This briefing paper draws together the key policy recommendations and findings derived from an in-depth qualitative study on enforcement of standards in the UK private rented sector (PRS). It considers a range of policy issues and highlights the changes which are needed at a national level to improve enforcement and therefore standards in the sector.

**Key recommendations**

- UK and devolved governments should improve the advice and guidance available to local authorities on regulating the PRS.
- UK and devolved governments should improve the data available to local authorities on the PRS. In England, a national registration system of all landlords and letting agents should be introduced.
- UK and devolved governments should re-consider their approaches to resource allocation to local authorities.
- UK and devolved governments should consider technical amendments to the existing suite of legislation, as well as codification of the diverse legislative provisions which currently exist.
Background

There have been significant shifts in the regulation of the PRS across the devolved governments in the last 15 years. It is well-established that a gap now exists between existing legislation and its enactment in practice. Local authorities have been subject to criticism regarding the inadequacy of current enforcement activities. This briefing considers how national governments can facilitate improvements in enforcement practice. The discussion is based on findings from 70 in-depth interviews with key stakeholders and professionals from 13 UK local authority areas.

Improving advice and guidance

One of the key themes that emerged across all devolved governments was the differences in enforcement practice among local authorities. The findings suggest that by no means all councils are taking an active role in regulating the sector. Light-touch approaches based on reactive enforcement and limited use of formal powers would appear to be relatively commonplace in the UK PRS.

At the same time, some local authorities are moving towards hard-line approaches which focus predominantly on punishing landlords and deterring illegal behaviour through prosecutions and other formal remedies. There are several limitations and challenges associated with relying on this style of enforcement as the primary means of regulating the sector. These include lack of resources, inadequate reporting of problems by tenants, high levels of inadvertent non-compliance due to lack of knowledge or awareness, and the low level of criminal sanctions applied by the courts.

UK and devolved governments should improve the advice and guidance available to local authorities on regulating the PRS.

Our research highlights several examples of good practice associated with compliance-focused and creative approaches to enforcement that draw on partnership working, a strong strategic approach, innovative use of data and careful consideration to how PRS teams are configured. Developing these approaches requires a sophisticated set of leadership and organisational skills and there is a distinct lack of information and guidance available to local authorities to assist in developing effective approaches.

Any new guidance should include advice on multi-agency working and building effective partnerships with public services and external partners. Local authorities should also be advised on processes to integrate services or coordinate operations where co-location or the creation of new organisational forms is not a realistic objective (e.g. in two-tier local authorities).

Improving the availability of data

Across the jurisdictions there was a lack of knowledge about the sector at local level. Some case studies sought to improve the availability of data by appointing an external organisation to conduct a survey of the sector in the area or used other sources of administrative data, such as housing benefit and council tax data.

These information sources have considerable limitations. Use of other proxies (such as HM Land Registry data) was said to yield very limited results. Reports by external organisations were reported to be of variable quality. In addition, using council tax or housing benefit to identify landlords presupposes they are complying with the requirements of these systems which cannot always be assumed to be the case.

Data sharing between local authorities and other agencies, such as Universal Credit, that hold data that would facilitate more effective enforcement should be enabled.

Disaggregated data and granular geographical information are key if local authorities are to develop approaches that exert effective leverage on the various types of landlords and local housing market conditions. Across the UK there is a need for an effective and responsive database that evolves in real time and consequently allows local authorities to understand the sector and the way in which it is changing.

UK and devolved governments should improve the data available to local authorities on the PRS.

Unless significant changes to the regulatory architecture and the nature of landlord organisations are introduced – so that membership of such a body effectively becomes a licence to operate – we are a long way from co-regulation as an effective solution for increasing overall compliance. We therefore believe that
appropriately designed national systems of registration or licensing will be the only means to regulate the sector effectively, including by providing local authorities with the data they need. National systems of registration and licensing are potentially powerful tools in the development and sharing of knowledge about the sector, as well as the upskilling of landlords and letting agents.

In England, a national registration system of all landlords as well as letting agents should be introduced.

The following key factors will need to be taken into consideration when introducing and improving national registration schemes.

**Identifying non-compliance:** An accurate view of the sector and how it is changing can only be obtained if all qualifying landlords register and, where necessary, re-register. However, there are data gaps across the devolved governments and an unspecified, but likely significant proportion of landlords are non-compliant with the requirement to register. Proactive enforcement, data sharing protocols and joint working are key in identifying non-compliance. A principal example of the former is Rent Smart Wales, where the enforcement of the obligations is shared with local authorities as part of their ongoing role in enforcing standards.

**Scheme objectives:** Scotland and Northern Ireland case studies described the national registration scheme as having a deficit in purpose. Several participants in Scotland highlighted – with landlord registration having been hastily assembled halfway through a bill change in 2004 - an ongoing debate about what the scheme is aiming to achieve and how effectiveness can be measured. National systems of registration or licensing require greater clarity of purpose, both on a national level and in their enforcement by local authorities.

**Information sharing agreements:** If one of the purposes of registration is to expand available information about the sector the next question is what to do with that information. If the information is used in a passive manner or cannot be accessed by local authorities, there may be little point in collecting it. The findings suggest that in Northern Ireland, current data sharing restrictions significantly limit its usefulness as a means of targeting enforcement and communicating with the sector at local level. The scheme’s potential to reduce inadvertent non-compliance by improving landlords’ understanding of their responsibilities is therefore greatly diminished. These restrictions mean that local authorities also lack incentives to enforce it, with our findings suggesting that at present little is done to identify those operating outside the scheme.

The Northern Ireland Assembly should review the national registration scheme to ensure that it is fit for purpose.

## The availability of resources

Cuts to local authority budgets have resulted in a long-term gap between the availability of resources and demand for their services. The impact of this can be seen reflected in PRS enforcement strategies, where inadequate resources operate as a significant deterrent to carrying out proactive activity and formal enforcement. As was repeatedly highlighted by participants across the case studies, “resources” refers not simply to money, but also to the skills and capabilities of staff available. In short, there are insufficient staff with the right training available to do the necessary work.

Given the significance of the regulatory role played, and of the private rented sector itself, UK and devolved governments should reconsider their approaches to resource allocation to local authorities.

The findings from our study suggest that in isolation neither compliance-focused approaches, based mainly on informal activity, nor formal deterrence-focused strategies are likely to be effective in a PRS context. Local authorities should aim to combine both approaches. However, a strategy blending different enforcement tools can be costly.

Local authorities should receive, and allocate, adequate funding to develop appropriate and effective responses to the changing nature and context of the PRS.

Whilst some additional funding has been provided in England, this is usually made available through a bidding process operated on extremely tight timescales and is generally only available for short-term projects. Our research suggests that such staccato projects are not the most effective way to assist the development of the longer-term strategies that are needed.
Funding programmes need to build in sustainable longer-term goals, as opposed to short-term sticking plasters.

**Legislative development**

Participants in England and Scotland emphasised that legislative developments addressing the PRS tend to be piecemeal and disjointed. Reflecting longstanding concerns, participants criticised the law governing the PRS as fragmented, opaque and lacking strategic focus. These findings are echoed in the most recent review of the PRS in England which highlights the need for a fundamental change in the regulation of the sector at a national level.

UK and devolved governments should consider technical amendments to the existing suite of legislation, as well as codification of the diverse legislative provisions which currently exist.

Our findings suggest that the threat of further action helps to make civil penalties an effective regulatory tool, with landlords being made aware that they should expect further escalation to prosecution if they do not co-operate. Even if rarely used, the severity of the most severe sanction figures as an effective deterrent and signals meaningful escalation is possible. Our participants felt that civil penalties were not severe enough to deter the worst of offenders. Criminal prosecution remains an important tool for local authorities.

Our research, however, suggests that the ability of local authorities to develop responsive and proportionate approaches is seriously undermined by the low fines and other sentences issued by the courts and tribunals. Even for cases where prosecutions were successful, numerous participants offered examples of low levels of fines for apparently egregious offences and successful defences which, on the face of it, appeared “creative”. If governments are to promote effective responsive approaches, then the “biggest stick” needs to be significantly bigger than is currently the case.

Clearer sentencing guidelines need to be provided to criminal courts and tribunals to ensure that punishment is proportionate to the nature of the offence.

The law as it currently stands makes it extremely difficult for trading standards in England to successfully use responsive approaches in their regulation of the PRS. Civil penalty charge notices can only be served against the legal entity which owns the business. In most instances it is a limited company. But there is no liability on the director(s) running the agency. If/when the local authority is successful in levying a civil penalty against an agency set up as a company - which according to legislation is the standard course of action for a first offence - the agency can simply dissolve and restart under a different name. The local authority then has to begin the whole process again.

Trading standards should have the power to serve civil penalties against the company directors who are the controlling figures behind a non-compliant company.

Our findings suggest that the effectiveness of rent penalty notices in Scotland may be affected by the introduction of Universal Credit (UC). In most cases where the penalty is applied tenants are on housing benefit; this shields them from the stress and vulnerability of withholding rent from their landlord. Prior to UC, the Housing Benefit department would work with the landlord registration scheme to suspend payment of the rent. However, under UC the tenant will be responsible for requesting benefit suspension; one local authority was concerned that the effectiveness may be reduced as a result.

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**About the project**

This project is part of a wider programme of work on issues relating to developments in, and the operation of, the UK private rented sector. The broad objective of the programme is to contribute to improving standards in the UK PRS. The work is funded by the TDS Charitable Foundation and SafeDeposits Scotland Charitable Trust. Read the full project report on the [CaCHE website](https://www.cACHE.org.uk).

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