

Local authorities and the private rented sector

The law and good practice

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Outline

Introducing ourselves

The current regulatory context

The Renters (Reform) Bill

Local authorities and the regulation of the private rented sector

Helen Carr

- Professor of Property law and social justice and Director of the Law School Research Centre, People, Property, Community
- History of practice, teaching, research and publications into housing and homelessness
- Part time judge with the FTT Property Chamber – housing leasehold and building safety jurisdictions
- Highlights
 - Seconded to Law Commission for its Renting Homes project
 - Advised Welsh Government on its Renting Homes legislation and on leasehold reform
 - Worked with Shelter to pass the Homes(Fitness for Human Habitation) Act post Grenfell

Mark Jordan

- Lecturer in Housing law at Southampton Law School and founding member of Law School Research Centre, People, Property, Community
- History of teaching, research and publications into housing and human rights in the UK, Ireland and Europe
- Highlights
 - Researcher on international research projects examining renting law and policy across Europe
 - Advised groups involved in international housing rights litigation at the Council of Europe
 - Worked with tenants' groups and local authorities in Ireland to develop a human rights-based tenant participation model

Current regulatory context

Law is voluminous and complex

Often shaped by historical roots

Neither comprehensive, coherent nor easy to locate

Ideologically driven with very limited consensus as to the proper balance between landlords and tenants

Reforms tend to be layered piecemeal onto existing legislation (cf Law Com reform project)

As a result limited access to justice

Regulated deregulation



Housing Act 1988
deregulated private
renting

Market rents with limited ability
to challenge these in the
tribunal

AST – s.21 HA 1988 enabling
eviction for ‘no fault’

Default tenancy from 1996



Since 1997 increased regulation



Always preserving the market rent

Increased regulation from 1997

Regulatory framework

- Gas Safety (Installation and Use) Regulations 1998
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Energy efficiency regulation

HA 2004

- Housing Health and Safety Rating System
- Licensing of HMOs
- Other possibilities for licensing 'challenging' rental properties
- Introduced Rent Repayment Orders
- Tenancy deposit protection
 - S.21 not available to landlords where there are breaches See Nearly Legal flowchart [s21updatedOctober21.docx \(live.com\)](#)

Since 2004

- Acceptance by Conservative administrations that the housing market is ‘broken’
 - Deregulation Act 2015
 - ‘Retaliatory’ evictions banned
 - Housing and Planning Act 2016
 - Banning orders
 - Database of rogue landlords and property agents
 - Extended availability of RROs
 - Homes (Fitness for Human Habitation) Act 2018
 - Extended scope of landlords responsibilities to fitness for human habitation
 - Tenants Fees Act 2019

Snapshot of private renting in England

Since 2000s, the private rented sector has doubled in size to 19% of households (4.4 million people)

Profile of tenants

- Diverse but growing numbers of families with children (30%) & low-income households
- Demand driven by unaffordability of ownership and undersupply of social housing

Profile of landlords

- Prevalence of ‘small’ landlords – ‘82% of landlords owned between 1 and 4 properties
- Supply driven by Buy-to-let mortgages, tax reliefs, rent subsidies

‘Crisis’ in the private rented sector

Deregulation created favourable investment conditions for private landlords but contributed to precarity for many tenants:

- Insecurity: ‘no fault’ evictions linked to rising homelessness and ‘unethical’ practices by Government (2019)
- Unaffordability: Private renters spend 32% of their income on housing, more than owners (18%) or social renters (27%) and signs of acute rent inflation(!)
- Housing conditions: 23% homes fail the Decent Homes Standard and 13% have at least one category 1 hazard

Growing recognition that tenants have a right to better, more secure and affordable homes

The Renters (Reform) Bill 2023

- Manifesto pledge by Conservatives in 2019 – a better deal for renters
- Five years of consultation
- Bill introduced May 2023 second reading November 2023
 - Abolishes s.21 of Housing Act 1988
 - All assured tenancies to be periodic (exception for PBA student accommodation)
 - More comprehensive possession grounds
 - Private rented sector ombudsman
 - Privately rented property portal
 - Right to request a pet
 - Measures to improve standards

The abolition of s.21

Benefits for tenants

- Increases security
- Taking action against poor housing conditions becomes more plausible
- Reduces the costs of renting

But there is a quid pro quo

- ‘Comprehensive fair and efficient grounds for possession’
- New persistent rent arrears ground
- Expedited grounds for ASB
- Consequences for intentional homelessness?

Money – New procedures for rents

- Rent review clauses will be banned
- Rent increases only once a year
- Amends s.13 of HA 1988
 - two months notice must be given of rent rises
 - Challenge market rents at tribunal
- Rent in advance must be returned if tenancy ends earlier than tenant has paid for
- Power to limit amount of rent in advance cf Scotland where only
- Ban on excluding tenants on benefits



The Property Ombudsman

- Single government approved Private Rented Ombudsman
- To provide fair, impartial and binding resolution more quickly, cheaper and less adversarial than the courts
- Scheme will cover all private landlords
- Redress scheme for tenants to make complaint against a landlord which will be quickly investigated
- Remedies
 - Apology
 - Information
 - Remedial action
 - Pay compensation up to £25,000

The Property Portal

- Designed to inform landlords of their obligations and demonstrate compliance
- Better information for tenants enabling them to make informed decisions
- Local authorities will have access to better data
- Will build on database of Rogue Landlords mandating the entry of all eligible offences and making them publicly visible



Some key questions....

- Illegal evictions are likely to rise
 - New financial penalty for illegal eviction
 - But outdated and clunky law
 - Promise of new investigatory and enforcement powers for local authorities
 - But very uneven use of those powers
- Effect on student accommodation
 - Student landlords lobbying for fixed terms
- Continued regulation of a deregulated market
 - Market rents will still apply
 - Tribunal may well be overwhelmed with challenges



Local authorities and private renting

Local authorities have an important regulatory role that is underpinned by legislation that requires authorities to:

- keep housing conditions (incl. overcrowding) under review
- take enforcement action where a category 1 hazard is identified
- promote equality and respect human rights

Renters (Reform) Bill includes a duty that local housing authority shall ‘enforce the landlord legislation in its area’

Local authorities' enforcement powers

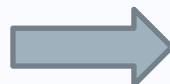
To fulfil legal duties, local authority have wide enforcement powers including:

- formal “deterrence–focused” regulation i.e. statutory notices, civil penalty notices (up to £30K fines), banning orders, criminal penalties, rent repayment orders
- other approaches i.e. surveys, licencing, informal actions

BUT many local authorities are not proactive but rather operate a ‘reactive’ enforcement service that responds to individual complaints

What does good enforcement look like?

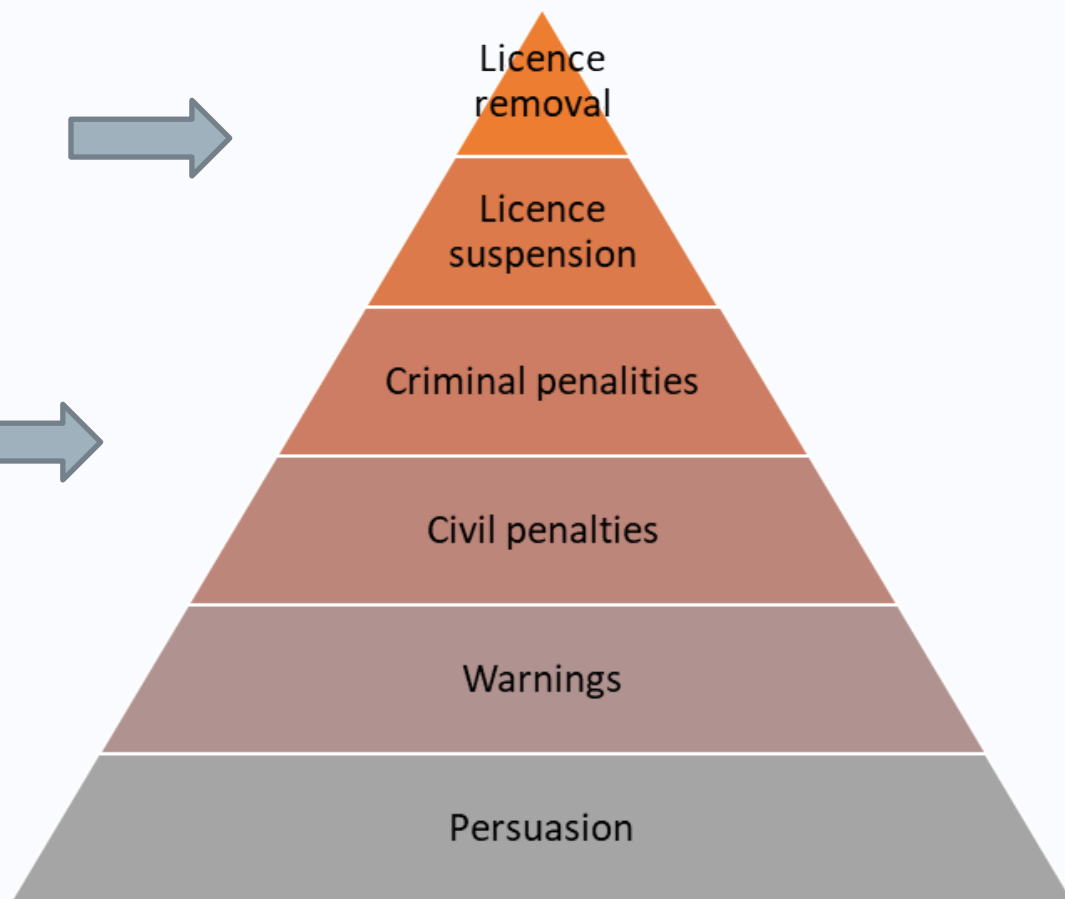
Full use of licencing & enforcement powers



Following lack of compliance, response should escalate to formal action



Advice, support as strategies of first choice



Pyramid of responsive regulation – Harris et al (2020)

Drivers and barriers to good enforcement

Drivers

Capacity of local enforcement teams

Experience and expertise of enforcement teams

Political will, strategic commitment, and support of legal teams

Barriers

Issues relating to the legal framework

Lack of meaningful data about private renting

DLUHC, *Local authority enforcement in the private rented sector* (2021)

YOUR QUESTIONS