

# National Private Tenants Organisation

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## Memorandum

**To:** Department for Communities and Local Government

**Cc:** Shelter, NUS, CAB, CIEH, All-party parliamentary group on the Private Rented Sector

**From:** National Private Tenants Organisation

**Date:** 23rd April 2012

**Subject:** Cabinet Office Red Tape Challenge: Housing and Construction: Private Rented Sector

### 1. Introduction

#### 1.1 Background information on the National Private Tenants Organisation

1.1.1 The English National Private Tenants Organisation (NPTO) works for professionally managed, secure, decent and affordable private rented homes in sustainable communities. NPTO membership consists of private tenant organisations, individual private tenants and associate members. NPTO works with partners who share its' objectives. Privately rented housing is different from home ownership or social renting. It should not be worse .

#### 1.2 Purpose of the memorandum

1.2.1 This memorandum is intended as a written submission on the Cabinet Office Red Tape Challenge (RTC) review of housing regulation, to the DCLG and the private rented sector (PRS) round table group which met on 28<sup>th</sup> March 2012.

1.2.2 NPTO has registered its' concern that it was not invited as a national private tenants representative organisation to the DCLG PRS round table meeting on 28<sup>th</sup> March 2012.

### 2. Executive summary

#### [A strategic approach to regulation in the PRS](#)

2.1 As the PRS is growing in size (16.5% of all households) and there are very real concerns regarding standards of management, condition of housing stock and affordability, NPTO welcomes a review of the current regulatory framework to determine if it meets the

needs of the PRS particularly consumers (tenants). NPTO would like to see a high quality, affordable PRS which is a tenure of choice and can meet a range of needs.

2.2 NPTO believes that the RTC review is approaching the issue of regulation in the PRS from a too narrow perspective. A more comprehensive strategic approach is required similar to the current Scottish Government 'Consultation on a Strategy for the Private Rented Sector'<sup>1</sup>.

2.3 A review of regulation to consolidate, simplify, rationalise and eliminate inconsistencies is a positive objective, but the PRS is characterised by an imbalance between the rights of landlords and tenants, rather than excessive red tape. It is not always a regulation that is at fault, it can be its' inappropriate application (see 3.3.4 below). A comprehensive review must also examine the need for new regulation as well as reviewing existing regulation. A regulatory framework which is effective and proportionate and more targeted is needed, i.e. smarter regulation. Any de-regulation must not drive down standards in the PRS.

*Please note: each section below is addressed with reference to the RTC terms of reference as detailed at: <http://www.redtapechallenge.cabinetoffice.gov.uk/private-rented-sector/>*

### Standards of management in the PRS

2.4 The most recent Government survey of private landlords showed that only 6% of landlords were members of a relevant professional body and 15% of letting agencies did not belong to any professional body<sup>2</sup>.

### 2.5 NPTO view

There are no specific regulations relating to landlord management standards in the PRS (other than for HMOs). As only 6% of landlords belong to professional bodies a voluntary approach is unlikely to work. Voluntary accreditation schemes are piecemeal across the country. More robust enforcement of existing relevant regulations is required along with a national licensing scheme for landlords and letting agencies. It would be useful to incorporate the HHSRS into mandatory HMO and selective licensing requirements? Could membership of professional bodies such as RLA and NLA be used as a fast-track entry to any voluntary landlord accreditation schemes?

### 2.7 Housing stock condition in the PRS

2.8 The English Housing Survey 2010-11, reported 37% of PRS households were non-decent. In the PRS 61.4% of homes failing the decent homes standard did so because of Housing, Health and Safety Rating System (HHSRS) serious hazards and 57.7% because of thermal comfort shortcomings<sup>3</sup>. Bad housing is closely linked to many wider social problems that blight neighbourhoods, such as crime and antisocial behaviour.

### 2.9 NPTO view

Local authorities should be supported and encouraged to take a more pro-active approach to inspections of PRS stock e.g. local housing condition surveys and should be

1 The Scottish Government, <http://www.scotland.gov.uk/Publications/2012/04/5779>, April 17<sup>th</sup> 2012

2 Private Landlords Survey 2010, <http://www.communities.gov.uk/documents/statistics/pdf/2010380.pdf>, October 2011

3 Julie Rugg and David Rhodes, *The Private Rented Sector: its contribution and potential*, 2008

encouraged and supported in taking tougher enforcement action against rogue landlords to ensure existing regulations are enforced. Local authorities should make greater use of selective licensing powers and consider following the example of Newham Borough Council's proposal to license all private landlords. Consideration should be given to extending the Decent Homes Standard to all PRS housing stock and appropriate targets set. NPTO calls for appropriate mandatory periodic Electrical Installation Condition Reports and electrical appliance inspection and testing in rented homes. Consideration could be given to consolidating health and safety enforcement responsibility to a single body e.g. the local authority.

## 2.10 Tenancies in the PRS

2.11 The most common form of tenancy in the PRS, the Assured Shorthold (AS) does not meet the needs of tenants who would like long-term settled tenancies e.g. older tenants and families with children in settled employment. The AS has also created problems in relation to tenants seeking to enforce their legal rights because of retaliatory eviction.

## 2.12 NPTO view

Landlords should be encouraged and given incentives to grant Assured or long fixed-term Assured Shorthold (AS) to tenants. Longer tenancies can benefit landlords too by providing a regular income stream. A review of PRS tenancies should be undertaken and account taken of tenancy models in other parts of Europe so that the varying needs of tenants are catered for. A new type of tenancy is required to deliver the security tenants may need. Regulation is required to deal with the problem of AS retaliatory eviction. Such legislation exists in Australia, New Zealand and some states in the U.S.A.

## 2.13 Rents

2.14 Over half (55%) of local authorities in England have a median private rent which costs more than 35% of median take home pay in that area, a level considered likely to be unaffordable in a number of studies<sup>4</sup>. Do the current arrangements for rent setting serve consumers (tenants) and landlords equally? Changes to Local Housing Allowance have put extra pressure on rent affordability.

## 2.15 NPTO view

A review of the current arrangements for rent setting in the PRS should be undertaken. NPTO favours exploring a rent regulation model.

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4 Shelter, *Shelter Private Rent Watch*, October 2011

### 3. Review of regulation in the private rented sector in England

#### 3.1 Comments on the Red Tape Challenge and the need for a strategic approach to regulation in the PRS

3.1.1 NPTO believes that the RTC review is approaching the issue of regulation in the PRS from too narrow a perspective if a high quality professionally managed PRS is the objective. NPTO would like to see the PRS as a tenure of choice not a 'no option' tenure as it is for many households at present. A more holistic approach is required similar to the current Scottish Government 'Consultation on a Strategy for the Private Rented Sector'<sup>5</sup>.

3.1.2 The Government's RTC web site states that "*this government has set a clear aim: to leave office having reduced the overall burden of regulation*"<sup>6</sup>. NPTO believes that a review of regulation to consolidate, simplify, rationalise and eliminate inconsistencies is a positive objective, but the PRS is characterised by an imbalance between the rights of landlords and tenants, rather than excessive red tape. A comprehensive review must also examine the need for new regulation as well as reviewing existing regulation. A regulatory framework which is effective and proportionate and more targeted is needed, i.e. smarter regulation.

3.1.3 A narrow approach to reviewing regulation in the PRS could have adverse consequences for a high quality, professionally managed, flexible and affordable PRS. Profound changes have occurred in the PRS and this needs to be recognised and addressed. The PRS caters for a diverse range of tenants (including more vulnerable tenants) who have diverse needs, this is set to expand further. The Scottish Private Rented Sector Strategy Group vision for a PRS (applicable to England too) is a worthy objective for the RTC: "*A thriving and professional private rented sector that offers good quality homes and high management standards; inspires consumer confidence; and encourages growth and investment to further develop and improve the sector*" (2012).

3.1.4 An example of an inconsistency in current regulation is that gas installations and appliances must receive an annual safety inspection<sup>7</sup> but electrical installations and appliance do not. NPTO calls for mandatory periodic Electrical Installation Condition Reports and electrical appliance inspection and testing in rented homes.

#### 3.2 Professional management in the PRS

3.2.1 The most recent Government survey of private landlords showed that only 6% of landlords were members of a relevant professional body and 15% of letting agencies did not belong to any professional body<sup>8</sup>.

3.2.2 89% 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<sup>9</sup>.

3.2.3 According to Shelter local authorities informed them that they are aware of some 1,477 serial rogue landlords, and that local authorities dealt with more than 86,000 complaints from private tenants in 2010/11; yet, wider research finds that over 350,000

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5 The Scottish Government, <http://www.scotland.gov.uk/Publications/2012/04/5779>, April 17<sup>th</sup> 2012

6 Cabinet Office, <http://www.redtapechallenge.cabinetoffice.gov.uk/about/>, 2011

7 HMG, *Gas Safety (Installation and Use) Regulations 1998*. (<http://www.legislation.gov.uk/ukSI/1998/2451/contents/made>), 1998

8 DCLG Private Landlords Survey 2010, <http://www.communities.gov.uk/documents/statistics/pdf/2010380.pdf>, October 2011

9 DCLG Private Landlords Survey 2010, <http://www.communities.gov.uk/documents/statistics/pdf/2010380.pdf>, October 2011

private renters experienced housing problems in the same year<sup>10</sup>.

3.2.4 NPTO is concerned that some private landlords continue to make use of Housing Act 1988, Part 1, Chapter 2, Section 21, in response to a legitimate request from a tenant. In other words evict a tenant rather than deal with their legitimate complaints. NPTO has produced an extensive report on the issue which can be found at: <http://www.npto.btck.co.uk/Researchandreports>.

3.2.5 There is also concern about management practices of some letting agencies. Nearly 40% of letting agencies are not registered with any ombudsman scheme. Complaints against rogue letting agents surged by 26% to more than 7,600 in 2011, according to independent adjudicator The Property Ombudsman<sup>11</sup>.

#### Examples of non-regulatory approaches

3.2.6 NPTO calls for the widespread establishment of voluntary landlords accreditation schemes and for all letting agencies to join the Government approved National Approved Letting Scheme, SAFEAgent Scheme and the Property Ombudsman (Lettings) scheme. Could membership of professional bodies such as RLA and NLA be used as a fasttrack entry to any voluntary landlord accreditation schemes?

3.2.7 Local authorities should be encouraged and supported in taking tougher enforcement action against rogue landlords. Education and training is also a vital element in supporting landlords.

3.2.8 Local authorities should be supported and encouraged to take a more pro-active approach to inspections of PRS stock e.g. housing condition surveys. A third (33%) of landlords and agents, who had heard of the Housing Health and Safety Rating System reported that only 58% of the dwellings they were collectively responsible for had received some form of assessment for potential hazards<sup>12</sup>.

3.2.9 There needs to be an improvement in tenants' and landlords' awareness of their rights and responsibilities.

3.2.10 There is a need for an effective redress/or dispute resolution procedure when disagreements arise between landlord and tenant.

3.2.11 Local authorities should make greater use of selective licensing powers and consider following the example of Newham Borough Council 'proposal to license all private landlords.

#### Regulatory reform

3.2.12 A national landlord and letting agency licensing scheme is required to ensure that there is a high quality, professionally managed PRS that meets the needs of society.

3.2.13 Regulation is required to deal with the problem of retaliatory eviction.

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<sup>10</sup> Shelter,

[http://england.shelter.org.uk/professional\\_resources/policy\\_and\\_practice/policy\\_library/policy\\_library\\_folder/policy\\_briefing\\_asserting\\_authority\\_-\\_calling\\_time\\_on\\_rogue\\_landlords](http://england.shelter.org.uk/professional_resources/policy_and_practice/policy_library/policy_library_folder/policy_briefing_asserting_authority_-_calling_time_on_rogue_landlords), September 2011

<sup>11</sup> TPO, <http://www.tpos.co.uk/downloads/reports/TPO%20Annual%20Report%202011.pdf>, 2011

<sup>12</sup> DCLG Private Landlords Survey 2010, <http://www.communities.gov.uk/documents/statistics/pdf/2010380.pdf>, October 2011

### 3.3 Housing stock condition in the PRS

3.3.1 The English Housing Survey 2009-10, reported 31% of PRS households were non-decent<sup>13</sup> (in 2010-11 this was 37%). In the PRS 61.4% of homes failing the decent homes standard did so because of Housing, Health and Safety Rating System (HHSRS) serious hazards and 57.7% because of thermal comfort shortcomings<sup>14</sup>. Private rented dwellings were more likely to be older and therefore more likely to have defects to the damp proof course, roof covering, gutters or down pipes, which could lead to problems with rising or penetrating damp affecting at least one room in the property<sup>15</sup>.

3.3.2 The PRS has the largest proportion of Standard Assessment Procedure (SAP) band G rated homes of all tenures, 5.8% compared with 3.4% for owner-occupier<sup>16</sup> households, and four times as common as in the social rented sector<sup>17</sup>. According to the English Housing Stock Report for 2009 (published in July 2011), there were still 3.3 million dwellings (all housing stock) in the lowest energy efficiency SAP bands F and G. The private rented sector had by far the largest proportion of pre 1919 stock (40%)<sup>18</sup>.

3.3.3 The likely cost to the NHS of poor health resulting from residing in PRS dwellings with SAP band F and G is estimated to be between £35 - £674 million per year<sup>19</sup>. 15% of PRS homes are classified as a Category 1 'excess cold' hazard under the HHSRS<sup>20</sup>.

#### Case study: Electrical safety

3.3.4 An example of an inconsistency in current regulation is that gas installations and appliances must receive an annual safety inspection<sup>21</sup> but electrical installations and appliance do not.

The Lofstedt report '*Reclaiming health and safety for all: An independent review of health and safety legislation*', November 2011, has a fundamental flaw in its' analysis of electrical appliance inspection and testing compliance, i.e. analysis of reasons for apparent over-compliance. There is a danger that the recommendations resulting from the analysis could be applied to the PRS. The legislation relating to electrical appliance safety, that is the 'Electricity at Work Regulations 1989' and the 'Electrical Equipment (Safety) Regulations 1994' (applicable to the PRS), are as valid now as when written and essential to prevent fatalities. Appropriate application of the legislation is clearly spelled out in IET Code of Practice (CoP) for In-Service Inspection and Testing of Electrical Equipment (3rd edition), any problem of over-compliance arises from mis-understanding and incorrect application of the IET CoP and not because of any flaw in the legislation. The Lofstedt report also misinterprets the term 'portable appliances' when it states that "businesses are going further and applying testing to all electrical equipment, not just to items that are truly portable" (page 9). The IET CoP clearly states that hand-held, portable, moveable, stationary, I.T and fixed electrical equipment should receive appropriate inspection and testing.

3.3.5 Bad housing is closely linked to many wider social problems that blight neighbourhoods, such as crime and antisocial behaviour. New investment is needed for

13 Department of Communities and Local Government, *English Housing Survey: Headline Report 2009-10*, July 2011

14 Julie Rugg and David Rhodes, *The Private Rented Sector: its contribution and potential*, 2008

15 DCLG, *English Housing Survey 2010-11*, February 2012

16 Department of Energy and Climate Change, *Energy Bill: Private Rented Sector Regulations 2011*, 2011

17 Department of Communities and Local Government, *English Housing Survey: Headline Report 2009-10*, July 2011

18 DCLG, *English Housing Survey 2010-11*, February 2012

19 Building Research Establishment, *The Health Costs of cold dwellings*, February 2011

20 Consumer Focus, *A private Green Deal*, December 2010

21 [HMG, Gas Safety \(Installation and Use\) Regulations 1998](http://www.legislation.gov.uk/ukxi/1998/2451/contents/made)  
(<http://www.legislation.gov.uk/ukxi/1998/2451/contents/made>), 1998

the provision of high quality private rented homes.

#### Examples of non-regulatory approaches or use of existing legislation

3.3.6 Local authorities should be supported and encouraged to take a more pro-active approach to inspections of PRS stock e.g. local housing condition surveys.

3.3.7 Local authorities should be encouraged and supported in taking tougher enforcement action against rogue landlords to ensure existing regulations are enforced.

3.3.8 Local authorities should make greater use of selective licensing powers and consider following the example of Newham Borough Council's proposal to license all private landlords.

3.3.9 Consideration should be given to extending the Decent Homes Standard to all PRS housing stock and appropriate targets set.

#### Regulatory reform

3.3.10 NPTO calls for appropriate mandatory periodic Electrical Installation Condition Reports and electrical appliance inspection and testing in rented homes. The death of one young mother could have been prevented by such mandatory inspection and testing<sup>22</sup>.

### **3.4 Tenancies in the PRS and security of tenure**

Assured Shorthold tenancies do not meet the diverse needs of consumers (private tenants).

3.4.1 The Housing Act 1988 introduced Assured Shorthold (AS) tenancies giving landlords the option to grant a minimum fixed-term 6 month tenancy (which can be renewed on a rolling basis as statutory or contractual periodic tenancies). This has become the tenancy of choice for landlords with very few Assured or long fixed-term AS tenancies being granted. This type of tenancy does not meet the needs of tenants who would like long-term settled tenancies e.g. older tenants and families with children in settled employment which contributes to sustainable communities. In other European countries private renting is viewed as a mainstream long-term tenure choice. An example of a more flexible approach to meeting private tenants diverse needs is the Residential Tenancies Act 2004 in the Republic of Ireland, this improved security of tenure.

Does the current legal framework serve tenants who require longer term stable and secure tenancies especially in regard to the enforcement of legal rights and the threat, fear of and actual retaliatory eviction<sup>23</sup>?

#### Examples non-regulatory approaches

3.4.2 Landlords should be encouraged and given incentives to grant Assured or long fixed-term AS to tenants. Longer tenancies can benefit landlords too by providing a regular income stream.

22 BBC, <http://news.bbc.co.uk/1/hi/england/cornwall/8140632.stm>, July 2009

23 NPTO, <http://btckstorage.blob.core.windows.net/site5929/V1.3%20DECC%20Retaliatory%20Eviction%20Working%20Group%20Submission.pdf>, October 2011

## Regulatory reform

3.4.3 A review of PRS tenancies should be undertaken and account taken of tenancy models in other parts of Europe so that the varying needs of tenants are catered for. A new type of tenancy is required to deliver the security tenants may need.

3.4.4 Regulation is required to deal with the problem of AS retaliatory eviction. Such legislation exists in Australia, New Zealand and some states in the U.S.A.

3.4.5 All tenants and licensees should be provided with written tenancy agreements and inventories for furnished accommodation.

## **3.5 Affordability**

3.5.1 Private rents in 8% of England's local authorities were "extremely unaffordable" - with average rents costing at least half of full-time take-home pay. Just 12% of areas were affordable. 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 a number of studies<sup>24</sup>.

3.5.2 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)<sup>25</sup>.

3.5.3 Do the current arrangements for rent setting serve consumers (tenants) and landlords equally?

3.5.4 Changes to Local Housing Allowance have put extra pressure on rent affordability. In April 2011, maximum local housing allowance (LHA) rates in all areas were reduced – only three out of ten properties for rent in any area are now affordable for people making a new claim. In expensive areas such as central London, rents are often much higher than the new caps on weekly LHA rates<sup>26</sup>.

## Regulatory reform

3.5.4 A review of PRS rents should be undertaken taking into account affordability along with a range of other factors including a reasonable return for landlords. NPTO favours exploring a rent regulation model.

(End)

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24 Shelter, *Shelter Private Rent Watch*, October 2011

25 DCLG, *English Housing Survey 2010-11*, February 2012

26 Shelter,

[http://england.shelter.org.uk/get\\_advice/paying\\_for\\_a\\_home/housing\\_benefit\\_and\\_local\\_housing\\_allowance/changes\\_to\\_local\\_housing\\_allowance](http://england.shelter.org.uk/get_advice/paying_for_a_home/housing_benefit_and_local_housing_allowance/changes_to_local_housing_allowance)