders and can use evidence of assessment under HHSRS in private law proceedings.

Reviewing and updating the HHSRS

Concerns about the HHSRS have prompted some government action. The Coalition Government conducted a review of the HHSRS which was published in March 2015. Changes to the HHSRS were rejected; instead, the Government opted to produce a lay persons guide to health and safety hazards in the home, the current version of which is *How to rent a safe home*.⁴ Measures were included in the Housing and Planning Act 2016 to strengthen the action that can be taken to tackle landlords that fail to deal with poor housing conditions which include civil penalty notices, banning orders and the extension of rent repayment orders. Further reviews of the HHSRS by the Chartered Institute of Environmental Health (2017) and the Housing, Communities and Local Government Select Committee as part of its wider inquiry into the private rented sector over 2017-18, concluded that there were grounds for updating the guidance. A further government review was undertaken in October 2018 which did consider whether to introduce minimum standards for common health and safety problems. The Ministry of Housing, Communities and Local Government commissioned RHE Global to identify the extent to which the HHSRS needed to be updated and revised including exploring the scope for setting minimum standards as part of the HHSRS framework. Following RHE Global's report the government indicated that it would improve, clarify and modernise the HHSRS assessment through:

- Reviewing and updating the current HHSRS Operating Guidance.

⁴ [How to rent a safe home - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428222/how-to-rent-a-safe-home.pdf).

- Developing a comprehensive set of Worked Examples which encompass the range of hazards, to illustrate the utilisation of standards and provide a spectrum of risks.
- Reviewing the current HHSRS assessor training, the training needs of assessors and other stakeholders and establish a HHSRS competency framework.

It also indicated that it would review the operation of the HHSRS with the aim to bring it up to date, empower landlords and tenants to engage with the system, ensure alignment with other legislative standards and systems, including the Building Safety Act, and help with the effective enforcement of housing standards. To address the support for a standards-based approach, the review also defined what have been described as ‘indicative baselines’ used to make an initial assessment of whether a property contains serious hazards, and also investigated barriers to the use of digital technology to support assessments.

In September 2023 DHLUC published its report on the key changes it intends to implement.⁵ In summary it will implement all of the recommendations set out above, including reviewing the operating guidance, updated comprehensive worked examples simpler banding of the results of HHSRS assessments and improvements to the underlying system including amalgamating and reducing the number of hazards from 29 – 21. Perhaps most significant there will be new indicative baselines set out in a checklist form that can be used to make an initial assessment. These are not designed to replace the whole risk assessment but will make the process easier to understand. DHLUC says that where these baselines are met it is likely a property will be free from category 1 hazards.

2.2. Landlords’ repairing obligation

Section 11 of the Landlord and Tenant Act 1985 (the 1985 Act), in the main a re-enactment of s.32 of the Housing Act 1961, inserts an implied covenant in tenancies with periodic tenancies or fixed term tenancies of less than seven years under which landlords are required to:

- keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes).
- keep in repair and proper working order the installations in the dwelling-house 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 or electricity); and
- keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

The 1985 Act also provides for an implied covenant on a tenant to allow the landlord (or their agent) to enter the premises to inspect the dwelling’s state of repair. The right is to enter at reasonable times of the day having given 24 hours’ notice in writing to the tenant.

Implied covenants mean that even if the tenancy agreement is silent on repairs the obligation will apply. It also means that any effort to contract out of the obligation is void.

A landlord will be in breach of Section 11 of the 1985 Act if: the disrepair falls within the landlord’s repairing covenant; the tenant has informed the landlord of the disrepair; and the landlord has failed to carry out effective repairs within a reasonable time. What is a ‘reasonable’ length of time will depend on the effect of the disrepair and the extent of the repairs needed. A tenant can take legal

⁵ For the full report see [Summary report: outcomes and next steps for the review of the Housing Health and Safety Rating System \(HHSRS\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115555/summary-report-outcomes-and-next-steps-for-the-review-of-the-housing-health-and-safety-rating-system-hhsrs-2023.pdf)

action against the landlord in the county court for breach of s.11. The court can order repairs to be done and award damages.

Evaluation of s.11 LTA 1985

Although s.11 of the LTA 1985 is probably the most effective tool available in private law to respond to poor conditions in the private rented sector it has some serious limitations. It does not apply to inherent defects and there is no obligation to make improvements so a tenant of a house without central heating cannot use the provision to make a landlord install central heating. The common law and narrow judicial interpretation of the provision has also introduced exceptions. For instance, the landlord is not liable for disrepair caused by a breach of the tenant's own duty to use the property in a "tenant-like manner" although it is not clear exactly what is required for that duty to be breached. There is no obligation to rebuild or reinstate the dwelling in the case of destruction or damage by fire, storm, flood or other inevitable accident. The landlord is not obliged to repair or maintain anything that the tenant is entitled to remove from the dwelling. Where works are necessary outside the property and the landlord cannot, despite their reasonable endeavours, obtain the necessary permission to carry out the works.

Perhaps the biggest obstacle to tenants acting against their landlord for failure to carry out repairs is that if they are assured shorthold tenants they risk of retaliatory eviction (see section 2.7)

2.3. Homes (fitness) for habitation

The Homes (Fitness for Human Habitation) Act 2018 (the 2018 Act), which came into force on 20 March 2019, amended the Landlord and Tenant Act 1985 by inserting a new section 9A into that Act. S.9A implies a covenant into all private residential tenancy agreements which are periodic or of fixed terms of seven years or less, that the property, including any common parts of the building, are fit for human habitation at the beginning of the tenancy and throughout.

Whether a property is unfit for human habitation depends upon its condition in respect of the following

- repair
- stability
- freedom from damp
- internal arrangement
- natural lighting
- ventilation
- water supply
- drainage and sanitary conditions
- facilities for preparation and cooking of food and for the disposal of waste water
- any 'prescribed hazard' - this is defined as any matter or circumstance amounting to a category 1 or 2 hazard under the HHSRS. A property will be unfit for human habitation if it is "so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition".

The same exceptions apply as to s.11. There is an overlap with the obligations under s.11 in which case a tenant can take action under both sections.

Tenants whose landlords are in breach of the implied term can take their landlords to the county court which can order the landlord to carry out repairs, put right health and safety problems and pay compensation for any damages suffered by the tenant.

Evaluation of s.9A LTA 1985

Although the introduction of a fitness for human habitation standard is important and long overdue, its significance may be as symbolic as material. Tenants may well face problems proving that their home is unfit for human habitation and the lack of expert solicitors may also prove a significant obstacle. In addition, tenants taking action under s.9A are at risk of retaliatory eviction. See section 2.4 below.

2.4. Retaliatory eviction

Assured shorthold tenants seeking repairs are at risk of retaliatory eviction. What this means is that a landlord when faced with a request for repairs, responds by serving the tenant with a s.21 no fault notice to terminate the tenancy. It is unclear how extensive retaliatory eviction is but there appears to be strong anecdotal evidence. Legal protections against retaliatory eviction were enacted in section 33 of the Deregulation Act 2015. The section prevents landlords from issuing a section 21 eviction notice within 6 months of having been served with an improvement notice by a local authority in relation to Category 1 or Category 2 hazards.

Evaluation of s.33 of the Deregulation Act 2015

The requirement that an improvement notice has to have been served leaves many tenants unprotected from retaliatory eviction. Not only do environmental health officers focus on working with landlords to remedy hazards rather than taking formal action, the 2015 Act does not provide protection where other enforcement action is used, such as civil remedies for breach of the fitness requirement or an abatement notice served in relation to a statutory nuisance.

2.5. Gas, electric and fire safety and energy efficiency

Landlords are subject to specific obligations relating to gas, electric and fire safety and energy efficiency standards.

Gas safety

'Under The Gas Safety (Installation and Use) Regulations 1998 (SI 1998/2451), landlords are responsible for the installation, maintenance and repair of gas fittings, appliances and flues. Landlords must ensure that these facilities are checked annually by a Gas Safe registered engineer, and the safety check record must be provided to the tenants. Failing to provide the tenant with valid gas safety and energy performance certificates, will prevent the landlord from using the 'no fault' ground of possession ie section 21.

Electrical safety

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (SI 2020/312) require that landlords ensure that electrical installations are inspected and tested by a qualified and competent person at least every five years. Electrical Installation Condition Reports must be provided to tenants within 28 days and to local authorities on request. Local authorities can impose a civil penalty fine of up to £30,000 on landlords who are in breach of this requirement.

Smoke and carbon monoxide alarms

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require private landlords to install a smoke alarm on every storey of the property used as rental accommodation, and a carbon monoxide alarm in any room used as living accommodation with a burning appliance for solid fuel (such as coal or wood). Landlords must ensure alarms are in working order on the first day of the tenancy and throughout the tenancy. Local authorities can issue remedial notices and fines of up to £5,000 for non-compliance.

Energy efficiency

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015/962) (as amended) established a minimum level of energy efficiency of Energy Performance Certificate (EPC) Band E for domestic private rented property in England and Wales. Where a local authority considers a landlord has failed to fulfil their obligations in this area, they can serve the landlord with a compliance notice. If a breach is confirmed the landlord may receive financial penalties of up to £5,000 per property. While the government proposed to improve the minimum level of energy efficiency of Energy Performance Certificate (EPC) Band to Band C for domestic private rented property, this proposal was dropped in 2023.

2.6. Statutory Nuisance

The Environmental Protection Act 1990 places an obligation on local authorities to investigate complaints of statutory nuisance and take appropriate enforcement action. Section 79 sets out the circumstances which might give rise to a statutory nuisance, including: ‘... any premises in such a state as to be prejudicial to health or a nuisance’. The premises as a whole must be prejudicial to health or a nuisance in order for a statutory nuisance to occur. This can be due to a single major item of disrepair, such as a leaking roof, or a number of minor items – dampness, mould growth are prejudicial to health. Tenants should request an inspection of the property by a local authority environmental health officer. Where a statutory nuisance is identified, the local authority must serve an abatement notice, which requires the nuisance to be dealt with. Tenants also have the option of making a complaint to the Magistrate’s court under section 82 of the 1990 Act, which can issue an abatement notice. In practice, the statutory nuisance mechanism is rarely used due to a combination of factors including lack of legal expertise, limited public funding, risks of costs and the criminal nature of proceedings.⁶

2.7. Decent Homes Standard

The Decent Homes Standard is a standard that applies to social rented housing. The standard was updated in 2006 to take account of the Housing Act 2004, and included the implementation of the Housing Health and Safety Rating System (HHSRS). To meet the standard a property has to:

- meet the current statutory minimum standard for housing (it must be free of category 1 hazards, assessed through the HHSRS).
- be in a reasonable state of repair;
- have reasonable facilities and services; and
- provide a reasonable degree of thermal comfort.⁷

⁶ H Carr et al, *Closing the gaps: Health and safety at home* (Shelter, 2017) p17/

⁷ For the full report see [Decent Homes Standard: review](#).

The Renters (Reform) Bill makes provision for a new Decent Homes Standard to apply in the private rented sector. This would place a legal duty on landlords to ensure their property meets the Decent Homes Standard and a legal duty on local authorities to ensure housing meets the Standard. It is proposed that a breach of the standard would be a criminal offence, which could incur a civil penalty or result in a prosecution in the Magistrate's Court. It is also proposed that a breach would be a banning order offence, which would prohibit a landlord from letting housing or engaging in letting agency or property management work.

3. Private rented housing conditions in England and in Southampton

The private rented sector has the worst housing conditions in England relative to ownership and social renting. The English Housing Survey (2021) estimates that 23% of private rented dwellings in England (around 1 million homes) did not meet the Decent Homes Standard. This compares with 13% of owner occupied dwellings and 10% of social rented dwellings. It also estimates that 14% of private rented dwellings (approximately 640,000 homes) had at least one Category 1 hazard under the Housing Health and Safety Rating System (HHSRS) and therefore contravened the legal minimum housing condition and safety standard.

There is no equivalent up to date data on housing conditions in the private rented sector in Southampton. The Council receives approximately 500 complaints from tenants in the city each year. This indicates there is a problem with substandard housing however it is not possible to establish the extent of that problem from tenant complaints alone. Indeed, individual complaints are likely to understate the scale of the problem because tenants face various barriers to making a complaint, not least the risk that doing so may expose them to retaliatory eviction or a punitive rent increase.

The most reliable source of data on housing conditions is the local authority housing stock condition survey. This is vitally important in developing a scientific basis for understanding housing conditions and targeting enforcement action in a proactive and structured fashion. The most recent Southampton Council housing stock condition survey (2008) found that 38% of all private homes (owned and rented) in Southampton did not meet the Decent Homes Standard while 25% of private rented dwellings had a hazard that is likely to result in harm that needs medical treatment.⁸ The leading causes of failure were poor insulation and heating and more serious housing hazards eg excess cold, falls, fire safety. These conditions present significant health risks to the occupants eg illnesses directly linked to living in cold, damp and dangerous homes, and so place significant pressures on the NHS.⁹ The survey found that poor private housing tended to be in older homes built before 1919 and was concentrated in Bevois, Bargate and Portswood wards. It was estimated that the cost of bringing this housing up to standard was £111 million.¹⁰ Using 2021 Census data, Southampton data observatory estimate that 'bedroom overcrowding is a concern for 5,952 (5.8%) households in Southampton'.¹¹

It is likely that mandatory House in Multiple Occupation (HMO) licencing and additional licencing schemes have helped to improve housing conditions in Southampton since 2008. However, the

⁸ Southampton City Council, Housing and Health in Southampton Report available at <https://www.southampton.gov.uk/moderngov/documents/s26558/Appendix.pdf> p 38. Also see https://www.seeda.co.uk/publications/Addressing_Poor_Housing_Conditions_in_the_Private_Sector_in_the_South_East_2006_1_2006.pdf

⁹ *ibid*, para 5.

¹⁰ *ibid*, para 36.

¹¹ <https://data.southampton.gov.uk/economy/housing-and-homelessness/#:~:text=2021%20Census%20data%20also%20shows,require%20two%20or%20more%20rooms.>

persistence of poor housing conditions at a national level indicates that such licencing schemes, which are widespread nationally, have not eliminated poor housing and management practices from the private rented sector. Indeed, if one applies the national averages from the English Housing Survey (2021) to Southampton, where there are approximately 28,000 private rented dwellings, this suggests that over 3,900 dwellings in the city have at least one Category 1 hazard and so would fall below the legal minimum housing safety standard while potentially 6,400 dwellings in the city would fail the Decent Homes Standard. This is a very rough estimate but it is indicative of how the proposal to apply the Decent Homes Standard to private rented housing, contained in the Renters Reform Bill, is likely to double the scope of local authority enforcement action in the city.¹²

4. Alternative approaches and instances of good practice

4.1. Renters Reform Bill

The Renters (Reform) Bill is likely to have a significant impact on regulation of housing conditions in the private rented sector. First, if and when the relevant clauses of the Renters (Reform) Bill is implemented, the abolition of the no-fault ground for eviction will reduce fear of retaliatory eviction by tenants seeking to have repair work carried out by their landlords. This is likely to enable more tenants to make complaints about defects or unsafe housing to the local authority.

Second, the Bill proposes applying a new Decent Homes Standard to private rented housing. This would place a legal duty on landlords to ensure their property meets the Decent Homes Standard and a legal duty on local authorities to ensure housing meets the Standard. It is proposed that a breach of the standard would be a criminal offence, which could incur a civil penalty (including a rent repayment order) or result in a prosecution in the Magistrate's Court. It is also proposed that a breach would be a banning order offence, which would prohibit a landlord from letting housing or engaging in letting agency or property management work. Furthermore, landlords will be required to participate in redress scheme which may provide a more accessible method of remedying disrepair and gaining compensation. Given that approximately 1 in 4 private rented dwellings fail the Decent Homes Standards, this change will considerably expand the scope of local authority enforcement action.

4.2. Proactive and responsive regulation by local authorities

Local authorities have a vitally important role in assessing housing conditions and taking enforcement action to address substandard housing in the private rented sector. In our first briefing report, we discussed these powers and argued that an example of good proactive – rather than complaint driven and reactive, enforcement practice by local authorities is a responsive regulatory approach.¹³ We contend that this model has much to offer local authorities facing significant regulatory changes, including those contained in the Renters (Reform) Bill. In particular, the proposal to apply the Decent Homes Standard to private rented housing is likely to considerably expand the scope of local authority enforcement action in coming years.

Adopting a proactive and responsive regulatory approach can help to enable a local authority to anticipate regulatory changes, establish the case for greater resource from central government, and

¹² There has been a significant increase in the size of the private rented sector, which now accommodates approximately 29% of households in the city, as compared to 25% in 2011. See Office for National Statistics (ONS), How life has changed in Southampton Census 2021 available at <https://www.ons.gov.uk/visualisations/censusareachanges/E06000045/>.

¹³ J Harris et al, *Improving compliance in the private rented sector* (UK Collaborative Centre for Housing Evidence, 2020)

demonstrate compliance through developing data led regulatory interventions to improve housing conditions. The success of this model depends upon local authorities conducting regular housing stock condition surveys. This is vitally important in terms of identifying the extent of substandard housing and developing effective strategies for targeting enforcement to improve housing and health outcomes for tenants. For instance, in one local authority area *'NHS hospital admissions data and Indices of Multiple Deprivation data were mapped onto the housing conditions survey to gain a general idea of where the best and worst quality housing and the tenants most in need of support were located.'* This data was then used to target enforcement activity and welfare support for tenants.¹⁴ When Southampton City Council updates its data by conducting a housing stock condition survey, a similar model could be developed to apply in Southampton.

4.3. The Good Landlord Charter

There are various examples of local authorities developing proactive and responsive regulatory approaches. One example is Greater Manchester Combined Authority's proposed Good Landlord Charter.¹⁵ This is a voluntary scheme for landlords who want to commit to higher standards than they are currently required to by law. The scheme represents an instance of good practice in how it was designed with effective participation of landlords associations, tenant unions ie Greater Manchester Tenants Union (GMTU) and other stakeholders which acted as members of the coordinating group.¹⁶ To become a member of the Charter, landlords are required to demonstrate they meet twenty member criteria, which are specific commitments to going beyond the minimum required by law and include the following examples:

- Affordable – e.g. a tenant should understand how their rent and other charges are set and should not be ripped-off.
- Inclusive – e.g. make or facilitate reasonable adaptations to properties, where needed
- Private and secure – e.g. tenants able to make reasonable changes to their home
- Responsive – e.g. published, timely target response times
- Safe and decent – e.g. a tenant should be able to live free from physical or psychological discomfort in their home, any work/repairs are done by a qualified or competent tradesperson, properties meet EPC C as a minimum
- Supportive – e.g. a commitment to refer tenants at risk of homelessness to council
- Well managed – e.g. landlord must be able to demonstrate accreditation or training¹⁷

4.4. The Repairing Standard in Scotland

The Repairing Standard in Scotland represents an instance of good practice for three reasons. First, unlike the piecemeal and disjointed nature of the regulation of housing conditions in England, the Repairing Standard consolidates the various housing conditions standards that apply to private rented housing into a single legal standard. This makes it easier for all parties to find, understand

¹⁴ *ibid.*

¹⁵ <https://www.greatermanchester-ca.gov.uk/what-we-do/planning-and-housing/good-landlord-charter>

¹⁶ The full list of organisations included in the coordinating group were The Bond Board, The British Property Federation, Bury Council, DASH, Fair Housing Futures, Generation Rent, Grainger PLC, Greater Manchester Fire and Rescue Service, Greater Manchester Good Employment Charter implementation unit, Greater Manchester Housing Providers, Greater Manchester Student Assembly, Greater Manchester Tenants' Union, Manchester City Council, Manchester Student Homes, National Residential Landlords Association, Safe agents, Shelter, University of Manchester and Wigan Council.

¹⁷ <https://www.greatermanchester-ca.gov.uk/media/9125/good-landlord-charter-consultation.pdf>

and enforce the legal minimum standard. Landlords are under a duty to ensure that private rented properties meet the repairing standard at the start of the tenancy and throughout the letting.¹⁸

A home meets the standard if:

- it's wind and watertight;
- the structure and exterior (like the walls and roof) are in a reasonable condition;
- the installations for water, gas, electricity, sanitation and heating are in a reasonable state of repair and working order;
- any fixtures, fittings or appliances provided by the landlord (like carpets, light fittings and household equipment) are in a reasonable state of repair;
- any furnishings provided by the landlord can be used safely for the purpose they were designed;
- it's fitted with suitable fire safety devices – smoke alarms, a heat alarm and fire extinguishers. All alarms should interlink. Alarms can be mains powered with battery backup or use long-life lithium batteries that cannot be changed. The battery alarms must be a sealed or tamper proof type.
- it's fitted with a carbon monoxide detector in any room with a carbon fuelled appliance (such as a heater or boiler, but not a cooker) or there is a flue from such an appliance
- electrical safety inspections are carried out by a qualified electrician at least once every five years
- the property meets the statutory Tolerable Standard (the basic legal standard that applies to all residential properties)
- The Scottish Government has committed to introduce regulations in 2025, requiring all private rented properties to reach a minimum energy efficiency standard equivalent to EPC C, where technically feasible and cost-effective, by 2028.¹⁹

The standard is enforceable by both tenants and local authorities. If a property does not meet the standard, and the landlord refuses to carry out repair work, a tenant or a local authority can report the landlord to the Housing and Property Chamber which can order the landlord to carry out the necessary works to bring the property up to standard. The repairing standard also represents an instance of good practice in how it has been integrated into an annual House Condition Survey. This survey records levels of disrepair across different housing tenures and thus provides timely meaningful data on housing conditions that can be used to target law and policy interventions.²⁰

Conclusion

Poor conditions within the private rented sector need to be understood in the context of generalised poor conditions in England's housing stock, which is old, often poor constructed, unsuited to energy

¹⁸ Housing (Scotland) Act 2006, s 13.

¹⁹ <https://www.gov.scot/policies/energy-efficiency/energy-efficiency-in-homes/#privaterented>

²⁰ Scottish Government, *Scottish House Condition Survey: 2021 Key Findings* (Scottish Government, 2023) available at <https://www.gov.scot/publications/scottish-house-condition-survey-2021-key-findings/pages/5-housing-conditions/>.

efficiency and requires constant maintenance alongside a powerful culture which resists interfering in private property ownership. Private rented housing is often the worst housing stock with records of poor maintenance and the residential occupiers may well find it to afford the heating and ventilation that poor quality housing requires. The increasing density of occupation of housing also exacerbates poor conditions. Housing is frequently converted for multiple occupation, conversions are often of poor quality, or the housing itself is not appropriate for sharing. The relatively extensive legal framework has proved ineffective to improve standards in the private rented sector. What is required is a culture change. Landlords must understand that proper investment in property is a requirement of being a decent landlord. Local authorities must be proactive in gathering and maintaining meaningful statistics on housing standards and using that data to target enforcement to improve housing conditions. Finally, tenants must be empowered to exercise their rights either through legal aid or through simple court procedures so that they can act for themselves. Poor housing conditions are affecting health and the sustainability of housing stock and urgently require addressing.

Bibliography

Helen Carr, David Cowan, Edward Kirton-Darling and Edward Burtonshaw-Gunn, *Closing the gaps: Health and safety at home* (Shelter, 2017)

Hannah Cromarty, *Housing conditions in the private rented sector (England)* House of Commons Library No 7328

Department for Levelling Up, Housing & Communities (DLUHC), *A fairer private rented sector* (DLUHC, 2022)

Department for Levelling Up, Housing & Communities (DLUHC), *English Private Landlord Survey 2021: main report* (DLUHC, 2022)

Department for Levelling Up, Housing & Communities (DLUHC), *English Housing Survey 2021 to 2022: private rented sector* (DLUHC, 2023)

Department for Levelling Up, Housing & Communities (DLUHC), *Summary report: outcomes and next steps for the review of the Housing Health and Safety Rating System (HHSRS)* (DLUHC, 2023)

Jennifer Harris, Alex Marsh and David Cowan, *Improving compliance in the private rented sector* (UK Collaborative Centre for Housing Evidence, 2020)

Peter Kemp, *Private Renting in Transition* (London, Chartered Institute of Housing, 2004)

Local Government Association, *Renters' Reform Bill, Second Reading*, House of Commons, 23 October 2023 (2023)

Alex Marsh and Ken Gibb, *The private rented sector in the UK* (UK Collaborative Centre for Housing Evidence, 2019)

Julie Rugg and David Rhodes, *The Evolving Private Rented Sector: Its Contribution and Potential* (University of York, 2018)

Scottish government, *Scottish House Condition Survey: 2021 Key Findings* (Scottish Government, 2023)

Southampton City Council, *Housing and Health in Southampton Report* available at <https://www.southampton.gov.uk/moderngov/documents/s26558/Appendix.pdf>

Appendix 1 29 hazards under the HHSRS

Number	Hazard	Health Effects
1	Damp and mould growth Health threats due to dust mites, mould or fungal including mental and social wellbeing health threats associated with damp, humid and mouldy conditions	Allergies, asthma, effects of toxins from mould and fungal infections
2	Excess cold Threats to health from cold indoor temperatures. A healthy indoor temperature is 18°C to 21°C	Respiratory conditions: flu, pneumonia and bronchitis Cardiovascular conditions: heart attacks and strokes
3	Excess heat Threats due to high indoor temperatures	Dehydration, trauma, stroke, cardiovascular and respiratory
4	Asbestos and MMF Exposure to asbestos fibres and Manufactured Mineral Fibres (MMF)	Asbestos: Damage to lungs MMF: Damage to skin, eyes and lungs
5	Biocides Threats to health from chemicals used to treat timber and mould growth	Risk from breathing in, skin contact and swallowing of the chemical
6	Carbon Monoxide and fuel combustion products Excess levels of carbon monoxide, nitrogen dioxide, sulphur dioxide and smoke	Dizziness, nausea, headaches, disorientation, unconsciousness and breathing problems
7	Lead Threats to health from lead ingestion from paint, water pipes, soil and fumes from leaded petrol	Lead poisoning causing nervous disorders, mental health and blood production issues
8	Radiation Health threats from radon gas and its daughters, primarily airborne but also radon dissolved in water	Lung cancer caused by exposure, which increases amount and length of exposure
9	Uncombusted fuel gas Threat from fuel gas escaping into the atmosphere within a property	Suffocation
10	Volatile organic compounds Threat to health from a diverse group of organic chemicals including formaldehyde that are gaseous at	Allergies, irritation to the eyes, nose and skin, headaches,

Number	Hazard	Health Effects
	room temperature and can be found in a wide variety of materials in the home	nausea, dizziness and drowsiness
11	Crowding and space Hazards associated with lack of space for living, sleeping and normal household or family life	Psychological distress and mental disorders, increased risk of hygiene issues, accidents and personal space and privacy compromised
12	Entry by intruders Problems keeping a property secure against unauthorised entry and maintaining defensible space	Fear of burglary occurring, stress and anguish caused by burglary and injuries caused by the intruder
13	Lighting Threats to physical and mental health associated with inadequate natural or artificial light, including the psychological effects associated with the view from the property through glazing	Depression and psychological effects due to lack of natural light. Eye strain from glare and inadequate light
14	Noise Threats to physical and mental health due to exposure to noise within the property or within its curtilage	Psychological and physiological changes resulting from lack of sleep, poor concentration, headaches and anxiety
15	Domestic hygiene, pests and refuse Health hazards due to poor design, layout and construction making it hard to keep clean and hygienic, attracting pests and inadequate and unhygienic provision for storing household waste	Stomach and intestinal disease, infection, asthma, allergies, disease from rats and physical hazards
16	Food safety Threats of infection from poor provision and facilities to store, prepare and cook food	Stomach and intestinal disease, diarrhoea, vomiting, stomach upset and dehydration
17	Personal hygiene, sanitation and drainage Threats of infections and threat to mental health associated with personal hygiene, including personal and clothes washing facilities, sanitation and drainage	Stomach and intestinal disease, skin infections and depression
18	Water supply Threats to health from contamination by bacteria, parasites, viruses and chemical pollutants due to the	Dehydration, fatigue, headaches, dry skin, bladder

Number	Hazard	Health Effects
	quality of water supply for drinking household use such as cooking, washing and sanitation	infections and legionnaires disease
19	Falls associated with baths Falls associated with a bath, shower or similar facility	Physical injuries: cuts, lacerations, swellings and bruising.
20	Falls on the level surfaces Falls on any level surface such as floor, yards and paths, including falls associated with trip steps, thresholds or ramps where the change in level is less than 300mm	Physical injuries: bruising, fractures, head, brain and spinal injuries
21	Falls associated with stairs and steps Falls associated with stairs and ramps where the change in level is greater than 300mm. It includes internal stairs or ramps within a property, external steps or ramps associated with the property, access to the property and to shared facilities or means of escape from fire and falls over stairs, ramp or step guarding	Physical injuries: bruising, fractures, head, brain and spinal injuries
22	Falls between levels Falls from one level to another, inside or outside a dwelling where the difference is more than 300mm. Including falls from balconies, landings or out of windows	Physical injuries
23	Electrical hazards Hazards from electric shock and electricity burns	Electric shock and burns
24	Fire Threats to health from exposure to uncontrolled fire and associated smoke. It includes injuries from clothing catching fire, a common injuring when trying to put a fire out.	Burns, being overcome by smoke or death
25	Flames, hot surfaces and materials Burns or injuries caused by contact with a hot flame or fire, hot objects and non-water based liquids. Scalds caused by contact with hot liquids and vapours.	Burns, scalds, permanent scarring and death.
26	Collision and entrapment Risks of physical injuries from trapping body parts in architectural features such as trapping fingers in doors	Physical injuries such as cuts and bruising to the body

Number	Hazard	Health Effects
	and windows and colliding with objects such as windows, doors and low ceilings	
27	Explosions Threats from the blast of an explosion, from debris generated by the blast and from partial or total collapse of a building as a result of the explosion	Physical injuries, crushing, bruising, puncture, fractures, head, brain and spinal injuries.
28	Ergonomics Threats of physical strain associated with functional space and other features at the dwelling	Strain and sprain injuries
29	Structural collapse and falling elements The threat of the dwelling collapsing or part of the fabric being displaced or falling due to inadequate fixing or disrepair or as a result of adverse weather conditions.	Physical injuries