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Supplementary information from: Residential Landlords Association



A report for the Residential Landlords' Association

## **The impact of regulation on the private rented sector**

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He was Lead Panel member of the Housing Market and Planning Analysis (HMPA) Panel of the Department of Communities and Local Government, from 2007-2010 and has advised many other public and private bodies. He also co-chairs the Economics Group of the European Network for Housing Research.

## About the Residential Landlords' Association

The Residential Landlords' Association (RLA) has over 14,500 subscribers representing 20,000 landlords in the private rented sector; who manage over 250,000 properties across the UK, with a total portfolio worth an estimated £40.6 billion.

The RLA seeks to promote and maintain standards in the sector; providing training for its members, promoting the implementation of local landlord accreditation schemes, and driving out those criminal landlords who bring the sector into disrepute. Some members also include letting and managing agents.

Members are required to subscribe to the RLA's code of conduct setting out their obligations to adhere to ethical standards, and ensure compliance with all relevant legislation.

Amongst its on-going aim for reform in the PRS, the RLA assisted in the establishment of the All-Party Parliamentary Group for the Private Rented Sector (APPG) in 2011, and currently provides the APPG with its secretariat.

For further information about the RLA please visit [www.rla.org.uk](http://www.rla.org.uk).

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## Disclaimer

This report has been written to inform and stimulate policy debate. While every effort has been made to ensure that the data and information are accurate, some errors may remain. In addition, it should be remembered that information in this field is variable in content and quality. The purpose of the report is to provide information, analysis and background regarding the UK's housing market and private rented sector. It is neither intended for use in advertising and promotions, nor for market forecasting and investment decision purposes, and no liability is accepted in either regard.

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## Executive Summary

### 1. Regulatory burden is growing

Though everyone seems to recognise the importance of market processes in the private rented sector, the regulatory burden is high and growing. The regulatory machine has swept along in a series of piecemeal measures driven by populist debate, many of which claim to have identified another 'market failure' requiring state controls. In addition, court rulings develop precedents that have to be followed in the future; adding further layers to regulatory creep.

There is a growing understanding in policy circles of the substantial scale of operating costs in the private rented sector, estimates of which range up to 30-40 per

*"...Getting operating costs down through re-assessments of the costs and benefits of aspects of the current regulatory regime and their impacts on landlords' operating costs would encourage investment and lower rents. Tighter controls do the opposite by raising costs and stifling investment incentives."*

cent of gross rents. However, at present, there is no move to examine the impact of regulations upon them. This report argues for the need to look at regulatory costs and the poor value for money associated with them.

Getting operating costs down through re-assessments of the costs and benefits of aspects of the current regulatory regime and their impacts on landlords'

operating costs would encourage investment and lower rents. Tighter controls do the opposite by raising costs and stifling investment incentives.

### 2. Regulation faces a fundamental problem of identifying bad behaviour

Much regulation in the private rented sector that aims to stop bad practice faces the problem that it is extremely difficult for regulatory agencies to identify exactly where it is occurring, to enforce penalties, and to monitor them. Cost effectiveness in such a context is likely to be poor.

### 3. Landlords are concerned about the rising tide of regulation

A survey of landlords, who were members of the Residential Landlords' Association, was conducted as part of the research. It showed that landlords were willing to support regulations that could deal with the problem of the reputation of the private rented sector being damaged by a minority of poor or crooked landlord behaviour.



However, opinions varied as to the effectiveness of legislation, with the overwhelming majority disturbed by the current scale of regulations and the ways in which they impact on their workloads and businesses.

There was a general feeling that legislation has grown significantly. Moreover, the ways in which legislation is currently enforced adversely affect landlords' ability to deal with arrears and problem tenants.

There were several big issues that really concerned landlords and, interestingly, two are of recent origin, reinforcing concerns about the growing regulatory burden:

- Tenancy deposit schemes
- Landlord and property registration
- Managing bad tenants

#### **4. Evaluation of the Tenancy Deposit Scheme**

Since 2007, deposits taken by landlords on new assured shorthold tenancies (AST) in England and Wales have had to be protected through a deposit protection scheme. There are now 2.4 million deposits protected, over 90 per cent of all ASTs. However, if a broad cost-benefit analysis is undertaken, the Tenancy Deposit Scheme looks expensive. Roughly, £7m of deposits annually are returned to tenants as they have been judged to have been unreasonably withheld. However, overall landlords' costs in fees and administration are 40 times greater, at over £275m a year, making the policy poor value for money. Though these costs initially accrue to landlords, they ultimately filter through to rents. So that the majority of tenants, as well as landlords, end up paying substantially for the policy that offers limited benefits in return.

#### **5. Landlord and property registration schemes are vague in aims and not cost-effective**

The requirement for residential investors to register with local authorities varies across the UK. Scotland and (soon to be) Wales have introduced landlord registration schemes aimed at improving 'professionalism' and checking whether people are fit and proper persons to be landlords. In England, local authorities have powers to designate areas as requiring landlord registration. Many have not used these powers, but the London Borough of Newham has recently designated the whole borough as a place where landlords must register.

In addition to regulations requiring landlords to be vetted by local government, some types of property also have to be registered under specific legislative requirements. Houses-in-multiple-occupation (HMOs) is a prime case. The conversion of existing homes to student accommodation is another example, which now requires planning permission in some designated areas.

All cases of landlord and property registration fail to be clear in their aims or how to measure success in achieving them. Vague statements form their basis, such as 'weeding out the rogues' and inducing 'greater professionalism', that are unquantifiable.

All imply universal coverage, but the worst operators are unlikely to conform. Instead, better quality landlords are faced with higher costs in terms of fees and administration and the aggregate benefit is limited or, more likely, negative.

Registration schemes can never be comprehensive because they face the

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fundamental information problem of not knowing what properties are rented out by whom. Rather than being comprehensive, they fall back on the threat of penalties for those that fail to register to try to ensure that high numbers do so. However, such threats are unlikely to impress the worst

landlords, because, after all, they are currently unfazed by the more draconian penalties they would probably face if their current poor practices were actually found out and punished. So, they are unlikely to co-operate.

In fact, poor landlords may react by being more covert in their operations. There are also significant costs in pursuing recalcitrant landlords, even if they are known; which both adds to overall scheme costs and acts as a disincentive for public bodies to chase miscreants.

All this suggests that registration schemes are doomed to fail in one of their key objectives - full coverage - with the worst of the sector unincorporated. With that, their fundamental aims cannot be met.

The Scottish Government's independent assessment of its scheme estimated that 15 per cent of landlords stayed unregistered, accounting for a full quarter of rental properties. Although this estimate is likely to be inaccurate, it points to the notable absence of properties in the register.

Registration schemes have turned out to be costly to run. Some costs of the Scottish scheme have become apparent following questions in the Scottish Parliament, with £11.1m in landlord fees and further initial public funding of around £5m. Added to those costs are landlords' time and other costs associated with registration, which are estimated here to be £3m for the 200,000 successful applicants. By contrast, only 40 landlords have been refused registration. This suggests that registration is highly cost ineffective.

## **6. Regulation fails to deal with bad tenants, through barriers to eviction**

The notion of being able to get back property relatively easily under the terms of an assured shorthold tenancy is severely compromised by the high cost of eviction and inefficient court procedures when the tenant does not go voluntarily. The overall time can be lengthy, running to months and occasionally years, and the outcome is uncertain up to the end. Anti-social tenants have no incentive to leave earlier as the landlord bears all the significant costs of the process, while they in effect stay rent free. Property management, investment returns, and the quality of service offered to other tenants are all detrimentally affected.

The landlord focus groups conducted as part of this research voiced this area as one where reform was urgently needed. They pointed out that it affects other tenants and neighbours as well as themselves.

More generally, the legal issues over managing bad tenants illustrate the limits and frustrations of state actions.

## **7. As the private rented sector is large, all regulation is costly**

The costs of the Tenancy Deposit Scheme and landlord registration illustrate a general consequence of regulatory control in the private rented sector, it is inevitably costly as there are millions of rental properties, tenants and landlords, yet universal state-determined requirements affect all of them. So, any regulatory action is likely to run into the millions or hundreds of millions of pounds in its impact on private rented sector operating costs.

This highlights the importance of only having regulation that leads to high levels of benefit, otherwise costs are likely to swamp any putative gains. Those benefits, moreover, need to be carefully measured and valued prior to legislation; given the near certain prospect that the cost of the new regulation itself will be high, no matter how 'light touch' are the claims made for it.

Getting the calculations wrong leads to:

- The introduction of poor-value-for-money regulation;
- Virtually irrevocable changes in the institutional framework of the private rented sector; and,
- Higher rents all round.

## **8. The costs of regulation discourage good landlords and encourage bad ones**

Regulation has a perverse effect of raising better landlords' costs but not those of poor ones, because unscrupulous landlords continue to ignore legislation and so face no costs of it. Therefore, paradoxically, regulation can worsen the position of

better landlords and, thereby, leave more of the market to bad ones. A situation of adverse selection, whereby the bad drives out the good, is created by policies that aim to do the opposite.

## 9. The poorest tenants and the most affordable properties are worst affected by the costs of regulation

Because most regulatory costs tend to be fixed sums rather than vary with rent levels, lowest rent properties are affected the worst by the negative impact of poorly-thought out regulation. So, poorer tenants and lower priced regions stand to gain the most through improving the efficiency of the regulatory regime.

## 10. Conclusions in brief...

- Further major private investment in rental housing is needed in the face of the UK's growing housing crisis. But it is likely to be held back by a failure to recognise the negative consequences of the way in which state regulation currently engages with the private rented sector.
- This is not to argue for a free-for-all. What is required is a holistic view of market processes, recognition of the limits of state engagement, and action to contain the regulatory burden.

*“...In contrast to current experience, a useful mantra for private rented sector policy debate would be ‘the benefits of regulation are often limited, but the costs are not.’*

- The sensible way to evaluate any proposal aimed at regulating the private rented sector is to undertake a cost-benefit analysis (CBA), comparing the costs, direct and indirect, with the value of the benefits expected to be achieved. Sensitivity analysis should be undertaken as well; particularly to counter any potential optimism bias.

- Policy should move beyond populist debate and a stampede towards more regulation. A good start would be an extensive review of the current regulatory framework, using rigorous data and cost-benefit analysis. Where good quality data are unavailable, policy should err towards the removal of regulatory control on the grounds of case not proven. Emphasis should also be put on avoiding the exaggeration benefits; on recognising the limits of state actions; and on a properly integrated analysis of the impacts on operating costs, investment, and rent levels.

- In contrast to current experience, a useful mantra for private rented sector policy debate would be 'the benefits of regulation are often limited, but the costs are not.'

## PART 1

### The impact of regulation on the private rented sector

#### 1.1. A growing burden of regulation

The UK's private rented sector is usually regarded as market led. It was freed up by legislation around a quarter of a century ago after decades of rigid and complex controls. However, there still exists a huge range of legally-binding regulations. They are not simply historic leftovers or necessary requirements for a functioning market but deliberate attempts by successive governments to control the behaviour of landlords and their agents. Moreover, the tide of regulation has been swelling in recent years and pressure for more mounts.

In mainstream debate, there is general recognition that the private rented sector is a modern economic and social success story. There are now over four million UK

*“...there has been a failure to recognise the cumulative impacts of regulation on the costs of providing rental housing... More restrictions are deemed necessary to tame perceived problems, notably the rotten few, but such regulations tend to fail in their stated objectives but, inadvertently, significantly raise costs.”*

households living in it. The number of dwellings has approximately doubled over the past 20 years and privately rented housing is now worth around £1.1 trillion. This scale and the speed of expansion in rental housing investment and consumption are without parallel, either historically or internationally. It is also recognised that market processes are central to that achievement and that sustaining of a free market is essential to maintaining investment and competition.

So, there is no apparent agenda of trying to reduce private renting to a tiny rump

in a way that was clearly the case in some political circles in the first half of the twentieth century. Instead, it will be argued here that there has been a failure to recognise the cumulative impacts of regulation on the costs of providing rental housing. Underpinning regulatory creep is a lack of an over-riding vision of how best to let market processes achieve desired housing ends.

In face of those absences, policy attempts to improve the operation of the private rented sector over the past decade have not been focused on trying to improve the efficiency of delivering housing services by limiting regulatory costs and impositions. Instead, the direct opposite has held sway. More restrictions are deemed necessary to tame perceived problems, notably the rotten few, but such regulations tend to fail in their stated objectives but, inadvertently, significantly raise costs.

How has this happened when everyone seems to recognise the importance of market processes? The regulatory machine has swept along in a series of piecemeal measures, many of which claim to have identified another 'market failure' requiring state controls. In addition, court rulings develop precedents that have to be followed in the future; adding further layers to regulatory creep. Indirect effects can add yet more. For example, legislation or court rulings may induce third parties to change their rules of engagement with landlords (contractors, insurance providers, etc.). Alternatively, legislation imposed on third parties may encourage them to charge landlords higher fees (as is likely with current independent moves to regulate lettings agents in England, Wales and Northern Ireland<sup>1</sup>). Taken altogether, regulations add up to having a substantial adverse impact on the costs of providing rented property and, in addition, they weaken market processes.

These trends are worrying because there is a real danger that the tide of regulation will erode the very mechanisms that led to the expansion of the private rented sector over the past two decades. The costs of unnecessary regulation affect all tenants as they raise rents.

Paradoxically, regulations also threaten quality. This occurs because the operating costs of those that obey the rules are raised, leaving more of the market to those that flout them. A significant part of the regulatory burden is also borne by taxpayers, mainly through forgone taxation caused by higher landlord costs.

Because most regulatory costs tend to be fixed sums rather than vary with rent levels, lowest rent properties are affected the worst by the negative impact of poorly-thought out regulation. So, poorer tenants and lower priced regions stand to gain the most through improving the efficiency of the regulatory regime.

The purpose of this report is, therefore, fivefold:

- To raise concerns about the market impacts of regulation;
- To highlight the costs imposed for often questionable benefits;
- To question the short-termism of the political processes by which tighter regulations come about;
- To argue that tenants are often not well served by policies that increase regulation; and,
- To suggest the need for a review of private rented sector regulations in order to instigate policy programmes that reduce current efficiency losses.

This is not to argue for a free-for-all. What is required is a holistic view of market processes, recognition of the limits of state engagement, and action to contain the regulatory burden.

Arguing for the benefits of market processes is scornfully viewed by some participants in debates as supporting landlords' profits against the interests of

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<sup>1</sup> M.Ball *Regulating residential letting agents: the issues and the options*, The Property Ombudsman, October, 2012.



tenants. However, that is a false conclusion because market processes are the main, and the least cost, protectors of tenants' interests. Encouraging greater supply by reducing the regulatory burden stimulates investment and competition between landlords for tenants. That typically raises standards far more effectively than state coercion.

The very existence of the modern private rented sector, which after all provides homes for millions of people, has depended on the investment stimulated by the return to market principles almost a quarter of a century ago. Official surveys show high levels of consumer satisfaction in the private rented sector that have been increasing over time, despite the breakneck expansion that has occurred in recent years.<sup>2</sup>

## 1.2. Focusing on operating costs

As the UK moves into growth, led by London, increases in rents are occurring due to a lack of supply in the face of burgeoning demand. More housing would be provided if it was profitable to do so. However, on top of a general shortage of housing, the 'operating costs' of providing rental housing are significant, which raise rents and discourage investment. Operating costs are the costs of running a rental housing business, rather than the property's direct capital and depreciation costs. They are associated with tenant and property management, vacancies and arrears, taxation and conforming to regulatory requirements.

There is a growing understanding in policy circles of the substantial scale of operating costs in the private rented sector. This is mainly due to the fact that large-scale investors are currently voicing reluctance to invest in housing because of them.<sup>3</sup> The recent Montague Report suggested that they were of the order of 30 per cent of gross rents. Others have come out with a higher figure of around 40 per cent.<sup>4</sup> Recent governments have been keen to encourage investment in the private rented sector. However, at present, there is no move to examine the impact of regulations upon those operating costs, though it would be a worthwhile route to pursue.

This suggests a rethinking of the current direction of regulatory policy away from ever more control. Getting operating costs down through re-assessments of the costs and benefits of aspects of the current regulatory regime and their impacts on landlords' operating costs would encourage investment. Tighter controls do the opposite by raising costs and stifling investment incentives.

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<sup>2</sup> *English Housing Survey, passim.*

<sup>3</sup> *Financial Times*, 11.6.13

<sup>4</sup> M. Ball, *Investing in private renting. Landlord returns, taxation and the future of the private rented sector*, RLA, 2011.

**Fig.1. The eight-step cycle of regulatory failure in the private rented sector**

### 1.3. The issue of the bad landlord and the problem tenant

It is widely recognised that most landlords offer an acceptable housing service.<sup>5</sup> Millions of tenancies are problem free for both the landlord and tenant. If that

were not the case, it is highly unlikely that the private rented sector would have expanded in the way it has over the past quarter of a century.

Nonetheless, in the midst of a multitude of mutually satisfactory rental transactions are some that go bad. This may be because of the actions of either landlord or tenant – a failure to undertake repairs; not paying the rent; etc. Some of them are chance events, with which the flexibility of the rental system can mainly cope. Nonetheless, in other cases the behaviour is deliberate and systematic. With regard to such actions on a landlord's part, regulation tries to protect the tenant, through safety, environmental health and housing laws and a variety of area, property type and landlord specific programmes. There is also growing recognition of the expense and misery bad tenants can create but to date that has resulted in limited policy action.

At issue is a relatively small amount of problem behaviour but the difficulty is identifying it and containing it, while keeping the efforts and costs of doing so within reasonable bounds. To expect perfect behaviour on either the part of all landlords and tenants is clearly unrealistic. The very flexibility of the private rented sector also means it is an easy port of call for those with criminal or malicious intent. Moreover, that characteristic could not be entirely removed even if draconian measures were introduced. On the positive side, flexibility and low transaction costs offer tenants the option of moving if problems with a tenancy arise, which can limit the extent of the burdens falling on them.

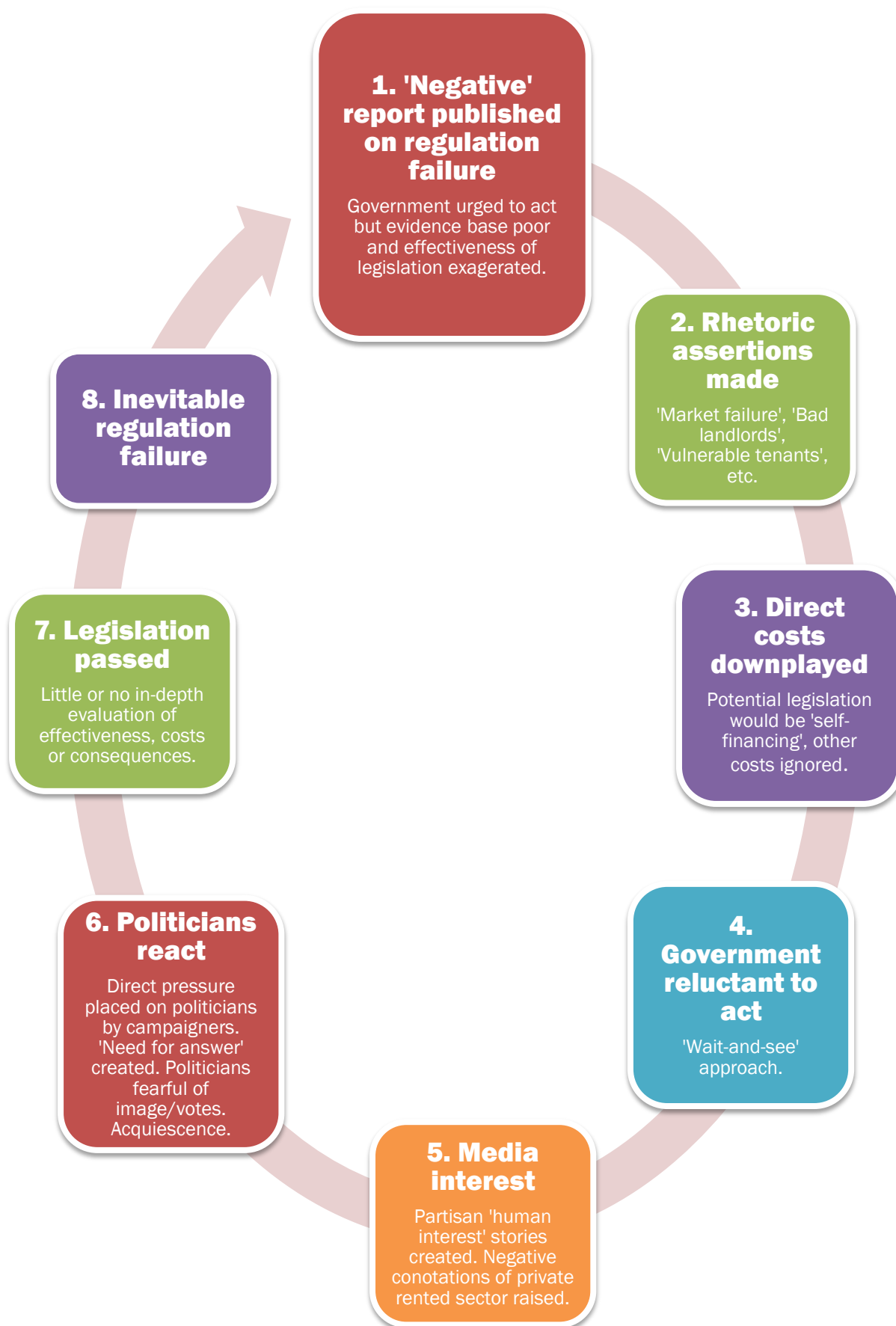
### 1.4. The populist drift towards greater state regulation of landlord behaviour

It would be wrong to disparage the genuine concerns of those pushing for state regulation. Instead, criticism needs to be directed at the high risk of poorly thought through legislation that is both costly and ineffective.

Unfortunately for rational discussion, policy debate over the private rented sector tends to be driven by a populist style of politics. Populism is a political creed that sees the people as fighting against the interests of elites. Substitute the words 'tenants' and 'landlords' and its use in housing policy debate can readily be seen in **an eight-step cycle of regulatory failure (see Fig.1)<sup>6</sup>**.

<sup>5</sup> See, for example, J. Rugg and D. Rhodes, *Review of Private Rented Sector Housing*, Centre for Housing Policy, York, 2008.

<sup>6</sup> 'The eight-step cycle of regulatory failure in the private rented sector' Model by Professor Michael Ball. Illustration by Richard Ashton.



A standard move towards additional private rented sector regulation starts the ball rolling with a 'survey' or 'report' discovering some negative event and saying that the government of the day should act. The evidence base may be poor; with the effectiveness of the proposed legislation exaggerated. Assertions may be made by the proposers of more legislation of widespread prevalence of the discovered poor practices. Stock phrases, such as 'market failure', 'unscrupulous landlords' and 'vulnerable tenants' abound. Direct costs may be downplayed, or ignored; sometimes, as with licensing, through claims of 'self-financing'. All other potential indirect costs are entirely neglected, though vital to any overall policy assessment.

Governments may initially be reluctant to act in face of such pressure but a campaign builds up. The media picks up on the issue and becomes partisan, as journalists emphasise the immediate 'human interest' side and muse on why the

*"...The worst cost of poorly thought out private rented sector regulation is the disincentive effect on investment. However, that is a long drawn out process. Short-termism predominates in consequence, with pro-overregulation rhetoric avoiding this key test. The dice are stacked in favour of more regulation."*

government of the day is so neglectful or hard-hearted. Politicians fearing for their images, or out for votes, join in campaigns or acquiesce to the pressure. Finally, the legislation comes on stream to widespread self-congratulation.

Rarely are in-depth evaluations of the effectiveness, costs or consequences of legislation conducted, either beforehand or once in place. Rather a classic ratchet effect occurs of incremental additions to legislation. As poorly conceived regulation unsurprisingly fails

achieve its ends; further calls for more are heard. The cycle continues and the regulatory burden grows in consequence.

Elements of the scenario just described can be seen in much policy debate over the private rented sector in the past decade. Evidence of it is highlighted in the case studies discussed below.

In this context, it helps to take a 'public choice' perspective on housing policy. In this economic approach rather than seeing housing policy debate in the common way it is portrayed as impartial attempts to improve the well-being of others, self-interested participants drive change. It clearly does not explain all peoples' actions which may be genuinely altruistic but does help to temper views that all debate is driven solely by social concern. That self-interest matters in housing policy is readily apparent: be it from campaigning groups out to show their effectiveness; politicians looking for votes; or interjections from those that gain employment and power in the broad regulatory industry or who have expectations of soon joining it. Moreover, such self-

interest also makes reversal difficult, even if it becomes apparent that legislation has failed to achieve its claimed ends.

The worst cost of poorly thought out private rented sector regulation is the disincentive effect on investment. However, that is a long drawn out process. Short-termism predominates in consequence, with pro-overregulation rhetoric avoiding this key test. The dice are stacked in favour of more regulation.

### 1.5. Regulatory 'failure'

It is important to position potential regulatory failure against any potential market failure in order to discount the notion that state action is a guaranteed solution to all ills. State regulation in the private rented sector faces formidable hurdles.

There are half-a-dozen basic questions to ask of any policy that prescribes actions to be taken in the private rented sector.

1. Has a problem been correctly identified?
2. Is the proposed solution appropriate, viable and cost effective?
3. Who gains and who loses?
4. Have potential undesired side-effects been fully evaluated?
5. How is the policy to be objectively monitored and appraised?
6. What happens if the policy does not work?

Answers to many of these questions often cannot be found in debates over specific policies. Yet consideration of them is critical and remains central to analysis and evaluation.

A particular issue in the context of the private rented sector relates to information, because policy with respect to the private rented sector faces severe information problems. Some relate to basic market data but of particular significance are the information problems inherent with market interactions. Regulation has to deal with a multitude of transactions between millions of tenants and landlords. Monitoring them and building up an evidence base against undesired actions is both costly and difficult. In fact, it is questionable whether an approach that requires such intensive investigation is an appropriate one. However, most regulation can only function effectively in that way.

Miscreants, instead of revealing knowledge of poor performance, wish to hide rather than advertise it and they will use a considerable amount of guile in doing so. Bringing them to court and enforcing other forms of punishment are consequently hard to achieve. Therefore, much regulation in the private rented sector that aims to stop bad practice faces the problem that it is extremely difficult for regulatory agencies to identify exactly where it is occurring, to enforce changes, and to monitor them. Cost effectiveness in such a context is likely to be poor.

In consequence, four features are commonplace:

1. An inability to target and punish poor performance;
2. Limited success;
3. Poor information with which to formulate and evaluate strategies; and,
4. High administrative overheads and other costs that may rise as efforts increase in the face of low achievement.

The fundamental information problem confronting regulators severely constrains what can be achieved. Costly strategies are necessary but outcomes may still prove to be ineffective or even negative in their effects.

Moreover, regulation is delegated to those charged with monitoring and enforcing it. This gives considerable leeway to agency, personal and local initiatives. For example, local authorities take different stances on enforcement, interpretation and the use of private rented sector related legislation. Some would argue that such

*“... ‘bad’ landlords may well continue to flout legislative requirements as much as they can get away with; given the low probability they face of being ‘caught’. In consequence, they will have lower costs than good ones... the bad ones will then be able to undercut the good ones, driving the latter out of the market... regulation may actually worsen the situation it claims to be improving.*

diversity offers direct experiments of the best way to implement legislation. However, countering that view is one that suggests that such a myriad of diverse actions may further add to policy confusion, difficulties and costs.

The information problem associated with unobserved actions typically leads to universal imposition of rules and regulations. Universal imposition is unfortunate because it imposes costs and actions on ‘good’ as well as ‘bad’ landlords. Faced with higher costs and more hassle, landlords will try to pass the costs on in higher rents; or quit the industry; or invest

less, particularly avoiding market segments where the regulatory burden is greatest. This paradoxically leads to adverse selection whereby the ‘bad’ drives out the ‘good’. First, landlords faced with higher costs may economise on other operating costs in order to finance the regulatory burden. One variable element of their operating costs is the budget for repairs and maintenance, thereby regulation costs may threaten accommodation quality. Second, ‘bad’ landlords may well continue to flout legislative requirements as much as they can get away with; given the low probability they face of being ‘caught’. In consequence, they will have lower costs than good ones. Unless tenants can discriminate perfectly between the two types of landlord, which is unlikely, the bad ones will then be able to undercut the good ones, driving the latter out of the market. In such situations, regulation may actually worsen the situation it claims to be improving.



Systemic negative impacts can also arise as a result of the secondary consequences of regulation. One of the most important is if regulation raises operating costs. Those high costs squeeze returns, which then lead to lower investment levels. The most clearly understood incidence of the highly damaging consequences of a collapse in investment induced by poorly thought out regulation can be seen in the example of traditional rent controls. But others, particularly in combination, have similar negative feedback effects.

## **1.6. Impact on rents**

Higher operating costs for landlords raise rents. The private rented sector has shown itself over the past two decades to be an industry where supply grows quickly in response to increases in the relative profitability of investment. This is possible, even in a context of generally tight housing supply, because much residential investment draws on the existing stock of housing, converting it from use in other tenures. At such times, moreover, investment may be made in stock conversions to a larger number of smaller-sized dwellings, extensions and modernisation; all of which add to rental supply and upgrade it.

This process of rental supply-side change is likely to be quicker in relation to increases than to declines. This is because landlords are likely to take some time unwinding previous investments in the face of structural market changes, such as the higher costs imposed by additional regulation. However, such asymmetrical adjustments are of less relevance when long-term impacts are of interest as they are in this case.

All this suggests that private investment in residential property is sensitive to relative rates of return. Operating costs clearly affect them significantly, so that over the long-run the pass-through of costs to rent levels is substantial. Most of the cost increases caused by regulation will therefore eventually be borne by tenants.

## **1.7. The cost benefit approach to evaluating regulation**

The sensible way to evaluate any proposal aimed at regulating the private rented sector is to undertake a cost-benefit analysis (CBA), comparing the costs, direct and indirect, with the value of the benefits expected to be achieved.

Sensitivity analysis should be undertaken as well; particularly to counter any potential optimism bias. In situations where data are limited, as is often the case with private renting, any estimates of the net benefits of change should err on the side of caution.

Once the information has been collated and future values discounted, decision-making rules can then be applied. In situations where the incidence of any poor behaviour is unknown (and expected to be random), the decision-making rule is simply that the aggregate benefits of regulation have to be greater than their costs.



However, in situations where landlords can signal probity to a degree, downward adjustments to the benefits should be made for risk-taking by tenants. There may also be grounds for assigning different weights the benefits to accruing to specific groups.

Policies already have broad CBA evaluations attached to them by sponsoring ministries in line with Treasury guidelines. However, these appraisals tend to be cursory, pro-the-policy exercises. They tend to rely on optimistic estimates of benefits and costs and examine direct impacts only; ignoring potentially adverse feedback effects.

## 1.8. The response of landlords

As part of this research, discussions were undertaken with landlords who were members of the Residential Landlords' Association (RLA). The main way in which this was undertaken was through three discussion groups conducted in North West and Southern England and London which around 40 landlords attended. Most were

professional landlords with the provision of rental housing their main business activity.

*"...In a democracy the law should be fair and impartial and seen this way by all parties. Yet the discussions with landlords indicate that they have little sense that legislation is for them, or can help them in their jobs as housing providers. This is particularly disturbing as private landlords now manage almost a fifth of the nation's homes."*

All three groups were keen to avoid the reputation of the private rented sector being damaged by a minority of poor or crooked behaviour. So, in principle, they were willing to support regulations that could deal with that problem. However, opinions varied as to the effectiveness of legislation; with the overwhelming majority disturbed by the current scale of regulations and the ways in which they impact on their workloads and businesses. There was a general feeling

that legislation has grown significantly (see Box 1 for its impact on the start of a tenancy). Moreover, the ways in which legislation is currently enforced adversely affect landlords' ability to deal with arrears and problem tenants.

In a democracy the law should be fair and impartial and seen this way by all parties. Yet the discussions with landlords indicate that they have little sense that legislation is for them, or can help them in their jobs as housing providers. This is particularly disturbing as private landlords now manage almost a fifth of the nation's homes.



### **'Starting a tenancy then and now': Evidence from a landlord**

*"When I bought my first rental property in 1994 ... I was required to give the tenants a notice of tenancy (a single page) a tenancy agreement (four pages) and if the tenant was paying cash, I further had to provide a rent book. All of these documents were purchased from a stationer and filled in by hand, five pages (duplicated for landlord) plus the rent book..*

*"For the most recent tenancy that I commenced ... I undertook an identity check and referencing. As a result of this I required a guarantor, entailing further background checks and a guarantor document. I further provided (as required by law) an energy performance certificate, a gas safety certificate, a periodic electrical installation inspection, a tenancy agreement, certificate stating that I have protected [the] deposit, (and the date that I did so), information about the scheme, a video and a paper inventory. I also asked the tenants to sign for the keys, which I photographed. Finally I asked the tenant to sign a letter, of my own authorship, but vital, to confirm that I have provided all of the above documentation.*

*"In all, this amounted to 59 pages of A4 plus a DVD. DVDs had not even been invented when I started, but now failure to provide any one of these [items] can lead to enforcement action, fines or automatic loss of up to three months' rent in the event that I need to seek redress for rent loss or damages through the courts."*

Some issues seem relatively small-scale but add-up. For example, some voiced concern about annual gas certificates. Why does a brand new boiler installed by a qualified person with a paper trail need a separate certificate as well? Why annual checks, immaterial of the equipment's age? The suggestion was made that replacement of older equipment would be encouraged by requiring less certification of modern ones.

Some criticisms concern local issues where officials are given considerable leeway. An example raised was the enthusiasm of some local authorities and their staff in trying to pursue landlords for council tax arrears incurred by previous tenants that did not pay them, even though council tax is solely the tenant's obligation not that of the

landlord. Another was the varying and sometimes unhelpful attitudes of environmental health officers in the ways in which they approach issues.

*"...A source of resentment was the unequal treatment of the private rented sector. Rules are imposed on it but not on other housing tenures... Private landlords felt frustrated that they are always treated as potential devils, while social landlords are always seen in official eyes and political rhetoric as angels. In contrast to such publicly aired views, it was pointed out that surveys of tenant satisfaction actually show better results for the private sector.*

Some noted their negative experiences of dealing on a day-to-day basis with parts of local authorities which ostensibly had an overall pro-private rented sector policy. The reality behind the supportive rhetoric left landlords perplexed.

A source of resentment was the unequal treatment of the private rented sector. Rules are imposed on it but not on other housing tenures. There is not even conformity across the private and social rental sectors. Private landlords felt frustrated that they are always treated as potential devils, while social landlords are always seen in official eyes and

political rhetoric as angels. In contrast to such publicly aired views, it was pointed out that surveys of tenant satisfaction actually show better results for the private sector. Nor is the social housing stock consistently in tip-top condition. It was further noted that it is impossible to obtain comparative statistics regarding adverse health and safety events across the two rental tenures, or for that matter including owner occupation. Some discussants voiced the view the private rented sector would probably come out well from such comparisons.

In a similar vein, respondents were bemused that some health and safety requirements are deemed absolutely and expensively essential in private renting but not elsewhere. Equally bewildering were rules that differentiated between household types on what seem spurious grounds. For example, strict rules are required for houses-in-multiple occupation (HMO) that add considerably to the expense of

operating in this segment of the market, but when a tenancy is let to a group that claims to be a large family then HMO rules do not apply; even if the number of people involved is actually greater.

There were several big issues that really concerned landlords and, interestingly, some are of recent origin; reinforcing concerns about the growing regulatory burden:

- Tenancy deposit schemes
- Landlord and property registration
- Managing bad tenants

These will be examined in more detail below; treating each one as a case study of the issues raised above. It is beyond the scope a report like this to undertake a

*“...over 90 per cent of assured shorthold tenancies now fall within the remit of tenancy deposit schemes ... However, a high coverage is not indicative of the actual benefits of the scheme but of the incentives used to ensure conformity to the regulatory rules. It was achieved by giving tenants an incentive to complain and landlords the threat of a significant cost penalty if they do not follow the rules of having to pay the tenant up to three times the deposit.*

detailed enquiry into them. Rather the aim is to draw together sufficient material to highlight some consequences of the regulatory burden and its impact on operating costs in the private rented sector.

## PART 2

### Case studies

#### 2.1. Tenancy deposit schemes

Since 2007, deposits taken by landlords on new assured shorthold tenancies in England and Wales have had to be protected through a deposit

protection scheme.<sup>7</sup> Three schemes operate under government contract; one of them is custodial and the others are insurance based. There are similar measures elsewhere in the UK.

The objectives of the policy are to ensure that tenants get back the deposits to which they are entitled; to encourage good practice; and to make an alternative disputes procedure available.<sup>8</sup> However, the simple cost-benefit analysis undertaken here suggests that the overall costs of this policy vastly outweigh the benefits. As those costs filter through to higher rents, most tenants who have no problem with deposits end up paying higher rents, while only a very small percentage of tenants get monies back they may not have done otherwise (but even they still pay higher rents as well,

<sup>7</sup> A good background source is *Tenants' deposits*, House of Commons Library SN/SP/2121, March 2012.

<sup>8</sup> DCLG, *Tenancy Deposit Protection Overview*, 2006.

offsetting some of those gains). A new, profitable insurance 'industry' has also arisen on the basis of the legislation.

Estimates made by The Tenancy Deposit Service (TDS), the provider that commendably makes available good, easily accessible information, suggest that over 90 per cent of assured shorthold tenancies now fall within the remit of tenancy deposit schemes; with 2.4 million deposits protected, worth £2.3m.<sup>9</sup> On this criterion alone, the scheme seems a huge success. Most landlords who are supposed to use the schemes are doing so.

However, a high coverage is not indicative of the actual benefits of the scheme but of the incentives used to ensure conformity to the regulatory rules. It was achieved by giving tenants an incentive to complain and landlords the threat of a significant cost penalty if they do not follow the rules of having to pay the tenant up to three times the deposit.

If a broad cost-benefit analysis is undertaken, the programme looks expensive even solely in its direct cost terms. The costs of the scheme initially accrue to landlords and they are over 40 times the value of the deposits recouped by tenants and run into the hundreds of millions of pounds annually. Those costs then filter through into rents. So, the majority of tenants, as well as landlords, end up paying for the policy.

The summary is as follows:

- |  |                    |
|--|--------------------|
| • Additional deposits recovered by tenants on a current annual basis | £7m                |
| • Annual fees & other landlord costs                                 | £276m              |
| • <b>Net benefit</b>   | <b>minus £269m</b> |

The detailed calculation on which those estimates are based is presented in Table 1. It utilises TDS' estimates for 2012 of the total number and value of protected deposits and the pay-out ratio to tenants, across all the schemes in operation. Insurance fees are based on currently advertised information, and the other, custodial, scheme is assumed to have a similar cost.

In addition to the costs already noted, data were provided by the RLA on landlords' costs, excluding insurance, associated with the overall deposit scheme. These additional landlord costs are principally associated with: the time taken at the beginning and end of a tenancy for the inventory; photographs; discussions with tenants (costed at £15 per hour); plus administration and ICT costs. (The costings assume no end of tenancy dispute and would escalate if one arises.)

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<sup>9</sup> *Tenancy Deposit Protection. An evaluation of the legislation, five years on*, TDS, 2012. It should be noted that the average deposit seems low for the coverage of deposits suggested. Average rents were £797 in 2012 and as deposits were typically of 4 weeks or more rent.

*Table 1: Tenancy deposit regulation cost-benefit analysis based on direct landlords' costs and tenants' benefits*

1	Average cost of insuring a deposit £	20.00
2	Average life of a tenancy (years)	1.5
3	Number of deposits protected m.	2.37
4	<b>Total annual cost of insurance £m</b>	<b>31.66</b>
5	Total value of protected deposits £m	2,325
6	Average value of a deposit £	979
7	Disputes as % of total deposits	0.85%
8	Approximately half of disputes awarded to tenant	0.43%
9	<b>Annual deposits recovered by tenants £m</b>	<b>6.67</b>
10	Average landlord costs (ex. fees) £	102.9
11	<b>Total landlord costs (ex. fees) £m</b>	<b>243.87</b>
<i>Summary</i>		<i>£m</i>
	Benefit to tenants	6.67
	Cost to Landlords (fees + other costs)	275.53
	<b>NET BENEFIT</b>	<b>- 268.86</b>

By way of a sensitivity analysis, it can be seen that by far the largest cost element is the non-fee costs of landlords. Yet, even if they are assumed to be only half of the estimate provided, the scheme's benefits are still hugely negative. The estimate insurance fees alone are five times those of the tenant pay-out.

At present, fee levels lead to high provider returns, following a couple of years of initial high set up costs. For example, TDS, a not-for-profit scheme, made a 33 per cent operating surplus before tax, according to its 2012 accounts. Fees may come down in future, if the competition for members is sufficiently strong between the providers or due to government regulatory engagement in a scheme that they license. Yet, even if fees fell by substantial amounts, tenant gains would still be much less than the programme's overall costs.

One, perhaps unexpected, feature of the scheme is that some landlords and lettings agents are now utilising the programme as a means to justify retaining deposits to cover tenant generated costs. In fact, they utilise them to roughly to the same degree as tenants. For them, it provides an independent, third party, if somewhat time-consuming, way of legitimising retentions. However, again, the relative scale of successful results is again tiny at less the 0.5 per cent of tenancies. Moreover, such landlord actions were not one of the stated objectives of the policy. Landlords have other options in this regard; so inclusion of it as a benefit is questionable. In any case, that activity would not improve the cost-benefit ratio by much.

Apart from these conclusions about the value-for-money of the programme, there are four further points of note. They relate to the broader issues raised earlier regarding



the use of data in private rented sector policy debate as well as to the effectiveness and costs of regulation. Taken together they show considerable evidence of the validity of the over-regulation scenario outlined earlier.

### **2.1.1. The relative usefulness of particular sources of data**

Not all data are equal in rigorousness and all have to be interpreted carefully. A failure to recognise these issues may lead to biases and exaggerations.

For example, the estimate used in the evaluation of the tenancy deposit schemes here (as shown in Table 1) was of the percentage of all terminating tenancies that led to a formal complaint about a withheld deposit. The reported very low percentage exists despite the fact that the costs to tenants of using tenancy deposit schemes to gain fair redress are small, with the onus of providing information and proof falling on the landlord.

By contrast, survey evidence measures a much higher incidence of tenant deposit complaints when people are asked at the end of a tenancy whether they think that landlords unfairly withheld deposits. The English Housing Survey has consistently been reporting around 30 per cent of tenants saying that part or all of their deposit was deducted and, of those, around a half felt that the monies should not have been withheld. Therefore, 15 per cent of all ending ASTs, according to this measure, have part of all of the deposit 'unreasonably' unreturned; a much greater sum than the less than half a per cent figure used here.

Yet, the two sources of data cannot be reasonably regarded as having equal weight when evaluating tenant deposit issues. The survey evidence is likely to be affected by respondent biases and self-interest and, so, tends to exaggerate the scale of the issue in consequence. The data from independent adjudicators showing a much lower incidence of problems are preferable, because they are based on tenants making clear commitments to recovering money. The independent evaluation of those claims in regard to the fairness of their complaint is far preferable as a data source than information based on quick, off-hand, unverifiable responses to survey questions.

### **2.1.2. The incidence of tenant complaints has been much lower than that estimated prior to legislation**

Claims of the scale of the tenancy deposit problem made prior to the legislation turned out to be much higher than the actual incidence measured after it was introduced.

A report by the National Association of Citizens Advice Bureaux (NACAB) in 1998, *Unsafe Deposits*, claimed that as many as 48 per cent of tenants had a deposit unreasonably withheld. This, it argued, made the case for action was 'overwhelming'. The report was highly influential and instrumental in kick-starting the campaign that led to the introduction of the 2004 legislation. However, the post-policy information



cited above indicates that the NACAB study produced a questionable estimate of deposit problems. In fact, it seems in the light of subsequent experience that the report over-estimated the problem a hundred-fold.

One possibility is that the behaviour of landlords dramatically changed once the tenancy deposit schemes came into operation. However, the scale of the difference in the estimates suggests that this is a poor explanation. Moreover, there is nothing in the tenancy deposit legislation to stop landlords from being litigious and arguing to the bitter end over the return of deposits if they so wish. The reality is that few chose to do so.

### **2.1.3. Problems are still said to exist**

Despite the high penetration of the tenancy deposit scheme, the media continues to report problems. For example, the *Guardian* on 12<sup>th</sup> June 2012 reported, "...Complaints from tenants about problems with rental deposits have soared by 86 per cent in the past two years, according to the housing charity Shelter."

Amongst other issues, this raises the questions regarding the effectiveness of the legislation in rooting out problems. Unfortunately, unscrupulous people will still try to rip people off no matter what the law says. One scam is to claim that deposits are protected when they are not. However, if people ignore the rules and tenants do not check adequately, there is little that regulation can do.

### **2.1.4. The costs are far higher than envisaged**

The estimates indicate that the tenant deposit scheme is a high cost operation. This is unsurprising as there are millions of rental properties and universal requirements affect all of them. Even if a programme is designed to cover only a portion of the private rented sector, the total cost of regulation will always be substantial as it will inevitably cover a large number of properties. So, any action that raises the regulatory burden is likely to run into the millions or hundreds of millions of pounds in its costs.

This highlights the importance of only having regulation that leads to high levels of benefit; otherwise costs are likely to swamp any putative gains. Those benefits, moreover, need to be carefully measured and valued prior to legislation; given the near certain prospect that the cost of the new regulation itself will be high, no matter how 'light touch' are the claims made for it. Getting the calculations wrong leads to the introduction of poor-value-for-money regulation; virtually irrevocable changes in the institutional framework of the private rented sector; and higher rents all round.

Another factor pointing to the need for greater regulatory caution is that most transactions in the private rented sector go smoothly. So, those 'good' tenants and landlords see none of the potential gains from a piece of legislation but bear a significant share of its costs. The fairness of such a distributional outcome is highly questionable.

Finally, on the cost side, the scale of the costs to landlords of the tenancy deposit schemes should be noted. Such costs are rarely encompassed in debates over the need for more regulation but, as can be seen from this example, they often are the most important items. Higher landlord operating costs lead to higher rents, so that omission of them seriously distorts rational debate over the efficacy of regulation and the benefits that tenants derive.

## 2.2. Landlord and property registration

The requirement for residential investors to register with local authorities varies across the UK. Scotland and (soon to be) Wales have introduced landlord registration schemes aimed at improving 'professionalism' and checking whether people are fit and proper persons to be landlords. In England, local authorities have powers to designate areas as requiring landlord registration. Many have not used these powers, but in 2013 the London Borough of Newham designated the whole borough as a place where landlords must register.

In addition to regulations requiring landlords to be vetted by local government, some types of property also have to be registered under specific legislative requirements. Houses-in-multiple-occupation (HMOs) is a prime case. The conversion of existing homes to student accommodation is another example, which now requires planning permission in some designated areas.

The basic question to ask of these measures, once again, is 'do the benefits of these policies outweigh the costs?' Scepticism should prevail until that question is answered. Examining landlord registration shows that doubt is often proved right.

Moves towards landlord registration really took-off following a recommendation for universal registration by the Rugg Report.<sup>10</sup> The last Labour Government was going to introduce a scheme for England, with 'no hurdles to entry', but failed to do so. Its response to the Rugg Report stated the aims of the proposal:

*"We see the introduction of a national register as vital to the professionalisation of the sector. It clarifies the fact that being a landlord is an important activity in itself with linked responsibilities and skills." (Para 15, The private rented sector: professionalism and quality. The Government response to the Rugg Review Consultation, DCLG, 2009).*

The problem with such an aim is explaining how conforming to a compulsory register alone changes below par landlord behaviours. Measurement and evaluation of the programme's effectiveness was going to be difficult with something as ill-defined as professionalisation. The current Scottish scheme is slightly more precise in that one aim is to allow neighbours to contact landlords and the other is to "weed out rogue landlords", though mechanisms to measure and evaluate such outcomes remain

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<sup>10</sup> *Op. cit.*

problematic. Some have also argued that registration kick starts forums, advice, and other landlord/local authority interactions,<sup>11</sup> though why registration is necessary for them remains unjustified.

Registration schemes face the fundamental information problems identified earlier in this report. This dooms them to almost certain failure to achieve their objectives. Meanwhile registration schemes have proved costly to implement for both local authorities and landlords.

One goal for a registration scheme is that it has to encompass all private rented sector activity if it is to have any serious potential for monitoring and limiting poor landlord behaviour. Yet, how is it possible to know the coverage achieved accurately? To be able to do that, some other reference mechanism is required that is able to identify the tenure status of all properties in a locality and how their tenure status changes over time. Such a public register of properties and their tenures does not exist. (Existing official registers of property title in the UK do not identify tenure). Moreover, if such a register did exist, a separate landlords' registration scheme would be redundant.

Registration schemes, instead of actually being comprehensive, fall back on the threat of penalties for those that fail to register to try to ensure that high numbers do so. However, such threats are unlikely to impress the worst landlords, because, after all, they are currently unfazed by the more draconian penalties they would probably face if their current practices were actually found out and punished. So, they are unlikely to co-operate. In fact, poor landlords may react by being more covert in their operations (or conduct their businesses through nominees). There are also significant costs in pursuing recalcitrant landlords, even if they are known; which both adds to overall scheme costs and acts as a disincentive for public bodies to chase miscreants. This suggests that registration schemes are doomed to fail in one of their key objectives - full coverage - with the worst of the sector unincorporated.

The Scottish Government's independent assessment of its scheme estimated that 15 per cent of landlords stayed unregistered, accounting for a full quarter of rental properties.<sup>12</sup> Although this estimate is unlikely to be accurate, given the comments made above, it points to the notable absence of properties in the register. Moreover, those missing landlords and properties probably contain the most problematic, in quality terms, parts of the country's private rented sector. Few tenants are likely to discriminate between properties based on whether landlords are registered with a local authority or not, so the impact on market quality at best is consequently going to be limited.

Regarding the scheme's objectives, neighbours are neither going to be helped in those missing cases; nor are genuinely bad landlords likely to feel threatened by the

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<sup>11</sup> E.g. *Landlord registration in Scotland: three years on*, Scottish Shelter, 2009.

<sup>12</sup> *Evaluation of the Impact and Operation of Landlord Registration in Scotland*, Scottish Government, 2011.

fear of the discovery of a lack of registration, as they are almost certainly operating beyond the law in any case. In fact, a compulsory registration scheme to which they do not belong might well push poor landlords further into the 'dark side'. Rogues do not register and naming and shaming is of limited use in such situations.

Registration schemes have also turned out to be costly to run. Some costs of the Scottish scheme have become apparent following questions in the Scottish Parliament, with £11.1m in landlord fees and further initial public funding of around £5m. Added to those costs are the landlords' time and other costs associated with registration. Even if landlords only have to spend an hour on conforming to the Scottish scheme that time spent would add a further £3m in costs for the 200,000 successful applicants (valued at £15 per hour). Set beside these costs is the benefit of the weeding out of potentially poor landlords. But that has happened to only a handful, with only 40 landlords refused registration.

Landlords in the past have voiced complaints about registration and the focus groups conducted as part of this research were equally vocal, especially in respect of those that had direct experience of them. They argue that it has adverse effects on renting property in low rent neighbourhoods where margins were already small. The costs and time absorbed act as disincentives to sustain quality and to invest in such areas. Such comments point to the adverse selection argument made earlier; whereby conforming to the costs of regulation may drive out better quality providers leaving the field to poor ones that the regulation ostensibly was trying to root out.

One local authority has recognised that its experience of area-based landlord registration schemes has shown the inappropriateness of the policy. Manchester City Council is to let its trial area schemes, in operation since 2007, run their course but acknowledges that they have not worked.<sup>13</sup>

### **2.3. Managing bad tenants**

An area of concern for landlords is the length of time it takes and the costs required to evict tenants who fail to pay their rent or behave in an anti-social manner. With ASTs, despite their design as a limited security of tenure tenancy, eviction in practice is neither speedy nor cheap when the tenant does not go voluntarily. A correctly worded two-month notice to quit is required; following which application can be made to the court for a possession order; after which a warrant for eviction has to be applied for and bailiffs brought in. Given the queues before obtaining a slot in court procedures, the overall time can be lengthy, running to months and occasionally years, and the outcome is uncertain up to the end. Anti-social tenants have no incentive to leave earlier as the landlord bears all the significant costs of the process.

The landlord focus groups conducted as part of this research voiced this area as one where reform was urgently needed. They pointed out that it affects other tenants and

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<sup>13</sup> *Property Week*, 15.3.13.

neighbours as well as themselves. Measures in relation to anti-social behaviour have been included in the recent (May, 2013) Anti-Social Behaviour, Crime and Policing Bill. However, there is uncertainty over the effectiveness of the legislation, if it does become law.<sup>14</sup>

However, the issue is more general than solely related to anti-social behaviour, because the snail's pace of court processes mean that landlords can rarely evict someone who has broken a tenancy agreement within reasonable time frames. Therefore, at the present, the notion of being able to get back property relatively easily under the terms of an AST is severely compromised by the high cost of eviction and inefficient court procedures. Property management, investment returns and the quality of service offered to other tenants are all detrimentally affected.

## Conclusions

Regulation is a central part of the way in which the UK's private rented sector operates. There is a mass of rules and housing law. The argument here is that taken altogether, regulations add up to having a substantial adverse impact on the costs of providing rented property and, in addition, they weaken market processes. Furthermore, they often fail to achieve their aims.

There is a need both to simplify the regulatory framework and to hold back on further moves towards more. Rigorous cost-benefit scrutiny should be applied to all policies and many current rules would fail that test.

There is a serious danger that excessive regulation will shrink the private rented sector because of the disincentives imposed on investment. The often made claim that tenants benefit from more controls, which are needed to raise standards, is misplaced. The opposite is often the case as such controls discourage better landlords from investing. Less investment typically leads to poorer housing quality. The surge in investment in the private rented sector over the past decade has been

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<sup>14</sup> *Strengthening Powers of Possession for Anti-Social Behaviour. Summary of responses to consultation and next steps*, DCLG 2012.

the driver of rising housing standards, not regulation. Furthermore, high operating costs raise rents, so tenants end up bearing much of the burden of regulation.

Further major private investment in rental housing is needed in the face of the UK's growing housing crisis. But it is likely to be held back by a failure to recognise the negative consequences of the way in which state regulation currently engages with the private rented sector.

Policy should move beyond populist debate and a stampede towards more regulation. A good start would be an extensive review of the current regulatory framework, using rigorous data and cost-benefit analysis. Where good quality data are unavailable, policy should err towards the removal of regulatory control on the grounds of case not proven. Emphasis should also be put on the avoidance of exaggerating benefits; on recognising the limits of state actions; and on a properly integrated analysis of the impacts on operating costs, investment, and rent levels. In contrast to current experience, a useful mantra for private rented sector policy debate would be 'the benefits of regulation are often limited, but the costs are not.'