

# A Decent Homes Standard in the private rented sector

CIEH response to a Department for Levelling Up, Housing and Communities consultation

October 2022

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## About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors, in 52 countries around the world. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

For more information visit [www.cieh.org](http://www.cieh.org) and follow CIEH on Twitter @The\_CIEH.

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## Introduction

We welcome, in principle, the Government's commitment to make privately rented homes meet a Decent Homes Standard (DHS) and to halve the number of non-decent homes across all tenures by 2030.

We are concerned, however, about how this commitment will be implemented in practice. In particular, we are concerned about how the DHS set out in the consultation would interact with existing standards such as the Housing Health and Safety Rating System (HHSRS) and the Minimum Energy Efficiency Standard (MEES).

In April 2022 a report from the House of Commons Committee of Public Accounts on regulation of private renting said:

The dozens of legislative powers used by local authorities are complex and spread across multiple enforcement bodies, creating a fragmented and disempowered regulatory system.<sup>1</sup>

The DHS set out in the consultation would add another layer of complexity to this system, especially as it overlaps with existing standards. Thermal comfort, for example, is already addressed in the 'excess cold' part of the HHSRS and the Energy Performance Certificate calculation in the MEES. We would like to see the various standards being consolidated to provide clarity for landlords, tenants and local authorities. There is a strong case for bringing them together within a single standard.

We are also concerned that the Government is creating an additional layer of enforcement obligations for which local authorities do not have enough overall resources or enough environmental health practitioners. While an extension of the powers of local authorities to deal with poor quality housing is to be welcomed, it needs to be accompanied by additional resources so that these powers can be used effectively.

We have answered the consultation questions in the section below and through the online survey. Our answers should be read, however, alongside the following additional comments for which there are no free text boxes available in the relevant sections of the survey.

- *Question 12 (whether we support the DHS as set out in the consultation):* We are answering 'Don't know' to this question in the light of the concerns set out above.
- *Question 16 (whether failure to meet the DHS should be a criminal offence):* We are answering 'Unsure/Don't know' to this question on the basis that it remains unclear (1) how the DHS will fit in with the HHSRS, (2) what resources will be made available to local authorities and (3) how the First-tier Tribunal will be reformed to cope with the extra work.
- *Questions 17-19 (measures that can be taken against offenders):* We believe that, if failure to meet the DHS does become a criminal offence, the measures mentioned in questions 17-19 should be available.

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<sup>1</sup> House of Commons Committee of Public Accounts, [Regulation of private renting](#), 13 April 2022, p. 6.

- *Question 19 (banning orders):* We note that proportionality issues arising under the Human Rights Act would need to be addressed.
- *Question 43 (role for other providers):* We would not wish to reach a position in which other providers have to be given a role because of insufficient local authority resources.

## Responses to consultation questions

### About you

1. In which capacity are you completing these questions?
  - Membership and awarding body for the environmental health sector
2. If responding on behalf of an organisation, please specify which organisation:
  - Chartered Institute of Environmental Health
3. If responding as an individual, where do you live? If you are responding as part of an organisation, where are you primarily based?
  - Spread evenly across the UK/National organisation

[Questions 4-11 are not applicable to CIEH.]

### 3. The Decent Homes Standard

#### *Proposed standard for the private rented sector*

12. Do you support bringing in and enforcing the Decent Homes Standard, as set out above, in the private rented sector?
  - Don't know
13. How clear is the Standard as set out?
  - Very unclear
14. How difficult do you believe the Standard will be to meet?
  - Quite easy
15. 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 change the Standard to remove 'old' so only the condition is relevant?
  - Yes

### 4. Enforcement of a Decent Homes Standard in the private rented sector

#### *Landlord duty to meet the Decent Homes Standard*

16. Do you think that a landlord's failure to meet the Decent Homes Standards should be a criminal offence?

- Unsure/Don't know

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

- Local councils should have the option to issue civil penalties or prosecute

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

- Yes

19. 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?

- Yes

#### *Exemptions from the duty*

20. 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)?

- No, exemptions should exist but not at the discretion of local councils

21. In some instances, carrying out Decent Homes Standard work or repairs without permission would put the landlord 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 the Decent Homes Standard to be set out in legislation?

- No, this should not be an exemption

22. Do you think 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 does not meet the Standard?

- No, this should not be an exemption

23. Do you think 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

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

- No, this should not be an exemption

25. 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?

- No, this should not be an exemption

26. 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.)?

- No, this should not be an exemption

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

- We believe that, in general, the exemptions mentioned in this section are unnecessary because there is already a test of reasonableness that can be applied in relation to enforcement action. Local authorities could publish enforcement policies that address the issue of proportionality.

#### *Responsible person for the landlord duty*

28. 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.

#### *Registering Decent Homes Standard compliance on the Property Portal*

29. 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?

- No

[Question 30 is not applicable to CIEH.]

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

- Yes

32. 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.

- Please see relevant comments in the section entitled “Introduction” in the version of this consultation response that is being submitted by email. We would welcome an opportunity to contribute to further discussions on this issue.

*Duty on local councils to investigate Decent Homes Standard complaints and report on enforcement action*

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

- Yes

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

- Yes

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

- Both their local community and central government

36. [For local councils only] How important would standalone enforcement guidance be to assist local councils in enforcing the Decent Homes Standard?

- Very important

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

- With regard to question 35, we note that central government needs to sort out problems with its portal.

*Provide local councils with powers to remedy properties that do not meet the Standard*

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

- Yes, they are useful

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

- Yes

40. Do you think local councils should have the power to undertake emergency remedial works?

- Yes

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

- Yes

*Clarify in legislation that landlords do not have a right to attend local council inspections*

42. 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]?

- Yes

*Providing advice on decency*

43. 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/Don't know

44. 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

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

- Yes

*Scope of application of the Decent Homes Standard*

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

- Yes

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

- Yes

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

- Yes

49. Should the Decent Homes Standard apply to property guardians, where empty buildings are temporarily used for accommodation to provide security?

- Yes

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

- Yes

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

- Yes

52. 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

53. Should the Decent Homes Standard apply to farm business tenancies and agricultural holdings?

- Yes

54. 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?

- With regard to question 49, we have answered 'Yes' but, if property guardians are included, there will need to be detailed guidance about what forms of licence to occupy are included, and explanations about how to assess suitably located and appropriately sized kitchens, bathrooms and toilets in buildings that were not designed to be residential accommodation and which may have unusual commercial/industrial configurations. The definition of the curtilage needs to form part of the information. With regard to questions 51-53, we have answered 'Yes' on the basis that these types of premises should be covered by both the HHSRS and the DHS. We do not believe, however, that it would make sense to apply the DHS to them while they are not covered by the HHSRS. Also, we believe that airbnbs should be covered by the DHS as well as by the HHSRS.

## **5. Impacts and costs**

55. 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.

- We believe that the DHS set out in this consultation could cause considerable confusion and increased litigation. Also, the possible impacts listed in the consultation in relation to this question should be addressed as part of an impact assessment.

56. 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

57. 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)?

- Strongly unsupportive



### *Transitioning to the Standard*

58. 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, there should be a grace period

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

- 12 months

60. 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

- No, all elements of the Standard should come in at the same time.

61. 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.

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

- There should not be any phasing