



**UK COLLABORATIVE  
CENTRE FOR  
HOUSING EVIDENCE**

# **The private rented sector in the UK**

An overview of the policy and regulatory landscape

Professor Alex Marsh (University of Bristol) and Professor Ken Gibb (University of Glasgow)

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# About the authors

Professor Alex Marsh is a Co-Investigator for the UK Collaborative Centre for Housing Evidence (CaCHE), based at the University of Bristol, and leads on the governance theme within CaCHE.

Professor Ken Gibb is Director of the UK Collaborative Centre for Housing Evidence (CaCHE) based at the University of Glasgow.

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This is the first report produced as part of the collaboration between CaCHE, the TDS Charitable Foundation and the SafeDeposits Scotland Charitable Trust. Through this collaboration we are undertaking a diverse programme of research on issues relating to developments in, and operation of, the UK private rented sector. The broad objective of the programme is to contribute to raising standards in the UK private rented sector.



**SafeDeposits Scotland**  
**Charitable Trust**

# Contents

Summary.....	4
Introduction.....	5
Private rented sector revival .....	6
Regulating renting.....	8
The purpose of this paper .....	9
1. The changing sector .....	10
2. Regulating the contract.....	18
Knowledge of rights and obligations .....	18
The balance of power between landlord and tenant.....	19
Housing market context .....	21
Regulating property quality .....	21
Regulating rents .....	23
Regulating the relationship.....	24
Regulating disputes .....	25
3. Regulatory schemes.....	26
National schemes – letting and managing agents.....	27
National schemes - landlords.....	27
Selective area-based schemes .....	28
Targeted HMO licensing .....	29
Severity of sanctions.....	29
Implementation, enforcement and penalties.....	30
Accreditation approaches .....	32
4. Finance .....	32
5. The current policy and regulatory landscape .....	34
6. Future agendas.....	35

# Summary

- The private rented sector has grown and evolved substantially over the last decade and a half. This change has been driven by diverse socio-economic, fiscal and political factors affecting both the demand and supply side. While this growth has been substantial, it has moderated in the last couple of years.
- As a consequence of the sector's more central role in the housing system, standards in the private rented sector have become an issue of much greater political salience.
- There has been a substantial amount of recent change in the regulation of the private rented sector, particularly in Scotland and Wales, with more change in prospect. Policy in England is, to some extent, in the process of catching up with developments elsewhere.
- Policy in the different jurisdictions across the UK is moving at different speeds in broadly the same direction, with some differences in emphasis.
- Policy is embracing more active regulation of landlord and agent practices and changing the institutional architecture of the sector, most notably the reform of tenancies in Scotland to give tenants greater security.
- Much regulatory change has occurred in the very recent past. These changes will have complex impacts and will need time to bed down. Some change has been legislated, but is yet to be implemented.
- Systematic and comprehensive evaluations of these policy and regulatory developments will take time to emerge. And it is important to think more systemically about them.
- The redesign of regulatory structures needs to be accompanied by a complementary emphasis upon effective implementation and enforcement. Given the pressures upon the budgets of enforcing agencies, there is a considerable risk that available resources are significantly constrained and implementation consequently ineffective.
- As new regulatory systems are established it is worthwhile considering the scope for establishing supporting administrative systems and databases in such a way that they capture data that can be used for evaluation purposes.
- CaCHE is planning a diverse programme of work analysing contemporary developments in the private rented sector. The programme of work in collaboration with The Disputes Service Charitable Foundation/SafeDeposits Scotland Charitable Trust is central to that programme.

# Introduction

The private rented sector has been the most dynamic sector of the British housing market over the last fifteen years. It has grown substantially both numerically and proportionately, although growth appears to have slowed in the last couple of years. While overall growth has been strong, growth trajectories have varied across the UK. Private renting occupied a relatively marginal position in the housing conversation for several decades. This is no longer the case. The sector now houses twenty percent of British households.<sup>1</sup> After nearly a century of decline its resurgence places it at the heart of the housing system. It has consequently attracted increased political, policy and regulatory attention. The nature and extent of the policy response to changes in the sector has differed across the nations of the UK. The primary purpose of this paper is to provide an overview of these developments and the state of play at the start of the new CaCHE collaboration with The Disputes Service Charitable Foundation/SafeDeposits Scotland Charitable Trust.

As the sector has grown it has evolved on both the demand and the supply side. Private renting is now accommodating a more diverse range of households, including many more families with children. More of those living in the sector expect to do so for extended periods of time, even if they expect to be mobile within the tenure. Average tenancy lengths are increasing. Mobility among lower income households within the tenure has been identified as a contributing to the suburbanization of poverty: rising rents induce poorer households to move away from more central locations in search of affordable accommodation.<sup>2</sup> The sector plays a diversity of roles within the housing market, and considerable effort has been expended trying to capture the diversity of its various submarkets in classifications and typologies. Figure 1 illustrates one recent attempt to summarize the richness of the contemporary private rented sector.<sup>3</sup> Any perception that, in today's housing system, renting privately is typically a relatively short-term transitional situation – to be followed by a move into more settled owner occupied or social housing – would be misplaced. While for some households renting privately is a relatively temporary arrangement, for others it is providing long-term accommodation, even if that is often as a result of constraints rather than choices. This is reflected in debates over the existence of “Generation Rent”.<sup>4</sup> It is possible that a preference for renting is emerging for some social groupings in urban areas – trading off flexibility and urban amenity against suburban ownership and longer commutes – but evaluating the importance of this phenomenon is difficult.<sup>5</sup>

The supply of private rented housing has also evolved. There has been much policy interest in encouraging institutional investment into the sector and involving large-scale organisations as landlords.<sup>6</sup> The composition of the private rented sector is changing as a result of Build to Rent initiatives bringing more new build properties into the sector.<sup>7</sup> While such organisations are now undoubtedly an established part of the landscape of the private rented sector, their importance should not be overstated. The proportion of private landlords who own and manage only one or a few properties has increased substantially over the last decade and a half.

<sup>1</sup> UK Housing Review 2018, Table 30b, Figure for 2016/17

<sup>2</sup> N. Bailey and J. Minton (2018) The suburbanisation of poverty in British cities, 2004-2016: extent, processes and nature, *Urban Geography*, 39(6), 892-915, <https://doi.org/10.1080/02723638.2017.1405689>

<sup>3</sup> This typology is drawn from M. Livingstone, K. Berry, K. Gibb and N. Bailey (2018) Private renting reforms: how to evidence the impact of legislation, SPICe Briefing, The Scottish Parliament.

<sup>4</sup> K. McKee, T. Moore, A. Soaita and J. Crawford (2017) ‘Generation Rent’ and the fallacy of choice, *International Journal of Urban and Regional Research*, 41(2), 318-333; K. McKee and A. Soaita (2018) The ‘frustrated’ aspirations of Generation Rent, CaCHE Report, UK Collaborative Centre for Housing Evidence.

<sup>5</sup> K. Gibb, M. Livingstone and K. Berry (2019) Overview of private rented housing reforms in Scotland, SPICe Briefing, The Scottish Parliament.

<sup>6</sup> Most notably the report produced by the Montague review: DCLG (2012) Review of the barriers to institutional investment in private rented homes, London: Department for Communities and Local Government. For a broader discussion see also M. Oxley, R. Lishman, T. Brown, M. Haffner and J. Hoekstra (2010) Promoting investment in private rented housing supply: international policy comparisons, London: Department for Communities and Local Government.

<sup>7</sup> As at Q1 2019 some 30,357 BTR units had been completed across the UK. Total BTR activity increases to 140,090 units, once units in planning (72,184) and under construction (37,549) are included: British Property Foundation (2019) Build to Rent Q1 2019, London: BPF.

The sector offers some very high-quality accommodation and professional management services, and it has been argued that “[t]he private rented sector works comparatively well at what it does”.<sup>8</sup> But it is also the sector in which poor quality property is most prevalent and poor management practices unacceptably frequent. Moreover, conditions in the poorer parts of the market may be deteriorating.

The majority of private rented sector tenants state that they are satisfied with their housing experience. For example, in England in 2016/17 84% of private renters were satisfied with their accommodation, compared with 81% of social renters and 95% of owner occupiers. The statistics for Scotland are similar: in 2016/17 some 87% of people renting privately were very or fairly satisfied with their housing, which again places private renting between social renting (83%) and owner occupation (97%). Overall, some 66% of private renters in England were satisfied with the repairs and maintenance service provided by their landlord, compared with 62% of those classified as vulnerable low-income households. Low-income tenants tend, in general, to be only marginally less positive about their experience than others in the private rented sector. There is, however, a question mark over the extent to which such figures for the bottom end of the market are influenced by low expectations rather than a high-quality experience.<sup>9</sup>

**Figure 1: Private rented sector sub-markets**



(Source: Livingston, et al, 2018, Figure 8)

## Private rented sector revival

The revival of the private rented sector over the last two decades is the product of diverse influences.<sup>10</sup> It is shaped in part by policies that ostensibly have little to do with housing. For example, changes to policy on higher education have not only increased numbers of students seeking privately rented accommodation during their studies but also the number leaving university carrying substantial debt and therefore finding themselves further away from accessing owner occupation. Broader policy agendas have had major implications for the private rented sector. Financial deregulation, innovation and competition has increased the availability of credit to (potential) private landlords. Attempts to shore up the financial system after the Global Financial Crisis of 2007-08 tightened credit conditions, thereby making access to mortgage finance more difficult for first time buyers for an extended

<sup>8</sup> M. Ball (2010) The UK private rented sector as a source of affordable accommodation, JRF Housing Market Taskforce Programme Paper, York, Joseph Rowntree Foundation.

<sup>9</sup> MHCLG (2018) English Housing Survey: Private Rented Sector 2016/17; Livingstone et al (2018) op. cit., p.11; D. Rhodes and J. Rugg (2018) Vulnerability amongst low-income households in the private rented sector in England, York: Centre for Housing Policy, Table A2 and p.55. Rhodes and Rugg base their analysis on a dataset combining 2012 and 2013 EHS data.

<sup>10</sup> P. A. Kemp (2015) Private renting after the Global Financial Crisis, *Housing Studies*, 30:4, 601-620, DOI: 10.1080/02673037.2015.1027671; R. Ronald and J. Kadi (2018): The revival of private landlords in Britain's post-homeownership society, *New Political Economy*, 23(6), DOI: 10.1080/13563467.2017.1401055; A.M. Soaita, B.A. Searle, K. McKee and T. Moore (2017) Becoming a landlord: strategies of property-based welfare in the private rental sector in Great Britain, *Housing Studies*, 32(5), 613-637, DOI: 10.1080/02673037.2016.1228855; E. Sanderson and I. Wilson (2017) Does locality make a difference? The impact of housing allowance reforms on private landlords, *Housing Studies*, 32(7), 948-967, DOI: 10.1080/02673037.2017.1291911; C. Hamnett and J. Reades (2019): Mind the gap: implications of overseas investment for regional house price divergence in Britain, *Housing Studies*, 34(3), 388-406, DOI: 10.1080/02673037.2018.1444151; J. Rugg and D. Rhodes (2018) The evolving private rented sector: its contribution and potential, York: Centre for Housing Policy.

period. At the same time, Quantitative Easing reduced the return on other classes of asset, affected pensions, and made investment in residential property more attractive for both domestic and international investors seeking assets perceived to be relatively low risk. An extended period of house price inflation has increased housing wealth inequalities: it has allowed home owners to leverage existing equity into multiple property ownership. Post-GFC austerity policy has reduced government funding for the construction of new affordable social housing, while changes to homelessness legislation and the arrival of the Homelessness Reduction Act 2017 mean that local authorities are increasingly seeking private tenancies to meet their homelessness-related duties. All these changes increased the flow of funds into private rental supply or the demand for private renting.

Conversely, reforms to the Local Housing Allowance, as part of the broader welfare reform agenda, have made the system less generous: as a consequence those who receive state assistance face greater challenges in securing adequate housing. The move to Universal Credit – the headline welfare reform of the 2010-2015 Coalition Government – coupled with the introduction of an overall benefit cap has had substantial implications in reducing the generosity of the available support for housing costs for some households – most notably young single people and large families – and in areas of high housing costs. It has also increased landlords' perceptions of the risks – as a result of increased complexity and unpredictability – associated with housing those in receipt of benefit. Policies such as the Home Office's Right to Rent, operative in England only, have been argued to influence landlords' willingness to let property to certain types of households.<sup>11</sup> The reassertion of processes of gatekeeping and discrimination by landlords are very much part of current concerns over the operation of the private rented sector.<sup>12</sup>

Policy has explicitly and directly fuelled the expansion of the private rented sector – most notably the promotion of the Buy-to-Let (BTL) mortgage. The favourable terms of BTL mortgages created financial incentives to invest in residential property for rent in preference to other assets. The incentives were strengthened by the contextual changes, noted above, that increased demand for private rental property and drove rental growth. We can see these incentive effects operating in reverse at the moment as tax changes introduced by HM Treasury since 2016 – and extended by the Scottish Government for their version of stamp duty which places a 4% tax premium on property purchases by landlords – have made private landlordism financially less attractive. This is contributing to greater churn in the sector and a slowing of its growth. It is too early to say whether the longer-term outcome will primarily be new private landlords, using different business models, taking over these properties or tenure conversion – back into owner occupation.

Finally, a number of relatively recent developments have made the characteristics of the private rented sector even more diverse. These include the emergence of Airbnb, property guardianship, and Social Lettings Agencies where provision of private rented properties is not necessarily directed at maximising financial return.<sup>13</sup> These developments push the sector in different directions: creating greater instability and fluidity in local housing markets and intensifying affordability problems; developing new, insecure terms of occupancy; or seeking to maintain affordability and improve management quality.

<sup>11</sup> This policy has been successfully legally challenged and its future is less than certain. The relevant case is: Joint Council for the Welfare of Immigrants, R (On the Application Of) v Secretary of State for the Home Department [2019] EWHC 452 (Admin) (01 March 2019): <http://www.bailii.org/ew/cases/EWHC/Admin/2019/452.html>

<sup>12</sup> See MHCLG (2019) English Private Landlord Survey 2018: Main report, chapter 3, for illustrative statistics on landlords' attitudes towards letting to social groups such as families with children or benefit recipients. For a more comprehensive discussion of processes of exclusion affecting rental housing see J. Preece and E. Bimpson (2019) Forms and mechanisms of exclusion in contemporary housing systems: an evidence review, Glasgow, CaCHE Working Paper.

<sup>13</sup> The literature in relation to these developments is, as yet, relatively modest. But see, for example, D. Wachsmuth and A. Weisler (2018) Airbnb and the rent gap: gentrification through the sharing economy, *Environment and Planning A: Economy and Space*, 50(6), 1147-1170; C. Hunter and J. Meers (2018) The 'affordable alternative to renting': Property guardians and legal dimensions of housing precariousness, in H. Carr, B. Edgeworth and C. Hunter (eds) *Law and the precarious home: socio-legal perspectives on the home in insecure times*, Oxford, Hart; T. Archer et al (2019) *Scaling up social lettings? Scope, impact and barriers*, York, Joseph Rowntree Foundation.

## Regulating renting

The legal and regulatory framework within which the private rented sector operates is a longstanding source of debate and concern. Law and policy governing the sector has been characterised as fragmented, opaque, inconsistent and in need of radical reform – particularly in England.<sup>14</sup> The framework represents the sedimentation of layers of regulation from different eras, motivated by different regulatory philosophies. Concerns about the gaps that open up between the letter of the law and its operation in practice are well-established.

Market-based and consumerist regulatory mechanisms rely upon residents exercising choice or asserting their rights. Their effectiveness in securing and sustaining quality in the sector has been questioned repeatedly. Their effectiveness is, at the very least, highly contextual. At the heart of the issue is the imbalance of power, and often resources, between landlord and tenant. Tenants on short-term tenancies, facing the prospect of no-fault eviction and limited protection against retaliatory eviction, can be reluctant to assert their rights and demand their landlord or letting agent deal with problems.<sup>15</sup>

The ongoing divergence of policy between the nations of the UK, particularly with respect to the grounds for tenancy termination, is allowing us to explore whether changing institutional conditions mean consumerist mechanisms can play a more powerful role in improving the sector in future. This is discussed further below.

While tenants are not necessarily well placed to fulfil the role ascribed to them by consumerist approaches to regulation, this is only one dimension of the challenge. The way in which key agencies – local authorities and the Police – are carrying out their enforcement roles in the sector is also a major concern. Recent governments may have put in place a range of legal measures aimed at improving standards in the sector but unless new powers are embraced by enforcing agencies their impact will be minimal. Dealing with issues in the private rented sector has never been seen as core business for the organisations responsible for enforcement. The sustained period of cuts to public budgets since 2010 – which has hit local government particularly hard – has accentuated the problem. Insufficient resources, rather than inadequate powers, has been highlighted as the key issue in enforcement.

As the private rented sector has expanded, concerns about lack of affordability, inadequate management and maintenance practices, insecurities associated with short-term tenancies and no-fault evictions have come into sharper focus. Governments within the UK have responded differentially to these issues. The Scottish Government has acted to address affordability concerns directly by, for example, allowing the designation of rent pressure zones. The Westminster Government, in contrast, has taken no action directed at affordability as yet, despite ongoing political pressure to do so. The Scottish Government has also transformed tenancy legislation, in the context of broader reform of the regulatory framework for private renting. Similarly, a major overhaul of the relevant legislation took place in Wales once the Welsh Government had access to relevant powers. In contrast, while proposals for major tenancy reform were advanced more than a decade ago in England, none has yet been implemented.<sup>16</sup> Recent developments in Northern Ireland have been constrained by the absence of an Executive, but nonetheless policy development, when it occurs, has also been in the direction of more active regulation.

<sup>14</sup> Including recent contributions, focused on the system in England, by Rugg and Rhodes, *op. cit.*; HCLG Select Committee (2018) Private rented sector, Fourth report of Session 2017-19, HC440; D. Baxter and L. Murphy (2019) Sign on the dotted line: a new rental contract?, London: IPPR.

<sup>15</sup> See, most recently, the discussion by E. Chisholm, P. Howden-Chapman, and G. Fougere (2018) Tenants' responses to substandard housing: Hidden and invisible power and the failure of rental housing regulation, *Housing, Theory and Society*, online first, DOI: 10.1080/14036096.2018.1538019.

<sup>16</sup> Law Commission (2006) Renting Homes: The final report, Law Com No 297, Cm 6781.



The evolving regulatory frameworks shaping the private rented sector within the UK thus display patterns of convergence and divergence.<sup>17</sup> The limited nature of security of tenure and regulatory oversight of standards in the private rented sector in England means that it is now an outlier not only within the UK but in Europe more broadly. However, there are clear signs that the direction of travel for policy in England is towards accepting the need for more active policy intervention. It may, therefore, be better to think of the policy development across the UK as being about differential speed of response, rather than qualitatively different types of response.

## The purpose of this paper

The aim of this paper is to provide an overview of these recent policy developments and the current regulatory situation in the private rented sector. The structure of the paper is thematic. The aim throughout is to acknowledge that talk of the “UK” or “British” private rented sector, and particularly private rented sector policy, is inappropriate. We aim to identify key ways in which the sector and policy towards it differs.

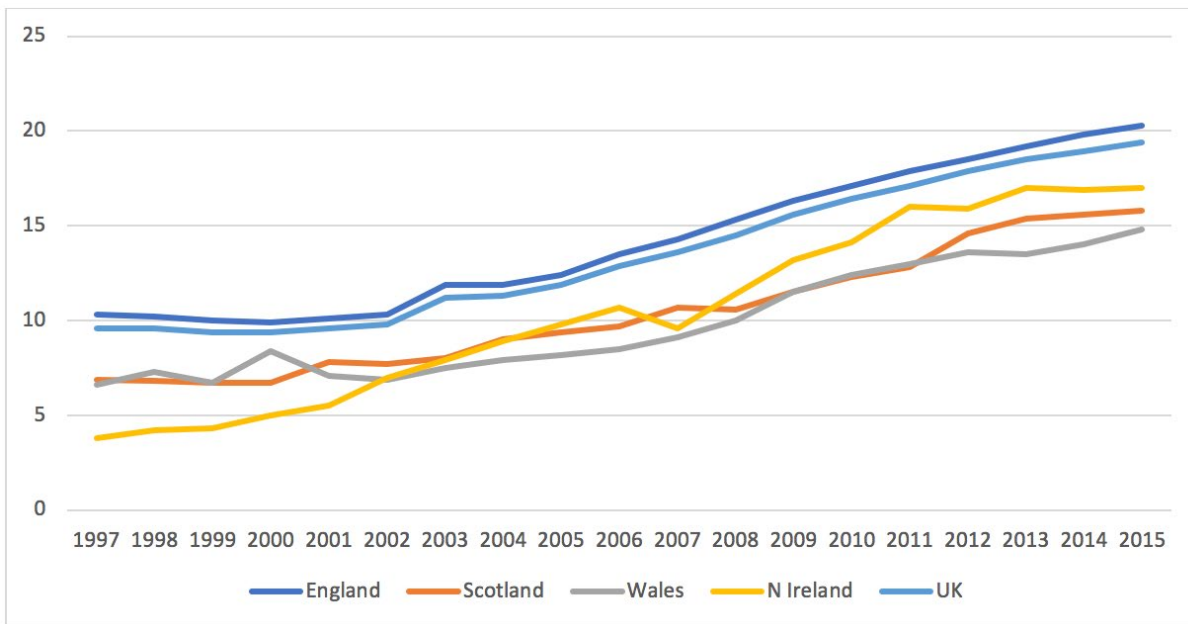
The paper is divided into six sections. The first section briefly sketches in more of the details regarding recent changes in the extent and nature of the private rented sector. Section two focuses upon regulation at the micro-level of the relationship between the tenant and their landlord or managing agent. Section three broadens the scope to look at regulation operated on a subsectoral – houses in multiple occupation – or a spatial - neighbourhood, district or nation - basis. The focus is on forms of registration and licensing. In section four we engage briefly with the more specific topic of finance and subsidy, broadly defined, which has been crucial in shaping the operation of the private rented sector. Section five of the report draws together the strands of the discussion. The final section of the report (section six) discusses the work that CaCHE is undertaking, both as part of the collaboration with TDS Charitable Foundation/Safe Deposits Scotland Charitable Trust and more broadly, to address some of the outstanding questions facing the private rented sector.

<sup>17</sup> T. Moore (2017) The convergence, divergence and changing geography of regulation in the UK's private rented sector, *International Journal of Housing Policy*, 17(3), 444-456, DOI: 10.1080/19491247.2017.1312795.

# 1. The changing sector

Over the last two decades the private rented sector has grown from accounting for one in ten dwellings in the UK to one in five (Figure 2). The overall growth of the sector closely tracks the growth in England, given its numerical dominance. Northern Ireland has experienced notably more rapid growth, from a lower base, than elsewhere. The sector's share of the housing stock has grown while the total stock itself has been growing: during the period 1997-2016 the UK housing stock grew by 15% overall, whereas the private rented stock grew by 3.2mill dwellings or 135%.

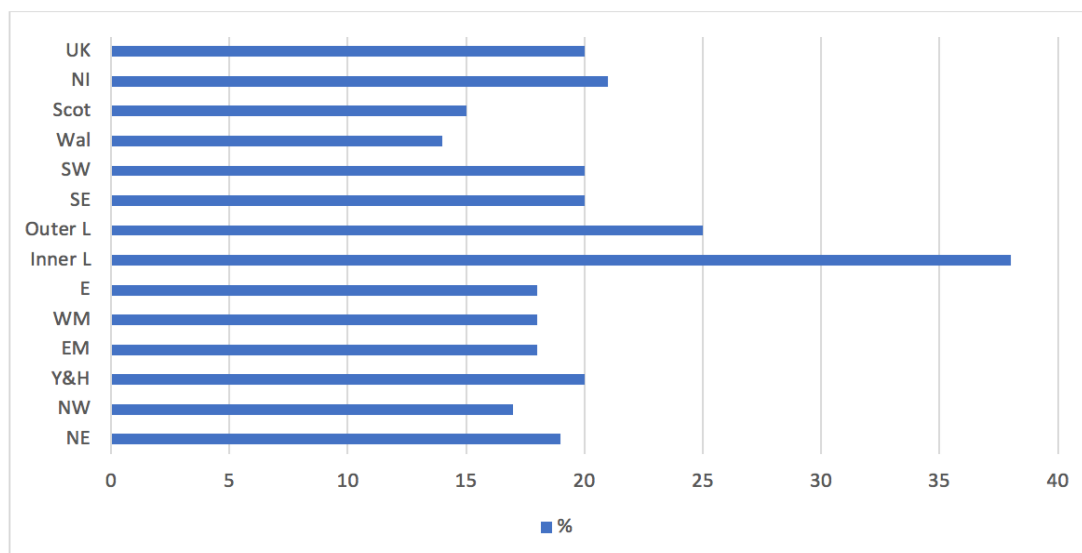
**Figure 2: Percentage of dwellings in the private rented sector, UK, 1997-2016**



(Source: UK Housing Review 2018, Table 17c) (Source: UK Housing Review 2018, Table 17c)

When we consider the percentage of households living in the private rented sector by region and country we see that private renting is considerably more prevalent in both inner and outer London than nationally – with more than one in three households in inner London now renting privately (Figure 3). Conversely, private renting currently accounts for closer to one in six households in Scotland and Wales.

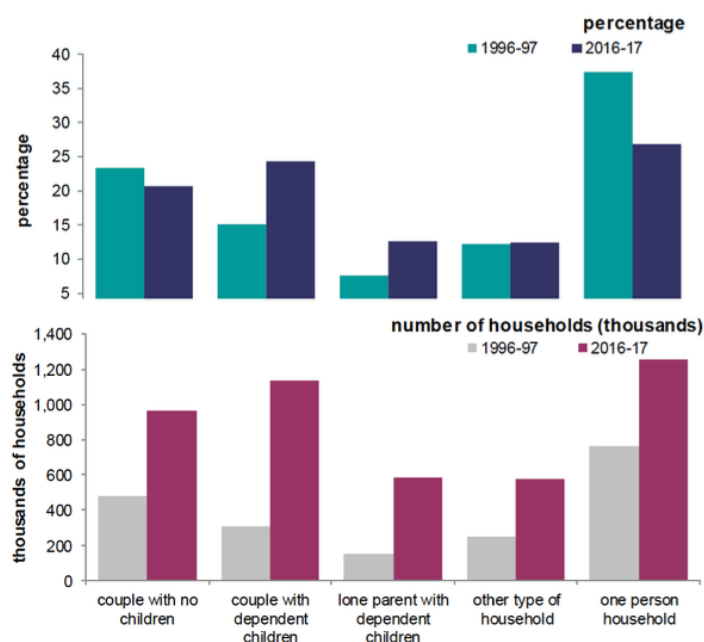
**Figure 3: Households in the private rented sector, by region/country, 2016/17a**



(Source: UK Housing Review 2018, Table 30b)

As well as experiencing substantial growth, the composition of the private rented sector has changed significantly. This is illustrated for England in Figure 4, which indicates that between 1996-97 and 2016-17 households with children increased from 23% to 37% of the sector. Over the same period, the proportion of small – one or two person – households correspondingly declined.

**Figure 4: Proportion and number of private rented sector households, by household type, 1996-97-2016-17, England**

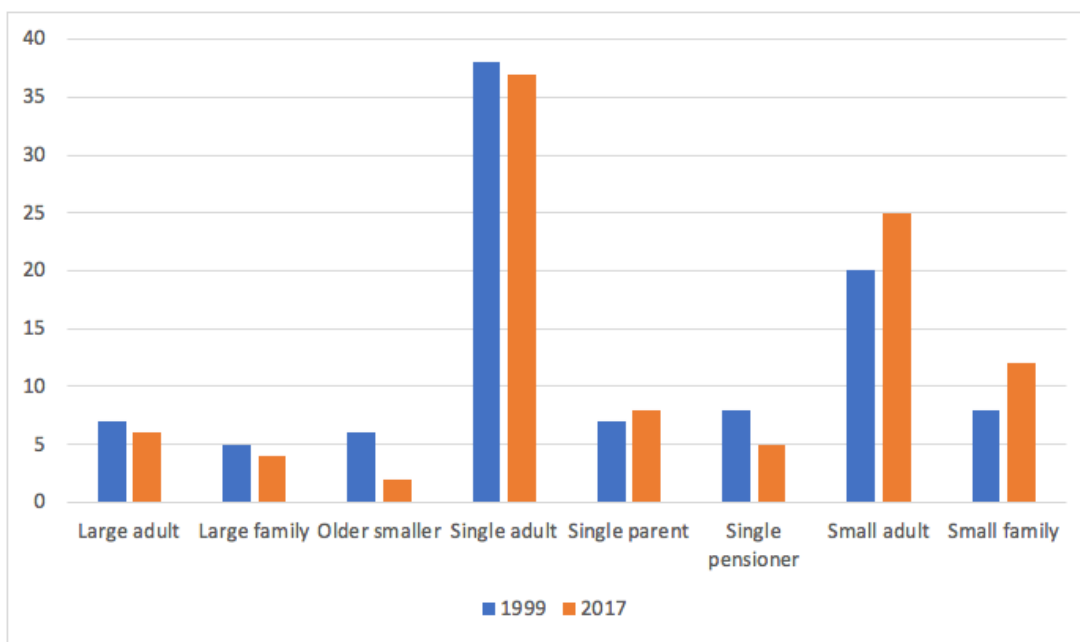


**Base: All private renters**  
**Note: underlying data are presented in Annex Table 1.3**  
**Sources:**  
 1996-97: Survey of English Housing  
 2016-17: English Housing Survey, full household sample

(Source: MHCLG, English Housing Survey: Private Rented Sector 2016/17)

The changes in the composition of the sector in Scotland have been less dramatic, and we have a more disaggregated picture of them (Figure 5). The proportion of the sector in Scotland comprising families with children increased somewhat between 1999 and 2017 (from 13% to 16%). The data for Scotland indicates that this growth has taken place among small, rather than large, families. In contrast to England, the proportion of single person households has remained stable, while the proportion of single pensioners has declined: resulting in a 4% decline in one person households overall. Small adult households have increase from one in five to one in four households in the sector, but this is offset to an extent by the reduction in the proportion of older smaller households.<sup>18</sup>

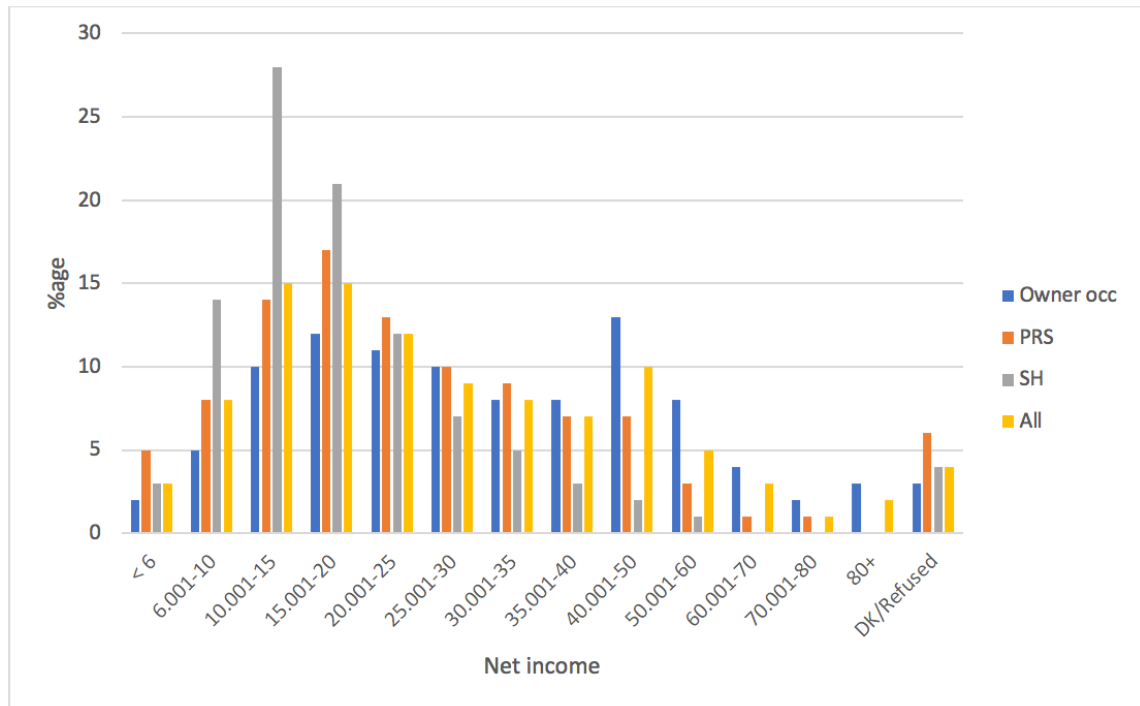
**Figure 5: Household composition of private rented households, Scotland, percentages**



(Source: Scottish Government (2018) Scotland's People 2017, Table 3.14)

When we look at the distribution of households by income group within tenures some key characteristics emerge. Figure 6 illustrates these characteristics using data for Scotland in 2017. Perhaps the most striking feature of the distribution is the concentration of poorer households in social housing, with two thirds of households in the sector having net incomes below £20,000 per annum. The corresponding figure for the private rented sector is 43%, but it is notable that five percent of private rented households are in the bottom income group (less than £6,000) compared with three percent of social housing tenants. In contrast to social housing, the private rented sector accommodates households across the whole of the distribution up to incomes in the £70,001-80,000 per annum category. Nearly a third of privately renting households have a household income above £30,000 per annum.

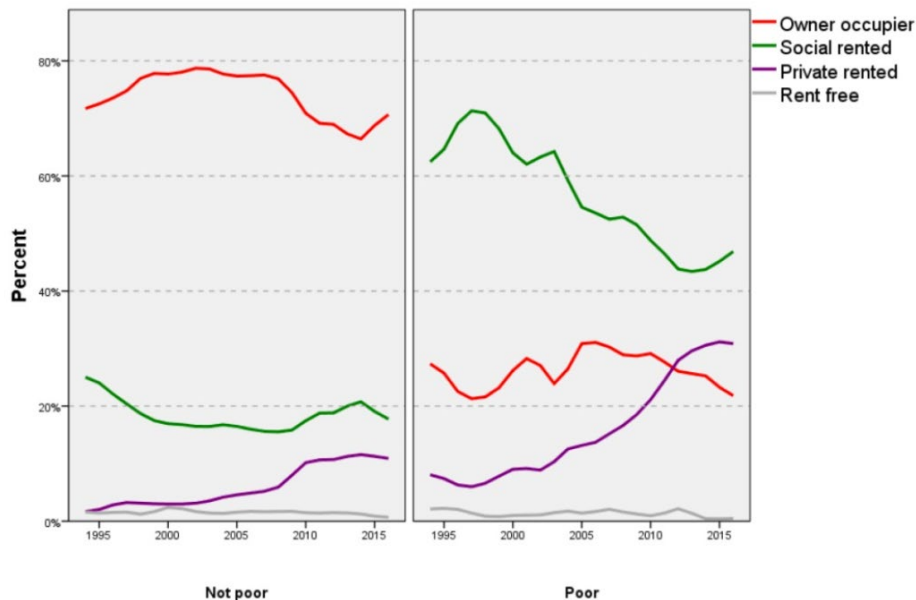
<sup>18</sup> Small adult household are defined as containing two adults between 16-64 and no children; older smaller households are defined as a two person household containing one or both members over 65 and no children.

**Figure 6: Net household income by tenure, 2017, Scotland**

(Source: Scottish Government (2018) Scotland's People 2017, Table 3.3)

When we bring together data on the numbers of families with children living in the private and data on household income we can gain further insight into the dynamics of change. Figure 7 uses data for Scotland to examine the percentage of children living in each tenure, differentiating between those living in poor and non-poor households. It indicates that there has been an increase in children in both poor and non-poor households living in private renting. However, the increase over time is considerably more rapid for children in poor households, and it is mirrored by a decline in children in poor households living in social rented housing.

**Figure 7: Percentage of children in different tenures, by household income**



(Source: Livingston et al (2019) Figure 7, authors' own analysis of the Family Resources Survey)

Moving beyond a discussion of “the private rented sector” allows the development of a better understanding of the components of demand and how they are changing. Growth in the sector has been accompanied by change – the increase in the number of households with children being the headline issue. But it is possible to disaggregate private rental demand further into a series of more or less overlapping submarkets. The private rented sector in a particular locality can play a range of functions. At the same time, the private rented sector can be playing a different range of roles in different local housing markets.

Figure 1 above presented one such recent attempt to disaggregate demand into eight components. An alternative – and currently the most well-established – approach to private renting submarkets is the classification proposed by Rugg and Rhodes.<sup>19</sup> The 2018 classification recognises recent developments that have significantly affected the dynamics of the private rented sector in some localities, such as the rise of platform-based short-term rental systems like Airbnb. It breaks the private rented sector down into the following eleven submarkets: students; ‘young professionals’; housing benefit; temporary accommodation; criminality and slum rental; economic migrants; asylum seekers and refugees; middle age, middle market; older tenants and regulated tenancies; property guardians; Airbnb-type arrangements.<sup>20</sup>

One of the key characteristics of the supply side of the private rented sector in England is that the scale of operation is characteristically small. It has been estimated that 2.3mill adults in England are some form of private landlord.<sup>21</sup> By 2010 nine out of ten landlords were individuals/couples (Table 1). By 2018 the proportion of landlords operating as individuals had increased further to 94%.<sup>22</sup> However, it is important that these statistics are contextualised. There are three points to note.

<sup>19</sup> J. Rugg and D. Rhodes (2008) *The private rented sector: its contribution and potential*, York: Centre for Housing Policy; J. Rugg and D. Rhodes (2018) *The evolving private rented sector: its contribution and potential*, York: Centre for Housing Policy.

<sup>20</sup> Rugg and Rhodes (2018) Chapter 3.

<sup>21</sup> Rugg and Rhodes (2018), p30.

<sup>22</sup> MHCLG (2019) *English Private Landlord Survey 2018: Main Report*, p5.

The first point is methodological. As Rugg and Rhodes highlight, this type of categorisation is by no means watertight: there is likely to be an overlap between the individual/couple category and the company category, where individuals decide to manage their portfolio through a company for tax purposes. Also, the distinction between ‘company’ and ‘organisation’ is not clear cut.<sup>23</sup> This point is underlined when we recognise that the type of organisations involved in acting as landlords for properties in the private rental market has become more diverse: a range of organisations including social enterprises, social lettings agencies, and market rental subsidiaries of housing associations are active in the sector. Their motivations for being active in the market are diverse and, to an extent, can blur the boundaries between private renting and the social rental sector.

Second, while most landlords may be individuals that does not mean that private renters typically have a tenancy with a small-scale landlord. The proportion of tenants renting from a landlord with a substantial portfolio is increasing over time. While 45% of landlords in England owned one property in 2018, this accounted for only one in five tenancies: the 17% of landlords with five or more tenancies accounted for nearly half of all tenancies (Figure 8).

**Table 1: Private landlord types, England**

<b>Landlord type</b>	<b>1993/94</b>	<b>1998</b>	<b>2001</b>	<b>2003</b>	<b>2006</b>	<b>2010</b>
<b>Individuals/couples</b>	61	61	65	67	73	89
<b>Companies</b>	20	22	13	17	15	5
<b>Organisations/other</b>	19	19	22	16	12	6
<b>Total</b>	100	100	100	100	100	100
<b>N.</b>	811	304	588	1280	903	1051

(Source: Rugg and Rhodes, 2018, Table 2.1; see original for underlying data sources)

The third point is that characteristics – individual, company, other organisation – tell us little about landlord motivations. In particular, individuals can become landlords for a host of different reasons. These range from the accidental – for example, through inheritance – to the highly strategic – with property rental and management as a primary occupation. They can be orientated towards the short-term – income maximisation – or think mainly in terms of property as a long-term investment – focusing on capital growth – or some combination of the two. Landlords can take a relatively active or a relatively passive approach to the management of their portfolio. Mixed motivations and longer-term orientations are the most commonly reported for both Buy-to-Let (BTL) and non-BTL landlords, with non-BTL landlords being more likely to report either being a temporary/accidental landlord or to have a focus upon rental income only (Table 2).

<sup>23</sup> Rugg and Rhodes, *ibid.*

**Table 2: Most important current role as a landlord; Buy-to-Let and Non-Buy-to-Let landlords, UK (2016)**

Most important current role	All (2,517)	BTL (861)	Non-BTL (1,656)
Investment for capital growth and rental income	33%	36%	32%
Contribution to pension	29%	32%	27%
Investment for rental income only	10%	8%	11%
Temporary/accidental as cannot sell property(ies)	8%	6%	9%
Somewhere for me/my family to live	7%	5%	8%
Investment for capital growth only	4%	6%	3%
Don't know	4%	3%	4%
Other	4%	2%	4%
Full-time business	1%	1%	1%
Housing an employee	0%	0%	0%

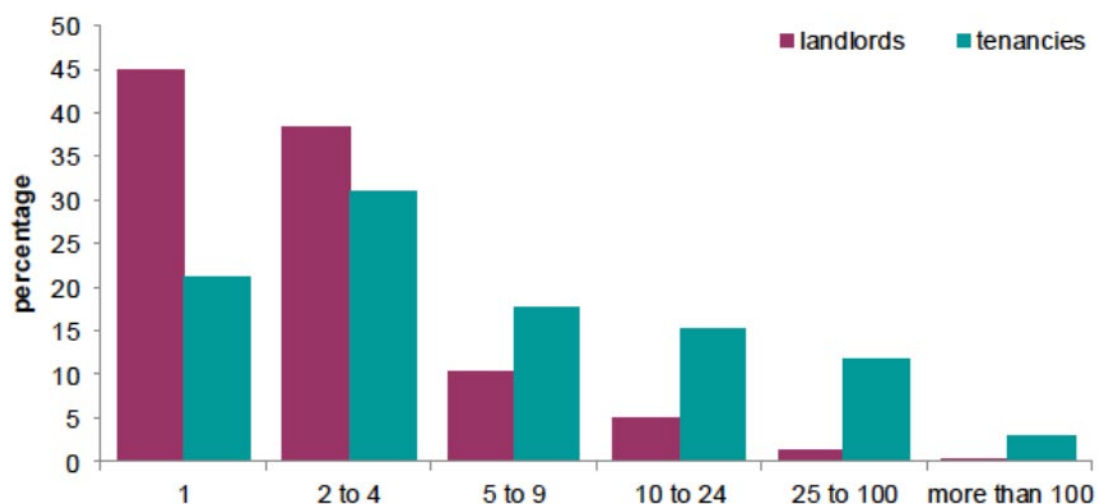
(Source: Scanlon and Whitehead, 2016, Table 12; data source: CML Landlord Survey 2016; base: all responding private landlords)

There have been several attempts to provide typologies of landlords via their characteristics and/or motivations, in order to understand better what drives the sector. The most recent such analysis classifies small-scale landlords into four categories: 'episodic landlords', pension-plan landlords, portfolio-building landlords, divesting landlords.<sup>24</sup> The conclusion the authors draw from this analysis is that "landlords' decision-making will very much be framed by the landlord category they broadly inhabit. This is especially pertinent with regard to landlords' response to regulation and taxation changes"<sup>25</sup> This observation has an important implication: knowledge of the composition of the supply side in a particular locality will enhance our ability to understand and anticipate the ways in which it will behave.

<sup>24</sup> Rugg and Rhodes (2018) pp.31-34. See K. Scanlon and C. Whitehead (2016) The profile of UK private landlords, CML Research, London: Council of Mortgage Lenders, for an alternative recent approach. For reviews of earlier approaches to classifying landlords see P. Kemp (2002) Private renting in transition, Coventry, Chartered Institute of Housing; T. Crook and P. Kemp (2011) Transforming private landlords: housing markets and public policy, Chichester, Wiley-Blackwell.

<sup>25</sup> Rugg and Rhodes (2018), p34.



**Figure 8: Landlords by portfolio size**

**Base: all landlords; weight: landlord weight and tenancy weight**  
**Note: underlying data are presented in Annex Tables 1.4 and 1.5**  
**Source: English Private Landlord Survey 2018**

Source: MHCLG (2019) English Private Landlord Survey, Figure 1.2

As Figure 8 demonstrates, landlords with substantial portfolios may be few in number but account for a substantial proportion of tenancies. Policy has been pushing to encourage larger scale institutional investment in private renting for the last decade. After 2013 in England government support was available through the Build To Rent Scheme and subsequently the Home Building Fund. Given relatively poor returns in other asset classes, investors were already looking to private renting as an investment that could generate a relatively attractive, and relatively stable, return. Government support gave the movement into private renting further momentum. Substantial sums of money have entered the sector as a consequence. This has created a distinctive subsector of corporate landlords providing new types of private rented accommodation, including schemes on a substantial scale. The subsector includes large social landlords who have moved into the provision of market rental accommodation. Research on this sector is, as yet, relatively underdeveloped, although media reports indicate that the consumer experience in the subsector is not unambiguously positive.<sup>26</sup> A presumption that large-scale landlordism of this type will, by definition, deliver a high-quality housing experience for tenants would be simplistic.

<sup>26</sup> See, for example, The Financial Times (2019) Should tenants fear the rise of the corporate landlord?, 04/04/19, <https://www.ft.com/content/17b26ffc-4cba-11e9-8b7f-d49067e0f50d>

## 2. Regulating the contract

There is a tension at the heart of private rented sector regulation. The majority of the sector relies on regulation of the relationship between landlord and tenant at the level of the individual tenancy agreement. For this to be an effective regulatory framework, the parties to the agreement have to be aware of their rights and obligations, and they have to be willing and able to exercise and enforce those rights. Yet, there are long-standing concerns that these conditions are often not met.

Broader regulatory interventions – regulation, licensing and accreditation schemes - seek to address the deficiencies of this contractual approach on a spatial basis or on the basis of property type by introducing regulatory mechanisms that rely on a different underlying logic. We discuss those in the next section.

### Knowledge of rights and obligations

Awareness of rights and obligations is relatively poor across the private rented sector. On the supply side, this is partly a product of the small-scale, amateur nature of much landlordism. While some small landlords no doubt take an active approach to their role – assuring themselves that they are well-informed – a proportion take a more passive approach and remain in relative ignorance of the legal framework within which they are operating. Yet, letting a property through a letting or managing agent is not in itself a guarantee that the property will be managed in an informed way. On the demand side, lack of knowledge has conventionally been seen as, in part, a product of the types of households living in the sector and the relatively transient nature of their residence.<sup>27</sup> Those who are not planning to stay long have more limited incentive to engage with the detail of tenancy law. However, while this is still true for parts of the sector, as the composition of the resident population changes and the average lengths of tenancy increase tenants' incentives are changing.

Nonetheless, there are issues beyond lack of knowledge to consider. The first is that the full scope of the relevant obligations, particularly those placed upon landlords' multidimensional activities, are not necessarily transparent to either landlord or tenant. This issue is particularly acute in England where landlords are subject to the provisions of many dozens of statutes and several hundred regulations. Tenancy agreements do not fully capture this situation and have a range of implied terms. It is hardly surprising when neither landlords nor tenants are fully aware of their rights and obligations. Local authorities engaged in enforcement, faced with a disparate range of powers and duties, are not always much better placed. Considerable expertise is needed to safely navigate this legal terrain.

Consolidation and simplification of the law is a precondition for more effective consumerist approaches to regulation. The case for reform in England has been made repeatedly but has so far not succeeded.<sup>28</sup> In contrast, tenancy law in Wales was overhauled by the Renting Homes (Wales) Act 2016, which took forward many of the Law Commission's 2006 recommendations regarding simplifying the types of contract available and ensuring that relevant rights and obligations upon landlords and tenants are more transparent.

<sup>27</sup> Work by Diane Lister on young renters made a key contribution here: for example, D. Lister (2002) *The nature of tenancy relationships: landlords and young people*, in S. Lowe and D. Hughes (eds) *The private rented sector in a new century: revival or false dawn?*, Bristol: Policy Press.

<sup>28</sup> The Law Commission conducted a major review of tenancy law and regulation in the early 2000s; see fn.16. However, its recommendations were not adopted by the Government of the day. The need for law reform has been restated by the HCLG Select Committee (2018) *op. cit.*, fn.14. In its response to the Select Committee the Government indicated its intention to explore with the Law Commission the need to revisit the issue: MHCLG (2018) *Government response to the Housing, Communities and Local Government Select Committee Report: Private Rented Sector*, London: MHCLG, Cm 9639. In their recent review of the private rented sector from a consumer perspective Which? placed particular emphasis upon the need to look at the extent to which letting agents are using "unfair, inaccurate or misleading terms and conditions" in their tenancy agreements: see chapter 3 of Which? (2018) *Reform of the private rented sector: the consumer view*, Policy Report, London, Which?.

The Westminster Government has mandated that landlords in England must give tenants a copy of the Government's regularly updated How to Rent guide at the start of a tenancy.<sup>29</sup> In Scotland landlords have been required to provide new tenants with a tenant information pack. However, with the change to the nature of tenancies in 2016 this requirement has shifted to mandating that tenants be provided with a copy of the written tenancy terms. The Welsh Government has produced *A home in the private rented sector: a guide for tenants in Wales*, with landlords expected to follow best practice and signpost new tenants to this document at the start of a tenancy. Once the Renting Homes (Wales) Act 2016 has commenced it will require landlords to provide their tenants with a written statement of their contract within 14 days of the contract becoming operational. In Northern Ireland tenants are entitled to a rent book and a statement of tenancy terms within 28 days of their tenancy starting. There are proposals to place requirements on landlords to provide more extensive information, but these have yet to be progressed.

However, few consider requiring landlords to provide new tenants with information to be, on its own, a sure route to ensuring all tenants are familiar with their rights.<sup>30</sup> There is a sense that the information needs to be distributed through other channels, such as social media, that do not rely on landlords to act. An alternative – or complement – to putting more information in the hands of tenants is to try to ensure that landlords are better informed.<sup>31</sup> One policy move in this direction is the funding of a free helpline for landlords in Northern Ireland. This started in January 2017 and is available to managing and letting agents as well as landlords.

## The balance of power between landlord and tenant

The second issue with regulation via contract is the substance of the relevant legal rights and whether they allow tenants to ensure that those rights are operative. In particular, do tenants feel sufficiently secure in their tenancy to assert their rights?

In England, the answer is clearly that many do not. In a context where the default tenancy length is six months and no-fault evictions at two months' notice are available under Section 21, surveys indicate a significant minority of tenants would not be willing to make a complaint to their landlord for fear of suffering retaliatory eviction. Such evidence does not, however, allow us to establish the extent to which these fears are well-founded and rooted in previous negative experience or are based on – possibly erroneous – anticipation of a negative reaction. Less dramatic than retaliatory eviction are retaliatory rent rises, but in situations where affordability is already poor a rent rise can be just as effective as a way of ensuring a tenant is forced to move.

Steps were taken under the 2015 Deregulation Act to provide tenants in England with protection against retaliatory eviction, but not retaliatory rent rises. However, that protection is only available as long as a specific procedure is followed and documented, and, even then, the protection offered is only for six months. While it is relatively early days for the impact of this piece of legislation to be assessed, there are concerns that in practice the protection it offers is turning out to be inadequate or inoperative.

<sup>29</sup> MHCLG also make available a model tenancy agreement for a shorthold assured tenancy. Its use is voluntary. It can be found here: <https://www.gov.uk/government/publications/model-agreement-for-a-shorthold-assured-tenancy>

<sup>30</sup> For example, in the survey conducted by Which? (2018) op. cit. only 31% of tenants in England confirmed that they had received the Government's How to rent guide from their landlord.

<sup>31</sup> Which? also found that only 21% of the landlords they surveyed could correctly identify the legal requirements upon them. 43% of the sample indicated they would like more information, training and advice (op. cit., chapter 2).

At the same time, Section 21 has come under increased scrutiny. A more radical approach to reform than trying to develop more effective measures against retaliatory eviction would be to remove the possibility of no-fault eviction entirely. This would have much broader ramifications, but it is part of a debate about how to deliver greater security to the increasing number of households – particularly those with children – living in the private rented sector. Several recent reports – originating within academia and from think tanks and lobby groups at different points of the political spectrum – have called for Section 21 to be abolished.<sup>32</sup>

Tenancy reform in Scotland has already taken this more radical step. The Private Housing (Tenancies) (Scotland) Act 2016 introduced the new standard tenancy (the private residential tenancy) which is effectively open-ended. Tenancy termination can only be for one of 18 specific legally permitted reasons. The new tenancy arrangements came into force in December 2017, ending no-fault grounds for possession.

This is a profound change to the institutional architecture of the private rented sector. It could have wide-ranging implications for the operation of the entire housing market. The full-scale evaluation of this policy change has not yet been undertaken.<sup>33</sup> There are commentators in England who are cautious about advocating for similarly radical change in England without first comprehensively evaluating the impacts of these recent policy changes in Scotland.<sup>34</sup>

A more modest step directed at delivering more stability to tenants is to challenge the six month assured shorthold tenancy as the default tenancy type. The Westminster Government consulted in mid-2018 on policy proposals for introducing three year tenancies and responded to the views submitted during the consultation in April 2019.<sup>35</sup> The Government's consultation concluded that "there was no widespread support from either landlords or tenants for the three-year tenancy model".<sup>36</sup> Furthermore, some have expressed scepticism that this type of measure will be sufficient to instil the sense of security for tenants to be more assertive in relation to rights without also removed section 21.<sup>37</sup>

This is an evolving story. A major component of the Renting Homes (Wales) Act 2016 is the complete overhaul of the available types of tenancy. This will mean the assured shorthold tenancy no longer applies and Section 21 will cease to exist. Stronger measures to try to combat retaliatory eviction relating to property fitness will be put in place. However, the commencement date for this legislation is still to be finalised. In England the latest development in this story is the Conservative Housing Minister's surprise announcement in April 2019 of a consultation on abolishing Section 21, as part of "a complete overhaul of the sector". This was the policy direction proposed in the light of the lack of broad-based support for three year tenancies. The Government conceives of the abolition of Section 21 as part of a suite of reforms:

The government intends to change the legislative framework by removing the Section 21 'no fault' eviction process, alongside strengthening the grounds for eviction under Section 8 of the Housing Act 1988 and simplifying court processes to make it easier to gain possession through the courts. These changes would create flexible, open ended tenancies and deliver a more robust system which works for both parties.<sup>38</sup>

<sup>32</sup> Including Rugg and Rhodes, *op. cit.*; Baxter and Murphy, *op. cit.*; Shelter (2019) A vision for social housing: The final report of Shelter's commission on social housing, London: Shelter; Centre for Social Justice Housing Commission (2019) Putting down roots: improving security for renting for renting families and private landlords, Interim Report 3, London: CSJ. In this they join the End Unfair Evictions coalition, organised by Generation Rent.

<sup>33</sup> But note that early evidence gathered by Shelter suggests that the new system in Scotland is having positive impacts from the tenant perspective, while having a limited negative impact on the supply of private rented housing: see Shelter (2019) The new private rental tenancies: Evaluating changes to rental agreements in Scotland, London, Shelter.

<sup>34</sup> Rugg and Rhodes, *op. cit.*

<sup>35</sup> MHCLG (2018) Overcoming the barriers to longer tenancies in the private rented sector, London, Ministry of Housing, Communities and Local Government.

<sup>36</sup> MHCLG (2019) Overcoming the barriers to longer tenancies in the private rented sector: Government response, London, Ministry of Housing, Communities and Local Government, para 16.

<sup>37</sup> Eg. Shelter (2019) *op. cit.*

<sup>38</sup> MHCLG (2019) *op. cit.*, para 24. The Government moved the agenda to the stage of formal consultation with the publication in July of MHCLG (2019) A New Deal for Renting: Resetting the balance of rights and responsibilities between landlords and tenants - a consultation, London, Ministry of Housing, Communities and Local Government.

While this announcement was welcomed by many housing commentators and campaigners, it was quickly noted that there is a long way to travel from this type of public pronouncement to the implementation of legislation to bring it into effect.<sup>39</sup>

## Housing market context

The third issue that needs to be acknowledged is housing market context, which can interact with the issue of security. A consumerist regulatory model works best when the buyer is able to choose between competing sellers, while sellers have to take care over the quality of their product in order to attract and retain buyers. The housing market frequently does not operate like this. When markets are characterised by persistent disequilibrium then this is not a good characterisation of their dynamics. Instead, the balance of power frequently lies with the landlord. That is, in areas of high demand buyers are aware that it is difficult to secure alternative accommodation. This means the 'choice' mechanism does not work effectively and landlords are not 'disciplined' by the market for providing poor quality property or management. At the bottom end of the housing market, sellers know that few poor people will choose to go without housing completely if they cannot find any of adequate quality at a price they can afford: consequently there is a sustainable market for (relatively) cheap property of very poor quality. The increasing use of the private rented sector by local authorities to discharge their homelessness duties means that in many localities there is competition for relatively poor quality private rented accommodation. Consequently there is a sustainable market for such property even though it is not necessarily cheap.

In situations of acute housing pressure a significant gap can open up between the way in which the private rented sector is supposed to work in principle – shaped the de jure regulatory framework – and the way it works in practice. This is not a question of ignorance or unintelligible legal complexity. Tenants can be willing to forego rights and tolerate poor quality because the principal alternative – homelessness – is worse. We can go back into the history of the private rented sector to find some very striking examples of this divergence: for example, the practice of paying 'key money' to access a tenancy in order to get around the rent restrictions associated with rent control.

## Regulating property quality

The countries of the UK use somewhat different approaches to assessing property quality. These are based around fitness for human habitation (England, Wales); tolerable standards (Scotland); and the statutory fitness standard (Northern Ireland).<sup>40</sup>

In England the Housing Health and Safety Rating System (HHSRS), introduced by the 2004 Housing Act, uses a risk-based approach to assessing hazards in the home. While the proportion of properties in the private rented sector which contain hazards has declined sharply over the last decade, that is partly a function of the growth of the sector bringing newer and better-quality properties into the sector. The absolute number of private rented homes with such hazards has increased. There were 750,000 private rented homes with a category one (most serious) hazard in 2016/17.<sup>41</sup> The quality of property at the bottom end of the market has been described as "shockingly inadequate".<sup>42</sup>

<sup>39</sup> See, for example, J. Birch (2019) Where next for renting after section 21?, (<https://julesbirch.com/2019/04/15/where-next-for-renting-after-section-21/>; last accessed: 12/05/19)

<sup>40</sup> See W. Wilson, J. Baxter, K. Berry and E. Murphy (2019) Comparing private rented sector policies in England, Scotland, Wales and Northern Ireland, Briefing Paper No 07624, London: House of Commons Library, pp37-43.

<sup>41</sup> MHCLG (2018) English Housing Survey: Private Rented Sector Report 2016/17.

<sup>42</sup> HCLG Select Committee, 2018, para 16.

While the risk-based HHSRS was introduced in the belief that it was an improvement upon simple 'pass' or 'fail' assessments of property fitness, it is considered by some to be unduly complicated because hazards are assessed relative to the occupant rather than on an absolute scale. This makes it harder for landlords to know whether their properties are problematic. There are also concerns that the standards upon which the HHSRS is based were set in 2004 and have not been updated. The case has, therefore, been made that the system needs to be overhauled and replaced with a simpler set of standards to increase its effectiveness. In October 2018 the Government announced a review of the system and preliminary scoping work is underway.<sup>43</sup>

At a more basic level, many tenants experience significant delays in waiting for landlords and agents to undertake repairs that are legally required. Citizens Advice carried out a study in 2017 that estimated 41% of tenants had "waited longer than is normally reasonable" to have such remedial work carried out on their home.<sup>44</sup>

Much of the Westminster Government's recent legislative effort in this area has been framed as dealing with the behaviour of so-called 'rogue landlords'.<sup>45</sup> This is the latest incarnation of well-established approach to regulating the private rented sector – which seeks to divide landlords into those who are 'good' and 'bad' and identify a subpopulation of landlords as problematic and/or criminal.<sup>46</sup> This approach signals an intention to maintain boundaries upon regulatory oversight – the focus is upon the most socially unacceptable rather than landlords in general. This approach gains plausibility in a context where one recent development is a subsector in which genuinely criminal landlords are active. But the risk with this approach is that in trying to isolate the problem to a criminal subsector it underplays the incidence of problematic behaviour and problematic conditions more broadly. Many tenants may experience problematic behaviour – action or inaction – by their landlord, through inadvertence or ignorance on the part of their landlord rather than through conscious, criminal intent.

The most recent intervention to tackle the issue of property standards is the Homes (Fitness for Human Habitation) Act 2018, which came into force in England on 20th March 2019. The Act aimed to address the situation in which the law: "relating to health and safety in people's homes is piecemeal, out-dated, complex, dependent on tenure, and patchily enforced. It makes obscure distinctions, which have very little relationship with everyday experiences of poor conditions".<sup>47</sup> The act does so by creating an implied covenant in the lease that a landlord must ensure that their property is fit for human habitation both at the start of a tenancy and for its duration. It stipulates that if the landlord fails to ensure that a property is fit for human habitation then the tenant will have the right to take legal action for breach of contract.

One relatively high-profile approach that goes beyond the foundational notion of fitness for human habitation is the idea of a more comprehensive, independently-assessed property 'MOT certificate', bringing together a number of different regulatory requirements and processes of certification (electrical safety, gas safety, etc) into one place. While this is an idea that has been part of the debate for some time policy has yet to embrace it.<sup>48</sup>

<sup>43</sup> For an overview see W. Wilson and A. Bellis (2019) The Housing Health and Safety Rating System (HHSRS), Briefing Paper 01917, London, House of Commons Library.

<sup>44</sup> When compared to national accreditation scheme timescales; M. Isaksen (2017) It's broke, let's fix it: Improving redress for private renters, London: Citizens Advice Bureau.

<sup>45</sup> See the 2016 Housing and Planning Act in particular. And, most recently, MHCLG (2019) Rogue landlord enforcement: guidance for local authorities, London: Ministry of Housing, Communities and Local Government.

<sup>46</sup> See, for example, S. Blandy (2001) Housing standards in the private rented sector and the three Rs: regulation, responsibility and rights, in D. Cowan and A. Marsh (eds) Two steps forward: housing policy into the new millennium, Bristol: Policy Press.

<sup>47</sup> H. Carr, D. Cowan, E. Kirton-Darling and E. Burtonshaw-Gunn (2017) Closing the gaps: Health and Safety at Home, London: Shelter, p1.

<sup>48</sup> The broad approach was suggested by The Law Commission (2007) Encouraging Responsible Letting: A consultation paper, CP No 181, London: The Law Commission. Rugg and Rhodes (2018) have advocated for the introduction of a property MOT and it has garnered support elsewhere.

## Regulating rents

Government intervention to regulate private rents can be argued to be the origins of active housing policy in the UK.<sup>49</sup> The long-term history of private renting is one characterised by periods of rent regulation followed by periods of rent deregulation; only for the pendulum to then swing back the other way. Since the 1980s we have been in a period of deregulation and primarily market-determined rents. The drivers underpinning the private rented sector have delivered strong rental growth in many parts of the country. The policy debate over rent regulation has consequently been reanimated. The UK shares this feature of its housing policy debate with a number of other developed countries.<sup>50</sup>

In England a range of contemporary stakeholders and lobby groups have called for greater direct rent regulation. It has attracted attention as part of the Labour Party policy platform and the Mayor of London is exploring the possibilities of some form of rent stabilisation. There are a range of different mechanisms, with different incentive effects, available and operating in housing markets elsewhere.<sup>51</sup> However, greater direct intervention to regulate private rents has so far been resisted by the Westminster Government. One of the key areas of contention is the extent to which attempts at rent stabilisation will have a negative impact on housing supply. If it successfully suppresses rents then it could either discourage landlords from letting properties or lead to deterioration in property quality.<sup>52</sup> Much of the political debate on this topic is conducted in rather broad strokes, without reference to serious attempts to estimate the impacts of changing regulation, although some modelling work has been attempted.<sup>53</sup>

Wales and Northern Ireland also do not currently have active systems of rent control for new tenancies. And policy is not clearly moving towards greater regulation. Rent regulation applies to some tenancies as a result of legacy policies. In Wales the situation is the same as that in England: tenancies created under the 1977 Rent Act still have regulated rents, but over time they have reduced in number. In Northern Ireland regulation is a more contemporary issue, with rent control applying to some tenancies created before April 2007.

Recent policy in Scotland has moved somewhat further. The Private Residential Tenancy introduced by the Private Housing (Tenancies) (Scotland) Act 2016 is designed such that the landlord can increase the rent no more than once a year, and must give the tenant three months' notice of an increase. If the tenant thinks the proposed rent increase is unreasonable then they can apply to Rent Service Scotland for an adjudication. A rent officer will determine an appropriate rent for the property by reference to a range of information on the property and its context: the rent determined could be higher or lower than that being proposed by the landlord.

The 2016 Act also introduced a system by which local rent pressure zones can be established and standardised how often rents can increase. Local rent pressure zones (RPZ), which only apply to a new tenancy, can be requested by local authorities for any specific geography within their boundaries. They need to be approved

<sup>49</sup> The 1915 Act set in train processes that resulted in the development of council housing. See W. Wilson (2017) A short history of rent control, House of Commons Library, Commons Briefing papers SN06747.

<sup>50</sup> C. Whitehead and P. Williams (2018) Assessing the evidence on rent control from an international perspective, London: LSE London.

<sup>51</sup> Whitehead and Williams, *ibid*; See also W. Wilson and C. Barton (2019) Private rented housing: the rent control debate, House of Commons Library, Commons Briefing papers SN06760. The components for a possible future system of rent control for London, drawing on the characteristics of schemes operating elsewhere, have recently been outlined by H. Wheatley, S. Arnold and J. Beswick (2019) Getting rents under control: how to make London rents affordable, London, New Economics Foundation.

<sup>52</sup> It is possible that rent stabilisation could act in the opposite direction by triggering a different type of behavioural response, at least for some landlords: formal policies that set out 'maximum' allowable rent increases can act as a signalling device conveying information to landlords whose rent adjustments lag the market and who would otherwise have allowed existing rents to prevail.

<sup>53</sup> For a recent study see A. Clarke, S. Morris, M. Oxley, C. Udagawa and P. Williams (2015) The effects of rent controls on supply and markets, Cambridge: Cambridge Centre for Housing and Planning Research.

by the Scottish government. RPZs can restrict rent increases for up to five years, but rents are still allowed to rise annually by CPI plus 1%. Starting or initial contract rents are unaffected.<sup>54</sup> However, it is generally thought to be difficult to make the case to justify the designation of an RPZ and so far none has been approved. The impact of this type of stabilization mechanism on local housing markets is therefore as yet untested.

It is also important to recognise that, while there can be political resistance to “rent control”, indirect regulation has, in practice, become an increasingly important feature of parts of the private rented sector through the operation of the social security system. The constraints on the Local Housing Allowance have placed an increasingly tight upper limit on the sorts of properties that benefit-assisted households can access.<sup>55</sup> In areas where such households dominate the private rented sector this effectively imposes a ceiling on local private rents.

There is an irony to where the debate over rent regulation, particularly in England, has ended up. While crude rent controls – of the type that operated in the early part of the twentieth century – are seen by many analysts as having a detrimental impact upon housing markets, there are a range of second and third generation approaches to rent stabilisation that can be designed in more subtle ways to mitigate the risks that they undermine landlords’ incentives. Yet none of this subtlety is available when regulation is effectively delivered through LHA limits, which act like old-style nominal rent controls. The failure of the policy conversation in England to engage seriously and holistically with rental affordability and regulation means policy is less effective than it might otherwise have been.

## Regulating the relationship

While rents and repairs are core to the relationship between tenants and their landlord or agent, other dimensions of the relationship subject to regulation include the handling of deposits and other transaction costs such as agents’ fees; management standards – particularly harassment and protection from eviction; and discrimination. There is also a role for Trading Standards where landlords are engaged in unfair or dishonest practices, such as misrepresentation of property quality or lack of transparency over their charges.

Historically, landlord handling of tenant deposits was a major source of friction. Inability to afford deposits can create difficulties for households in accessing accommodation. Withholding of deposits at the end of tenancies, whether with justification or otherwise, can create difficulties for tenants in securing subsequent accommodation. It can be a route into homelessness for those without sufficient financial reserves.

Some of the heat was taken out of this issue by Government legislating that, from April 2007 onwards, deposits should be covered by third party schemes, which are either custodial or insurance-based. Regulatory innovations have been used to incentivise landlords to engage with these schemes: for example, the ability to use Section 21 notices has been linked to adopting appropriate deposit-holding practices.<sup>56</sup>

While the three organisations running approved deposit schemes now handle billions of pounds in deposits, there are outstanding questions about the coverage of the schemes. Although using such schemes is mandatory it appears that there is a considerable shortfall in the number of deposits being held: the number would seem to exceed the shortfall that could be accounted for by the range of legitimate exemptions. It is likely therefore that some tenants are not receiving the protections to which they are legally entitled,

<sup>54</sup> The system also allows for rent adjustments associated with property improvements, with the adjustment being determined by the Rent Officer.

<sup>55</sup> One striking illustration of the deteriorating affordability position for those reliant on local housing allowance is provided by the contrast between Figures 6 and 7 in T. Archer et al (2019) *op. cit.*, which use data from England to compare the size of the LHA gap in 2015 and 2018.

<sup>56</sup> Evaluation evidence for the operation of the schemes in Scotland can be found in Scottish Government Social Research (2018) *Review of tenancy deposit schemes in Scotland*, Edinburgh, The Scottish Government.

<sup>57</sup> In 2018 the HCLG Select Committee, with reference to English survey data, noted “200,000 tenants who reported having been abused or harassed by a landlord.” The last major Government-funded study on this topic in England was twenty years ago: A. Marsh, R. Forrest, P. Kennett, P. Niner and D. Cowan (2000) *Harassment and unlawful eviction of private rented sector tenants and park home residents*, London: Department of Environment, Transport and the Regions.



although more detailed investigation of deposit-holding practices is required to draw firm conclusions.

The conduct of the landlord-tenant relationship is regulated by housing specific - the Protection from Eviction Act 1977 - and more general - for example, the Protection from Harassment Act 1997 - legislation. While survey research has identified a considerable number of tenants reporting behaviour that potentially falls within the ambit of these Acts, there has been limited amounts of recent research on this topic.<sup>57</sup>

The amateur nature of much private landlordism raises the possibility of landlords crossing the line into harassing and other unlawful practices through inadvertence. But of equal policy concern is that there has traditionally been no necessity for landlords - or, for that matter, letting and managing agents - to undergo any training, adhere to any code of conduct, or belong to any professional body. This has long been contrasted unfavourably with other housing market intermediaries such as Estate Agents. Many such agents have no doubt always conducted themselves professionally and have voluntarily joined professional bodies and submitted to codes of conduct. Yet, there are concerns that some provide poor service, to the detriment of both landlords and tenants.<sup>58</sup> This is an area in which there has recently been considerable regulatory change. We consider this more fully in the next section.

The most recent development in the regulation of the relationship between landlord/agent and tenant is the passage into English law of the Tenant Fees Act 2019, which came into force on 1 June 2019. The primary focus of the Act is the prohibition of fees charged by letting agents, as well as placing limits on deposit payments and a range of other fees and charges. The Act makes a number of other regulatory changes, including hybrid arrangements that bar the use Section 21 to recover to possession when the landlord has unlawfully charged fees that have not been repaid. The Act incentivises local authorities to be proactive in using relevant powers by allowing them to retain monies secured through financial penalties to fund future enforcement activities.

The 2019 Act brings England into closer alignment with the system in Scotland, where letting agents have not been able to charge fees beyond a refundable deposit since 2012. In Wales the Renting Homes (Fees etc) (Wales) Bill - which aims to prohibit a range of fees and charges associated with granting or renewing a tenancy - received Royal Assent in May 2019, with commencement in September 2019. While proposals to ban letting agent fees had got to the consultation stage in Northern Ireland by 2017, the process of legislating has progressed no further since.

One outstanding question regarding moves to ban tenant fees is the behavioural response from landlords and agents and consequently the overall impact on affordability. The intention is to reduce the financial burden on tenants by removing these additional charges. But whether in practice this is the net result - or whether, for example, the agents' income is maintained through compensatory rent increases - is yet to be determined.<sup>59</sup> The prospect that the net financial benefit to tenants is limited cannot be ruled out, at least in high pressure housing markets. In low demand areas it is likely to be more difficult for agents to inflate rents to recoup income.

## Regulating disputes

Knowledge of rights and responsibilities and willingness to act to see that they are fulfilled are key ingredients in ensuring that standards in the private rented sector are upheld. In addition, there need to be effective mechanisms through which disputes can be addressed and resolved, and the parties to any dispute need to have access to the resources to help them navigate relevant legal and administrative processes.

<sup>58</sup> For example, Which? (2018, p5) report on the basis of their survey data that "[t]wo-thirds (64%) of tenants who used an agent during their searching process experienced problems, such as having to make decisions without enough information. Equally, 59% of landlords stated they had experienced an issue with their letting agent, for example slow service and poor communication".

<sup>59</sup> See The Guardian (2019) Letting fees ban: agents urge landlords to increase rents, 15/06/19, <https://www.theguardian.com/money/2019/jun/15/letting-fees-ban-agents-urge-landlords-to-increase-rents> (last accessed: 12/07/19).

The issue of resources has been highlighted as increasingly of concern. A sustained period of austerity policy has meant cuts to advice services and legal aid for housing: many tenants do not now have access to the advice and support they need to help them pursue a claim.

In terms of legal and administrative processes, again we are in a period of change. The Housing (Scotland) 2014 Act transferred private rented sector housing civil cases from the sheriff courts to a new First Tier Tribunal. Private rented sector disputes are now heard by the First Tier Tribunal (Housing and Property Chamber) who provide specialist access to justice for all parties on issues such as the grounds for termination, unreasonable rent increases and deposit scheme disputes.

The Westminster Government has sought evidence on how to improve the operation of the existing court system.<sup>60</sup> At the same time, there is broad-based support among stakeholders and campaign groups in England for the creation of a specialist housing court similar to that which now exists in Scotland,<sup>61</sup> although it has been noted that without reform and reintroduction of legal aid for housing creating such a court will have a limited impact in practice on tenants' access to justice.<sup>62</sup> The Westminster Government launched a call for evidence on the case for a housing court at the end of 2018.<sup>63</sup> We await its response to the evidence submitted.

In England membership of a redress scheme has been a requirement on letting agents since 2014. This is enforced by local authorities, which have the power to fine non-compliant agents.

There are moves to increase the coverage of Ombudsman schemes. The Westminster Government is moving towards making it mandatory for private landlords to belong to an Ombudsman scheme. The aim is to make it easier for tenants to access dispute resolution, particularly in relation repairs and maintenance, without needing to resort to the courts. The Government has also consulted on the creation of a single housing Ombudsman<sup>64</sup> following the consultation the Government has proposed the creation of a Housing Complaints Resolution Service and the establishment of a Redress Reform Working Group to help develop the new service.<sup>65</sup>

### 3. Regulatory schemes

In section three we focused on regulatory mechanisms that operate primarily through the relationship between the landlord or agent and the individual tenant. In this section we move on to examine regulatory schemes based on landlord or agent registration or licensing that operate on a spatial or sub-sectoral basis.

There are several broad dimensions across which such schemes can vary, including:

- Whether a scheme is mandatory or voluntary
- Whether a mandatory scheme focuses upon registering or licensing, or encompasses both
- The stringency of the criteria a landlord/agent has to meet in order to join or participate in the scheme (eg levels of knowledge, appropriate behaviours, property standards)

<sup>60</sup> A. Burns and T. Hadfield (2018) A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts, London, Ministry of Housing, Communities, and Local Government.

<sup>61</sup> For example MHCLG Select Committee (2018) op. cit.; Baxter and Murphy (2019) op. cit.

<sup>62</sup> Rugg and Rhodes (2018) op. cit.

<sup>63</sup> MHCLG (2018) Considering the case for a housing court: a call for evidence, London, Ministry of Housing, Communities and Local Government.

<sup>64</sup> MHCLG (2018) Strengthening consumer redress in the housing market: a consultation, London, Ministry of Housing, Communities and Local Government.

<sup>65</sup> MHCLG (2019) Strengthening consumer redress in the housing market: Summary of responses to the consultation and the Government's response, London, Ministry of Housing, Communities and Local Government.

- The extent to which a scheme seeks to encompass all relevant landlords/letting agents within a specific area or targets particular subgroups or subsectors.
- The sanctions against inappropriate behaviour available to the operator of the scheme
- Whether the scheme is subsidized, self-financing, or revenue generating.

In terms of current practice in the UK, we can distinguish between schemes that apply to letting and managing agents and those that apply to landlords, as well as differentiating national schemes from those that operate at a more local spatial scale.

We finish this section with a brief consideration of the related topic of accreditation schemes.

## National schemes – letting and managing agents

The Housing (Scotland) Act 2014 introduced a letting and managing agent registration scheme. This entailed establishing a register of letting agents, applying a ‘fit and proper person’ test to agents, and implementing a code of practice. This system became operational in January 2018 and included a grace period to allow agents time to join. Since October 2018 it has been a criminal offence to operate as a letting agent without being registered. Similarly, the Housing (Wales) Act 2014 legislated the requirement for letting and managing agents operating in Wales to be licensed. This came into force in November 2016. Participating in training is a condition of obtaining a license. Rent Smart Wales, which is managed by Cardiff Council, acts as the regulatory body. The scheme requires adherence to a code of practice which encompasses issues such as the handling of client monies, where relevant, and mandates the membership of a redress scheme.

Policy in this area is developing more slowly in England. The Westminster Government announced its intention to regulate letting agents in October 2017. A call for evidence was issued in October 2017 and the Government published its response in April 2018.<sup>66</sup> The Government’s key move has been to establish a Regulation of Property Agents Working Group, chaired by Lord Best, with the aim of advising government on a new regulatory framework. The group is due to report by summer 2019.

In Northern Ireland a consultation on establishing a regulatory framework for letting agents was recently carried out, and the intention is to move policy in a similar direction to that occurring elsewhere in the UK. There is, however, no system in place as yet.

## National schemes - landlords

Scotland was the first part of the UK to introduce mandatory landlord registration, in 2006. Landlords must register with their local authority and must pass a ‘fit and proper’ person test before joining the register. The register can be viewed by the public. Substantial fines can be applied to landlords who operate without being registered. Local authorities are the enforcing body.

The Rent Smart Wales scheme covers private landlords as well as letting agents. All private landlords who let directly to tenants need to be registered with Rent Smart Wales, while those who use an agent need to declare the identity of their agent when they register. Hence landlords must be registered even if they do not directly manage property. This system came into force in 2016. Registration lasts for five years. Some of the information on the register is publicly accessible.

<sup>66</sup> MHCLG (2017) Protecting customers in the letting and managing agent market: Call for Evidence, London, Ministry of Housing, Communities and Local Government; MHCLG (2018) Protecting customers in the letting and managing agent market: Government response, London, Ministry of Housing, Communities and Local Government.

Registration requires landlords to provide information on the properties under management. But property quality is not inspected at the point of registration. The Welsh system supplements registration with licensing for any landlord managing property directly. Licensing is intended to ensure that a landlord is a 'fit and proper person' who adheres to the scheme's code of practice.

At the end of the 2000s<sup>67</sup> national registration of landlords was part of the policy conversation in England, but it was an idea that was explicitly rejected by the Coalition government in Westminster after 2010. The proposition that policy in England should be reoriented towards light touch landlord registration and licensing at the level of the property has recently be forcefully reasserted by Rugg and Rhodes.<sup>68</sup>

*The Landlord Registration Scheme Regulations (Northern Ireland) 2014* established a registration scheme covering all those who let property under a private tenancy. The register is public and searchable, up to a point. Letting a property without being registered carries a modest financial penalty. Landlord licensing has been part of recent debates over regulatory reform in the sector, but it is not an idea that has so far been embraced.

Rather than attempting to capture information on the entire landlord population in England, recent policy has focused on compiling data on rogue landlords and agents. Since April 2018 local authorities have been responsible for maintaining the content of the database: they are required to enter details of landlords who are subject to a banning order, and have the option to record those who have not been subject to such an order but have received civil penalties in its stead. The database is designed primarily to give Government sight of the "rogue landlord" problem. As initially conceived the database was not publicly visible, but this lack of transparency has been heavily criticized and it is proposed that the approach will be changed. While this Government's strategy has been crafted to focus upon the worst problems in the private rented sector it has been criticised for failing in its own terms: "Rogue landlordism" is too weak a concept to cover the worst levels of criminality in the shadow PRS.<sup>69</sup> And, having not received a single entry in its first six months, there is a degree of scepticism about the database's effectiveness.<sup>70</sup>

## Selective area-based schemes

While policy in England eschewed national schemes of regulation and licensing, the possibility of establishing selective area-based licensing schemes was opened up by the Housing Act 2004.<sup>71</sup> Local authorities can make the case to designate spatially-bounded licensing schemes. The case has to be made that the housing market in the identified area exhibits specific negative characteristics – poor quality properties, anti-social behaviour - or risks that indicate a negative trajectory towards low demand. Some authorities have designated such schemes to cover their whole borough.<sup>72</sup> The take up of selective licensing has been relatively modest:

As of the 1st of January 2019, 44 local authorities reported operating one or more such schemes. Four local authorities operate schemes that cover 100% of the local area, and nine further authorities report operating a scheme that covers more than 20% of the local area.<sup>73</sup>

<sup>67</sup> Following the publication of the original Rugg report in 2008.

<sup>68</sup> Rugg and Rhodes (2018), pp.144-145. A national registration scheme is also recommended by CIH/ CIEH (2019) A licence to rent, CIH/CIEH, and by Which? (2018) op. cit.

<sup>69</sup> Rugg and Rhodes (2018), p146.

<sup>70</sup> The Guardian (2018) Government's rogue landlord list empty after six months, <https://www.theguardian.com/business/2018/oct/23/governments-rogue-landlord-list-empty-after-six-months> (Last accessed; 21/05/19)

<sup>71</sup> For further detail see W. Wilson (2019) Selective licensing of private rented housing in England and Wales, House of Commons Library, Briefing paper 4634.

<sup>72</sup> This is an area in which regulatory innovation is possible. Liverpool operates a city-wide selective licensing scheme which includes an element of co-regulation with the Residential Landlords Association (RLA), where RLA members are able to claim discounts of up to 50% on fees.

<sup>73</sup> Lawrence, S. and Wilson, P. (2019) An independent review of the use and effectiveness of selective licensing, London, Ministry of Housing, Communities and Local Government, para 1.15

However, the authorisation process for securing designation for a scheme has changed over time in ways that have changed its complexity and moved the locus of control. Approval from the Secretary of State was required during the initial phase of the policy, but from 2010 a general consent meant that as long as all the conditions for designation were met there was no need to secure approval from the Secretary of State. This changed again in 2015 when the requirement for central approval was reintroduced for situations where a local authority proposes to declare an extensive scheme – one that covered more than twenty percent of their borough or twenty percent of the private rented sector.<sup>74</sup>

The post-2015 policy has been criticised for its recentralisation of control, against the spirit of the Localism Act 2011. The policy has been criticised by the MHCLG Select Committee for, in its view, creating a process that is “too slow, lacks transparency, and is overly bureaucratic and unduly expensive”.<sup>75</sup>

In the summer of 2018 the Government announced an independent review of selective licensing. The report of this review was published in June 2019.<sup>76</sup>

## Targeted HMO licensing

The houses in multiple occupation (HMO) subsector of the private rented sector is frequently considered by policymakers to be an area of concentrated risk – including risks of poor property quality, poor management practice, fire, and impacts on neighbouring properties and neighbourhoods. Mandatory HMO licensing was introduced in Northern Ireland in 2019. This means that all the constituent countries of the UK are now operating mandatory licensing schemes targeted on this subsector.

In England the scheme was introduced by the Housing Act 2004 and the legislation in Wales broadly follows the Housing Act 2004.<sup>77</sup> In Scotland the current scheme originates with the Housing (Scotland) Act 2006.<sup>78</sup> Each scheme applies a slightly different definition of an HMO, in terms of the number of floors in the property and/or number of households. The definition of HMO has recently been revised in England in a way that brings more properties within the scope of the law.<sup>79</sup> The schemes in each country also operate with differences in the mix of sanctions that can be applied to those who do not comply with their licence conditions and to operators of unlicensed HMOs.

## Severity of sanctions

These regulatory schemes typically make available a range of sanctions of varying severity.<sup>80</sup> This is an important issue when we consider the extent to which landlords are presented with incentives to comply with the regulations, or disincentives to risk operating in contravention of a mandatory scheme.

<sup>74</sup> This latter policy change did not apply to Wales.

<sup>75</sup> MHCLG Select Committee (2018), p.4.

<sup>76</sup> Lawrence and Wilson (2019) op. cit.

<sup>77</sup> It is also possible for a local authority to supplement a mandatory licensing scheme with additional HMO licensing, which includes requirements that go beyond those specified by the Government.

<sup>78</sup> Though Scotland was the first part of the UK to license HMOs. A voluntary system affecting a subset of HMOs operated in the 1990s; a mandatory system was introduced in 2000. See H. Currie (2002) *The Scottish system of licensing houses in multiple occupation*, in S. Lowe and D. Hughes (eds) *The private rented sector in a new century*, Bristol, Policy Press.

<sup>79</sup> See *The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018*.

<sup>80</sup> In this respect they display some of the characteristics of responsive regulation; a concept introduced to the regulatory debate by I. Ayres and J. Braithwaite (1992) *Responsive regulation: transcending the deregulation debate*, Oxford: Oxford University Press. We will be examining the mapping of regulatory developments on to evolving regulatory thinking as part of a future project.

The maximum financial penalty under the schemes operating in the different countries of the UK range from the inconvenient to the potentially ruinous. As well as fines and financial penalties of varying severity, rent repayment orders and management orders, these sanctions include incentivising mechanisms such as tying the ability to serve a section 21 notice, where available, to the possession of a licence.

If we focus on the strongest sanctions available under a scheme, these are now severe enough to act, in principle, as a meaningful (dis)incentive. In England and Scotland landlords can be banned or disqualified from operating as a consequence of certain behaviours that effectively challenge or undermine their designation as a 'fit and proper' person. The comprehensive nature of the Welsh registration and licensing system means that if a landlord fails to secure designation they are effectively precluded from operating. In Northern Ireland a similar argument applies in the HMO subsector, if not in the whole private rented sector.<sup>81</sup>

The availability of sanctions that stretch as far as to prohibiting landlords from operating goes some way to addressing a key concern that has recurred in past iterations of the debate over the regulatory regime for private renting. Whereas the benefits – and therefore incentives – of acting outside the law can be considerable, landlords found to have acted unlawfully were subject to negligible sanctions and relatively nugatory penalties. In such circumstances, the disincentive effects embedded in the legal framework are limited.

However, while available sanctions are one part of the picture, another part is the vigour with which the regulatory regime is enforced and the extent to which the full range of sanctions is, or can be, utilized in practice.<sup>82</sup>

## Implementation, enforcement and penalties

Some of the changes to regulatory policy noted above have only recently been implemented. Comprehensive evaluation of their impacts will take time. There have, however, been several evaluations of earlier stages in the development of registration and licensing schemes.<sup>83</sup>

These evaluations focused primarily upon early implementation issues. Where they consider impacts the message is generally mixed. The research identifies areas where schemes are working well and areas that are more problematic. Research informants and survey respondents might report better joint working and community involvement, improvement in standards in parts of the sector, better knowledge of and communication with registered/licensed landlords, constructive engagement by landlords with training, and a higher proportion of landlords exhibiting accurate knowledge of obligations.

<sup>81</sup> There are issues of detail around whether these more severe sanctions affect a landlord's ability to operate a particular property, or within a single local authority area, or within the sector at all – and whether prohibition from operation is for a fixed period or until certain types of actions are undertaken or behaviours displayed. But we don't pursue the detail here.

<sup>82</sup> It is also important to view the legal and regulatory framework for private renting in context. It is, for example, possible to prosecute 'rogue' landlords not only in relation to housing law but also invoking the law in relation to the proceeds of crime. This can increase the severity of financial penalties considerably. On the other hand, pressures on a local authority's homelessness function can present incentives not to take robust enforcement action against private landlords, thereby potentially exacerbating the homelessness problem locally: a point recognised in a previous iteration of the discussion, D. Cowan and A. Marsh (2001) There's regulatory crime and then there's landlord crime: from 'Rachmanites' to 'Partners', *Modern Law Review*, 64(6), 855-874.

<sup>83</sup> Notably Building Research Establishment (2010) *Evaluation of the impact of HMO Licensing and selective licensing*, London: MCLG; Lees, F. and Boyle, J. (2011) *Evaluation of the impact and operation of landlord registration in Scotland*, Edinburgh, Scottish Government Social Research; PACEC (2016) *Evaluation of Rent Smart Wales: Baseline Evaluation Report*, Welsh Government, GSR 76/2016; RSM PACEC (2018) *The evaluation of Rent Smart Wales: Final evaluation report*, Welsh Government, GSR Report.

But there are several recurrent and related concerns. The first is the extent to which schemes are primarily reaching the more conscientious and well-intentioned landlords – on whom they could be imposing an unnecessary additional burden – and, conversely, the extent to which they are not reaching more problematic landlords and behaviours. The latter issue connects to the second concern: the adequacy of the resources available for identifying and, where necessary, enforcing against landlords whose behaviour falls short or where landlords do not proactively engage with the scheme. Lack of sufficient resources for effective implementation hampers an assessment of whether registration and licensing represent effective regulatory mechanisms. A third concern is about whether different schemes operating in a specific geographical area interact effectively with each other.

An extensive and systematic evaluation of the operation of the selective licensing scheme in England has recently been published. The conclusions of this study were not out of line with those of previous work, and highlighted the importance of thinking holistically about the issue:

The research overall indicates that selective licensing can be an effective policy tool with many schemes achieving demonstrable positive outcomes. However, this study also indicates that when implemented in isolation, the effectiveness of selective licensing is often limited. Schemes appear to be more successful as part of a wider, well planned, coherent initiative with an associated commitment of resources...<sup>84</sup>

Since 2017 local authorities in England have had a power to use civil penalty notices as an alternative to prosecution. Providing this alternative seeks to address a number of issues associated with relying on criminal sanctions alone. However, this move has been criticised on several grounds. It potentially creates a degree of ambiguity and uncertainty for landlords. The normative force of the sanction is reduced. Civil penalties are not a sufficiently strong deterrent for the worst offenders. The level of fines imposed by the courts has been argued to be inadequate. The MHCLG Select Committee argued for further strengthening of sanctions:

We believe local authorities should have the power to levy more substantial fines, which might stand a chance of breaking the business models of the worst offenders. Further, local authorities should have the power to confiscate properties from those landlords committing the most egregious offences and whose business model relies on the exploitation of vulnerable tenants.<sup>85</sup>

Focusing on enforcement and penalties associated with these types of registration and licensing schemes risks neglecting a central finding of the literature on regulation: that much regulatory practice is associated with softer activities designed to bring about compliance by those subject to the regime. It can be more effective to talk with landlords about how they need to change in order to bring properties and practices into line with regulatory requirements than it is to default to formal enforcement as the first response. But in the current financial environment facing local authorities sustaining such ‘softer’ work is likely to be difficult. There is a risk that regulatory decisions are taken in the light of their anticipated financial payoff – money from fines can be retained to fund the service – rather than their effectiveness in achieving the ultimate goal of compliance.

<sup>84</sup> Lawrence and Wilson (2019) *op. cit.*, p.7. See also the recent evidence of positive impacts offered by CIH/ClEH (2019) *A licence to rent*, CIH/ClEH.

<sup>85</sup> MHCLG Select Committee (2018), para 92.

## Accreditation approaches

While much of the recent discussion has been oriented towards mandatory registration and licensing, the role of landlord accreditation schemes should not be neglected. Accreditation schemes were developed in particular localities or for particular subsectors – most notably student housing.<sup>86</sup> Such schemes are not mandatory but they are operated, in some form, by the majority of local authorities. During the 1990s and 2000s they received considerable policy attention because they were seen as offering the prospect of increasing compliance without compulsion.<sup>87</sup> Voluntary schemes work on the basis of incentives, rather than threats of enforcement. They offer landlords the prospect of access to valued goods – beyond the status of being accredited that could include, for example, certain types of local grants or subsidies. A weakness of voluntary accreditation schemes – as noted above for registration and licensing – is that they tended not to engage the most problematic landlords. This is a problem that is not necessarily solved by making accreditation mandatory. This weakness, is in part, the reason why subsequent discussion has drifted in the direction of more interventionist statutory registration and licensing. But we should bear in mind that while accreditation schemes may lack the firepower to address the most challenging subsectors within private renting they can prove an effective mechanism for raising or maintaining standards elsewhere in the sector.

Equally importantly, technological developments open up possibilities for new forms of accreditation operating outside the control of local or national government. One such recent development is the Marks Out of Tenancy website that invites tenants to provide a TripAdvisor style rating for their landlord, agent, property or the area in which it is located.<sup>88</sup> Furthermore, rapid developments in services such as credit scoring can potentially act as a disciplinary device upon (prospective) tenants who recognise that maintaining a good track record of rent payments could influence their credit score and that in turn could, in principle, shape their access to housing.

## 4. Finance

As noted above, the changing financial landscape facing private landlords has played a key role in the evolution of the sector. This includes tax breaks and incentives to encourage landlords to invest in residential property, on the one hand, and changes to the social security system that have constrained the ability of tenants to afford the rents that landlords are seeking to charge, on the other. There has also recently been renewed interest in the scope for using financial mechanisms to incentivise landlords to house poor households in property of adequate standard.<sup>89</sup>

The private rental sector cuts across public finance and a need for investment through private financial means. The Westminster Government, for example, has offered debt guarantees for up to 30 years on projects of a minimum scale of £10m, anywhere in the UK, for the construction of new-build private rented accommodation by borrowers classified as private sector for national accounting purposes.<sup>90</sup>

<sup>86</sup> D. Hughes and R. Houghton (2007) Accreditation, in D. Hughes and S. Lowe (eds) *The private rented housing market: regulation or deregulation*, Farnham: Ashgate.

<sup>87</sup> P. Leather, K. Revell and N. Appleton (2001) *Developing a voluntary accreditation scheme for private landlords: A guide to good practice*, London: Department of Environment, Transport and the Regions.

<sup>88</sup> See <https://www.marksofthenancy.com/>

<sup>89</sup> On which, see A. Clarke and M. Oxley (2017) *Using incentives to improve the private rented sector for people in poverty: An international policy review*, Cambridge: Cambridge Centre for Housing and Planning Research; A. Clarke and M. Oxley (2018) *Using incentives to improve the private rented sector for people in poverty: three costed solutions*, York: Joseph Rowntree Foundation. The competition for small-scale targeted funding announced by MHCLG in October 2018 as the Private Rented Sector Access Fund, to support schemes that help those at risk of homelessness to access or maintain a private tenancy, includes the possibility of using incentives and guarantees. This initiative builds on earlier work by Crisis: see J. Rugg (2014) *Crisis' Private Rented Sector Access Development Programme: Final Evaluation Report*, York: Centre for Housing Policy.

<sup>90</sup> See eg MHCLG (2018) *Private rented sector housing guarantee scheme*, London, MHCLG (March).



The great majority of small-scale private landlords are Buy to Let (BTL) operators, often with just one property to let. Unintuitively, these small-scale operators do not necessarily rely on debt finance. They often let property bequeathed or unsold from an early housing move. Or they have drawn down housing or other equity to facilitate the purchase. Nonetheless, tax relief on mortgage interest has been an important driver of BTL demand and the swingeing cuts in such tax relief initiated by the majority Conservative government after 2015 are widely held in the sector to be a destabilising force that reduces investment and shifts providers at the margin out of private renting. Like the impact of Brexit, the full effect of the reduction in tax relief has not yet been felt.

The cuts in tax relief were compounded by the decision by the same Chancellor, in his last budget, not to grant private landlords the reduced rate of capital gains tax offered to all other investors. At the same time, mimicked in Scotland, stamp duty was increased by 3% for landlords (and subsequently increased by 1% more on all tax bands in Scotland).<sup>91</sup>

These three interventions amount to a serious fiscal assault on the BTL sector. The changes were not evidenced by research but based on political calculation and loose statements from the Bank of England that the BTL sector was pricing out entrants to home ownership and otherwise destabilising the housing market. The unintended and potentially damaging consequences of the tax hike have not been adequately considered or addressed.

The other side of the coin is the use of tax incentives or guarantees to encourage investment, property maintenance and other standards-improving behaviour. Private landlords have access to relief on repair and maintenance work but are less advantaged than other business taxpayers in that they do not receive a standard depreciation allowance. In Scotland, in an attempt to promote the Build to Rent sector, an experimental pilot rental income guarantee has been provided by the Scottish Futures Trust (SFT) which will underwrite up to 50% of void rental income for three years. Interestingly, to date no investor has taken the SFT up on the opportunity.

A second interesting innovation from Scotland is mid-market rent (MMR). This is now the fastest growing affordable supply model, expanding more quickly than affordable home ownership or Help to Buy. MMR is grant-funded new build (or modernised existing property), up to a ceiling of around £40,000 per unit, that has its rent closely aligned to the relevant Local Housing Allowance (LHA) and is targeted to households in work who are not eligible for social housing. There is a local income cap placed on applicants as well. These tenure models are managed by housing associations but clearly compete in the private rental market. Anecdotal evidence suggests that they are popular and in-demand and may be having wider impacts on both the private landlord competition and on how social landlords view their management function.

Finally, private landlords are closely intertwined with the welfare benefit system and its ongoing reform since 2010. The PRS took the early brunt of benefit cuts reducing the levels of LHA, both by room size and in absolute terms via the rebasing of the calculation of LHA from the 50th percentile to the 30th percentile across Great Britain. Landlords were also affected by household benefit caps, basing younger single person rates on shared living, and limits on uprating applied to all recipients. In recent years, the chief concern has been around the introduction and roll out of Universal Credit (UC), which subsumes housing support into a benefit combining the six main working age means-tested benefits/tax credits into one monthly payment. UC's introduction has been plagued by many difficulties. But there are key concerns about its structure: not least among these are, on the one hand, the five week delay before receipt of first payment and, on the other, its conditionality structure which can readily sanction recipients in the form of stopping benefits for different durations. Both these system characteristics increase the risks that households will be unable to sustain their tenancy. These issues overlay long-standing landlord concerns about the need for greater streamlining of local authority bureaucracy.

<sup>91</sup> Scotland operates the Land Buildings Transactions Tax which replaced Stamp Duty Land Tax under the 2012 extension of powers in Scotland.

The private rented sector has had an uneasy relationship with the benefit system. Much of the rise in the housing benefit bill, historically, has been attributed to rising rents in the private rental market coupled with more low-income tenants in the growing sector. The opprobrium directed at tax-funded benefits going to private landlords has been intensified by stories about poor quality accommodation and unsatisfactory relationships between specific landlords and tenants, and also by growing concerns that some landlords are unwilling to take benefit-dependent households as their tenants. In March 2019, Zoopla announced that they would no longer facilitate such exclusion by refusing adverts that identified properties as ‘no DSS’ or equivalent. These issues are fundamentally empirical, but we lack good evidence about their generalisability or otherwise.

## 5. The current policy and regulatory landscape

The private rented sector has grown and evolved substantially over the last decade and a half. This change has been driven by diverse factors on both the demand and supply side. While this growth has been substantial, it has moderated in the last couple of years. We are not locked in to this recent growth path: continued sector growth is by no means inevitable. Recent modelling work has illustrated the way in which the future path of private renting depends on broader socioeconomic trajectories.<sup>92</sup> It suggests that weaker overall economic performance is associated with stronger private rented sector growth. It seems likely that the private rented sector is going to continue to play a significant role in the housing system into the medium term.

There has been a substantial amount of recent change in the regulation of the private rented sector, particularly in Scotland and Wales, with more change in prospect. Policymakers in Scotland and Wales have been willing to think strategically and set out bold new frameworks for regulating the sector. Policy in England is, to some extent, in the process of catching up with developments elsewhere. Changes in England also been relatively piecemeal so far: this absence of strategy and vision has attracted forthright criticism.<sup>93</sup> There are, however, recent signs that the Westminster government is becoming more inclined to contemplate more far-reaching reform.<sup>94</sup>

Much of this regulatory change – such as the mandatory register of letting agents in Scotland – has only been in operation for a matter of months. It is 18 months since the new tenancy was introduced in Scotland. The effects of changing several components of the system at once, as has happened in Scotland, cannot be straightforwardly predicted. These systems will need time to bed down. There will be a range of behavioural responses from landlords and tenants – some of which will likely be difficult to anticipate - which mean the full impacts of the policy changes will take a while to become apparent.

Policy in the different jurisdictions across the UK is moving in broadly the same direction, with some subtle – and not so subtle – differences in emphasis. There remains the question of the extent to which the redesign of regulatory structures has been accompanied by a complementary emphasis upon effective implementation and enforcement.<sup>95</sup> Given the pressures upon the budgets of enforcing agencies, as a result of broader policies of fiscal retrenchment, there is a considerable risk that available resources are significantly constrained. In such circumstances the challenges of determining whether new structures are effective in meeting policy objectives and raising standards are so much the greater.

<sup>92</sup> C. Udagawa, K. Scanlon and C. Whitehead (2018) *The future size and composition of the private rented sector*, London: LSE London.

<sup>93</sup> Rugg and Rhodes (2018), chapter 9.

<sup>94</sup> The announcement in April 2019 of the review of section 21 was framed by the Westminster Government as heralding a planned “complete overhaul of the sector”, although the nature and scope of such an overhaul was left unspecified.

<sup>95</sup> Recent work by Simcock and Mykkanen, based on FOIA requests, gives a clear indication that local authorities’ utilization of the powers at their disposal is a key question: see T. Simcock and N. Mykkanen (2018) *The postcode lottery of local authority enforcement in the PRS*, Manchester, Residential Landlords Association.

Evaluating effectiveness also requires sufficiently extensive and detailed data. There is a limited amount of detailed data routinely collected and reported on the private rented sector. As new regulatory systems are being established it is worthwhile considering the scope for establishing supporting administrative systems and databases in such a way that they capture data that can also, as a by-product, be put to work in evaluation.

## 6. Future agendas

Systematic evaluations of these policy and regulatory developments will take time to emerge. And it is important to think more systemically about them.<sup>96</sup> We need to take a holistic view of regulatory change. In Scotland, for example, we need to understand the ways in which letting agent regulation, deposit schemes, landlord registration, and the new tenancy arrangements interact to affect the dynamics of the sector, and the housing market more broadly. The evidence requirements for addressing this challenge are significant.<sup>97</sup> The Nationwide Foundation is funding a three-year mixed methods evaluation of the Scottish reforms.

There are a range of evidence gaps relating to the private rented sector that CaCHE is planning to address over the coming months and years. There is a project under way to look at older private rented tenants, a group that has attracted relatively little recent attention. In a collaboration with the Urban Big Data Centre, a postgraduate research student is conducting a project comparing the private rented sector in England and Scotland after the Scottish reforms, treating recent policy divergence as creating a natural experiment. An international evidence review on rent regulation is planned for 2020, building on the recent work by Whitehead and Williams.<sup>98</sup>

More directly, over the coming twelve months, as part of the CaCHE collaboration with TDS Charitable Foundation/Safe Deposits Scotland Charitable Trust we are going to be carrying out three projects:

- an evaluation of alternative dispute resolution schemes;
- a review of the enforcement of private rented sector legislation across the UK;
- an investigation of the discrepancies between the number of tenancies in the private rented sector and the number of deposits protected.

As noted above, the debate about alternative dispute resolution schemes currently has some momentum. But this debate could be better informed by a critical analysis of the relevant evidence. In a context where new institutions and processes are being considered and designed, what lessons can be learnt from existing practice elsewhere and avoid repeating mistakes?

That there is a discrepancy between the number of tenancies in the private rented sector and the number of deposits protected is well-established. We know much less about what is happening to produce this outcome. How do the characteristics of landlords, tenants, and tenancy deposit schemes combine to produce this discrepancy? To what extent does it represent a compliance failure? And how can any implementation gap be reduced?

Finally, we have noted several times in our discussion above that enforcement has been identified as a key issue. Indeed, for some commentators on regulation in the sector it is the principal contemporary issue. Can we say more about what shapes regulatory effectiveness? To what extent are there regulatory innovations or hybridisations that might be used more extensively or drawn into the housing sector from practice elsewhere in order to enhance compliance?

<sup>96</sup> See K. Gibb and A. Marsh (2019) *Housing and systems thinking*, Glasgow, CaCHE Working Paper, for a general discussion of this point in a housing context.

<sup>97</sup> See Livingston et al (2018) *Private Renting Reform*, for an extended discussion. For a discussion with a narrower focus on the data required to monitor rent regulation see D. Robertson and G. Young (2018) *An evaluation of rent regulation measures within Scotland's private rented sector*, Edinburgh, Shelter Scotland.

<sup>98</sup> See fn. 50.