

CIH response to the government's consultation: A Decent Homes Standard in the Private Rented Sector



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Introduction

CIH is pleased to submit its response to the consultation on a Decent Homes Standard (DHS) for the private rented sector (PRS), as part of the wider review of the DHS. The standard should as much as possible be consistent across the social and private rented sectors, and encourage proactive landlords to go beyond the baseline of the standard to improve the quality of homes.

At the start of the DHS review, we argued that the next iteration of the DHS should enable social landlords to work in consultation with their tenants to recognise their priorities for their homes, and to enable landlords to work flexibly with the other programmes they are required to meet, including net zero carbon and energy efficiency, building and fire safety measures etc. However, with multiple landlords and a huge range of housing types now to be covered by the DHS, this flexibility will need to be set in clearly defined parameters so that landlords, regulators and tenants can know what is expected, to facilitate performance monitoring, and to enable swift and effective enforcement action where required.

The guidance will also need to be very clear about what are regulatory requirements for which the residents can hold landlords to account (and how they do that) and what are best practice examples and guidance on how landlords and residents can work together to agree priorities for further improvements above and beyond the standard itself. The guidance will also need to ensure that landlords, councils, and tenants understand what a 'reasonable standard' is in relation to repairs, thermal comfort and facilities as applied in the PRS. Whilst there is a known framework for standards for safety under the Health and Housing Safety Rating System, the standard of reasonableness in relation to the other criteria is obviously not yet tested, and guidance would help to avoid precedent being set through unnecessary legal procedures.

To make the DHS a real standard enforceable in the PRS (proactively rather than triggered by complaints) is likely to require additional resources, including more trained staff, for many local authorities which are already stretched. This has been reinforced by the findings of the House of Commons Public Accounts Committee's [report](#) into the regulation of the PRS. Government will also need to consider how regulation is applied where local councils have built and manage private rented homes, so that there is not a gap in regulation for this part of the PRS.

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support and knowledge they need. CIH is a registered charity and not-for-profit organisation so the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in the public and private sectors, in 20 countries on five continents across the world. Further information is available at: www.cih.org.

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Below we address the specific questions of the consultation:

Q12: Do you support bringing in and enforcing a Decent Homes Standard, as set out above, in the private rented sector?

Yes

Although we appreciate it is attempting to provide flexibility to account for the wide range of housing types in the PRS, we still think that greater clarity is needed for residents on what a reasonable degree of thermal comfort and reasonable facilities etc might mean. We think that there should be as close a correspondence as possible with the measures set out for the social housing sector, and that landlords should be encouraged to go above and beyond to provide high quality homes.

Q13: How clear is the Standard as set out?

Quite clear

Guidance on what might be considered reasonable would be useful both for landlords and tenants, and help tenants to raise issues where the standards in their homes fall short.

Q14: How difficult do you believe the Standard will be to meet?

Unsure

Given the range and scope of the sector there are likely to be landlords that already meet this and some who may fall significantly below the decent level, with varying capacity and resources to tackle this quickly. However, over time it is important that the standard is upheld so that the quality of housing overall in the PRS is raised.

Q15: Currently, a property will fail the Decent Homes Standard if 'a key building component' (e.g. wall, window, roof) is both old and in poor condition. Should we remove the standard to remove 'old' so only the condition is relevant?

Yes

Age is an indicator but the quality of the component and how it is used is more likely to affect condition. However, for some landlords with only one or two properties age may be a helpful indicator to trigger action to inspect and assess when replacements are likely to be required. Guidance for landlords that includes up to date age limits for key components would be useful in these cases.

Q16: Do you think that a landlord's failure to meet the Decent Homes Standard should be a criminal offence?

Yes - **where they fail to comply with council's improvement notices.**

*Action to enforce the Decent Homes Standard should be, as far as practical, in line with the other enforcement powers available to local councils. Councils generally aim to work with landlords to address matters before escalating to this and we anticipate that they will take the same approach for the DHS. The **failure to comply with earlier notices for action is the trigger for escalation to greater penalties including prosecution.***

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Councils will be unlikely to use this without full exploration of all other measures, given the burden and costs involved, but it is important that they have the power within the range of actions to enforce the standard. However, it will be important to ensure that councils are resourced to enforce effectively.

Q17: Should local councils have the option to issue civil penalties or prosecute for Decent Homes Standard offences?

Local councils should have the options to issue civil penalties or prosecute.

See comments above for Q16

Q18: Do you think rent repayment orders should be extended to include Decent Homes Standard offences?

Yes

Rent repayment orders should be available following failure to comply with notices to improve or take action to reach the DHS (following the approach for other housing offences)

Q19: Do you think that a landlord's failure to meet their duty to keep a property at Decent Homes Standard should be included as a banning order offence?

Unsure

A banning order would be useful where the landlord clearly does not or will not improve homes, or where there are widespread problems in the stock rather than individual or discreet problems that can be resolved through other measures, including councils intervening to undertake the repairs (with the ability to recoup costs in full).

However, government should consider research to understand the potential impact of banning orders on larger providers. For example, would a banning order apply to all stock across all councils? How would a banning order be communicated to other authorities and enforced?

Government should commit also to a review of how the powers to enforce the DHS are operating, and the impacts for tenants, within a set time period to ascertain if these are sufficient or if additional powers should be in place, which could then be introduced/ amended in regulations.

Q20: Do you think that local councils should have the discretion to make properties temporarily exempt from the duty to meet the Decent Homes Standard on a case-by-case basis (with regard to statutory guidance)?

Yes

But the scope for this should be clear and provide some level of consistency (within the pressures of local housing markets/ supply etc). Clear statutory guidance is necessary, and councils should be required to publish policies on how this may be applied locally.

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Q21: In some instances, carrying out Decent Homes Standard work without permission would put landlords in breach of a statutory obligation, such as in the case of listed buildings. We are proposing to exempt landlords where they have attempted to obtain permission to carry out the works and been refused. Do you think it would be appropriate for this exemption to be set out in legislation?

Yes

As above for Q20, and landlords must be able to demonstrate they have exhausted routes for permission and any appeal process in their efforts to achieve the DHS. Landlords should explore what improvements could be made so that at least some measures to improve the quality of the home can be introduced, even where the full DHS is not possible.

Q22: Do you think that local councils should have the discretion to temporarily exempt a landlord from the duty to meet the Decent Homes Standard where the landlord has bought a property with sitting tenants that doesn't meet the standard?

Yes

Within the scope of statutory guidance, and with the proviso that the timeframes are kept as short as possible (or at least are regularly reviewed, not open-ended).

Q23: Do you think that local councils should have the discretion to temporarily exempt the personal representatives of a landlord from meeting the Decent Homes Standard where a letting property is under probate?

Yes

Within the scope of statutory guidance, and with the proviso that the timeframes are kept as short as possible (or at least are regularly reviewed, not open-ended).

Q24: Do you think that local councils should have the discretion to temporarily exempt an incoming manager from the duty to meet the Decent Homes Standard where the landlord has either lost their HMO licence or is not fit and proper, so a new person or company is managing the property?

Yes

Within the scope of statutory guidance, and with the proviso that the timeframes are kept as short as possible (or at least are regularly reviewed, not open-ended).

Q25: Do you think local councils should have the discretion to temporarily exempt someone from the duty to meet Decent Homes Standard where they are taking over the property on a temporary basis due to the landlord being incapacitated?

Yes

Within the scope of statutory guidance, and with the proviso that the timeframes are kept as short as possible (or at least are regularly reviewed, not open-ended).

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Q26: Do you think local councils should have the discretion to temporarily exempt a landlord from the duty to meet the Decent Homes Standard where accidental damages have occurred (e.g. fires, floods, storms, etc.)?

Yes

Within the scope of statutory guidance, and with the proviso that the timeframes are kept as short as possible (or at least are regularly reviewed, not open-ended).

Q27: Do you have any further comments on exemptions from the landlord duty to meet the Standard?

In all cases of proposed exemptions, we believe that councils should be able to allow the exemption temporarily, but that there should be a clear expectation of regular reviews of this so that homes are not neglected or exempt for too long after the resolution of the issue triggering an exemption. This should be set out in guidance for councils and landlords.

Q28: Who do you think should be responsible for a Decent Homes Standard failure? Please select one or more responses.

- **The immediate landlord** - the person who receives the rent from those living in the property. Although this person has a direct relationship with the tenants they may not have sufficient control over the property to ensure it meets the Decent Homes Standard.
- **The person with “control” over the property** - this may not be the immediate landlord if in order to comply with the Decent Homes Standard they need consent from a superior landlord. A person would have “control” if they can make decisions about the property to ensure the Decent Homes Standard is met without having to seek consent from a superior leaseholder or freeholder.
- **The freeholder of the property or the leaseholder with a lease of more than 21 years** - which party is responsible for the relevant criterion of the Decent Homes Standard will depend on the rights and responsibilities as set out in the terms of individual leases.
- **Other**

There should be an expectation that the parties that will benefit in the long term from decency should have responsibility proactively to provide it - in which case there should be a requirement for the **immediate landlord and the superior landlord** to cooperate to ensure the home meets the standard. Government should also work with local councils to develop a framework for action where homes are ‘rent to rent’, or it is otherwise difficult to track and bring enforcement against the person/ company who has ultimate responsibility for and benefits from the home as an asset. In all cases this should enable councils to ensure that the tenants are not left either homeless or stuck in a non-decent home.

Q29: Do you think that landlords should use the Property Portal to register Decent Homes Standard compliance of their properties or record where there is an agreed exemption?

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Yes

This is a logical step but government should work with local councils to ensure that this supports action at the local level, that there is access to shared information, and that it does not result in additional administrative burdens for local authorities. It also provides the opportunity to identify where improvements in the data is required and where standards need to be revised - for example around EPC data to be used on the portal.

Q30 NA, for tenants only

Q31: Do you think it should be an offence to provide false or misleading information regarding Decent Homes Standard compliance and exemptions?

Yes

To provide trust in the system from tenants. There needs to be a clear arrangement to ensure timely sharing of information between central government and local councils, where this involves information on the property portal.

Q32: Duplicative burdens on landlords at local and national level are undesirable where they can be avoided. We want to work with local councils and other stakeholders to ensure that the transition to a Privately Rented Property Portal is as seamless as possible, including looking at how it can integrate with licensing schemes where practicable. We will also work to streamline requirements for landlords, such as by working with BEIS on synchronising guidance on minimum energy efficiency. It is imperative that the system meets the needs of landlords, tenants, agents and local councils. Please share thoughts on how we can streamline requirements and support compliance.

As above, the property portal, the information required to be held on it, and any other monitoring/ reporting mechanism should be developed between and work for both central and local government.

It provides the opportunity to set out clearly the purpose, scope and nature of different enforcement and licensing schemes that councils must (DHS) or are able to apply (such as selective licensing) and how these collectively achieve decent and safe communities as well as decent and safe homes.

Q33: Do you think local councils should have a duty to investigate complaints of properties that fail to meet the Standard in their area?

Yes

In line with other housing enforcement actions, although this will require additional resources for local councils, including trained and qualified staff.

Q34: Should local councils be required to report activity related to addressing properties that fail to meet the Standard in their area?

Yes

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Q35: If local councils were required to report their Decent Homes Standard activity, to whom should they provide the information?

Both to their local community and central government

To their local community and to central government via the property portal if data transfer and sharing can be streamlined.

Q36 NA, for local councils only

Q37: Do you have any further comments on the proposal to put a duty on local councils?

Given the scale of the PRS, and that this will be a new requirement of both landlords and councils, additional resources should be provided, including the capacity to take on appropriately trained and qualified staff.

Q38: Do you think Decent Homes Standard failure awareness notices are a useful part of Decent Homes Standard enforcement?

Yes

Q39: Do you think local councils should have the power to serve Decent Homes Standard improvement notices?

Yes

Q40: Do you think local councils should have the power to undertake emergency remedial works?

Yes

For works relating to health and safety of the occupant. However, councils should also be able to recoup costs in taking such actions.

Q41: Do you think local councils should have the power to issue Decent Homes Standard failure prohibition orders?

Yes

As far as possible, in relation to Q38-41 above, the powers of local councils should mirror and build on the approaches they have used in relation to other housing enforcement measures, and support them to build proactive and useful relationships with private landlords to maintain a healthy PRS.

Q42: Should we amend legislation to make it explicit that a landlord does not have a right to attend inspections [by virtue of receiving notice to that effect]?

Unsure

Landlords should not be able to delay inspections by arguing dates and times are not suitable. Local councils should be required to give adequate notice and inspections should

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then proceed without the landlord in attendance, should they fail to attend; any representation from the landlord on matters raised from the inspection should also be given within a specified timescale.

Q43: Do you think that there is a role for other providers (not just the local council) in providing advice to landlords on whether their properties meet the Decent Homes Standard?

Unsure

Possibly although consideration would be needed as to the skills and qualifications for the role, and how landlords can be assured of that when using alternative providers, to avoid unhelpful and unqualified advice.

Q44: Do you think local councils have a role in providing advice to landlords on pre-emptive work to prevent properties failing to meet the Standard in the near future?

Yes

Q45: Where local councils provide this advice, should they be able to charge for this service?

Yes

Potentially, although councils may decide to limit any charges in order to encourage landlords to engage with them. This should be at their discretion.

Q46: Should the Decent Homes Standard apply to all privately rented accommodation let on a tenancy?

Yes

Q47: Should the Decent Homes Standard apply to residential temporary accommodation provided by local councils to homeless households?

Yes

Given the length that many households stay in temporary accommodation. Requiring this to be included will help to drive up quality across the sector and support people at a very difficult period of life/ mitigate some of the negative impacts of homelessness for families.

Q48: Should the Decent Homes Standard apply to purpose-built student accommodation (e.g. halls of residence owned by universities or other providers)?

Yes

Q49: Should the Decent Homes Standard apply to lodgers, where a tenant lives in the property with the landlord?

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Unsure

Ideally this should also apply but enforcement may be very difficult and should be focused where it can be most effectively applied in the initial stages of the scheme. Potentially once the system is embedded it should be extended to less formal arrangements including lodgers. The capacity and resources of councils is also an issue where the scope is extended.

Q50: Should the Decent Homes Standard apply to non-traditional accommodation such as house boats or caravans?

Unsure

As above Q49

Q51: Should the Decent Homes Standard apply to 'tied' accommodation, which is where an individual is required to or has the option to live in certain accommodation for the purpose of their employment?

Yes

Q53: Should the Decent Homes Standard apply to farm business tenancies and agricultural holdings?

Yes

Q54: Do you have any other comments on the scope of the Decent Homes Standard, including other types of accommodation that you think should or should not be included in scope?

The DHS should apply as extensively as possible where residential properties are let in order to improve the living conditions of the majority and to drive up the quality of housing stock. Where informal or non-conventional homes are concerned, ideally the standard should extend to these, although CIH acknowledges the difficulty and resource issue for councils in that. Here we note that the use of such informal/ non-conventional arrangements is due in large part to the under-supply over many years of decent housing at affordable rents (most notably social rents) and addressing this underlying issue is a critical way to address the larger problems of our housing market.

Q55: What do you think will be the main impacts from bringing in a Decent Homes Standard in the private rented sector for both tenants and landlords? Please provide any evidence and further comments on impacts in the free text box.

- Improved tenant/landlord relationship
- **Fairer competition in the rental market**
- **Improved health for tenants**
- **Improved wellbeing for tenants**
- Increase in tenants' pride in their home
- **Improved communities**
- **Financial cost for landlords to make changes**

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- Landlords reducing their portfolio size
- Increased rents
- **Increased property values**
- Disruption for tenants whilst works are being undertaken
- Disruption for landlord whilst works are being undertaken
- **Other** - There are likely to be some initial problems and potentially landlords exiting the market. However, it is important that the scheme is introduced as part of the overall ambition to drive up the quality of rented accommodation.

Q56: There are risks that bringing in the Decent Homes Standard means landlords exit the market or that they pass costs on to tenants. Which of the below would you support to mitigate the risks of any negative impacts of introducing a Decent Homes Standard in the private rented sector? Choose as many as you would like.

Extended implementation timeline

Extended timeline within reason, and with the agreement of local councils - this will also help with increased demand on local trades and materials. Cost caps may also be appropriate to reflect the significant differences in rent levels as indicated by LHA rates, although we would prefer to see this reflected in further extensions of timescales in achieving the overall DHS, rather than settling potentially for a lower standard based solely on cost.

Q57: To what extent would you support bringing in a cost cap on criteria B, C and D of the Standard (e.g. on the non-safety elements of the Standard)?

Quite unsupportive

Q58: Do you think there should be a transitional 'grace' period before the Decent Homes Standard becomes a requirement, and when enforcement action can be taken?

Yes

Q59: If there were to be a grace period, what length of grace period should there be before the Decent Homes Standard becomes a requirement?

18 months

Q60: Do you think that we should phase in parts of the Standard. For example, to bring in criteria A and B in the first instance, before including criteria C and D at a future point

Unsure or don't know

Safety measures clearly take precedence, but otherwise we think that all of the measures within the DHS are important, and if any staging is to be agreed, it should be between tenant and landlord, reflecting tenants' priorities.

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Q61: If elements of the Standard were to be phased in, please rank the order you would want them to be brought in from first to last.

1. Criterion A: It meets the current statutory minimum standard for housing
2. Criterion B: It is in a reasonable state of repair
3. Criterion D: It has a reasonable degree of thermal comfort
4. Criterion C: It has reasonable facilities and services

Caveat: See above response to Q60.

Q62: If elements of the Standard were to be phased in, how long would you like to see between phases?

Less than 6 months

Any extension beyond this, only where there is agreement with tenant and local council.

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