

# National Private Tenants Organisation

*For professionally managed, secure, decent and affordable privately rented homes  
in sustainable communities*

## ***Private Rented Sector***

### ***Submission by NPTO to the Communities and Local Government Select Committee inquiry***

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# About the National Private Tenants Organisation

The National Private Tenants Organisation (NPTO) campaigns for professionally managed, secure, decent and affordable private rented homes in sustainable communities in England. NPTO participates in national discussions and consultations on the private rented sector.

Members of NPTO include private tenant organisations, associate members and individual private tenants. NPTO has links with tenant organisations in other countries.

## 1. The quality of private rented sector housing

### 1.1 Problems with the quality of housing

#### 1.1.1 Introduction

The PRS compares poorly to other tenures in relation to housing quality and there are significant concerns about the decency of a large number of dwellings. In 2010 levels of disrepair in the private rented sector were still significantly higher than in other tenures<sup>1</sup>.

#### 1.1.2 Non-decent housing in the PRS

1.1.2.1 Privately rented dwellings had the highest incidence of non-decency (failing the Decent Homes Standard 2006) of all tenures at 37%. Of this 37%, 23.1% failed to meet minimum Housing Health and Safety Rating System (HHSRS) requirement (i.e. for dwelling to be free of HHSRS category 1 hazards), 16.4% failed on thermal comfort, 8.7% failed on repair and 3.3% on lack of modern facilities<sup>2</sup>.

1.1.2.2 Private rented dwellings are more likely than those in other tenures to experience damp problems, partly because they are more likely to be older stock. Some 40% of private rented dwellings were built before 1919 compared with 21% of owner occupied, 9% of housing association and 4% of local authority dwellings. Those dwellings most likely to have any HHSRS Category 1 hazard were those built before 1919<sup>3</sup>.

#### 1.1.3 Health and safety

1.1.3.1 A freedom of information request submitted by Shelter to all councils across England showed that more than 85,000 complaints were made in the past year alone. Of those complaints, 62% were about serious and life-threatening hazards<sup>4</sup>.

1.1.3.2 Electricity kills at least one person every week in the home and almost 1,000 are seriously injured every day. The Electrical Safety Council has found that private tenants are disproportionately affected by electrical accidents<sup>5</sup>. A rise in non-professional landlords confused over their responsibilities puts tenants at further risk. There is no legal requirement for landlords to arrange for inspection and testing of electrical appliances and installations to ensure their continued safety. Certain potentially fatal electrical problems can only be found by professional testing. For more information please see the NPTO campaign report at: [www.KeepRentingSafe.weebly.com](http://www.KeepRentingSafe.weebly.com)

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1 DCLG, *English Housing Survey: Homes: Annual report on England's housing stock 2010*, Chapter 3: page45, July 2012

2 DCLG, *English Housing Survey: Homes: Annual report on England's housing stock 2010*, July 2012

3 DCLG, *English Housing Survey: Homes: Annual report on England's housing stock 2010*, July 2012

4 Shelter, "Complaints about landlords up almost 30%",

[http://england.shelter.org.uk/news/october\\_2012/complaints\\_about\\_landlords\\_up\\_almost\\_30](http://england.shelter.org.uk/news/october_2012/complaints_about_landlords_up_almost_30), 4<sup>th</sup> October 2012

5 Electrical Safety Council, <http://www.esc.org.uk/public/news-and-campaigns/press-releases/news/article/confusion-between-landlords-and-tenants-exposes-millions-to-serious-electrical-dangers/>, March 2012

#### 1.1.4 Poor energy efficiency in the PRS

1.1.4.1 The PRS had the highest percentage (17%) of dwellings in inefficient Energy Efficiency Rating Bands F and G in 2010. The PRS showed the least improvement in thermal comfort and in 2010 still had a significantly higher proportion of homes failing the Decent Homes standard on this aspect than any other tenure<sup>6</sup>.

1.1.4.2 In 2010, PRS dwellings had the lowest percentage of all tenures having central heating systems. 92% of owner occupied dwellings had central heating systems, compared to 88% of social and 80% of private rented dwellings<sup>7</sup>. The PRS along with Housing Association dwellings had highest percentage of all tenures not having cavity wall insulation. PRS had the highest percentage of all tenures not having double glazing (14.5%)<sup>8</sup>. Private rented dwellings were less likely to have mains gas.

1.1.4.3 In 2011 38% of PRS dwellings did not have an Energy Performance Certificate and the landlord had no plans to obtain one.<sup>9</sup>.

#### 1.1.5 Fuel poverty in the PRS

1.1.5.1 The PRS had the highest percentage of all tenures of households living in fuel poverty at 30% ('after housing costs' approach). The main rationale behind an after housing costs measure of income is that money that needs to be spent on housing costs is not part of a household's disposable income, and thus cannot be spent on their fuel bill<sup>10</sup>.

#### 1.1.6 Retaliatory eviction of tenants complaining about housing conditions

1.1.6.1 Retaliatory eviction can be said to occur when a PRS landlord seeks possession of a property using Housing Act 1988, Part 1, Chapter 2, Section 21, in response to a legitimate request from a tenant. Please see evidence on the problem of retaliatory eviction at: <http://www.npto.btck.co.uk/OurReports>

### **1.2 Proposed measures to improve the quality of housing in the PRS**

#### 1.2.1 Non-regulatory measures

1.2.1.1 Local Authorities (LAs) should conduct more proactive inspections of PRS dwellings.

In 2010 only 33% of landlords and letting agents had heard of the HHSRS, of this percentage only 58% had received an assessment for potential hazards in dwellings under their control. Of these inspections only 10% were conducted by LA Environmental Health Officers<sup>11</sup>. Central Government should ensure LAs are incentivised and adequately resourced to conduct inspections on all PRS housing stock.

1.2.1.2 Local Authorities should better enforce existing legislation

A freedom of information request submitted by Shelter to all councils across England

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6 DCLG, *English Housing Survey: Homes: Annual report on England's housing stock 2010*, July 2012

7 DCLG, *English Housing Survey: Homes: Annual report on England's housing stock 2010*, July 2012

8 DCLG, *English Housing Survey Headline Report 2010-11*, 9<sup>th</sup> February 2012

9 DCLG, *Private Landlord Survey 2010*, October 2011

10 DECC, *Annual Report on Fuel Poverty Statistics 2012*, 17<sup>th</sup> May 2012

11 DCLG, *Private Landlord Survey 2010*, Annex 7.2, October 2011

showed that more than 85,000 complaints were made in the past year alone. Of those complaints, 62% were about serious and life-threatening hazards. There were only 487 successful prosecutions against private landlords in 2011. However, they were mostly driven by a small handful of local councils including Newham, Leeds, Salford and Manchester<sup>12</sup>. More robust enforcement of the HHSRS is essential.

#### 1.2.1.3 There should be better collection of data on housing conditions at LA level

There is a lack of data on housing conditions, complaints and action taken collected at LA level. Many local authorities have not undertaken any systematic surveys of their private sector stock for over a decade, despite the statutory requirement to keep conditions under review (s.1 Housing Act 2004). An example of good practice in this respect is the Bristol City Council Private Sector Housing Condition Report. See: <http://www.privatehousinginformation.co.uk/site/files/Bristol%20HCS.pdf>, although it is disappointing that they not intend to address the issue of non-decent housing in the PRS.

#### 1.2.1.4 Tax regime

The tax regime for landlords should be examined to encourage longer-term investment in the PRS. In many European countries there is a more favourable tax regime for landlords.

### 1.2.2 Regulatory approach

#### 1.2.2.1 Statutory minimum standard for all PRS dwellings

1.2.2.1.1 A mandatory minimum standard should be introduced this could be as outlined in 1.2.2.1.2 (*extension of the Decent Homes Standard*) below or based on the *Scottish Repairing Standard model*. The Repairing Standard, contained in the Housing (Scotland) Act 2006, brings together and extends slightly the existing statutory and contractual repairing obligations of private landlords. The landlord must ensure the house is wind and water tight and reasonably fit for human habitation. The structure and exterior, various installations, fixtures, fittings and appliances must be satisfactory. Furnishings provided must be safe. Smoke alarms are also required. Since September 2007, landlords have had to inform tenants in writing about the Repairing Standard before the start of any new tenancy. If the tenant notifies the landlord that the house does not meet the Standard, the landlord will have a duty to carry out necessary work within a reasonable time. Instead of going to court, tenants apply to the Private Rented Housing Panel<sup>13</sup>.

1.2.2.1.2 The Decent Homes Standard 2006 should be extended to all PRS dwellings not just vulnerable households and made a mandatory requirement. Adequate resources for LAs to carry out both reactive and proactive inspections and enforcement action is essential until such time as there is legislation requiring all landlords to comply with minimum standards as a condition of letting.

#### 1.2.2.2 Health and safety

There is a dangerous anomaly whereby annual testing gas appliances and fittings is required but periodic inspection and testing of electrical appliances and installations is not (see 1.1.4.2 above). New legislation is required to require periodic inspection and testing of electrical appliances and installation by qualified electricians. The Health & Safety Executive should play a more pro-active role in monitoring adherence to the legal requirements for gas safety.

12 Shelter, "Complaints about landlords up almost 30%", [http://england.shelter.org.uk/news/october\\_2012/complaints\\_about\\_landlords\\_up\\_almost\\_30](http://england.shelter.org.uk/news/october_2012/complaints_about_landlords_up_almost_30), 4<sup>th</sup> October 2012

13 Scottish Government, *Repairing Standard*, <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/landlords/physical/rules/repairing>

### 1.2.2.3 Retaliatory eviction

New legislation should be introduced to deal with the problem of tenants being evicted in response to legitimate complaints about housing conditions (See 1.1.6 above). Several countries such as New Zealand and states in Australia and the U.S.A. have introduced legislation to deal with this problem. Please see the evidence contained in our report at <http://www.npto.btck.co.uk/OurReports>

### 1.2.2.4 Housing Ombudsman Service

Membership of the Housing Ombudsman Service should be compulsory for private landlords and agents. The Housing Ombudsman Service is set up by law to look at complaints about RSLs who are compelled to join. Only a tiny percentage of private landlords and agents are also members.

## 2. Rent

### 2.1 Market rents

#### 2.1.1 Introduction

All private renters should have a home at a rent that is affordable and allows long-term financial planning. Strong regulatory frameworks (including predictable rents and greater security of tenure) in other countries such as Germany have not deterred landlords from letting properties and has led to large PRS. Market rents in high demand do not have any relationship to affordability. De-regulation of the PRS in 1988 did not lead to significant growth in the size of the PRS. In 1987 the PRS comprised 9.5% of all households, eleven years later (1998) it was on 10.3%, fifteen years later (2003) it was only 10.8%<sup>14</sup>. The buy-to-let boom, lack of social housing and home ownership being out of reach for many people, were major factors in later increases in the size of the rented sector.

#### 2.1.2 High rent levels in the PRS

2.1.2.1 Over half (55%) of local authorities in England have a median private rent for a two bedroom home which costs more than 35% of median take home pay in that area, a level considered likely to be unaffordable in studies. 8% of local authorities are extremely unaffordable (median rent 50% or more of median full-time take-home pay); 21% are very unaffordable (median rent 40% to 49% of median full-time take-home pay) 26% are fairly unaffordable (median rent 35% - 39% of median full-time take-home pay). The most unaffordable local authorities are concentrated in London<sup>15</sup>.

2.1.2.2 According to the English Housing Survey 2010-11, average weekly rents in the private rented sector continued to be well above those in the social rented sector (£160 per week compared to £79). Around 2.7 million (75%) households in the private rented sector were 'market renters'<sup>16</sup>. The comparison between social and private rents is highly relevant now that local authorities have the power to discharge their re-housing duties to homelessness households by securing private rented accommodation and in the light of the welfare benefit caps which directly impact on the ability of low income private renters to meet their rental liability.

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14 DCLG, English Housing Survey Headline Report 2010-11, Table AT1, 9<sup>th</sup> February 2012

15 Shelter, Shelter Private Rent Watch: Report One: Analysis of local rent levels and affordability, October 2011

16 DCLG, English Housing Survey Headline Report 2011-11, 9<sup>th</sup> February 2012

## 2.2 Proposed measures to create affordable and predictable rents

### 2.2.1 A new model of rent determination

A new model of rent determination should be introduced in the PRS which promotes long-term stability for tenants and a reliable income stream for landlords. This would increase market certainty. **A new rent model would work best with longer tenancies.**

The model suggested below takes into account a reasonable return on landlord's investment and ongoing costs.

*The model should take into account the following factors in calculating initial rents and increases:*

Setting initial rents:

- **Affordability** e.g. taking account of geographic median income (e.g. rents no greater than a percentage of median income) or by reference to social housing rents for comparable properties. In Sweden rents cannot exceed 5% of the rental price of public housing.
- **A reasonable return on landlords investments** and costs taking account of factors including depreciation and a more liberal tax regime for landlords
- **Rent commensurate with the type of dwelling**, this could include some or all of the following factors:
  - Furnished or unfurnished dwelling
  - Presence of a garden
  - Number of rooms
  - Number of storeys
  - Number of amenities
  - Energy efficiency
  - Disrepair (this would promote improvements in the quality of dwellings)
  - Modernity of facilities
  - Inclusion of utility costs etc

Rent increases:

- **Predictable rent increases/indexed increases** e.g. annual increases in line with inflation or cost of living (RPI or CPI) at prescribed intervals and taking into account landlord's investment and costs and possibly offset by a more liberal tax regime for landlords. Predictable rent increases would also help landlords with long term financial planning

Adjudication:

- **A locally based statutory third party adjudication service** for rent setting and disputes. This role might be taken on by LAs.

### 2.2.2 Short term measures

The restriction introduced by the Housing Act 1996 on applications to the Rent Assessment Committee for decisions on rent to once within six months of the beginning of an Assured Shorthold tenancy should be removed. It would also act as a deterrent to retaliatory eviction if Rent Assessment Committee decisions were attached to the subject property, not merely the subject tenancy.

## 3. Management in the private rented sector

### 3.1 Lack of professionalism in management the private rented sector

3.1.1 In 2010 eighty-nine per cent of landlords were private individual landlords responsible for 71% of all private rented dwellings. More than three quarters (78%) of all

landlords only owned a single dwelling for rent, with only 8% of landlords stating they were full time landlords. Over three-fifths (63%) of all private individual landlords had no relevant experience or qualifications<sup>17</sup>.

3.1.2 Only 6% of landlords were members of a relevant professional body or organisation<sup>18</sup>.

## **3.2 Rogue landlords**

3.2.1 Shelter has reported that LAs dealt with more than 86,000 complaints from private tenants in 2010/11; yet, wider research finds that over 350,000 private renters experienced housing problems in the same year. LAs told Shelter they are aware of some 1,477 serial rogue landlords. Yet, in the past year only 270 landlords were prosecuted<sup>19</sup>.

## **3.3 Proposed measures to improve professional management in the PRS and eliminate rogue landlords**

3.3.1 A combination of the measures below is required to improve management standards and eliminate rogue landlords.

### 3.3.2 National licensing schemes

3.3.2.1 National licensing schemes are an essential tool in dealing with rogue landlords and improving management professionalism but need to be accompanied by other measures as outlined below.

3.3.2.2 The Scottish landlord registration scheme has been in operation for 6 years. All private landlords must register with their local authority to ensure that they are a "fit and proper person" to let property. It is an offence to let any house without being registered.

3.3.2.3 The Republic of Ireland has a mandatory tenancy registration scheme which requires private landlords/their agents to register details of their tenancies with the Private Residential Tenancies Board.

3.3.2.4 The Welsh Assembly has outlined a potential scheme in the "Homes for Wales" White Paper of May 2012.

3.3.2.5 The Northern Ireland Assembly The Committee for Social Development will soon consider draft regulations for a Northern Ireland Landlord Registration Scheme.

### 3.3.3 Use of discretionary licensing

3.3.3.1 NPTO supports the use of powers under the Housing Act 2004 by LAs to introduce additional and selective licensing schemes and welcomes London Borough of Newham's discretionary licensing across its entire area. Selective Licensing became mandatory on 1 January 2013. NPTO would encourage all LAs to consider introducing schemes similar to Newham Council's.

### 3.3.4 Voluntary landlord accreditation schemes

3.3.4.1 NPTO supports the establishment of voluntary landlord accreditation schemes providing there are adequate standards for entry and continuous improvement and that both are adequately monitored and enforced. The Government should encourage all LAs

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17 DCLG, Private Landlord Survey 2010, October 2011

18 DCLG, Private Landlord Survey 2010, October 2011

19 Shelter, "Asserting authority: calling time on rogue landlords", September 2011

to establish schemes.

3.3.5 LAs should conduct inspections of all PRS dwellings.

3.3.6 LAs should better enforce existing legislation.

## **4. Letting agents**

### **4.1 Concerns regarding letting agents**

#### **4.1.1 Excessive letting agent fees**

Research by Shelter found that about 23% of more than 5,000 people surveyed believed they had been landed with unfairly high fees for aspects of renting in England such as credit checks, renewing contracts and "administration". More than half (52%) of people who felt they had been ripped off, or knew someone who had been, said this was due to fees being "out of proportion" to the true cost of the work done. The housing charity said it had found cases of renters being charged more than £150 for repeat credit checks each year, which Shelter said actually cost between £8 and £25 to perform. It said some people were being charged £100 just to view a property and renters were being charged up to £540 in non-refundable "administration" fees<sup>20</sup>.

#### **4.1.2 Regulation of letting agents**

Letting agents are largely unregulated with only voluntary membership of professional bodies. Fifteen percent of letting agents do not belong to a professional body<sup>21</sup>.

### **4.2 Options to improve letting agent service**

#### **4.2.1 Reform of letting agent fees**

The Scottish Parliament has voted to approve secondary legislation to clarify that all tenant charges, other than rent and a refundable deposit, are not permitted. A the same approach should be adopted in England.

#### **4.2.2 Options for regulation of letting agents**

##### **4.2.2.1 Letting agents to be put on the same footing as estate agents**

Letting agents should be put on the same footing as estate agents. This would involve bringing letting agents under the definition of an estate agency which would give the Office of Fair Trading the ability to ban agents who act improperly.

##### **4.2.2.2 National licensing scheme for letting agents**

A national mandatory licensing scheme could be introduced for letting agents to ensure only fit and proper businesses operate in the sector. In the short term NPTO would like to see all letting agents joining the National Approved Letting Scheme and Safe Agent schemes.

##### **4.2.2.3 Complaints about letting agents - Housing Ombudsman Service**

Consideration could be given to making membership of the Housing Ombudsman Service

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20 Guardian, <http://www.guardian.co.uk/money/2012/sep/04/quarter-people-ripped-off-lettings-agents-shelter>, September 2012

21 DCLG, *Private Landlords Survey 2010*, October 2011

compulsory for letting agents. The Housing Ombudsman Service is set up by law to look at complaints about registered providers of social housing. Certain private landlords and agents are also members.

#### 4.2.3 Social letting agencies

NPTO strongly supports the widespread establishment of social letting agencies which are more focused on meeting the needs of tenants and communities.

### **5.0 Houses in multiple occupation (HMO)**

5.1 NPTO believes that greater use of discretionary licensing schemes will improve the quality of HMOs and their management. Proposed changes to the housing benefit shared room rate are likely to see more individuals forced to live in HMOs.

5.2 LAs need to take more robust action to ensure all HMOs which should be licensed are licensed and that the HHSRS is enforced.

### **6.0 Security of tenure and tenancy agreements**

6.1 Since the introduction of the Assured Shorthold tenancy the vast majority tenants have suffered from lack of security of tenure. This does not promote sustainable communities. More secure tenancies have not impeded the growth of large PRSs in other countries e.g. Germany. Some 30% of private renters worry about their landlord/letting agent ending the contract before they are ready to move out<sup>22</sup>.

6.2 A new model of standard tenancy should be introduced which provides security and stability for tenants and their families and incorporates predictable rents.

Fixed five year tenancies have been suggested with annual rent increases no more than the cost of living (CPI). Tenants should be given first option if a landlord decides to sell a property.

6.3 In the short term NPTO encourages all landlords to offer Assured or long fixed-term Assured Shorthold tenancies (with break clauses for tenants). The certainty of stable tenancies benefits landlords and tenants.

#### 6.4 Tenancy agreement reform

6.4.1 Legislation should be introduced so that all tenants receive a written tenancy agreement with a tenants information pack provided at the start of a tenancy (see 6.5.2 below). The principles set out for Consumer Contracts in the Law Commission Report, Renting Homes<sup>23</sup> including mandatory terms should be enshrined in statute

6.4.2 All tenants should be provided with a tenancy information pack at the start of the tenancy based on the Scottish tenancy information pack which will be introduced on 1<sup>st</sup> March 2013. The Tenant Information Pack will include information on tenancy agreements, property condition, appliance manuals and the rights and responsibilities of tenants and landlords.

6.4.3 All tenants should be allowed to decorate their homes and have pets without obtaining their landlords' permission, but must repair any resulting damage.

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22 Shelter, YouGov 2011, base: 541 private renting GB adults. Fieldwork: 2 to 5 December 2011

23 Renting Homes: The Final Report Vol 1 The Law Commission (Law Com No 297)

## **7.0 Homelessness and the use of the private rented sector**

7.1 Families must not be forced to accept PRS accommodation if they feel social housing is the best option for their family. Social housing is better regulated, affordable and secure. A more secure, decent and affordable PRS will help prevent homelessness.

7.2 Where homeless households choose the PRS, local authorities should avoid recouping the costs of providing rent guarantee or deposit schemes from them. LAs should limit referrals to the PRS to tenancies where there is no Housing Benefit shortfall or where there is a sustainable solution to cover any shortfall.

## **8.0 Tenant representation**

8.1 PRS tenants should have a mandatory right to consultation and information similar to rights social housing tenants have in respect to housing management and maintenance. PRS tenant panels should be considered similar to plans for social housing tenants. The panels are a key part of government plans to give communities more power over how decisions are made locally, and will be able to refer complaints to the housing ombudsman on behalf of individual tenants and shape services and get involved in local decision making. Local authorities should encourage and support the formation of local groups of private renters and ensure that private renters are consulted when drafting local housing strategies, considering service provision, etc.

8.2 Tenant information packs (see 6.4.2 above) would help tenants be better informed about their rights and responsibilities and support services available in their local area.

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