A British Property Federation response to:

A Department of Communities and Local Government consultation on:

Review of Property Conditions in the Private Rented Sector

The British Property Federation

The British Property Federation (BPF) is the trade association for the property investment sector. We represent larger investors in property; companies and pension funds who invest in all forms of property for the benefit of their shareholders and UK pensioners. We also represent a number of national, regional and local landlords associations who themselves are the voice of private landlords in their localities.

We welcome the opportunity to respond to Department for Communities and Local Government Review of Property Conditions in the Private Rented Sector. Should you require any further information on the comments contained in this response then please do not hesitate to contact Matthew O'Connell at moconnell@bpf.org.uk or 020 7802 0111

Question 1: In addition to the production of the Tenant's Charter, is there any further action that could be taken to raise awareness amongst tenants and landlords of their rights and responsibilities? Who needs to take this action?

There is a huge amount of information available online for landlords and tenants, some of it more reliable than others. Tenants and landlords need to be in possession of the facts if they are to feel confident asserting their rights. Realistically, most people will use the internet as their first source of information. The section on the .Gov website on private renting is a good source of information, but tying it into the .Gov website makes it difficult to initially identify. We would encourage DCLG to create a single website similar to the NHS direct website where the information is more user friendly. Working with landlord and tenant groups it would be easy to identify the most common sources of conflict between landlords and tenants, which could then be addressed in an FAQ section.

Ipsos Mori data from last year shows that 61% of private tenants have smart-phones, DCLG should ensure any tenancy information they supply is smart phone compatible. The Tenant's Charter needs to have an interactive interface, linked to a website such as the one described above which can provide more details or examples of important documents like gas safety certificates or EPCs.

For the greatest impact the tenant's charter needs to be presented to them at the start of their tenant experience which often is a letting agent, or increasingly, on websites such as Rightmove, Zoopla and Gumtree.

Question 2: What is best practice in raising awareness amongst tenants of their right to seek help and advice from their council and how can this be shared between local authorities?

Creating policy for the PRS is difficult as it varies from postcode to postcode. There have been successes in student areas, as it is easier to provide information and advice through

universities. It also offers excellent opportunities to channel the supply of lettings through an organisation supported by the University. An excellent example of this is Unipol, a charity that runs a national accreditation scheme for student housing in the PRS, in collaboration with universities and student unions. They accredit landlords, offer training and allow landlords to list their properties on its website.

Obviously some demographics will be mirrored across the country, identifying those areas with similar private sector tenants would allow for best practice sharing. It is also important for Local Authorities to identify those demographics most likely to be exposed to poor conditions and least likely to seek help.

A Joseph Rowntree report studying the use of the PRS by migrants found that new migrants are very likely to rely on the PRS and are usually most likely to settle in the most disadvantaged areas where housing demand is lowest, described as the 'new migrant penalty'. They tend to have a poor understanding of their rights and are unlikely to communicate with the Local Authority. Outreach has been most successful when advice has been distributed by MCROs (migrant and refugee community organisations) new migrants feel more confident accessing information via their own community, and these schemes deliver this while retaining a link with the Local Authority.

Question 3: What is best practice in dealing with requests for help and advice from private sector tenants and how can this be shared between local authorities?

Current fiscal constraints have forced Local Authorities to be more and more reactive in the way they approach their duties under Section 3 of the Housing Act 2004. To make sure resources are properly used there needs to be education of tenants to communicate what is reasonable to ask of a landlord or a local authority and what is not.

Tenants should be made aware that if they are experiencing a problem in their property the landlord is almost certainly the best person to contact, 56% of tenants who contact the Housing Ombudsman do not talk to their landlord before making a complaint.

Local Authority intervention should involve the landlord at an early stage, to get a full understanding of the circumstances behind a request for help or advice. To avoid any confusion or misunderstanding any findings, inspection notes or judgements should be issued in writing to all parties.

Question 4: Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?

Tenants should be informed of any potential hazards in their home. There is clearly an advantage for a landlord to have a tenant report something they believe to be problematic before it becomes a greater issue. For most landlords, it will be best practice to ensure tenants are shown around a property when they move in and are shown how to safely operate controls and appliances.

We would of course be supportive of tenants being more aware of potential hazards around the home, provided they do not attempt repairs on appliances or systems when they are not qualified.

Areas where legislation already mandates checks, for example on gas and electrical appliances do not need additional guidance for tenants, beyond the tenant ensuring these documents are in date. The advice to tenants should always be to contact the landlord if they suspect there is a hazard.

Question 5: Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?

No, one reason a landlord will issue a Section 21 is because they require the tenant to vacate before major works can be carried out. This is most likely to be due to a significant level of prolonged disruption.

When dealing with serious disrepair, a landlord will have the safety of the tenant in mind and if there are risks in them staying in the property during repairs. The landlord may be left with no choice but to issue a section 21 possession notice to their tenant. Local Authorities have similar powers under the Housing Act 2004 to issue a range of enforcement options to address serious disrepair and order improvements. Section 20 and 21 of the Housing Act 2004 allow Local Authorities to prohibit occupation of part of, or all of the premises. They also have powers under Part 9 of the 1985 Act to declare an area a clearance area, which would require a tenant to vacate the property for their own safety. In the same circumstances, a responsible landlord needs to have the powers to deal with a hazard and to protect the tenant. Regrettably, with the current pressures on housing in some areas, people are desperate for any kind of accommodation and are willing to live in non decent homes.

It is important to bear in mind that, just as there are bad landlords, there are bad tenants who do not fulfil their responsibilities. If a tenant is causing serious damage to a property, a landlord should absolutely have the right to evict that tenant. It is not comparable to the restrictions on the issuing of a Section 21 if the tenant's deposits have not been correctly protected. Issues of disrepair are far less black and white, without clear evidence of the disrepair it is hard to determine who caused it or how long it has existed. We would deem it best practice for a landlord and tenant to examine the property at the outset of the tenancy and complete a thorough inventory with photo evidence where possible.

A property is unlikely to slip into a state of serious disrepair overnight. Anything that would necessitate major improvement work would likely as not have been present on the first day of the tenancy, and should have been rectified before a tenant moves in.

It can be difficult to identify some hazards without training or experience but if it is something obvious such as structural damage or exposed wires, we would encourage prospective tenants to alert Environmental Health Officers at the appropriate local authority who can then advise landlords of the necessary improvements.

Some Local Authorities operate schemes to return empty properties to the market, offering up to 75% of the works if the landlord makes the property available to their local Housing Department for a number of years. We would encourage similar incentives be made available for landlords

Fundamentally, evicting a tenant is time consuming and expensive, the landlord receives no rental income while the property is empty, may have to pay council tax, must re-decorate to make the property attractive; potentially pay for a letting agent, and on top, there is no guarantee the next tenant will be an improvement on the old one.

Retaliatory eviction is not something that we deem to be a widespread phenomenon and we would want to see a suitable evidence base for this behaviour before further burdensome legislation is considered. The Rugg Review, the Law Commission and most recently a DECC report examining the implementation of the Energy Act 2011 all found little evidence that retaliatory eviction actually occurs.

It is more likely a fear of retaliatory eviction explains why the tenant does not feel comfortable discussing property conditions with the landlord. The result being problems that could have been easily managed go unreported, in the case of something like a water leak, not reporting it early can do a large amount of structural damage that would necessitate the landlord asking the tenant to vacate the property for their own safety and so repairs can be carried out.

We would have far greater concerns if the landlord continued to let their tenants stay in a property undergoing substantial repair or renovation. Any restriction on using Section 21 in order to carry out repairs could lead to tenants choosing to remain in situ due to an understandable reluctance to move and as a result be exposed to hazardous conditions. Similarly to selective licensing, any restriction would hamper good landlords as they maintain their properties and protect their tenants, rogue landlords will simply continue to illegally evict, or wait until the end of the suspended period and then evict.

Question 6: What would be an appropriate trigger point for introducing such a restriction?

The restriction should not be introduced. Landlords know that Section 21 orders are time consuming and potentially very expensive, the end result will be an empty property they will have to fill, with all the expenses that accompany that, on top of the repairs which would have to be completed before a new tenant moved in. If a landlord has a good tenant there is no reason for them to start eviction processes.

If restrictions were imposed on issuing section 21 notices, landlords would simply increase their use of Section 8 notices, which are a far blunter tool, as they require a reason for initiating the eviction process. The result of this would be tenants who are continuously in arrears would be evicted under Section 8 which would reveal exactly why they have been evicted which would make it far harder to find a new property, given that recent a BPF survey showed that 30% of landlords ask for references.

Question 7: How could we prevent spurious or vexatious complaints?

We do not believe that a tenant's ability or confidence to complain if there is a problem with their property should be limited in any way. If there are genuine problems in the property it is important tenants feel empowered to voice their concerns.

Despite this, landlords need the confidence of the Section 21 to ensure they can secure the property in case of arrears, persistent anti-social behaviour or if they need to sell the property. As part of best practice for landlords, we would deem it prudent for landlords to catalogue any demands for repairs from tenants, and to respond in writing, keep evidence that shows the repairs were successfully carried out, or with the support of the local authority, reassure the tenant there was no need for repairs to be made.

Question 8: Do you think Government should introduce Rent Repayment Orders where a landlord has been convicted of illegally evicting a tenant?

If the landlord or a representative of the landlord has been convicted of illegally evicting a tenant, they should be convicted under powers laid out in the Protection from Eviction Act 1977.

Question 9: Should this be in addition to, or instead of, any damages the tenant may have received, or action taken by the local authority, for example a prohibition on renting out the property?

The RRO should not be used in these circumstances as there is already legislation covering offences relating to illegal eviction. Any further action should be left up to the local authority or individual tenant. There are numerous civil and criminal offences already covering offences related to illegal eviction such as breach of contract, breach of covenant for quiet enjoyment, breach of s.3 of the Protection from Eviction Act 1977, trespass to land, nuisance, trespass to goods and conversion, breach of s.27 of the Housing Act 1988 and potentially assault. We do not deem any further punitive measures necessary as the legislative deterrent is clearly already significant.

Question 10: Should a Rent Repayment Order be issued automatically where a landlord has illegally evicted a tenant?

The landlord should be convicted of illegally evicting a tenant and any conviction should be subject to the Protection from Eviction Act 1977. Beyond this, if there is proof the landlord has committed other offences, they should be convicted of them as well. A tenant could have enjoyed comfortable and safe conditions in the property for months or years before the illegal eviction occurred. There is no reason for a huge proportion of rental income to be taken from the landlord for what may be an accidental failure to understand due process.

Question 11: Do you think a landlord should be subject to a Rent Repayment Order if they rent out a property that contains serious hazards?

Yes, if the property is found to contain serious hazards the tenant should be able to reclaim the rent paid between the hazard being identified by the local authority and the repair being carried out, where the tenant remains in situ. If the landlord offers alternative accommodation that is hazard free that should be taken into account in any RRO award.

Question 12: What should the trigger point be?

We would consider a Category 1 hazard under the Housing Health and Safety Rating System to be a suitable trigger.

Question 13: Should a Rent Repayment Order be in addition to, or instead of, any damages that the tenant may also be awarded, or other action taken by the local authority, for example a prohibition on renting out the property

A property that contains Category 1 hazards should not be rented out. The Local Authority should ensure that any hazards are addressed before the property is put back on the market.

Question 14: Is there a need to review the sanctions currently available to local authorities when dealing with less serious housing condition breaches?

Local Authorities have sufficient powers under the Housing Act 2004 to tailor any enforcement efforts to the specific nature of the housing offence.

Question 15: Should private sector landlords be required to install, and maintain, smoke alarms in their properties, or would a non-regulatory approach to encourage greater take-up be a better option?

We believe that regulations should obligate all rented housing, both social and private to ensure that there are working fire and smoke detectors in the property at the time a tenancy starts. After that, like in the owner occupied sector, the obligation should be on the tenants to maintain and test, and report any faults. Landlords should have the choice whether alarms are hardwired or battery operated.

Question 16: Should private sector landlords be required to install, and maintain, carbon monoxide alarms in their properties or would a non-regulatory approach be a better option?

We believe that when a product is installed in any property, regardless of tenure, that has the potential of emitting carbon monoxide the relevant detectors should be compulsory. This already constitutes best practice for most landlords. If there is no appliance capable of producing carbon monoxide it seems slightly ponderous to make them compulsory.

Landlords should ensure that the relevant detectors are fully functioning in a property at the outset of the tenancy. Beyond this, the obligation should be on the part of the tenant, although best practice for most landlords would be to carry out checks on detectors at the same time as the annual gas safety check, to minimise disruption to the tenant. Again there should be choice as to whether detectors are battery operated or hardwired.

Question 17: Does the Landlord and Tenant Act 1985 cover the right areas, or should it be broadened to cover other issues?

We deem the current legislation to be sufficient.

Question 18: Do you think that the current approach strikes the right balance or should there be a statutory requirement on landlords to have electrical installations regularly checked?

We agree with the DCLG that checks should be done at the outset of the tenancy and maintained throughout its duration but that this should not be a legislative obligation. Our industry has concerns that the testing of electrical installations is far more open to abuse by providers of tests and there is not the same confidence in the sector's accreditation as there is in Gas Safe for Gas safety checks. Landlords are worried that they are often compelled to follow whatever advice the electrical tester gives when they do not always think it necessary. Landlords do not view the accreditation process to be as rigid as the Gas Safe Register.

Question 19: How effective is voluntary accreditation as a way of driving up standards?

It certainly has a role to play. Voluntary accreditation drives up standards and identifies landlords who are keen to improve the service they deliver. It is important that there is a

market advantage for landlords to be a member, for example, having a package of incentives available only for accredited landlords would act as a driver for registering.

Incentive packages could include free gas or electricity checks for the property, a letter of recommendation or certification from the Local Authority, a liaison officer to deal with different departments in the local authority on behalf of the landlord, or access to bulk purchase discounts on landlord essentials like insurance.

Question 19: Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?

We remain very sceptical that the worst landlords in any given area apply for licenses and therefore the main targets of such measures continue breaking the law. You could convict a landlord of not having a license despite them having an exceptionally maintained property, while the rogue section simply ignore the requirement. Why would anyone already breaching the law not think twice about breaking other laws? Licensing therefore tends to capture a range of landlords from those who are no problem and diligently abide by the law, to those who possibly out of ignorance may be breaching their statutory obligations. Proponents of such schemes may use the latter as justification for introducing licensing schemes, but normally such schemes are introduced to capture the perpetrators of the worst standards, and on that score we believe they mostly fail.

Selective licensing can work if it is implanted with the original policy intention of targeting a small area with the support of an effective enforcement strategy, otherwise it is toothless. Currently it is being implemented across whole local authority boundaries without adequate resources, with the only result being higher rent for tenants as landlords pass on the costs of licensing.

Manchester City Council has decided not to continue with selective licensing at the end of its five year duration. There has as yet been no official evaluation of the Manchester scheme, although councillors reported the scheme was overly bureaucratic, lacked teeth and enforcement ‘was limited with a focus on applications and income generation rather than quality checking and taking action where landlords fail to comply.’

Local Authorities have in some cases rushed through selective licensing, giving scant regard to their obligations under Part 3 of the Housing Act 2004, as the R (Peat and others) v Hyndburn District Council case demonstrated. Fundamentally, communication needs to improve between landlords and Local Authorities, and springing surprise licensing on landlords trying to operate a professional business will not remedy this.

Schemes tended to be better targeted before the general consent was introduced in 2010 and it should be withdrawn as soon as possible and replaced with a more tightly defined general consent. This could allow local authorities a general consent to introduce licensing schemes covering x% of their area. Any more than x% would require the explicit consent of DCLG. We think this would help restore the intention of the Act, that such powers should be targeted, whilst not unduly impinging on localism.

If the intention of licensing is to weed out the poor landlords, it seems sensible to exempt accredited landlords from licensing. The power remains in the 2004 Act for the Government to make regulations on fees. Another suggestion would therefore be for the Government to allow for license fees to be rebated to landlords, where their property was not inspected during the license period, or inspected and found to have no serious faults.

While the law makes it clear that a Local Authority cannot make charge any more than the administration costs of a licensing scheme, we believe that Government should use existing powers in the 2004 Act to mandate that licensing fees should be returned to landlords if their property is not inspected during the five year licensing period, or if on inspection, the property is found to have no serious faults. Fundamentally, this would impact on landlords who obey the law, show consideration to the needs of their tenants and maintain high professional standards. Those that chose to operate covertly and actively avoid complying with their responsibilities are always going to do so.

Question 20: Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?

This is undoubtedly the most effective and sensible approach. The problem with seeking to target rogue landlords is identifying them. Properties in the PRS will not be so identifiable in look or occupancy. Some will be being let for private rent, but others will be in owner-occupation. Requiring all PRS properties to have a license is not the most effective tool as it doesn't actively improve the conditions of a property, it simply targets the management

To reduce the 'beds in sheds' phenomenon the information necessary for a conviction needs to be accessible by one well funded agency with databases containing information on planning permissions, building regulations, council tax, EPC compliance, gas and fire safety and a good knowledge of the area in which they are operating.

As the Government is keen to promote investment in the PRS and increase the construction of large purpose built professionally managed private rented properties it is important that any licensing schemes do not dissuade a company from investing in an area. Licensing will not result in large landlords selling their stock, but the bureaucratic and financial burden of paying for a license and filling out forms which in some cases are over 40 pages long for each property, do act as a disincentive. New purpose built stock built to high specifications, leading the market on property management should be promoted at every opportunity.

For schemes to work and standards to increase Local Authorities need to keep landlords on side, if landlords feel they are being unfairly targeted they are likely to do the bare minimum to comply and the scheme will prove ineffective. Key to this is the payment of licensing fees.

There are parts of the 2004 Act that have never been enacted on fees and have laid dormant on the statute book. Specifically, section 87(6e) allows DCLG to specify circumstances in which no license fee is payable. One way of reinforcing good behaviour and targeting the bad landlords would be to specify, using this part of the Act, that landlords who are members of recognised local or national accreditation schemes would be exempt from selective licensing fees.

This would in itself start to rein local authorities back towards the intentions of the Act, whilst not depriving them of their powers to license. It would also give accreditation and promotion of good practice a boost. Some local authorities do provide discounts to accredited landlords, but practice across licensing schemes varies significantly, from token discounts of small amounts to more significant concessions, but rarely fee exemptions.

Question 21: How can we balance the need for short-term holiday accommodation with seeking to ensure that sufficient accommodation is available for longer term letting?

In leasehold property, there are often management difficulties associated with having people sub-let to very short-term tenants. Having people regularly moving in and out of properties puts a strain on regular tenants who may be disturbed as holiday makers can be responsible for increased noise moving in and out with luggage to catch flights during the night, or by making too much noise. Given the pressures on housing in London and areas popular with tourists, we would consider retaining housing for full time residents to be the current priority, there are plenty of other accommodation options for holiday makers.

Question 23: Do you think the methodology that underpins the HHSRS and/or the accompanying operational guidance need to be updated?

There is a need to update the guidance and to try and simplify and communicate it to landlords and tenants.