Written evidence submitted by the Chartered Institute of Environmental Health to the Renters' Rights Bill Committee

Introduction

The Chartered Institute of Environmental Health is the professional voice for environmental health representing over 7,000 members working in the public, private and non-profit sectors (including environmental health professionals working in local authority private rented sector enforcement teams). Building on our rich heritage, we ensure the highest standards of professional competence in our members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. We campaign to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to our environment and our health.

Executive summary

- We welcome the Renters' Rights Bill but are concerned about the large enforcement burden that the provisions of the Bill will impose on local authorities. Funding must be proportionate, sustained and predictable. It must permit local housing authorities to attract new staff and fund the training of those staff now and in the future.
- We believe the Bill provides an opportunity to remove unnecessary barriers to local authorities using licensing schemes to improve housing standards.
- Licensing is a focused and proactive approach to improving the worst housing and minimises burden on good landlords in other areas.
- We are recommending that local authorities should be able to use licence conditions to improve housing conditions and that the maximum duration of discretionary licensing schemes should be increased to ten years.
- We are concerned about how the role of the new ombudsman will interact with that of local authorities.
- We welcome the proposed private rented sector database as a tool to support the use of tailored enforcement approaches by local authorities.
- We believe that, although national approaches such as lead authorities promote consistency, local authorities are best placed to regulate the private rented sector in view of the variation between geographical areas.
- A list of our recommended amendments to the Bill can be found at the end of this written evidence.

Funding enforcement

1. We welcome the Renters' Rights Bill but are concerned about the large enforcement burden that the provisions of the Bill will impose on local authorities and the need for proportionate funding that is sustained and predictable.

2. The success of the landlord redress scheme, the private rented sector database and the changes around possession of properties all depend on effective enforcement. The Bill allows for database fees to be passed on to local authorities but there is no comparable source of direct revenue generation for funding enforcement burdens associated with the new ombudsman service. We are recommending that the Bill should be amended to permit ombudsman fees to be used to fund the enforcement costs of the scheme.

3. Local authorities are already severely under-resourced and struggling to meet their existing enforcement burdens. Work by Battersby[1] found an average of 2.46 environmental health officers for every 10,000 private rented sector dwellings in London boroughs and 2.2 in metropolitan and unitary authorities. This is not sufficient to deal with the existing numbers of tenant complaints.

4. The Bill's heavy reliance on civil penalty notices appears to assume this income will support a significant proportion of the cost of enforcement. Most cases are resolved through informal action, so only a small proportion will result in punitive action through prosecutions or civil penalty notices. Penalty notices do not represent a reliable or predictable source of income. Only half of the amounts charged in civil penalty notices are collected by local authorities.[2]

5. Since the millennium there has been a substantial increase in the range of housing legislation. Additional legal protections are welcome, but all these new protections require effective enforcement. Each new piece of legislation requires further resources from local authority environmental health teams.[3] Local authority regulatory department funding fell by an average of 41% and staff numbers fell by over a third between 2010 and 2020.[4]

6. Other industries fund their regulation through local authority fees (for example planning and building control). The rental sector should limit burdens on the taxpayer by funding local authority regulation. Ombudsman and database registration fee income should be used to ensure the sector contributes much more towards the cost burdens associated with its regulation. Moreover, central government funding will need to be sustained beyond the initial years of the introduction of these new duties and reflect the relative size of the private rented sector for each local authority.

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[1] Stephen Battersby, *Private Rented Sector Inspections and Local Housing Authority Staffing*, March 2018.
[2] National Residential Landlords Association, *The Enforcement Lottery: Local authority enforcement 2021-23*, May 2024.
[3] National Residential Landlords Association, *Not under-regulated but under-enforced: the legislation affecting private landlords in England*, July 2021.
[4] Emma Rose, *The UK's Enforcement Gap 2020*, Unchecked UK, October 2020.

7. Research carried out by Harris et al.[5] found that reliable and consistent funding streams are required to allow local authorities to plan staffing requirements. Decades of unpredictable funding have severely reduced the ability of local authorities to devote resources to recruitment, training and maintaining an experienced inspectorate. 4 out of 5 local authorities rely on agency staff to deliver basic environmental health functions.[6]

8. We would suggest that local authorities should receive ring-fenced funding based on the number of private rented sector dwellings registered in their areas in order to reflect their relative enforcement burdens. We believe there should be separate fees for the administration of the ombudsman and database schemes. A defined proportion of those fees should be paid to local authorities to cover routine costs involved in providing these regulatory functions.

Removing unnecessary barriers to the use of licensing schemes

9. We believe that the Bill provides an important opportunity to remove unnecessary barriers to the use of licensing schemes to improve housing standards.

10. Licensing provides a means for local authorities to inspect privately rented housing using enforceable conditions - and to identify and resolve problems - without the need for tenants to have complained. It also provides locally tailored regulation of the sector, burdening landlords only where the risk to health is greatest. It makes major contributions to area-based issues, such as crime, anti-social behaviour and waste management, and brings together a range of bodies to focus additional support services for landlords and tenants, improving public health and reducing burdens on the NHS.

11. Licensing means the market pays for its own regulation, rather than relying on the taxpayer. It provides a sustainable and predictable source of income that enables local authorities to maintain staffing levels and support the training of new officers.

12. There is currently a peculiar disconnect in the Housing Act 2004 licensing legislation whereby local authorities can introduce selective licensing schemes to address poor housing conditions[7] but cannot include a directly enforceable requirement relating to housing condition as a condition of the licence itself. We are therefore recommending that section 90 of the Housing Act 2004 should be amended by the Bill to enable local authorities to use licence conditions to improve housing conditions. We are suggesting that the wording of subsection 90(1) should be brought into line with the

[5] Jennifer Harris, Dave Cowan and Alex Marsh, *Improving compliance with private rented sector legislation: Local authority regulation and enforcement*, UK Collaborative Centre for Housing Evidence, August 2020.
[6] Chartered Institute of Environmental Health, *Environmental health workforce survey report: local authorities in England*, April 2021.
[7] The Selective Licensing of Houses (Additional Conditions) (England) Order 2015

wording of the equivalent provision for licensing of houses in multiple occupation in subsection 67(1).

13. Discretionary licensing schemes, which include selective licensing schemes and additional licensing schemes for houses in multiple occupation with less than five occupiers, are very expensive and time consuming for local authorities to introduce. We are therefore recommending that sections 60 and 84 of the Housing Act 2004 should be amended by the Bill to increase the maximum duration of discretionary licensing schemes from five to ten years. This would allow local authorities to advertise longer term posts and to include training of new staff in discretionary licensing schemes. It would also provide more time for local partnerships formed through such schemes to become embedded and effective.

14. The introduction of selective licensing schemes involves considerable uncertainty when the schemes are subject to the Secretary of State's ability to veto them. We are therefore recommending that the general approval for selective licensing schemes[8] should be extended to include schemes that cover more than 20% of the local authority area or more than 20% of privately rented homes in that area.

15. If there are issues in the private rented sector which can be addressed through selective licensing schemes, it seems arbitrary for local authorities to be unable to establish such schemes without ensuring that the sector forms a high proportion of properties in the area. We are therefore recommending that the requirement for them to do this[9] should be removed.

Other provisions on enforcement

16. At present environmental health officers must give 24 hours' notice to landlords and tenants when inspecting property conditions under the Housing Health and Safety Rating System (HHSRS). This is not required for licensing or for inspections assessing the management of houses in multiple accommodation. It gives the landlord 24 hours notice that the tenant has complained. The landlord can then appear at the inspection, which can be an intimidating experience for a tenant. Local authorities should be able to conduct such visits without giving 24 hours' notice, permitting private conversations with the tenant before the local authority contacts the landlord to notify them if works are required. We are therefore recommending that section 239 of the Housing Act 2004 should be amended by the Bill to remove the requirement for 24 hours' notice and that a similar requirement in clause 123 of this Bill should also be removed.

[8] The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015

[9] The requirement is in The Selective Licensing of Houses (Additional Conditions) (England) Order 2015.

17. Clause 102, subsections (3) and (7), of the Bill provides additional new reasonable excuse defences for failure to license a property. We are recommending that the wording of these defences should be changed to clarify that superior landlords relying on reasonable excuse defences must be able to demonstrate that they have managed their property proactively rather than simply refer to tenancy agreements.

18. Clause 128, subsection 4, of this Bill provides only a level 3 fine for obstruction. The Housing Act 2004 uses a level 4 fine. The Bill should be changed to align these offences.

19. Universal Credit has replaced Housing Benefit for many claimants. Local authorities are allowed to use Housing Benefit information and should be allowed to use equivalent Universal Credit information. We are therefore proposing that section 237 of the Housing Act 2004 should be amended by the Bill to allow local authorities to use the latter type of information. Clause 131, subsection (4), of the Bill should be amended for the same reason.

20. There is some confusion over whether under section 239 of the Housing Act 2004 an officer must be separately authorised to inspect each property or a blanket authorisation can be issued. The latter interpretation is far more practical. Clauses 115 and 123 of the Bill provide equivalent powers. We are recommending that the Bill should be used as an opportunity to clarify this point.

Landlord redress schemes

21. We broadly support the use of a landlord redress scheme but are concerned by the lack of clarity about interactions between the proposed ombudsman and local authority enforcement bodies and about the funding arrangements for local authorities tasked with enforcing membership of the redress scheme.

22. When the 4.6 million private rented sector households are able to access an ombudsman, the workload will be considerable. 85% of private landlords operating as individuals own 1-4 rental properties and 45% own just one.[10] There will be a wide range of compliance levels. It is unclear how the new ombudsman will protect tenants from long delays in dealing with their complaints and unclear who will take the lead if a tenant complains to both the ombudsman and the local authority. The ombudsman should not be another obstacle that stands between tenants and enforcement of their rights.

[10] Department for Levelling Up, Housing and Communities, *English Private Landlord Survey 2021: main report*, May 2022.

The private rented sector database

23. We welcome the proposed private rented sector database as a tool to support tailored enforcement approaches by local authorities.

24. Enforcing national registration would add considerably to the workloads of local authority inspectorates. At present the nearest analogous system of national registration enforcement is Rent Smart Wales. The Welsh Government's evaluation of Rent Smart Wales found that in its first two years only 196 fixed penalties had been issued and 13 successful convictions completed owing to a lack of clarity on roles and responsibilities for local authorities and a lack of capacity at local level to enforce the Housing (Wales) Act 2014.[11]

25. The database would provide a valuable tool to support the use of licensing schemes under the Housing Act 2004. Identification of unlicensed properties would become more straightforward. The database could be used proactively to inform landlords about local authority activities in their area. Selective licensing should be retained to focus enforcement where it is needed most, generating revenue to resource this activity from operators in those areas and minimising burden on compliant landlords in other areas.

26. The private rented sector is composed of a wide range of local sub-markets[12] which local authorities are best equipped to understand and regulate. A national registration scheme will tell local authorities where rented properties and their landlords are. Aside from collecting basic certification, the database will do little to bring about direct improvements in property conditions and management without independent inspections of properties. Self-declaration of property condition is unlikely to be an effective indicator of compliance with the Decent Homes Standard. Certificates will also need to be checked as faults are frequently found in those provided to local authorities.

27. The database will provide a valuable source of information on the sector. There are a range of opportunities to match this information with existing English Housing Survey and public health datasets. Consideration should be given to providing access to the data for researchers, with a view to promoting more evidence-based policy decisions.

Decent Homes Standard

28. We welcome, in principle, the proposed application of the Decent Homes Standard to the private rented sector. We remain of the view, however, that the various standards need to be consolidated to provide clarity for landlords, tenants and local authorities. At present there is no detail on what the updated standard will require. We would like to be part of all discussions around updating and enforcing this standard.

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[11] Welsh Government, *Evaluation of Rent Smart Wales*, June 2018.

[12] Julie Rugg and David Rhodes, *The Private Rented Sector: its contribution and potential*, Centre for Housing Policy, 2008, pp. 15-28.

Enforcement authorities

29. Whilst recognising that the appointment of a lead enforcement authority could promote consistency, we would like to see more clarity about the Government's intentions in this area. Changes should not undermine the autonomy of individual local authorities and indeed the work of the lead authority itself. Our review of primary authorities found that the costs of running the schemes are rarely fully recovered. The unrecovered time and resources combined with reductions to local authority budgets mean that primary authority duties are impacting on their authorities' ability to carry out other statutory functions.[13] A lead authority would need to be adequately resourced to carry out its new duties.

30. The cost of lodging an appeal with the Tribunal Service is relatively low, but the costs to the local authority of defending itself against such an appeal are substantial. Tribunal Service hearings and decisions for private rented sector housing cases vary widely. The system would benefit from a review and the provision of clearer guidelines, particularly if it is to handle more housing cases.

Guidance on civil penalties

31. We welcome the provisions in the Bill regarding guidance for local authorities on the administration of financial penalties. These appear in clauses 15, 39, 56, 57, 64 and 89 and in Schedule 4. In each case they say: "The Secretary of State may give guidance …". We are recommending, however, that in each case they should be amended to replace the word "may" with the word "must". At present all local authorities have to produce their own internal policies. Whilst policies can be shared, the production of central guidance would greatly reduce duplication of effort and improve consistency.

Scrutiny of regulations

32. The implementation of the Bill will be determined by regulations covering approximately 38 separate areas. We are recommending that the Bill should be amended so that regulations relating to the private rented sector database, which affect local authority operations and funding, will be subject to the affirmative procedure to provide more opportunity for scrutiny. We would like the Government to engage in a meaningful dialogue with us to ensure the regulations function appropriately within the existing enforcement regime.

33. The regulations made under this Bill should be presented to Parliament in aggregated groups, as a coherent whole, so that Parliament can see and understand their simultaneous impact and permit sufficient time to debate them. This will help to reduce confusion arising from duplication of standards and overlapping jurisdictions amongst regulatory bodies.

[13] Chartered Institute of Environmental Health, *Perspectives on Primary Authority*, November 2019.

List of recommended amendments

Permitting ombudsman fees to be used to fund the enforcement costs of the scheme

Clause 63, page 92, line 39, after "or to be incurred," insert "in the enforcement of requirements imposed by or under this Chapter, and"

Clause 63, page 93, line 19, after "section 62(7)." insert—

"(11) The Secretary of State may direct the landlord redress scheme to pay to local housing authorities or into the Consolidated Fund the amount it receives in respect of the fees it charges, or any part of that amount.

(12) If the Secretary of State is the landlord redress scheme
(a) subsection (11) does not apply, and
(b) the Secretary of State may pay to local housing authorities the amount it receives in respect of fees it charges, or any part of that amount."

These amendments would permit ombudsman fees to be used to fund the enforcement costs of the scheme.

Enabling licence conditions to be used to improve housing conditions

To move the following clause—

(1) The Housing Act 2004 is amended as follows.

(2) In section 90, for subsection (1) substitute—

"(1) A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following—
(a) the management, use and occupation of the house concerned, and
(b) its condition and contents."

This amendment would enable local authorities to use licence conditions to improve property conditions.

Increasing the maximum duration of discretionary licensing schemes

To move the following clause—

(1) The Housing Act 2004 is amended as follows.

(2) In section 60, subsection (2), for "five" substitute "ten"

To move the following clause—

(1) The Housing Act 2004 is amended as follows.

(2) In section 84, subsection (2), for "five" substitute "ten"

These amendments would increase the maximum duration of discretionary licensing schemes from five to ten years.

Removing the 24 hours' notice period for inspections

To move the following clause—

(1) The Housing Act 2004 is amended as follows.

(2) In section 239, leave out subsection (5)

Clause 123, page 138, leave out subsection (1)(c)

Clause 123, page 138, leave out subsection (2)

These amendments would remove the requirement for 24 hours' notice to be given to landlords and tenants when property conditions are inspected under the HHSRS and a similar requirement in clause 123 of this Bill.

Changing the wording of the additional reasonable excuse defences for superior landlords

Clause 102, page 122, leave out subsection 3 and insert—

"(3) After subsection (4) insert—

"(4A) In proceedings against a person for an offence under subsection (1)(a) it is a defence for them to prove that they had a reasonable excuse—

(a) for having control of or managing the HMO, or

(b) for being the landlord or licensor in relation to a person occupying the HMO under a tenancy or licence,

in circumstances in which the HMO was required to be licensed under this Part but was not so licensed

(4B) In proceedings against a person for an offence under subsection (1)(b) it is a defence for them to prove that they—

(a) did not know, and had a reasonable excuse for not knowing, that the building or part of the building concerned was an HMO,

(b) took all reasonably practicable steps to ensure that the HMO was licensed under this Part,

(c) reasonably relied on an agreement making another person responsible for ensuring that;

(i) the building or part of the building concerned would not become an HMO, or

(ii) the HMO was licensed under this part, and took all reasonably practicable steps to ensure the agreement was complied with, or

(d) had some other reasonable excuse for failing to ensure that the HMO was so licensed.""

This amendment would change the wording of the reasonable excuse defence for failure to license an HMO to clarify that superior landlords relying on reasonable excuse defences must be able to demonstrate that they have managed their property proactively rather than simply refer to tenancy agreements. A similar amendment should be used to change the wording of the reasonable excuse defence in clause 102, subsection 7, for failure to license a house under Part 3 of the Housing Act 2004.

Increasing the fine for obstruction

Clause 128, page 141, line 130, leave out "3" and insert "4"

This amendment would increase the fine for instruction to match the one used in the Housing Act 2004.

Allowing local authorities access to Universal Credit information

To move the following clause—

(1) The Housing Act 2004 is amended as follows.

(2) In section 237, for subsection (2) substitute—

"(2) This section applies to any information which has been obtained by the authority in the exercise of functions under—

(a) section 134 of the Social Security Administration Act 1992 (c. 5) (housing benefit), or

(b) The Welfare Reform Act 2012 (universal credit), or

(c) Part 1 of the Local Government Finance Act 1992 (c. 14) (council tax)."

This amendment would allow local authorities to use Universal Credit information. Clause 131, subsection (4), of the Bill should be amended for the same reason.

Requiring guidance on financial penalties

Clause 15, page 22, line 9, leave out “may” and insert “must”

Clause 39, page 47, line 14, leave out “may” and insert “must”

Clause 56, page 79, line 17, leave out “may” and insert “must”

Clause 57, page 80, line 19, leave out “may” and insert “must”

Clause 64, page 94, line 9, leave out “may” and insert “must”

Clause 89, page 110, line 25, leave out “may” and insert “must”

Schedule 4, page 188, line 36, leave out “may” and insert “must”

These amendments would ensure that the Secretary of State is required rather than permitted to provide guidance for local authorities on the administration of financial penalties.

Making regulations relating to the private rented sector database subject to the affirmative procedure

Clause 137, page 147, line 5, after “63,” insert “74,” and after “75,” insert “77, 78, 79,”

This amendment would make regulations relating to the private rented sector database subject to the affirmative procedure.

31st October 2024