Comparing private rented sector policies in England, Scotland, Wales and Northern Ireland

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Summary

The private rented sector (PRS) has overtaken social housing and is now the UK’s second largest tenure after owner occupation. The English Housing Survey (EHS) reported that in 2014-15, 19% (4.3 million) of households were renting privately. This trend has been replicated across the UK. The credit crunch of 2008-09 is attributed with making it harder for some households to access home ownership with the result that the PRS is now viewed as a longer-term housing option. A 2012 report by the Joseph Rowntree Foundation, Housing options and solutions for young people in 2020, predicts that the PRS will house 37% of all young people in the UK by 2020.

There has also been a change in the nature of households living in the sector. Traditionally the PRS housed, in the main, a more mobile population of younger single people and couples; over the last 10 years there has been an increase in the proportion of households living in the sector with dependent children. In England the proportion of these households in the PRS increased from 30% to 37% between 20014-05 and 2014-15. This equates to about 912,000 additional households with children in the PRS.

The expansion of the PRS has resulted in greater focus on conditions in the sector. There have been, and continue to be, calls for improved regulation of letting and managing agents, particularly in relation to fees and charges. Shelter; for example, has argued for tenants’ rights to be strengthened to provide a greater degree of security of tenure and to protect tenants who request repairs to their homes. In response, landlord organisations point to the “burden” of existing regulation and argue that more regulation in the form of registration schemes will be ineffective in identifying and tackling the worst offenders.

Housing is a devolved matter; policy approaches to the PRS in the devolved administrations are showing some significant divergences. Scotland and Wales have introduced legislation to implement a new framework for the sector – both are introducing comprehensive landlord registration schemes. Scotland has gone further and has abolished additional fees and charges by letting agents; in addition, the Private Housing (Tenancies) (Scotland) Act 2016 will introduce a new form of PRS tenancy under which there will be no ‘no fault’ ground for possession available to landlords to use to evict tenants.

In England, the Government has adopted a less interventionist position on the basis that additional regulation would increase the burden on reputable landlords with the risk that additional costs would be passed on to tenants. However, measures have been introduced to increase transparency around letting agent fees and, in the Housing and Planning Act 2016, to strengthen the sanctions available to tackle “rogue” landlords.

Landlords in Northern Ireland must register on a central database in order to let properties but, in general, there has been rather less legislative activity in relation to the PRS than in the rest of UK in recent years. In November 2015, the Department for Social Development published a discussion paper on the Review of the Role and Regulation of the Private Rented sector which considered the current and potential future role of the sector, including the effectiveness of current regulation. More recently, in a debate on the landlord registration scheme on 20 June 2016, the Assembly resolved to “call on the Minister for Communities to review urgently the landlord registration scheme and to introduce the regulation of letting agents”.
This Briefing Paper provides a summary of the different approaches adopted by the Governments in England, Scotland, Wales and Northern Ireland in regard to some key areas of PRS policy.
1. Letting and managing agents

Summary

Regulation

- There is no overarching regulation of managing and letting agents in England. Agents are required to be members of a redress scheme and, once the relevant provisions are in force, the Housing and Planning Act 2016 will provide for client money to be protected.
- The Housing (Scotland) Act 2014, when fully in force, will introduce a framework for the regulation of letting agents (which includes managing agents) in Scotland.
- Provisions in the Housing (Wales) Act 2014 will, when in force (expected to be November 2016), provide for all letting agents and those involved in property management work to obtain a license from Rent Smart Wales.
- There is currently no letting agent regulation in Northern Ireland.

Fees and charges

- There is no cap on fees and charges in England and Wales but agents must publish a tariff of fees. Consumer protection legislation may apply.
- Fees charged, in addition to rent and a refundable deposit, have been prohibited in Scotland when an agent grants, renews or allows a ‘protected’ or assured tenancy to continue since November 2012.
- There is no regulation of fees and charges in Northern Ireland.

1.1 Regulation

England

There is no overarching statutory regulation of private sector letting or managing agents in England nor any legal requirement for them to belong to a trade association, although many letting and managing agents submit to voluntary regulation.¹

The Government has resisted calls to introduce regulation in the sector and has pointed instead to the existing range of available powers under consumer protection legislation. However, an amendment to the Enterprise and Regulatory Reform Act 2013 was agreed to enable the Government to require letting and managing agents to sign up to a redress scheme. The Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013 (SI 2013/3192) came into force on 13 December 2013. The Order set out the criteria and process for approving redress schemes. On 15 April 2014 the Government announced that it had approved three redress schemes “that all letting and property management agents will be required to join later this year.” The Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 made

¹ Parts of the sector, such as large Houses in Multiple Occupation (HMOs) are subject to mandatory licensing under the Housing Act 2004. Some local authorities have introduced additional (discretionary) HMO licensing schemes and/or selective licensing schemes to cover other privately rented housing. Where these apply, landlords must obtain a license and adhere to certain standards before renting out properties.
membership of a scheme a legal requirement with effect from 1 October 2014. The Order provides for complaints against members of the scheme to be investigated and determined by an independent person. The SI empowers local authorities to enforce compliance by imposing a fine of up to £5,000 for non-compliance, with a right of appeal to the First Tier Tribunal.

A new Code of Practice on the management of property in the private rented sector was published in October 2014.

Scotland

When fully commenced, the Housing (Scotland) Act 2014 will introduce a framework for the regulation of letting agents (which includes managing agents) in Scotland. This new framework includes:

- a mandatory register of letting agents with an associated ‘fit and proper’ person test and training requirement that must be met to be admitted to the register;
- a statutory code of practice all letting agents must follow;
- a new way for tenants and landlords to resolve complaints against letting agents for breaches of the statutory code of practice through a new specialist First-tier Tribunal; and
- powers for Scottish Ministers to obtain information and of inspection to support monitoring of compliance.

It is anticipated that the register will begin to accept applications in early 2018. The Scottish Parliament approved the Letting Agent Code of Practice (Scotland) Regulations 2016 in February 2016; these regulations will come into force on 31 January 2018. The First-Tier Tribunal is expected to begin hearing letting agency cases in December 2017.

Further information is available on the Scottish Government’s website.

Wales

Concerns about the standards and practices of some letting and managing agents in Wales have been acknowledged in the National Assembly and by the Welsh Government.

In March 2011, the Assembly’s Communities and Culture Committee published its report, Making the Most of the Private Rented Sector in Wales, following a detailed inquiry. The Committee’s report included a recommendation that “the Welsh Government takes appropriate legislative action to enable the introduction of statutory regulation of all letting agencies in Wales.” This has recently been taken forward through Part 1 of the Housing (Wales) Act 2014 (the 2014 Act).

The 2014 Act contains provisions that will require agents who engage in lettings or property management work\(^2\) to obtain a licence. Licences will be issued by Rent Smart Wales, a service within Cardiff Council, which acts as the licensing authority for the whole of Wales. The relevant sections of the 2014 Act are expected to commence on

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\(^2\) As defined in Sections 10 and 12 of the Housing (Wales) Act 2014.
Agents must apply to become licensed in advance of this date through the Rent Smart Wales service. When the legislation was initially introduced, it was proposed that for an agent to obtain a licence, they would have to join an approved professional body. As the Bill progressed through the Assembly, that requirement was removed. However, agents who are members of the UK Association of Letting Agents, the Association of Residential Letting Agents, the Royal Institution of Chartered Surveyors, or the National Approved Letting Scheme do currently receive a discount on their licence fee.

Agents will have to undertake approved training to obtain a licence. Licences will be issued subject to a condition that the Code of Practice issued under the 2014 Act is adhered to. The Code of Practice sets standards relating to letting and managing rental properties. There will also be a range of other conditions attached to agent licences. This will include conditions which address client money protection, professional indemnity insurance, membership of a redress scheme as well as other issues relating specifically to agents.

Northern Ireland

Apart from consumer protection legislation, there is currently no robust letting agent regulation in Northern Ireland. The consultation held by the Department for Social Development in November 2015 on the future role and regulation of the private rented sector, states that there have been calls from politicians in Northern Ireland for that situation to change.

A Private Members’ Motion on the regulation of the Private Rented Sector took place in the Assembly Chamber on the 20 June 2016. The Assembly resolved to “call on the Minister for Communities to review urgently the landlord registration scheme and to introduce the regulation of letting agencies.”

1.2 Fees and charges

England

There is no upper cap on the fees that agents can charge in England. The Government amended the Consumer Rights Act 2015 to require letting agents to publish a full tariff of their fees; this requirement came into effect on 27 May 2015. The Government committed to reviewing the impact of the measure one year after implementation.

In the parliamentary answer reproduced below, in addition to confirming the Government’s position on regulation, the Minister provided information on challenging unfair agency fees:

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3 DSDNI, Review of the Role and Regulation of the Private Rented sector, November 2015
4 Northern Ireland Assembly Official Report, 20 June 2016
5 Duty of Letting Agents to Publicise Fees etc (Exclusion) (England) Regulations 2015 (SI 2015/951)
Asked by Lord Browne of Ladyton

To ask Her Majesty’s Government whether they will regulate landlords and letting agents, in the light of the increase in the number of young people unable to afford a deposit to buy a home; and, if so, how.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):

Letting and managing agents are already subject to consumer protection legislation. Consumer protection legislation covers issues such as giving false or misleading information, not acting with the standard of care and skill that is in accordance with honest market practice and claiming falsely to be a member of a professional body or approved redress scheme. For tenants or landlords who are charged unfair or unreasonable fees by an agent, this means that they are able to report this to their local trading standards officer or to the Office of Fair Trading which has both civil and criminal enforcement powers. Further information on the consumer protection legislation is available at:


In addition, between a third and a half of all agents belong to voluntary schemes which set standards and offer redress if things go wrong. In the light of these existing schemes, we have no current plans to introduce further statutory regulation. Disproportionate regulation on the private rented sector would push up rents and reduce the choice and availability of accommodation on offer to tenants.

I also refer the noble Lord to the Written Ministerial Statement of 6 September 2012 (Official Report, col. 30WS) on the steps that the coalition Government are taking to provide more homes both to rent and buy.6

In its Lettings Market report (February 2013) the Office of Fair Trading (now the Competitions and Markets Authority, CMA) concluded that greater compliance with existing laws would deal with a number of common complaints about fees and charges and stated an intention to produce additional guidance:

In order to support better compliance with consumer protection law in particular we will be producing and consulting on two guidance documents as to how consumer protection law applies.7

Following a consultation exercise, the new CMA guidance was published on 13 June 2014, Consumer protection law guidance for lettings professionals, alongside a further document: Key principles for lettings professionals.

The Communities and Local Government Select Committee considered whether the Scottish approach to letting agent fees (namely abolition, see below) should be adopted in England. The Committee considered evidence on the impact of the ban on fees in Scotland and concluded that the impact on the market was “inconclusive” and recommended:

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6  HL Deb 15 October 2012 WA444-5
7  OFT1479 para 1.6
We recommend that the Department for Communities and Local Government commission research on the likely impact of a ban on agents’ charging fees to tenants (other than rent and refundable deposits) in England. This should consider and take into account the impact of the Scottish Government’s decision, but it should look more widely and also consider the likely impact of a ban in England, which would include consumer confidence, costs and transparency.8

The Government responded:

My Department therefore has no plans to further regulate the private rented sector by banning letting agent fees in England, as this would only reduce the numbers of properties available to rent which would not help tenants or landlords.

[...]

My Department will investigate the potential effects of banning letting agency fees in England if it becomes clear that the transparency measures are not achieving their policy objective.9

Scotland

Letting agents in Scotland have not been able to charge tenants’ fees in addition to the rent and a refundable deposit when granting, renewing or allowing a ‘protected’ tenancy to continue since November 2012.10

In 2012, the Scottish Government undertook a consultation on the charging of premiums in the private rented sector. This followed widespread concerns about the legality of pre-tenancy charges made by some letting agents. The Rent (Scotland) Act 1984 (the 1984 Act) had already made it an offence to require payment of any premium (in addition to the rent and a refundable deposit of no more than two months’ rent) as a condition of the grant, renewal or continuance of a ‘protected tenancy’. However, the Scottish Government believed that there was confusion around what constituted a premium, and whether some fees charged to tenants were reasonable and should be allowed.

Following the consultation, the 1984 Act was amended to clarify that ‘premium’ included any service or administration charges.11

Shelter Scotland has established a website to assist tenants in reclaiming any unlawful premiums they may have paid - it provides further information on this issue.

Wales

The Welsh Government had intended that the Code of Practice issued under Part 1 of the 2014 Act would include a requirement for letting agents to publicise their fees. However, the Welsh Government chose to take advantage of UK legislation, the Consumer Rights Act 2015, to achieve the same outcome.

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8 HC964, March 2015
9 HC 434, September 2015
10 As defined in section 1 of the Rent (Scotland) Act 1984. Section 27 of the Housing (Scotland) Act 1988 provides that sections 82, 83 and 86-90 of the 1984 Act will also apply to assured tenancies (as defined in section 12 of the 1988 Act) as they do to protected tenancies (with some modifications).
11 Private Rented Housing (Scotland) Act 2011
On 25 November 2014, the Assembly agreed a Legislative Consent Motion on the Consumer Rights Bill (as it then was) relating to letting agency fees. The 2015 Act now requires letting agents in Wales to display or publish a list of their relevant fees and charges. Local authorities enforce this new legislation. They are able to impose a civil penalty of up to £5,000 on agents who fail to comply with the requirements. Agents in Wales can appeal to the Residential Property Tribunal against any civil penalty.

**Northern Ireland**

In March 2013, Housing Rights Service in conjunction with its Private Tenant’s Forum, carried out a mystery shopping exercise of 40 letting agents in Northern Ireland. The exercise revealed that the vast majority of letting agents surveyed were charging additional fees for general administration costs; credit checks; tenancy renewal fees and inventory charges.

At that time, the fees ranged from £25 to £100 and most letting agents did not advertise these costs on their websites. Housing Rights Service subsequently called for greater regulation of letting agents’ practices including a requirement for letting agents to present all fees on their websites, advertisements and promotional material.\(^{12}\)

The need for tighter regulation of letting agents’ fees was raised by several members during a debate on a Private Members’ Motion on the regulation of Private Rented Sector in June 2016.\(^{13}\)

**1.3 Client money protection**

Baroness Hayter of Kentish Town (Labour) moved amendments during consideration of the Housing and Planning Bill on Report in the House of Lords to enable the Secretary of State to make regulations (subject to the affirmative resolution procedure), to require letting agents and property management agents to belong to a client money protection scheme and to provide an enforcement mechanism.\(^{14}\)

Lord Palmer of Childs Hill, who had put his name to the amendments, set out why rent money paid to an agent needs to be protected:

> Some 80% of the lettings agency sector—these are the figures used by the Minister—have client money protection. The new amendment and the original amendment are for the 20% who put tenants and landlords at risk. If a letting agent goes bust or goes walkabout in a liquidation, tenants’ money held and the rights of landlords and tenants are at the bottom of the creditors’ queue in a liquidation or bankruptcy.

> […]

> Perhaps the best way of illustrating the need for this amendment is by telling horror stories, of which there are many. This month, it was reported that a company called Whitefield Properties took

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\(^{13}\) Northern Ireland Assembly Official Report, 20 June 2016.

\(^{14}\) HL Deb 20 April 2016 cc641-6
rental money due to landlords and tenants’ deposits over a four-year period. The money was paid into the firm’s bank account and was, perhaps carelessly, not protected. It was reported that £123,000 of customers’ money went missing. The Staffordshire firm, with branches in Milton, Leek and Crewe, went into administration in 2014. If we were still arguing for this amendment, I would give many more examples to try to make my case.¹⁵

The amendments were agreed to without division. These provisions are now contained in sections 133-135 of the Housing and Planning Act 2016.

As Scotland has banned additional agents’ fees the question of client money protection does not arise.

Licences issued to agents in Wales under the Housing (Wales) Act 2014 will be subject to a condition that client money protection is in place.

Since 1 April 2013 in Northern Ireland, all tenants’ deposits for privately rented accommodation must be protected by their landlord in an approved Tenancy Deposit Scheme. All deposits must be held in special bank accounts, regulated by the Financial Conduct Authority, to ensure the deposit is safe should the schemes (either custodial or insurance) the fail.¹⁶ However, there is no specific protection for other monies paid by tenants to letting agencies.

¹⁵ HL Deb 20 April 2016 cc643
¹⁶ Tenancy Deposit Scheme, NI Direct
2. Tackling rogue landlords

### Summary

**Registration**
- There is no national registration scheme for private landlords in England.
- Scotland has operated a mandatory landlord registration scheme since 2006.
- The *Housing (Wales) Act 2014* launched a landlord registration scheme in Wales in 2015.
- In Northern Ireland any person or persons who let property under a private tenancy must register on a central database.

**Licensing**
- England, Scotland and Wales operate mandatory licensing for certain houses in multiple occupation (HMOs). These schemes operate under different legislation. In England and Wales the requirement applies only to large HMOs of 3 or more storeys with 5 or more occupants who do not form a single household.
- The *Housing (Wales) Act 2014* has introduced landlord and agent licensing in Wales which goes wider than the HMO provisions.
- Licensing in Northern Ireland is restricted to HMOs.

**Banning orders/disqualification**
- Local authorities in England will be able to apply for orders to ban landlords/agents from operating for a period of time when they have committed certain offences when the relevant provisions in the *Housing and Planning Act 2016* are brought into force.
- Landlords may be disqualified from operating in Scotland.
- There is no equivalent in Wales to a banning order but the requirement for landlords to be registered and licensed means that landlords must not undertake lettings or management activities unless they are licensed, or have appointed a licensed agent.
- There is no equivalent to a banning order in Northern Ireland.

**Retaliatory eviction (landlords seeking to evict tenants who request repairs)**
- There is some limited protection for assured shorthold tenants in England whose tenancies started after 1 October 2015.
- The *Private Housing (Tenancies) (Scotland) Act 2016* will remove the ‘no-fault’ ground for possession with the result that the risk of a retaliatory eviction will be reduced.
- The *Renting Homes (Wales) Act 2016* will give the courts discretion not to grant possession in cases of retaliatory eviction.
- There are no equivalent provisions in Northern Ireland.

### 2.1 Landlord registration schemes

**England**

There is no national mandatory landlord registration scheme which applies across the private rented sector in England.

Some local authorities operate their own voluntary landlord accreditation schemes. Labour attempted to amend the *Housing and Planning Act 2016* during its passage through Parliament to place a duty on local authorities to operate an accreditation and licensing scheme for private landlords. A major drawback of licensing is that it impacts on all landlords and places additional burdens on reputable landlords who are
already fully compliant with their obligations. This creates additional unnecessary costs for reputable landlords, which tend to be passed on to tenants. The majority of landlords provide a good service and the Government do not want to impose unnecessary additional costs on them or on their tenants, who would inevitably see rents rise as a result of the additional costs.  

DCLG published Dealing with rogue landlords: a guide for local authorities in August 2012.

Scotland

In 2006 Scotland was the first part of the United Kingdom to introduce a mandatory landlord registration scheme.

Under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 most private landlords in Scotland are required to register with their local authority. They can do this through a central website. The person who must register is the person who owns the property. In some cases, this may not be the same person who has entered into a contract with the occupier. Any agents (which include professional agents or informal arrangements) also need to be named on the registration.

The local authority must be satisfied that the owner of the property and the agent are fit and proper persons to let residential property, before registering them. There is no training requirement or physical inspection of any properties listed on the registration. Lettings solely to family members do not require a landlord to register.

The register can be searched online by members of the public.

Failure by a landlord to register is an offence. The maximum penalty is a fine not exceeding £50,000.  

A broad overview of landlord registration in Scotland is provided in a leaflet produced by the Scottish Government.

Wales

Landlord registration has been introduced in Wales by Part 1 of the Housing (Wales) Act 2014. It was launched in November 2015, and landlords have a year to comply with the new requirements before any enforcement action is taken against them.

Landlords with tenants on ‘domestic tenancies’ must register. That definition includes assured, assured shorthold and regulated tenancies. Welsh Ministers can, by order, add to the tenancies included within the definition of ‘domestic tenancy’. The requirement to register also applies where a property is being marketed for let under any ‘domestic tenancy’.

Landlords must register with Rent Smart Wales, a service within Cardiff Council, rather than their own local authority. For the purposes of landlord registration (and licensing, see section 2.2 below), Cardiff Council is the designated licensing authority for the whole of Wales.

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18 Ibid., c713  
19 Section 93(7), Antisocial Behaviour etc. (Scotland) Act 2004
Registration lasts for a period of five years and requires payment of a fee. Although details of all rental properties let under domestic tenancies by the landlord in Wales must be provided at the time of registration, no checks on the physical condition of those properties are made as part of the registration process.

Some of the information on the register will be made publicly available on request. The Housing (Wales) Act 2014 outlines in Schedule 1 what information must be provided about a registered landlord, property or licensed landlord or agent if a request is made to the Licensing Authority.

Rent Smart Wales intends to make the register of information available on its website.

Penalties

- A landlord who has not registered will be unable to give their tenant a Section 21 notice – the no-fault ground for possession of assured shorthold tenancies;
- The landlord may be subject to a fixed penalty notice of up to £150;
- If prosecuted by the licensing authority or local authority, they may be subject to a fine of up to level 3 on the standard scale, currently £1,000.

Northern Ireland

The Landlord Registration Scheme Regulations (Northern Ireland) 2014 provide for a landlord registration scheme in Northern Ireland. Any person or persons who let property under a private tenancy in Northern Ireland must register.

A landlord who lets a property and is not registered may be prosecuted and faces either a fixed penalty notice of up to £500, or a fine of up to level 4 on the standard scale, currently £2,500.

The register can be searched online by entering either a landlord’s name or the address of a property. The online database will not disclose a landlord’s name if someone searches by the property address.

Further information on landlord registration in Northern Ireland is available on the Housing Advice for Northern Ireland website.

2.2 Licensing schemes

England

Mandatory licensing of large houses in multiple occupation exists under the Housing Act 2004. Some local authorities have adopted additional (discretionary) licensing schemes to incorporate other HMOs and/or selective licensing schemes covering designated areas of private rented housing within their boundaries. Some of the selective licensing

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20 This covers HMOs with 3 or more storeys containing 5 or more occupants who do not form a single household.
schemes cover all the private rented housing within a local authority area, e.g. Newham.

Sanctions which may apply for breach of an HMO license include:

- A financial penalty;
- Rent Repayment Orders to recover Housing Benefit paid to the landlord;
- Interim and Final Management Orders where local authorities take over the management of HMOs.

More information on licensing of HMOs and selective licensing can be found in these Library Briefing Papers: Selective licensing of private landlords (England & Wales) and Houses in multiple occupation.

Scotland

While there is no licensing scheme which covers all landlords in Scotland, licences are required for Houses in Multiple Occupation (HMOs).

Scottish Ministers have issued guidance to local authorities on the licensing of HMOs under Part 5 of the Housing (Scotland) Act 2006. Under that legislation, every HMO must be licensed by the relevant local authority, unless they are subject to an exemption. Non-compliance with the legislation could result in a fine of up to £50,000.

Wales

Landlord and agent licensing has been introduced in Wales by the Housing (Wales) Act 2014. Landlords and agents have until 23 November 2016 to comply with the new requirements.

Landlord and agent licensing in Wales is intended to ensure those involved in the letting or management of rental properties are:

- Fit and proper persons;
- Suitably trained; and
- Comply with a Code of Practice.

Landlords and agents must also comply with any specific licence conditions imposed on them by the licensing authority.

Landlords who undertake no lettings or management activities in connection with their rental properties will be required to register as a landlord, but will not require a licence. They will, however, need to appoint a licensed agent.

A licence will last for a period of five years.

Penalties

Landlords who carry out letting or management activities at their properties without a licence, or who appoint an unlicensed agent, could face a range of civil or criminal penalties:
• A landlord who carries out lettings or property management activities without a licence may be liable on conviction to an unlimited fine;

• Appointing an unlicensed agent carries a fine of up to level 4 on the standard scale, currently £2,500;

• In cases other than appointing an unlicensed agent or failure to provide information to the licensing authority, a fixed penalty may be issued instead of prosecution. The fixed penalty will be £150, or in the case of offences attracting an unlimited fine, £250;

• Rent Stopping Orders and Rent Repayment Orders can be made by the Residential Property Tribunal providing certain conditions are met;

• A licence can be revoked if the licence holder has breached a condition of the licence or certain other criteria are met.

Other licensing requirements

Licensing of Houses in Multiple Occupation (HMOs) in Wales, as in England, follows requirements set out in the Housing Act 2004. Holding an HMO licence does not negate the need for a landlord or agent licence under Part 1 of the Housing (Wales) Act 2014. Further information is provided on the Rent Smart Wales website:

...the requirements of the Housing (Wales) Act 2014 are in addition to the licensing requirements for Houses in Multiple Occupation (HMO) in the Housing Act 2004. This new legislation in Wales does not repeal the Housing Act 2004; both are in place you must comply with both.

Local authorities in Wales can introduce selective licensing of all properties (other than HMOs that are already required to be licensed) within a designated area subject to certain conditions being met. This is the same power used in the London Borough of Newham. However, some of the conditions that must be met before a selective licensing scheme can be introduced differ between England and Wales.

The Welsh Government issued a ‘general approval’ for selective licensing schemes in 2007. There has been limited use of this power.

Northern Ireland

There is no general requirement for all private landlords in Northern Ireland to obtain a licence.

In 2013 the Northern Ireland Assembly called on the then Minister to consider the introduction of a licensing scheme for landlords operating in the private rented sector. The November 2015 consultation paper issued by the Department for Social Development, now part of the Department for Communities, outlined why this has not happened:

...the blanket licensing approach adopted by some local authorities in England was found to have major drawbacks. This is because it impacts on all landlords and places additional burdens on reputable landlords who are already fully compliant with their obligations, thereby creating unnecessary costs for reputable landlords which are generally passed on to tenants through higher rents. The typical cost of a licence is around £500
and lasts for five years. As a result, the landlord may see a reduction in their property’s investment value, but the more likely outcome is for tenants to bear most of the burden, especially in areas of high rental demand. The vast majority of landlords provide a good service and the Department does not believe it is appropriate to impose unnecessary additional costs on them, or their tenants. Such an approach is disproportionate and unfairly penalises good landlords.\textsuperscript{21}

The situation is different in relation to Houses in Multiple Occupation (HMOs). As in other parts of the United Kingdom, occupiers of these properties are considered to be at higher risk, particularly from fire. New legislation relating to HMOs has recently been passed by the Northern Ireland Assembly. The \textit{Houses in Multiple Occupation Bill}, once enacted and commenced, will introduce a mandatory licensing scheme to replace the existing HMO registration scheme. Lord Morrow, the Minister for Social Development, made the following comments about the Bill during its final stage in March 2016:

First, it will introduce a mandatory licensing scheme that will ensure higher physical and management standards for HMO accommodation. That means that landlords will be required to obtain a licence before an HMO can be operated. To obtain a licence, planning permission will have to be in place, which will address the future risks of HMO over-provision.

[...]

Guidance for landlords will include model tenancy agreements that specify and outline acceptable tenant behaviour and detail tenant activities or practices that a landlord would not consider tolerable. Landlords will be encouraged to ensure that tenants are aware of their responsibilities and any possible consequences should they breach the conditions. My Department will publish a code of practice and comprehensive guidance for the licensing scheme to help councils and landlords to meet the requirements of the regulations\textsuperscript{22}.

Further information about that legislation is available in a \url{briefing} provided by the Northern Ireland Assembly’s Research and Information Service.

\section*{2.3 Banning orders}

\subsection*{England}

Part 2 of the \textit{Housing and Planning Act 2016}, when in force, will introduce banning orders. It will be possible for First-Tier Tribunals to issue banning orders on application of a local authority the effect of which will be to prevent a person from:

- letting housing in England;
- engaging in letting agency work that relates to housing in England;

\textsuperscript{21} DSDNI, \url{Review of the Role and Regulation of the Private Rented sector}, November 2015. P16

\textsuperscript{22} \url{Official Report}, Tuesday 15 March 2016.
• engaging in property management work that relates to housing in England; or
• doing two or more of those things;
• being involved in a body corporate that carries out activities from which the person is banned.

A banning order may be sought where a landlord/agent has committed a ‘banning order offence.’ These offences will be specified in regulations but may include:

• offender has been convicted (or sentenced) in the Crown Court for any offence involving fraud, violence, drugs or sexual assault which was committed at any residential premises which the offender (or a person associated with him) owned or was involved in the management of and which neither he, nor the associated person, occupied as their main residence;

• offender has been convicted (or sentenced) in the Crown Court for any offence that was committed against or in conjunction with any person who was residing at the residential premises owned by the offender (other than a person associated with him);

• where an offender has been found guilty on two or more occasions of a relevant housing offence (whether in the magistrates’ court or in the Crown Court).\(^{23}\)

Banning orders will apply for at least 12 months. Local authorities will be able to impose a financial penalty for breach of a banning order.

Database of rogue landlords and letting agents
The 2016 Act also places a duty on the Secretary of State to establish and operate a database of rogue landlords and letting agents. Local authorities will be responsible for maintaining the content of the database. Persons subject to a banning order will have to be added to the database while an order is in force. The Secretary of State will publish guidance on the criteria to be used by authorities in deciding whether to include someone on the database.

The Act places a duty on the Secretary of State to give every local housing authority in England access to information held on the database. There will be no public access to the database.

The 2016 Act has also amended the Housing Act 2004 to enable the Secretary of State to make arrangements allowing a Tenancy Deposit Scheme administrator to provide information, or share information, with local authorities in England. The purpose of this is to assist authorities in carrying out their private sector enforcement work under Parts 1 to 4 of the 2004 Act.

Rent repayment orders
Rent Repayment Orders (RROs) were introduced by the Housing Act 2004. Occupiers of a property, or the relevant local authority, can apply to a First-Tier Tribunal to recover rent or Housing Benefit (or Universal

\(^{23}\) DCLG, Tackling rogue landlords and improving the private rented sector — Government response, November 2015
Credit paid to an unlicensed landlord of a licensable HMO to cover the period when a licence was not in place, up to a maximum period of 12 months.

The Housing and Planning Act 2016 has extended the circumstances in which a RRO may be sought to cover breach of a banning order or an offence listed in section 40 of the 2016 Act; for example: a breach of an improvement order; unlawful eviction of a tenant; breach of a prohibition notice; and breach of licensing requirements under the 2004 Act.

Scotland

The Antisocial Behaviour etc. (Scotland) Act 2004 provides for a number of sanctions against landlords in respect of registration offences, including a power for the court to issue a disqualification order.

Under Section 93A of the 2004 Act, the court may, in addition to imposing a financial penalty, disqualify the convicted person (and, where the person is not an individual, any director, partner or other person concerned in the management of the person) from being registered by any local authority for a period of up to 5 years.

A landlord or agent can also have their registration revoked if they are no longer a ‘fit and proper person’ to be a landlord, or to act on a landlord’s behalf.

Similarly, in certain circumstances, the court may revoke an HMO licence and disqualify an owner from holding a licence, or an agent from being named on a licence, for up to five years.24

Wales

While there is no direct equivalent of banning orders in Wales, the Rent Smart Wales registration and licensing regime does mean that landlords and agents could have their licence revoked.

A licence under Part 1 of the Housing (Wales) Act 2014 can be revoked for any of the reasons set out in Section 25. These reasons are:

a. the licence holder has breached a condition of the licence;

b. the authority is no longer satisfied that the licence holder is a fit and proper person to hold a licence;

c. the licence holder has contravened section 23 (licence holder’s duty to update information);

d. the licence holder and the licensing authority have agreed that the licence should be revoked.

If a licence was revoked then a landlord would need to either appoint a licensed agent, or obtain a licence themselves.

Registration can also be revoked where a landlord:

a. provides false or misleading information in an application under section 15 or in notifying a change under section 16;

24 Section 157, Housing (Scotland) Act 2006
b. contravenes section 16; or
c. fails to pay any further fee charged under section 15.

While revocation of either a licence or registration would not bring with it an ongoing ban for a set period, it would clearly be relevant if the licensing authority had to assess whether the ‘fit and proper person’ criteria had been met when considering any application for a licence.

The Welsh Government has issued guidance on matters that must be considered by the licensing authority where it is determining whether a person passes the ‘fit and proper person’ test.

**Northern Ireland**

There are currently no provisions equivalent to the proposed Banning Orders in England.

*The Houses in Multiple Occupation Act (Northern Ireland) 2016* is intended to strengthen the regulation of HMOs. It provides that a council may at any time revoke an HMO licence on a number of grounds including if that person is no longer deemed a fit and proper person or if the HMO management arrangements are not satisfactory.

Section 36 of 2016 Act also contain provisions for ‘disqualification orders’. This Section provides a court with powers to revoke an HMO licence and disqualify an owner from holding an HMO licence, or an agent from being named on a licence, for a period not exceeding five years. These powers can be used on conviction of an offence under various provisions of the Act.25

### 2.4 Retaliatory eviction

**England**

It has been argued by organisations such as Shelter that tenants seeking repairs can be at risk of retaliatory eviction. This is where a private landlord serves a section 21 notice on an assured shorthold tenant (seeking to terminate the tenancy) in response to the tenant’s request for repairs, or where they have sought assistance from the local authority’s environmental health department.

Retaliatory eviction is argued to be a by-product of the fact that private landlords can evict assured shorthold tenants without having to establish any ‘fault’ on the part of the tenant.26

Following an unsuccessful attempt to introduce protection for tenants via a Private Member’s Bill, measures were subsequently added to the Deregulation Act 2015.

These measures came into force on 1 October 2015, and only apply to new tenancies started on or after this date. DCLG has produced a guidance note on the new regulations which has further information.27

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25  *Houses in Multiple Occupation Act (Northern Ireland) 2016*
26  See for example Citizens Advice Bureau, *The tenant’s dilemma*, June 2007
Section 33 of the *Deregulation Act 2015* prevents landlords from issuing a section 21 eviction notice within 6 months of having been issued an improvement notice in relation to Category 1 or Category 2 hazards.

Whilst the 2015 Act covers tenants whose properties have been issued an improvement notice, it does not cover other rights of repair, including a civil remedy pursued over unfitness for human habitation or an abatement notice served in relation to a statutory nuisance.

**Scotland**

Commencement of the *Private Housing (Tenancies) (Scotland) Act 2016* will remove the ‘no-fault’ ground for possession and should mean there is no risk of a retaliatory eviction in Scotland.

In written evidence to the Scottish Parliament’s Infrastructure and Capital Investment Committee, during scrutiny of the Private Housing (Tenancies)(Scotland) Bill, Crisis commented:

> The removal of no-fault eviction and introduction of indefinite tenancies is particularly to be welcomed, will end any possibility of retaliatory evictions, and will facilitate the most secure private tenancies in the UK.

Further written evidence from Shelter Scotland echoed these comments:

> Ending no-fault eviction in the PRS removes the possibility of a retaliatory or revenge eviction, and so gives tenants the power to act as strong consumers.

However, evidence from the Govan Law Centre was less certain that the new legislation would bring about material change. It suggested that the mandatory eviction grounds, particularly those relating to a landlord’s intention (for example, to sell the property) were ‘ripe for exploitation by landlords and will be abused in practice.’

Further background on the new legislation can be found in a briefing from the Scottish Parliament’s Information Centre written before the legislation was passed.

**Wales**

At present in Wales, the no-fault ground for possession under Section 21 of the *Housing Act 1988* can be used by a landlord seeking to avoid their repairing obligations, or indeed for any other reason. The tenant cannot make out a defence on the basis that the eviction is retaliatory because of some action on their part, such as trying to enforce their right to repairs. When commenced, the *Renting Homes (Wales) Act 2016* will address this.

The 2016 Act will allow the court discretion to refuse to make an order for possession in cases of retaliatory eviction. The court will only have this power where a landlord is relying on the no-fault ground for possession in respect of a periodic or fixed term standard contract (broadly equivalent to existing assured shorthold tenancies). Additionally, the court must be satisfied that the landlord is seeking possession to avoid their repairing or fitness for human habitation obligations.
Welsh Ministers may amend the 2016 Act by regulations to provide further descriptions of retaliatory claims. This means they could be extended to cover claims other than those where landlords are seeking to avoid their repairing or fitness obligations.

**Northern Ireland**

There are legislative provisions to protect tenants in Northern Ireland from retaliatory eviction. To evict a tenant lawfully the landlord must serve a Notice to Quit and obtain an Order for Possession from a court. In other words, in order to evict a tenant, a landlord must demonstrate to the court that there are grounds for eviction.

A landlord seeking to gain possession before the end of a fixed term tenancy must prove to the court that the tenant has breached the terms of the tenancy agreement e.g. non-payment of rent. However, if tenancy has become a periodic tenancy, the landlord does not need to have reasons to begin eviction proceedings but must still obtain an Order for Possession.\(^{28}\)

Protected and statutory tenants have considerably more security of tenure in Northern Ireland. There are two types of grounds on which a court may order possession – discretionary grounds and mandatory grounds. Discretionary grounds include, for example, non-payment of rent or a deterioration in the property as a result of the neglectful actions of the tenant or a person residing in the property. On such grounds an Order for Possession will only be granted if the court considers it reasonable to do so. If a mandatory ground is relied upon (e.g. the landlord intends to return to live in the property) and the landlord proves that the ground is made out, the court has no discretion and must make an Order for Possession.\(^{29}\)

Whilst the law may protect tenants from retaliatory eviction in Northern Ireland, the issue is that many tenants may be unaware of their rights and how to exercise them.

\(^{28}\) Housing Rights, *Right to Evict*  
\(^{29}\) Kilpatrick, A. (2012) *Housing Law in Northern Ireland*. 
3. Tenants’ deposits

**Summary**

- Landlords in England and Wales have been under a duty to protect deposits paid in respect of assured shorthold tenancies since 6 April 2007.
- Similar provisions exist in Scotland – these provisions apply to all private rented tenancies. The date of introduction varied depending on when the tenancy was entered into but most tenancies were brought within coverage in 2012.
- All deposits paid to private landlords in Northern Ireland have had to be protected since 1 April 2013.

**England & Wales**

Since 6 April 2007 deposits relating to assured shorthold tenancies (though not any other tenancies or licences) in England and Wales have had to be protected by one of the Government approved schemes. This requirement was introduced by the *Housing Act 2004* and secondary legislation. Information can be found on the [GOV.UK website](https://www.gov.uk).

The *Renting Home (Wales) Act 2016* will replace, and largely replicate, the current deposit protection requirements in Wales. Protection will be extended to include all occupation-contracts, not just standard contracts - which are broadly equivalent to the existing assured shorthold tenancy.

**Scotland**

Tenancy deposit protection in Scotland is similar to the model adopted in England and Wales.

A private landlord who has received a tenancy deposit in connection with a tenancy has 30 working days to protect the deposit.

The deposit must be paid to the administrator of an approved scheme and the tenant provided with certain information, including details of which tenancy deposit scheme the money has been paid into.

Where a landlord has not complied with the requirement to protect a deposit, the tenant may apply to the sheriff for an order under Regulation 10 of the *Tenancy Deposit Schemes (Scotland) Regulations 2011*. If satisfied that the landlord did not comply with the legal requirements to protect the deposit and provide the required information to the tenant, the sheriff must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

The Scottish Government’s strategy for the private rented sector, *A Place to Stay, A Place to Call Home: A Strategy for the Private Rented Sector in Scotland*, provides some background to the introduction of deposit protection in Scotland:

Three Tenancy Deposit Schemes approved by the Scottish Government opened in July 2012. Introduction of the schemes
will protect tenant deposits, providing a fairer and more transparent approach to managing tenant deposit payments. This measure addresses the significant problem caused by a minority of landlords who have unfairly withheld tenant deposits.

The schemes in Scotland are provided without the need for public funding, and are free for tenants and landlords to use. Services provided by each scheme includes a free, independent dispute resolution process, to be accessed when disputes arise over the return of deposits.

Northern Ireland
From 1 April 2013, landlords in Northern Ireland have been required to safeguard deposits through a tenancy deposit protection scheme. As in England and Wales, there are two types of scheme: custodial and insurance based. A deposit must be protected within 14 days of a landlord or agent receiving it. As in Scotland, England and Wales, the tenant has to be provided with certain information, including details of which scheme is being used. This information must be provided within 28 days of receiving the deposit.

There is more information on tenancy deposit protection in Northern Ireland on the [NI Direct website](https://www.nidirect.gov.uk).
4. Security of tenure & rent control

Summary

Security of tenure

- In England most private tenants have an assured shorthold tenancy with no long-term security of tenure.
- Most tenancies in the private rented sector in Scotland are short assured with a minimum term of 6 months. The Private Housing (Tenancies) (Scotland) Act 2016 will, when commenced, introduce a new type of tenancy for the private rented sector in Scotland to replace the short assured tenancy and assured tenancy for all future lets. The ‘no fault’ ground for possession will be removed.
- As in England, most private sector tenancies in Wales are assured shorthold tenancies with limited security of tenure. The Renting Homes (Wales) Act 2016 will introduce a new legal framework for renting a home in Wales under which standard occupation contracts are expected to be the main type of contract in the private rented sector. These will be similar to assured shorthold tenancies. Landlords will still be able to recover possession on the basis of a no-fault ground provided the correct period of notice has been given to the occupier.
- Most private rented tenants in Northern Ireland have either a fixed-term tenancy, a default six month tenancy or a periodic tenancy. Landlords can evict using a no fault ground for possession but in 2011 the notice periods associated with the use of this ground were extended.

Rent control

- There is no rent control in England and Wales other than that which applies to protected (regulated) tenants under the Rent Act 1977.
- The Private Housing (Tenancies) (Scotland) Act 2016 will allow local authorities in Scotland to implement rent caps in designated areas where there are excessive rent increases.
- Rent control in Northern Ireland may apply to protected or statutory tenancies created before 1 April 2007. Tenancies created after this date are not subject to rent control.

England

The vast majority of private tenants in England have an assured shorthold tenancy. The rights of these tenants are governed by the Housing Act 1988. These tenancies offer no long-term security of tenure as, after the expiry of the fixed-term of the tenancy or at any time in the case of a periodic tenancy (but only after the expiry of the initial 6 months), the landlord may seek repossession after serving a section 21 notice. If the proper notice requirements are followed the landlord may obtain a repossession order without having to prove any fault on the part of the tenant. Landlords may seek to repossess a property let on an assured shorthold tenancy within the fixed-term by using one of the grounds for possession set out in schedule 2 to the 1988 Act.

It is open to landlords to create an assured tenancy which offer tenants a much greater level of security of tenure but very few, if any, choose to do this.

Special rules apply to the service of section 21 notices in respect of tenancies starting after 1 October 2015.
There are some circumstances where a section 21 notice will be held to be invalid, for example:

- where the landlord has failed to protect the tenant’s deposit in a Government approved scheme;
- the deposit was only protected more than 30 days after the tenant paid it;
- the landlord did not provide the required information about the tenancy deposit scheme used to the tenant;
- for tenancies starting after 1 October 2015:
  - the notice was served after a complaint to the landlord in writing about repairs;
  - the landlord failed to address the repairs;
  - the issue was reported to the council; and
  - the council served the landlord with an improvement notice or notice to carry out emergency works.
- A section 21 notice will also be invalid if served within 6 months of a council serving the landlord with either:
  - an improvement notice; or
  - a notice saying the council will do emergency repairs.

Criticisms of the lack of security of tenure offered to private sector tenants prompted the Coalition Government to develop a model tenancy agreement for use when the parties are seeking to enter into a longer term tenancy of 2 or more years. Its use is discretionary. DCLG also produced How to rent: the checklist for renting in England which landlords are required to give to new tenants. There were some unsuccessful attempts to amend the Housing and Planning Act 2016 during its passage through Parliament to extend the minimum term for assured shorthold tenancies. The Minister, Marcus Jones, responded to an amendment to introduce a default term of 36 months:

> However, there is no one-size-fits-all approach to tenancy length. Many landlords are looking to rent out a property for the longer term, but there will be some for whom letting a property is a short-term plan and who need the property back at some point, perhaps even for their own family to live in. Although I understand the spirit in which the amendment has been tabled, I think it would be counterproductive and would overburden the market with restrictive red tape, stifling investment and the supply of rented housing at a time when we most need to encourage it. That would not help tenants or landlords.31

The 1988 Act deregulated private rented tenancies so there is no rent control associated with assured and assured shorthold tenancies. Assured shorthold tenants have a limited right of appeal to a tribunal

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31 PBC 10 December 2015 c692 – Lord Kennedy of Southwark also attempted to introduce a minimum 36 month term for new assured shorthold tenancies created after 1 April 2018 and to give tenants a right to terminate a tenancy by giving the landlord two months’ notice: HL Deb 1 March 2016 cc711-19.
within the first 6 months of the tenancy if they think the rent is too high.

There have been various calls for the reintroduction of rent control in response to significant rent increases in areas of high housing demand. The Communities and Local Government Select Committee considered this issue as part of its 2013-14 inquiry into the sector, the Committee concluded:

Problems with the affordability of rents are particularly acute in London and the South East. Although in other parts of the country average rents and yields are relatively stable, we are still concerned that some families are struggling to meet the costs of their rent. We do not, however, support rent control which would serve only to reduce investment in the sector at a time when it is most needed. We agree that the most effective way to make rents more affordable would be to increase supply, particularly in those areas where demand is highest.32

The Coalition Government welcomed this recommendation.33

Most private tenancies in existence at the point at which Part 1 of the 1988 Act came into force on 15 January 1989 were regulated tenancies governed by the Rent Act 1977. Some of these tenancies, which offer substantial security of tenure, still exist but as it is, as a general rule, not possible to create new regulated tenancies they are dying on the vine. These tenancies are subject to rent control – ‘fair’ or ‘registered’ rents are set independently and reviewable every two years.

Scotland

Most tenancies in the private rented sector in Scotland are short assured, under the Housing (Scotland) Act 1988. These must be for a minimum of six months’ duration. As in England and Wales, a landlord can recover possession at the end of the tenancy through the courts providing they have given the tenant at least two months’ notice. This is commonly known as a ‘no-fault’ ground for possession. Some tenants in Scotland will have assured or regulated tenancies, both of which provide greater security of tenure.

The Private Housing (Tenancies) (Scotland) Act 2016 will, when commenced, introduce a new type of tenancy for the private rented sector in Scotland to replace the short assured tenancy and assured tenancy for all future lets. The new tenancy will be known as a private residential tenancy.

Private residential tenancies will be open-ended, and there will be no ‘no-fault’ ground for possession equivalent to the current notice that can be given under section 33 of the Housing (Scotland) Act 1988. The Private Housing (Tenancies) (Scotland) Act 2016 will allow local authorities to implement rent caps in designated areas (rent pressure zones) where there are excessive rent increases. Applications must be made to Scottish Ministers, who will then lay regulations before the Scottish Parliament. Tenants unhappy with a proposed rent increase will

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32 HC50, para 110
33 Cm 8730, October 2013
also be able to refer a case to a rent officer for adjudication (provided the property is not in a rent pressure zone).

Further background on the new legislation is available in briefings from the Scottish Parliament Information Centre, available on the Scottish Parliament’s website.

Wales
Currently, as in England, most private sector tenancies in Wales are assured shorthold tenancies. These tenancies provide limited security of tenure as the landlord can recover possession without the need to provide any reasons for seeking repossession; the landlord merely needs to give the correct period of notice in a form that complies with the legal requirements. Recent changes to Section 21 notices in England do not apply in Wales.

There are certain restrictions that could prevent a landlord from serving a section 21 notice where the property is let under an assured shorthold tenancy in Wales:

- no section 21 notice may be given in relation to a shorthold tenancy of a part of an unlicensed House in Multiple Occupation, so long as it remains unlicensed (s.75, Housing Act 2004);
- no section 21 notice may be given where the landlord has not complied with requirements relating to tenancy deposit protection (s.215, Housing Act 2004).

When the Housing (Wales) Act 2014 is fully commenced, landlords in Wales will also be prevented from serving a section 21 notice if they are not registered as a landlord, or if they are not licensed and have not appointed a licensed agent.

As in England, some tenants in the private rented sector will have assured tenancies, which bring greater security of tenure as the landlord cannot serve a notice under section 21 of the 1988 Act. A very small number will have regulated tenancies which, as well as providing security of tenure, give a right to a fair rent – a form of rent control.

The Renting Homes (Wales) Act 2016 will introduce a new legal framework for renting a home in Wales. Standard occupation contracts are expected to be the main type of contract in the private rented sector. These will be similar in many respects to assured shorthold tenancies. Most notably, landlords will still be able to recover possession on the basis of a no-fault ground provided the correct period of notice has been given to the occupier.

Under current law, landlords cannot recover possession during the first six months of an assured shorthold tenancy. The Welsh Government had proposed removing this protection, known as the ‘six month moratorium’ on the basis this would encourage private landlords to let to households considered higher risk; for example, to younger people or people with a poor credit history.

Following concerns raised by tenant representatives and Members of the Communities, Equality and Local Government Committee, the
Welsh Government subsequently changed its position. During Stage 2 proceedings on 30 September 2015, the Minister for Communities and Local Government announced her intention to maintain the six month moratorium. She stated:

…taking into account all the evidence I’ve received on this issue, and I have received a lot of evidence, I’ve decided the potential risks arising from removing the moratorium may outweigh the benefits. I am, therefore, proposing to bring forward an amendment at Stage 3, which would maintain the current arrangements.34

While there have been calls from opposition politicians in Wales for rent control in the private rented sector, the current Welsh Government has not indicated any intention to pursue such a policy.

Northern Ireland

Most tenants in the private rented sector in Northern Ireland will have either a fixed-term tenancy, a default six month tenancy or a periodic tenancy. A small number of tenants whose private tenancy began before 1 April 2007 may have protected tenancies. Protected tenants enjoy rent control, and have a more substantial level of security of tenure. Further information on protected tenancies is available on the Housing Rights website. Tenancies created after 1 April 2007 are generally not subject to rent control – landlords can charge a market rent.

If a landlord wishes to end a non-protected tenancy on a ‘no-fault’ basis, the length of the notice they must give depends on how long the tenant has lived in the property. These periods were extended in 2011 when the Private Tenancies (Northern Ireland) Order 2006 was amended. The notice periods are:

- If the tenant has been in the property for less than 5 years they must get at least 4 weeks’ notice.
- If the tenant has lived in the property for more than 5 years but less than 10 they must get at least 8 weeks’ notice.
- If they have lived in the property for over 10 years, they are entitled to 12 weeks’ notice.

After the Notice to Quit expires, the landlord must seek a possession order from the courts. Further information on the eviction and possession process is available on the Housing Advice Northern Ireland website.
5. Fitness and repair

Summary
- There is no statutory minimum fitness standard for private rented properties in England.
- The Tolerable Standard is the basic statutory minimum standard for all housing in Scotland.
- The situation in Wales is similar to that in England but the Renting Homes (Wales) Act 2016 will replace most existing tenancies with one of two new types of occupation contract and under these contracts there will be an obligation on landlords to ensure that let dwellings are fit for human habitation.
- Northern Ireland has a statutory fitness standard which applies across all tenures.

England

Fitness

The Landlord and Tenant Act 1985 sets out implied terms in a tenancy agreement that require landlords to let properties which are ‘fit for human habitation’ at commencement of and throughout a tenancy. This is regardless of any stipulation to the contrary written into the tenancy agreement.

However, these implied terms only apply to homes under a certain level of rent, the amount of which has not been uprated from the level set out in the Rent Act 1957. As a result, the provisions in the 1985 Act only apply to those paying less than £80 annual rent in London, or less than £52 annual rent elsewhere, and are therefore effectively obsolete.35

Thus there is effectively, no pass/fail housing fitness standard in England. Attempts to introduce a minimum fitness standard during the passage of the Housing and Planning Act 2016 through Parliament were resisted.36

Housing standards are assessed by environmental health officers (EHOs) using the Housing, Health and Safety Rating System (HHSRS) which was introduced by the Housing Act 2004. The HHSRS allows EHOs to inspect and identify hazards. Where they identify the most serious (‘Category 1’) hazards, they are required to take action, however they can also choose to take action in regard to less serious (‘Category 2’) hazards.

The risk-assessment approach to property standards of the HHSRS means that issues are judged on the risk they pose, not simply whether or not a property has a particular maintenance issue. It should assess for the most vulnerable member of the household, and therefore would give a different judgement depending whether or not, for example, a baby lived at the property.

More information can be found in the Commons Library briefing paper, Housing Health and Safety Rating System (HHSRS).

Under the Gas Safety (Installation and Use) Regulations 1998, landlords are responsible for the maintenance and repair of gas fittings.

35  Section 8, Landlord and Tenant Act 1985
36  See Library Briefing Paper 07328: Housing fitness in the private rented sector
appliances and flues. Section 122 of the *Housing and Planning Act 2016* allows for the introduction of mandatory electrical safety checks.

As of 1 October 2015, all private landlords have been required to install a smoke alarm on every storey of the property used as rental accommodation, and a carbon monoxide alarm in any room used as living accommodation with a burning appliance for solid fuel (such as coal or wood).  

### Repairs

Section 11 of the *Landlord and Tenant Act 1985* sets out an implied covenant for repairs in tenancies of less than seven years, under which landlords are required to carry out repairs to:

- The structure and exterior of the dwelling;
- Basins, sinks, baths and other sanitary installations in the dwelling;
- Heating and hot water installations.  

The repair must be reported for a landlord’s duty under section 11 to arise.

### Scotland

**Fitness**

The Tolerable Standard is the basic statutory minimum standard for all housing in Scotland. It is broadly equivalent to the fitness standard that applied in England and Wales until Section 604 of the *Housing Act 2004* was repealed.

Examples of defects that would mean a property was below the tolerable standard, and therefore not fit to live in, include:

- severe damp problems;
- structurally problems;
- a lack of adequate ventilation, natural and artificial light or heating;
- an inadequate supply of fresh water;
- no sink with hot and cold water;
- no indoor toilet.

The tolerable standard can be found in the *Housing (Scotland) Act 1987*. An overview and background to the origin of the standard is provided on the Scottish Government’s [website](https://www.gov.scot).  

Local authorities have a duty to take action where a dwelling is below the Tolerable Standard, to close, demolish or bring it up to the required standard.

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37 Ibid.
Repairs

The Housing (Scotland) Act 2006 (the 2006 Act) outlines the Repairing Standard. This standard applies in addition to the Tolerable Standard discussed above. Private landlords in Scotland are required under the 2006 Act to ensure that a rented house meets the Repairing Standard at the start of a tenancy and throughout the letting.

The Repairing Standard states that a privately rented property:

- must be wind and watertight and reasonably fit for tenants to live in;
- structure and exterior must be in a reasonable condition;
- water, gas, electricity, heating and hot water installations must be in good working order (these include external features such as drains);
- fixtures, fittings or appliances provided by the landlord must be in good working order and safe to use;
- furnishings provided by the landlord must be suitable to use; and
- must have suitable smoke detectors.

The Scottish Government has issued statutory guidance on a number of elements of the Repairing Standard, including on electrical installations and appliances, the provision of carbon monoxide alarms and smoke detectors. Regard must be had to the guidance in determining whether a house meets the Repairing Standard.

If a tenant believes that their home does not meet the repairing standard, an application can be made to the Private Rented Housing Panel for a decision by a Private Rented Housing Committee. Since December 2015, local authorities have also been able to apply to the Private Rented Housing Panel. The tenant can decide whether or not to take an active role in the local authority application. The Committee can then determine whether or not the landlord has complied with that duty and order the landlord to carry out the necessary repairs. Various enforcement powers apply if the landlord fails to undertake the required works.

The SNP’s Manifesto 2016 included the following commitment on private rented sector standards:

We will consult on a national standard for private rented homes to ensure a good basic standard of accommodation, driving out rogue landlords who exploit tenants in sub-standard accommodation.40

Wales

Fitness

At present, the only statutory requirement for a dwelling to be fit for human habitation in Wales is contained in the Landlord and Tenant Act 1985. However, the provisions in that Act only apply to dwellings

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39 Third party applications by local authorities was phased in – the third and final phase began on 1 June 2016.
40 SNP Manifesto 2016, p35
at a very low rent, currently under £52 a year, which effectively means it is redundant.

In 2006, as in England, the fitness standard set-out in the *Housing Act 1985* was replaced in Wales by the Housing Health and Safety Rating System (HHSRS). Although there are no proposals to repeal or replace HHSRS in Wales, legislation recently passed by the Assembly will effectively introduce a new fitness standard for rented accommodation.

This legislation, the *Renting Homes (Wales) Act 2016* (the 2016 Act), will replace most existing tenancies with one of two new types of occupation contract: secure contracts (modelled on the existing secure local authority contract, and standard contracts (modelled on the existing assured shorthold contract).

Under these new contracts, there will be an obligation placed on landlords to ensure the dwelling let is fit for human habitation.

Where the contract is a fixed term standard contract, the obligation will only apply to contracts made for a term of less than seven years. The dwelling must be fit for human habitation on the occupation date of the contract and remain so for the duration of the contract.

During scrutiny of the Bill, the Minister for Communities and Tackling Poverty, Lesley Griffiths AM, addressed concerns raised by the Communities, Equality and Local Government Committee that a requirement to ensure properties were fit for human habitation lacked ambition. In response, the Minister stated that she believed this provision would raise standards. The Minister also stated that it would be easier for contract-holders to demonstrate that their property was unfit, without having to rely on an inspection by a local authority Environmental Health Officer.

‘Fitness for human habitation’ is not defined in the 2016 Act. However, under Section 94 of that Act, Welsh Ministers “must prescribe matters and circumstances to which regard must be had when determining […] whether a dwelling is fit for human habitation.” The Act states that these may make reference to the Housing Health and Safety Rating System. Welsh Ministers may also make regulations that prescribe requirements which landlords must comply with in order for a dwelling to be fit for human habitation.

It was expected that the 2016 Act will be commenced during the 2016-17 financial year, but this has not been confirmed.

**Repairs**

The 2016 Act also imposes an obligation on landlords to keep dwellings in repair. In the case of fixed-term standard contracts, the obligation will only apply where the fixed-term is less than seven years. These repairing provisions are largely a restatement of Section 11, *Landlord and Tenant Act 1985*.

Under the 2016 Act, the landlord will have to:
(a) keep in repair the structure and exterior of the dwelling (including drains, gutters and external pipes), and
(b) keep in repair and proper working order the service installations in the dwelling.

“Service installation” means an installation for the supply of water, gas or electricity, for sanitation, for space heating or for heating water.

Northern Ireland
Fitness

The Statutory Fitness Standard in Northern Ireland is similar to the one that currently applies in Scotland, and the standard that used to apply in England and Wales. It applies across all tenures of housing and sets the legal threshold below which no one should be expected to live.

In a recent consultation from the Department for Social Development (now part of the Department for Communities) on the role and regulation of the private rented sector in Northern Ireland, the application of the fitness standard to the PRS, and how it can affect rent levels, is explained:

Currently in Northern Ireland all properties built before 1945, where a private tenancy commenced after 1 April 2007, must meet the fitness standard, in order to attract a market rent. A proof of fitness of a private rented home, through the mechanism of a certificate of fitness, must be acquired by qualifying landlords from Environmental Health within the council where the dwelling is located. This process requires a council official to inspect the premises and enforce the requirement for any works necessary to meet the standard. In the absence of a certificate of fitness the dwelling can remain rented out, however there are rent restrictions applied until the dwelling meets the criteria of the standard.

In order to meet the statutory fitness standard, as amended by the Housing (Northern Ireland) Order 1992, a property must:

- be structurally stable;
- be free from serious disrepair;
- be free from dampness prejudicial to the health of the occupants (if any);
- have adequate provision for lighting, heating and ventilation;
- have adequate piped supply of wholesome water;
- have satisfactory facilities in the house for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water;
- have a suitably located water-closet for the exclusive use of the occupants (if any);
- have, for the exclusive use of the occupants (if any), a suitably located fixed bath or shower and wash-hand basin each of which is provided with a satisfactory supply of hot and cold water; and
- have an effective system for the draining of foul, waste and surface water.
The Department for Social Development’s [Housing Strategy](#) commits to review the fitness standard across all tenures and to put in place an enhanced statutory minimum standard. A [discussion paper](#) on the future of the fitness standard in Northern Ireland was issued in March 2016.

Further information is available on the Northern Ireland Housing Executive [website](#).
6. Information for tenants and model contracts

In **England**, landlords are now required to provide new tenants with *How to rent: the checklist for renting in England*. Use of the Government drafted *model tenancy agreement* is discretionary. There are additional requirements relating to assured shorthold tenants and the protection of their deposits (where payable).

In **Scotland**, landlords have a duty to provide new tenants with a *tenant information pack* containing key standardised information on renting in the private sector. *The Private Housing (Tenancies)(Scotland) Act 2016* gives Scottish Ministers powers to prescribe statutory tenancy terms. Landlords will be obliged to provide their tenants with a copy of the written tenancy terms and any other information specified by Scottish Minister. The First-tier Tribunal will have powers to deal with landlord’s failure to comply with these requirements.

In **Wales**, once the *Renting Homes (Wales) Act 2016* has been commenced, there will be an obligation to give the contract-holder a written statement of the contract within 14 days of the occupation date. Model occupation contracts will be available for landlords to use once the 2016 Act is fully commenced (though a landlord may choose to use their own contract, if it complies with the legislation). Occupation contracts will contain all fundamental, supplementary and additional terms pertaining to the contract, so are likely to be far lengthier and more comprehensive than current tenancy agreements. Examples of the model contracts are available on the Welsh Government’s website.

The Welsh Government has also published, *A home in the private rented sector: A guide for tenants in Wales*. The Code of Practice that landlords and agents licensed under the Housing (Wales) Act 2014 must comply with requires, as best practice, that tenants should be given, or signposted to, that publication.

In **Northern Ireland**, tenants are entitled under the *Private Tenancies (NI) Order 2007* to a Rent Book. Additionally, if a tenancy started on or after 1 April 2007 the landlord must provide the tenant with a statement of tenancy terms within 28 days of the tenancy commencement date. The Northern Ireland Housing Executive website provides a sample rent book template and a template for statement of tenancy terms.41

Landlords across the UK are also required to give tenants an Energy Performance Certificate and a Gas Safety Certificate

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41 Information extracted from the Northern Ireland Housing Executive website [accessed on 23 June 2016]
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