

BSHF Response to the Consultation Review of Property Conditions in the Private Rented Sector

About BSHF

The Building and Social Housing Foundation (BSHF) is an independent housing research charity committed to ensuring that everyone has access to decent and affordable housing, and holds Special Consultative Status with the United Nations Economic and Social Council.

BSHF has conducted research into the private rented sector, looking in particular at its recent growth and the household composition of tenants. This submission is based on this research and information provided by Ben Pattison from the University of Birmingham.

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Introduction

BSHF appreciates the Government's recognition of this key issue. We feel it is important to underline that whilst addressing challenges within the private rented sector is key, this is only part of the larger, more fundamental problem of dysfunction across the entire housing market. Until the broader issues of undersupply, affordability and inelasticity are addressed effectively access to good quality housing will continue to be problematic for those with limited housing choices. This is an important concern regarding the protection of vulnerable households, particularly considering the ability for local authorities to discharge their homelessness duties within the private sector, where tenants are exposed to potential exploitation.

Growth of the private rented sector

The private rented sector has grown rapidly in the past 25-30 years, from housing 1.7m households (9 per cent) in 1992, to 3.9m households (18 per cent) in 2013.¹ This growth has been particularly rapid since 2001, which saw the introduction of Buy to Let mortgage finance, enabling prospective landlords to enter the market more easily. For the first time since the 1960s the private rented sector is larger than the social rented sector.²

Table 1 *Change in relative size of 'Private rented: Private landlord or letting agency' for selected lower-tier or unitary authority areas, 2001 to 2011*³

	Lowest growth		Highest growth		Highest growth: Non-London
Isles of Scilly UA	-2.10	Bournemouth UA	11.14	Leicester UA	9.64
St. Helens	1.67	Barking and Dagenham	11.41	Watford	9.94
Copeland	2.00	Brent	11.76	Bristol, City of UA	9.95
Allerdale	2.20	Manchester	11.88	Coventry	10.30
Ryedale	2.52	Enfield	11.95	Reading UA	10.52
Suffolk Coastal	2.62	City of London	12.19	Luton UA	10.74
Mid Suffolk	2.77	Hackney	12.92	Corby	10.81
Chiltern	2.82	Slough UA	13.10	Bournemouth UA	11.14
Rushcliffe	2.91	Tower Hamlets	15.25	Manchester	11.88
South Lakeland	2.93	Newham	15.83	Slough UA	13.10

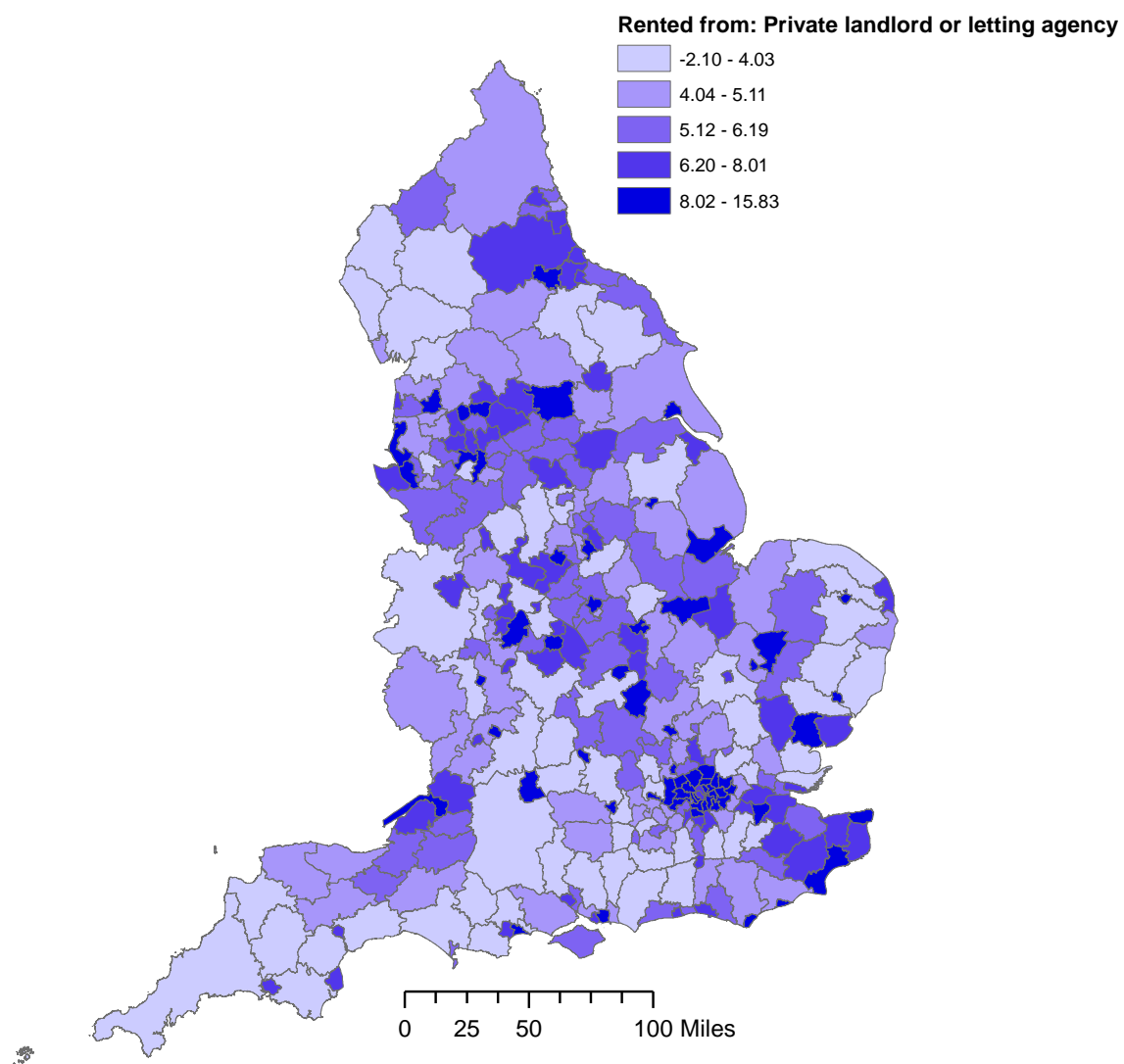
While the strongest areas of growth have been in London, rapid growth can be seen across the country. While some areas have seen much greater growth than others (Table 1), the sector has grown in almost every local authority area in England (Figure 1).

¹ Department for Communities and Local Government (2014) English Housing Survey 2012 to 2013: Headline report, www.gov.uk/government/publications/english-housing-survey-2012-to-2013-headline-report

² Department for Communities and Local Government (2012) Live Tables on Household Characteristics: 801: Tenure trend, www.gov.uk/government/statistical-data-sets/live-tables-on-household-characteristics

³ Pattison, B. (2013) Briefing Paper: Some key trends in the private rented sector in England: analysis of Census, CHASM, www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/CHASM/briefing-papers/2013/trends-private-rented-sector.pdf

Figure 1 *Change in relative size of the private rented sector, 2001 to 2011, England, percentage points*⁴



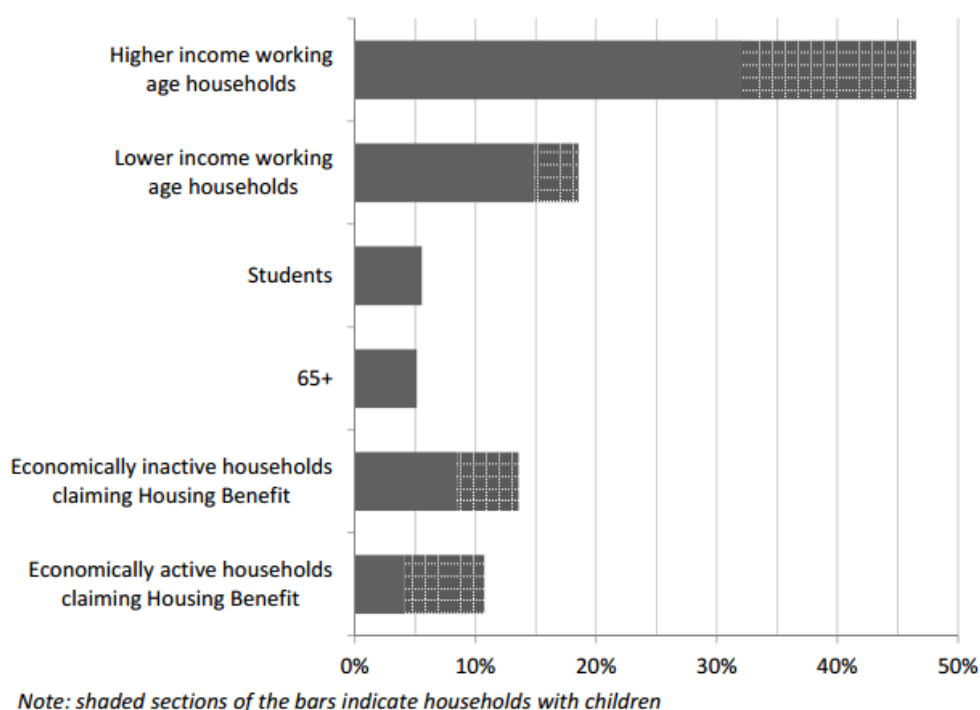
⁴ Pattison, B (2014) Personal correspondence. Calculations based on Table KS402EW, 2011 census and 2001 census

Households in the private rented sector

As well as its change in size, the private rented sector has changed substantially in composition. The private rented sector is not homogeneous, but is composed of different sub-sectors. The seminal review of the private rented sector by Julie Rugg and David Rhodes in 2008 identified eleven different sub-markets operating in the private rented sector, including young professionals, housing benefit tenants, temporary accommodation and high-end rentals.⁵ Landlords will tend to operate in one of these markets and to some extent tailor their properties and tenancies to the characteristics of these groups.

Another way of looking at the diversity of the private rented sector is to consider the characteristics of tenants rather than markets. Research by BSHF found six distinct groups of tenants living in the private rented sector, four of which contained a significant number of families with children.⁶

Figure 2. Sub-sectors of the private rented sector, English Housing Survey, 2009/10



Different household groups have particular needs in terms of their tenancy, or particular requirements in terms of affordability, security of tenure or housing standards. Research by Shelter has demonstrated that despite the growing number of families in the tenure, the private rented sector is not providing suitable accommodation for these households.⁷ Further research by Shelter

⁵ Rugg, J. and Rhodes, D. (2008) The Private Rented Sector: Its contribution and potential, www.york.ac.uk/media/chp/documents/2008/prsreviewweb.pdf

⁶ Pearce, J. (2013) Who Lives in the Private Rented Sector? Analysis of households' characteristics, www.bshf.org/published-information/publication.cfm?thepubid=19f007b2-15c5-f4c0-990836c156d907f7&lang=00

⁷ Shelter (2012) Homes Fit for Families? The case for stable private renting, http://england.shelter.org.uk/_data/assets/pdf_file/0019/423451/Homes_fit_for_families_FINAL.pdf

and Crisis has highlighted that many formerly homeless households are being housed in unfit privately rented accommodation.⁸

Landlords and letting agents

As in much of Europe, the majority of private landlords in the UK are individuals responsible for one or a small number of properties.⁹ Private landlordism is often a part-time activity, providing a supplementary investment and income, rather than a professional endeavour. A significant number of landlords are so-called accidental landlords, those unable to sell their property at the desired price, letting the property out until market conditions are more favourable.¹⁰ In this context, many landlords may not be fully aware of their legal responsibilities or may not possess the skills necessary to effectively manage a tenancy and property.

It is perhaps better to describe landlords acting illegally as “criminal” rather than “rogue”, where practices include severe overcrowding and renting “beds in sheds” or even “houseboat slums”.¹¹ Landlords who consciously choose to operate outside of the law will not proactively respond to licensing schemes or similar measures. They are also unlikely to be reported by their tenants, who by definition may have extremely limited housing options. Therefore, it is vital that local authorities are enabled to undertake proactive enforcement. Beyond this group of criminal landlords there is a spectrum of landlords who might be supported or incentivised to improve the service that they provide.

BSHF is therefore concerned by the dichotomy drawn between “good” and “rogue” landlords. The quality of provision across the private rental market can be measured on a broad spectrum, and standards will differ for many reasons. These might include variations in awareness of obligations, presence of skills or resources, and concern for tenant welfare. A landlord who takes three weeks to get a boiler fixed could not reasonably – on that count alone – be considered a “rogue” landlord, but nor could they be considered good. While the issue of “criminal” landlords must clearly be addressed, much of the sector may benefit from carefully considered regulation. BSHF therefore recommends that appropriate intervention is considered as an option across the whole spectrum of private rent.

Letting agents are another key component of the sector, and are now responsible for managing around two thirds of private tenancies.¹² Research has highlighted significant problems with these organisations, including the use of disproportionate and unclear fees.¹³ Fees can be a significant

⁸ Shelter and Crisis (2014) A Roof Over my Head: The final report of the Sustain project, http://england.shelter.org.uk/data/assets/pdf_file/0005/760514/6424_Sustain_Final_Report_for_web.pdf

⁹ Diacon, D., Moore, T., Pearce, J. and Vine, J. (2012) Building New Homes for Rent: Creating a tipping point, www.bshf.org/published-information/publication.cfm?thepubid=03eb21cc-15c5-f4c0-99108a788c643284&lang=00

¹⁰ Ball, M. (2011) Investing in Private Renting: Landlord returns, taxation and the future of the private rented sector, Residential Landlords Association, <http://longertermtenancies.com/investing-in-private-rental-housing-ball-report-september-2011.pdf>

¹¹ Forbes, S. (2014) My Life in London’s Houseboat Slums, The Guardian, Sunday 23 February, www.theguardian.com/society/2014/feb/23/london-houseboat-slum-rents-barge

¹² Darian, L. (2011) Renting in the Dark: Creating a lettings market that works for tenants, Resolution Foundation, www.resolutionfoundation.org/media/media/downloads/Renting_in_the_Dark.pdf

¹³ Darian, L. (2011) Renting in the Dark: Creating a lettings market that works for tenants, Resolution Foundation, www.resolutionfoundation.org/media/media/downloads/Renting_in_the_Dark.pdf

financial obstacle and exacerbate affordability issues. While the government has taken some measures to address these issues, more are needed to protect tenants. It has been suggested that letting agents be brought under the Estate Agents Act (1979), giving the Office of Fair Trading powers to ban agents who act improperly.¹⁴ The Scottish Government has also eliminated fees for tenants, with fees chargeable only to landlords. While landlords may pass this cost on through increased rents, it avoids significant financial outlays at the commencement of a tenancy.

Approach to regulation

Although the private rented sector has changed dramatically in the last 25 years, regulation and resources have failed to keep pace. The diversity of the sector means that a flexible approach is needed to allow local authorities to determine the appropriate local response. There is also a need for sufficient resources to ensure that measures can be effectively enforced, and to ensure that regulation suits the types of small scale landlords that predominate.

BSHF welcomes the open approach taken by the consultation overall, however, we are concerned that the government has made a premature decision to dismiss consideration of comprehensive regulation. Comprehensive regulation of private rented housing has been employed successfully in countries such as Germany, without negatively impacting on supply.¹⁵ While every context is unique and transfer is not always possible, it is equally important that examples from other countries are not simply ignored. Research by the London School of Economics shows some of the various approaches taken to regulation across Europe and the implications for the UK.¹⁶ An active consideration of all policy options is important if the most effective approach is to be developed.

While excessive regulation could lead to increased rents or reduced supply, it is apparent that the current system is not fit for purpose in ensuring that tenants receive basic standards in compliance with the law.

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

We are concerned that there is an imbalance in favour of landlords in relation to the consultation process. If tenants' interests are to be represented, more should be done to make tenants aware of consultations that affect them. As a minimum, visitors to the tenant pages¹⁷ of the Gov.uk website should be directed to the Draft Tenants' Charter page.

While the production of the Tenant's Charter is welcome, the Department for Communities and Local Government needs to ensure that there is a strategy in place for the effective dissemination of the Charter. If this is not achieved, only the self-defining group of professional and conscientious

¹⁴ Darian, L. (2011) Renting in the Dark: Creating a lettings market that works for tenants, Resolution Foundation, www.resolutionfoundation.org/media/media/downloads/Renting_in_the_Dark.pdf

¹⁵ Scanlon, K. and Kochan, B. (2011) Towards a Sustainable Private Rented Sector: The lessons from other countries, LSE, www.lse.ac.uk/geographyAndEnvironment/research/london/events/HEIF/HEIF4b_10-11%20-newlondonenv/prslaunch/Book.pdf

¹⁶ Scanlon, K. and Kochan, B. (2011) Towards a Sustainable Private Rented Sector: The lessons from other countries, LSE, www.lse.ac.uk/geographyAndEnvironment/research/london/events/HEIF/HEIF4b_10-11%20-newlondonenv/prslaunch/Book.pdf

¹⁷ For example: www.gov.uk/private-renting

landlords will become aware of the information and pass it on to their tenants, therefore the target audience will not be reached. In particular, vulnerable tenants and ‘accidental’ or ‘casual’ landlords should be prioritised.

The collection of data on private rent (particularly poor quality provision) is inherently difficult, and there is great variation between local authorities. Better quality data could be achieved via simple administrative processes, for example requesting information about the property tenure whenever there is a new Council Tax account, or when an electoral roll form is issued. These processes (or similar) already exist in some local authorities. When a new tenant is identified it could trigger the provision of information to the household – this would avoid wastage and allow more effective and ongoing market monitoring.

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

Effective partnership working can have a positive impact on the number of tenants made aware of their rights and the services provided by the council – for example through referral systems via third sector organisations such as the Citizens Advice Bureau or Shelter.

Online networking tools such as Knowledge Hub¹⁸ can also be useful for local authority officers in disseminating best practice and discussing operational and strategic issues. This is a very low cost resource and its use could be encouraged (formally or informally).

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

Improved internal communication between departments dealing with the private rented sector enables streamlining of services and prevents duplication, confusion and failure to respond. For example, enquiries and requests for assistance may come through to both housing and environmental health departments. Online networking tools again can be helpful in sharing best practice. Better cross-departmental working in relation to housing issues would help to improve the strategic evidence base of local authorities and may lead to better targeting of resources and policies. This was a finding, for example, in the Leicester & Leicestershire Managing and Updating of Data project.¹⁹

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

If a more targeted approach to identifying and communicating with private sector landlords and tenants is employed, there may be some benefit to producing a very basic guide (i.e. one page) about what sort of things you should report to your landlord to fix, explaining the role of the local council and which department to contact if the problem is not rectified.

¹⁸ Knowledge Hub: <https://knowledgehub.local.gov.uk/>

¹⁹ B.Line Housing Information (2010) Leicester & Leicestershire Housing Market Area, Managing and Updating of Data Project, http://www.lsr-online.org/reports/leicester_and_leicestershire_shma_managing_and_updating_of_data

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

BSHF strongly supports this proposal to limit the potential for retaliatory eviction. Citizens Advice report that fear of retaliatory eviction is a significant issue.²⁰ Tenants should be able to raise repair requests with landlords and see these repairs completed within a reasonable time frame without fear of eviction.

BSHF recommends that the wording “in serious disrepair or needs major improvements” is clarified sufficiently to ensure both that (i) tenants are also protected in cases of persistent failure to rectify less serious issues, for example; and (ii) landlords are not unduly penalised in cases of reasonable notices to quit.

Section 21 should also be accompanied by measures that protect tenants. For example: the notice period could be extended from 2 months to 6 months to ensure tenants have time to find alternative accommodation; the landlord could be required to return all or part of the deposit within this time so that it may be used as down payment on a new rented property. Measures like these could reduce demand for emergency housing provision and would encourage landlords to give greater consideration to the impact of eviction on their tenants. However, there is a moral question over the appropriateness of Section 21 and its implications in terms of prioritising property owners over tenants. We are concerned that the focus has shifted away from the right to housing as a basic need.

BSHF suggests that in renting a property to a tenant, landlords are delivering a product as part of a business model. Therefore expectations of quality and service are incumbent upon them in the way that they would be any other business. The long term business model of private renting recognises stable rental income from dependable tenants as the primary business objective (in the same way any business would want a loyal customer base), rather than short term capital gain through property price inflation. This recognition is established among institutional private rental providers, and is widely recognised in larger international private rental markets. A private rented sector where long term secure tenancies are recognised as an asset by existing players, market entrants and investors would reduce instability and improve the overall quality of the sector.

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

Potentially this could be where a tenant has made a complaint to the local authority which has been verified by a council officer. The statutory mechanisms for this approach are already in place within the Housing Act 2004. This should be accompanied by a drive to ensure tenants are made aware of their rights in relation to Section 21 notices, and their right to make a complaint, as well as recognition of the potential increased demand on resources if this change is implemented. However, where tenants are not aware that the option exists to complain to the local authority the trigger point may need to be revised (see below).

²⁰ Citizens Advice (2007) The Tenant’s Dilemma: Warning, your home is at risk if you dare complain, www.citizensadvice.org.uk/tenants_dilemma_-_document.pdf

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

As outlined in our response to Question 5, BSHF is concerned about the use of Section 21. However, if these proposals are implemented it is unclear how much of an issue this is likely to be. If complaints to a local authority are assessed promptly and accurately, a spurious complaint would be unlikely to delay an eviction and would therefore not be in the tenant's advantage. It is therefore vital that systems are established to ensure the prompt assessment of the property in the event of a complaint of this nature.

The process could include a requirement that the text of Section 21 notices must inform tenants of their right to appeal within a fixed window from the date of the notice. This could prevent 'delaying' tactics whilst ensuring tenants are still given recourse against retaliatory eviction, particularly if they had not reported the problem to the local authority before the notice was served. If the local authority is involved in arbitration of a Section 21 eviction under these circumstances it is likely that an inspection will occur and that the complaint will be verified (or not) as a matter of course.

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

We agree that financial compensation for the tenant is important as they may have incurred significant costs in addition to the inconvenience and stress associated with eviction. The Rent Repayment Order approach proposed seems appropriate for this purpose, but BSHF has no particular comment to make on the specific mechanisms used.

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

Prohibiting further landlord activities may be advisable. In addition, powers within the Housing Act 2004 could enable local authorities to take over management of properties where 'rogue' or 'criminal' landlords have been established. For example, if a landlord is prohibited from renting out the property but will not sell it, the local authority could use EDMO powers and Section 31 (works in default) to bring the property up to a decent standard and take over management of it. Alternatively management could be delegated to a registered provider or similar. This would protect tenants, provide better quality housing, and provide a route via which local authorities could recover costs through the letting of the property. It would also act as a significant deterrent to illegal eviction, as well as enabling costs to be secured as a charge on the property so they may still be recovered in the case of a sale.

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

Introducing a measure like this may be more effective as a deterrent than an option which could be applied inconsistently.

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

Under consumer protection law, consumers are entitled to goods and services being of satisfactory quality and fit for purpose. Where this is not the case, a refund is typically due. Tenants should be afforded the same legal protection when landlords have failed to provide accommodation that meets minimum legal standards, in the form of a full refund of rent.

Question 12: What should the trigger point be?

This could be where a tenant has made a complaint to the local authority and the complaint has been verified as justified by a council officer. This would need to be accompanied by a drive to ensure tenants are made aware of their rights.

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

Local authorities could make use of their powers in relation to empty properties as per the Housing Act 2004 where an owner is to be prevented from renting out the property (see response to Question 9). This would require the council to remain proactive and could lead to better quality management. For example, prohibition orders have been used by Environmental Health Officers at Oadby and Wigston Borough Council.

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

BSHF has no particular comment to make on this issue.

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

It is important to balance the costs to landlords and the benefits to tenants. Regarding provision of smoke detectors, the cost to the individual landlord is very low (and may even be available free of charge from the Fire Service in some cases), whereas the benefit to tenants is potentially very high: as stated in the consultation document, a person is four times more likely to die in a fire if there is no smoke detector fitted. It therefore seems reasonable that landlords be required to install and maintain smoke alarms.

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

As with question 15, in all cases of regulation the cost to the landlord must be weighed against the risk/benefit to the tenant. One important consideration with regard to this issue is the increasing number of children housed in the private rented sector. Children are among those most at risk of

carbon monoxide poisoning.²¹ If carbon monoxide detectors were to become a requirement for landlords, this would be easy to enforce by making it a component of the annual gas safety check.

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

BSHF has no particular comment to make on this issue.

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

It seems justifiable to require landlords to carry out safety tests immediately where concerns are raised, with a penalty (fine) for non-compliance to ensure tenant safety. In addition, BSHF would support the introduction of a requirement for electrical inspections on a 5-yearly basis. Current legislation already recognises the importance of gas safety checks, and unsafe electrical installations may equally be fatal or cause serious injury. The Electrical Safety Council, as a professional organisation, seems well-placed to assess the appropriate frequency of such checks.

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

Voluntary accreditation schemes have been shown to improve standards among those who sign up to them.²² In a properly functioning market where tenants are informed and have real choice, there may be some benefit to voluntary accreditation, with landlords who offer a poor service being driven out of the market. However, given the constrained housing markets that exist across England, the impact of voluntary accreditation may be limited. The issues of poor quality housing and other problems within the private rented sector discussed within this consultation are symptomatic of broader housing market dysfunction. Until the wider problems of supply and affordability are effectively tackled the opportunity to exploit those in housing need will remain available to unscrupulous landlords.

The same logic can be applied to mandatory licensing: the tool is only as good as the ability to enforce it, and therefore is more likely to end up covering only landlords who are already meeting their obligations. For any licensing or registration scheme to be effective it must be accompanied by improved information dissemination to tenants with regard to their rights and expectations, and sufficient resources for local authorities to tackle landlords that fail to meet their legal obligations.

Question 20: Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?

BSHF recommends that local authorities are trusted to act with discretion and competence. The private rented sector is diverse, therefore it is important that local authorities are given the freedom to address their local challenges in the most appropriate way, with the expectation that they will ensure the most effective and efficient use of resources.

²¹ Department of Health (2008) Carbon Monoxide: Are you at risk? www.co-bealarmed.co.uk/wp-content/uploads/2012/10/Carbon_Monoxide_Are_You_at_risk_NHS-leaflet.pdf

²² https://england.shelter.org.uk/data/assets/pdf_file/0007/382705/Good_practice_-_landlord_accreditation.pdf

We are concerned that the current process places too high a burden of proof on local authorities. Instead, local authorities should be allowed to introduce any licensing scheme they wish as long as it can be shown that they are not making a profit from it. It is unlikely, given the emphasis on efficient spending within local authorities, that many would introduce a blanket scheme not of material benefit to the area.

It is not clear which of the licensing schemes will offer the most effective approach, as much will depend on the specific design of any scheme. Allowing local authorities greater freedom would create natural experiments in licensing which can then be assessed over time.

Question 21: Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?

There is an assumption inherent in this question that licensing is necessarily a burden and exists only to address malpractice. However, all landlords can benefit from the support that can be made available to them through a licensing scheme. The majority of landlords are responsible for a single property and are not landlords by profession. Therefore, support may be made available through a licensing scheme, such as training and provision of up-to-date regulations and good practice guides, which benefits all landlords. This is of course dependent on the form that a licensing scheme takes and does not mean that a compulsory licensing scheme should be adopted. Nevertheless it is important to recognise that regulation can be beneficial to the sector as a whole and not just in tackling malpractice. Additionally, ensuring that all landlords meet minimum standards provides a level playing field and means that criminal landlords cannot undercut legal landlords.

Question 22: Should the relevant provisions of the Greater London Powers Act 1973 be reviewed or updated, does London need separate rules from the rest of England, and what comments would you have on how regulations could better support and reflect modern technology?

In line with our previous recommendation, it is important that all local authorities are given the flexibility and resources to address widely varying needs.

The London housing market in particular presents the most extreme cases of unaffordability, malpractice and excess demand. While these problems can also be found in other high demand areas across the country, (including cities such as Cambridge and Manchester), what marks London out is the combined effect of density and scale in exacerbating the symptoms of housing market dysfunction.

Providing specific powers to London boroughs and the Greater London Authority may be a better alternative than a blanket approach which may inevitably end up being London-centric in its focus. However, other high demand areas would also benefit from powers to tackle problems in the private rented sector (see response to Question 20). Any interventions must enable flexibility to respond to the varying challenges across the country.

Question 23: Do you think the methodology that underpins the Housing Health and Safety Rating System and/or the accompanying operational guidance need to be updated?

BSHF has no particular comment to make on this issue.