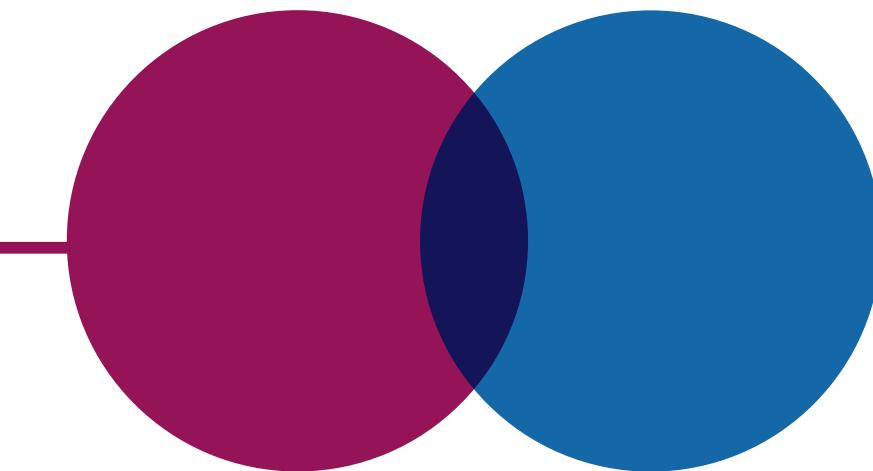




National Audit Office



Regulation of private renting

Department for Levelling Up, Housing & Communities

REPORT
by the Comptroller
and Auditor General

SESSION 2021-22
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Regulation of private renting

Department for Levelling Up, Housing & Communities

Report by the Comptroller and Auditor General

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Commons in accordance with Section 9 of the Act

Gareth Davies
Comptroller and Auditor General
National Audit Office

6 December 2021

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Key facts

4.4m

estimated number of households in the private rented sector in England, renting from at least 1.5 million landlords or more

36

number of key pieces of legislation relating to the private rented sector

13%

estimated proportion of privately rented homes with serious health hazards, compared with 10% of owner-occupied homes and 5% of social housing

23%

estimated proportion of privately rented homes classified as non-decent, rising to 29% for renters receiving housing support

25%

proportion of English landlords surveyed who said they were unwilling to let their properties to non-UK passport holders

£9.1 billion

estimated amount of housing support paid to private renters or directly to private landlords in England in 2020-21

65

number of local authorities in England (out of 308) we have been able to identify as having run a landlord licensing scheme beyond minimum requirements since 2010

10

number of landlords and letting agents banned since banning orders were introduced in 2016

18 months to September 2021

duration of longer notice periods for evictions during the COVID-19 pandemic

Summary

1 There are an estimated 4.4 million privately rented households in England. While most tenants have a good experience of renting, those who do not may find it contributes to serious illness, financial issues or homelessness. For example, poor-quality housing can pose serious risks to health and safety through electrical hazards, infestations and damp. Poor conduct by landlords and letting agents, such as overcharging, harassment or illegal eviction, can also affect tenants' wellbeing.

2 The Department for Levelling Up, Housing & Communities (the Department) – formerly the Ministry of Housing, Communities & Local Government – aims to ensure the rented sector is fair for tenants, and to protect them from such harms. It legislates and creates policies used to regulate the sector, including 36 key pieces of legislation setting obligations for landlords and letting agents and enforcement arrangements. For example, minimum property standards are defined within five different Acts of Parliament, including the Building Act 1984, Landlord and Tenant Act 1985 and Housing Act 2004.

3 While the Department sets the overall policy and regulatory framework, local authorities are responsible for regulating the sector and ensuring landlords comply with legal obligations. Local authorities choose how they regulate based on local priorities and have a range of investigation and enforcement tools available. All local authorities must issue licences for all properties let to five or more people from different households, known as large houses in multiple occupation (HMOs). However, each authority determines how to administer licences, what fees to charge, whether to set additional conditions or whether to license properties that are not large HMOs. There is no requirement for privately rented properties to be checked before they are let. Local authorities also determine when and how they examine properties or landlords. This differs from social housing, in which a national regulator sets outcome-based standards for how registered providers run their businesses (economic standards), and proactively monitors compliance.

4 The proportion of households in England living in privately rented accommodation has approximately doubled in the past 20 years, and the sector faces several challenges:

- On average, private tenants spend more of their income on housing (32%), compared with those living in their own properties (18%) or social housing (27%).
- The market is increasingly populated by low-income groups, benefit recipients and families, whose access to other housing options may be limited. The Department for Work & Pensions estimates that £9.1 billion of housing support was paid to private renters or directly to private landlords in England in 2020-21.
- In around 29,000 instances in 2019-20, households were, or were at risk of being, made homeless following an eviction that was not their fault.
- Many local authorities face funding pressures, which can constrain their ability to check properties proactively for non-compliance and therefore places greater reliance on tenants being aware of their rights and reporting problems.
- The sector is highly complex and shaped by intersecting policy areas across government that affect the supply and demand of rented properties. This includes areas outside the Department's remit, such as energy efficiency standards, benefits and welfare, and judicial processes for tenant complaints.

5 The Department recognises that challenges within the sector affect how it should be regulated, and it is planning large-scale reforms to help address these issues. It has committed to publishing a white paper in 2022, which will provide further details on the proposed reforms.

Scope of the report

6 This report examines the extent to which the regulation of private renting in England supports the Department's aim to ensure the sector is fair for renters. Our evaluations were based on our good practice guidance on the principles of effective regulation (Figure 4 on page 19), supported by comparisons with other regulated sectors where appropriate. While we did not seek to assess the Department's current work developing reform proposals, we considered it alongside our assessment of the current system.

7 The report covers:

- the coherence of the Department's regulatory strategy, and whether this is based on a good understanding of the challenges within the sector;
- the extent to which the Department's oversight of and support for local authority regulation of providers (landlords and lettings agents) contribute to its aims for the sector; and
- whether tenants are adequately supported to resolve problems and ensure they get a fair deal.

8 While this report considers the effectiveness of the overall regulatory regime in improving tenant outcomes, we did not audit local authorities or other stakeholders. We considered the potential impacts of regulatory requirements on landlords but did not seek to evaluate how well the sector works for them. We also did not seek to evaluate wider issues that impact on the sector, such as affordability and access to social housing or property ownership.

Key findings

Regulatory strategy for private renting

9 Privately rented properties are less likely to comply with minimum safety standards than other types of housing and are more likely to be classified as non-decent. By law, both privately and socially rented properties must be free of category 1 hazards (serious threats to health and safety). An estimated 13% of privately rented homes, 589,000 properties, fail to meet these standards due to at least one category 1 hazard, and the associated costs to the NHS are estimated to be £340 million a year. This compares with 10% of owner-occupied homes and 5% of social housing. There is also geographical variation, with category 1 hazards ranging from 9% to 21% in different regions of England. In addition, an estimated 23% of privately rented homes are classified as non-decent (rising to 29% for those receiving housing support), compared with 12% of social housing and 16% of owner-occupied homes. Social housing providers have additional regulatory requirements that may partly explain these differences – for example, they are assessed against economic standards by a national regulator and must meet the Decent Homes Standard, which goes beyond minimum safety requirements. In addition, private landlords can currently evict tenants without specific reasons (paragraphs 2.3 to 2.7).

10 The Department has in recent years taken a piecemeal approach to intervening in the private rented sector and is now looking to take a more strategic approach.

The Department has introduced legislative changes to protect tenants' rights. In the past decade, this has included mandatory redress schemes for letting agency work, a ban on charging letting fees to tenants and temporary restrictions on evictions during the COVID-19 pandemic. However, the Department does not yet have a strategy for what it wants the regulation of the sector to look like as a whole. Stakeholders we interviewed, including tenant and industry representatives, considered that the system was fragmented and overly complex. As the Department has not evaluated its recent interventions, it also does not know their impact on the overall operation of the market. It is currently defining the strategic objectives of its reform programme and has begun mapping how potential changes might affect the sector (paragraphs 2.8 to 2.11).

11 The Department's approach is limited by gaps in the data on what problems are occurring and where. Effective regulation relies on relevant, high-quality data so that intervention and oversight can be directed to where it is needed and regulatory burdens can be minimised. The Department has some insight into how the sector is working, such as on property conditions and tenants' finances, from surveys of landlords and tenants and from engaging with stakeholders. However, it lacks robust data on key issues where regulatory action may be required such as harassment, evictions and disrepair that is not being addressed. The Department also does not know the full costs to landlords of complying with their obligations. Without such data, the Department will struggle to measure the impact of its interventions or establish whether further action is needed. For example, it has limited data to monitor the 2015 changes aimed at preventing retaliatory evictions of tenants who raise complaints. The Department told us it aimed to collect better data as part of its planned reforms, but it has not yet developed a plan to do so. We note that the strategic objectives it is developing are measured largely by data sources it already has, and do not demonstrate that it is considering what other data it needs to properly understand outcomes for tenants (paragraphs 2.12 to 2.14).

12 The Department works with other parts of government to understand the impact of any related policies on private renting but could do this more consistently.

For example, since 2020 the Department has sat on a cross-government board with the Department for Business, Energy & Industrial Strategy to oversee implementation of minimum energy efficiency standards in the rented sector. The Department has regular discussions but no formal arrangements with other departments such as HM Treasury and HM Revenue & Customs, covering issues on tax policy and compliance affecting landlords. The Department also worked with the Ministry of Justice and HM Courts & Tribunals Service to put a temporary restriction on eviction proceedings during the COVID-19 pandemic. However, the effectiveness of this joint working is constrained by limitations in the courts data available. The Department has begun to consider how its planned reforms may interact with other parts of government but has not yet established how it will monitor the overall effects on landlords and tenants (paragraphs 2.15 to 2.17).

Regulating landlords and letting agents

13 There is considerable variation in the approaches and regulatory activity of local authorities.

The 308 lower-tier or single-tier local authorities in England are each responsible for regulating the private renting market in their own area. We found a wide range of approaches and levels of regulatory activity. For example, some authorities inspect almost no properties while others inspect a large proportion of their market, and we were only able to identify 65 out of 308 that have chosen to license more properties than the minimum requirement since 2010, due to data limitations. We also found low use of some regulatory tools such as banning orders and penalty notices – only 10 landlords and letting agents have been banned by local authorities since new powers were introduced in 2016 (paragraphs 3.4 and 3.5).

14 The Department has limited insight into which local regulatory approaches are effective in ensuring landlords comply with their legal obligations, and in what circumstances.

The Department has limited data on what tools and approaches are used by local authorities and therefore cannot meaningfully analyse which are more effective at improving compliance and protecting tenants. To examine what might be possible with better data, we analysed the limited data available to look for relationships between regulatory approaches and several outcome indicators. We found that local authorities that are more active in inspecting properties were more likely to see fewer category 1 health and safety hazards and a better improvement over time in compliance with energy efficiency requirements. We were unable to identify other trends due to data limitations – for example, there were no robust data on local authorities' regulatory approaches and the Department retains geographical data on property conditions for the latest five years only (paragraphs 3.6 and 3.7).

15 The Department has taken steps to understand the behaviours of different landlords, which may allow more targeted use of regulation in future.

Private landlords in England, numbering more than 1.5 million, have varied characteristics and include both commercial investors with many properties and accidental landlords who may never have intended to let property. For regulation to be effective in influencing providers, it is important to understand the incentives and behaviours of different types of provider, and how they might respond to different regulatory tools and approaches. The Department has segmented the landlord population, categorising them as either 'good practice', 'meeting legal requirements', 'mixed compliance' or 'lower compliance and awareness', and explored common characteristics within these categories. However, it has not yet made the analysis available to local authorities. The Department also regularly engages with landlords and letting agents through trade bodies to gain insight into current developments (paragraphs 3.8 to 3.10).

16 Local authorities we interviewed told us they could regulate better with more support and sharing of good practice from the Department. Stakeholders and academics have highlighted the challenges that local authorities face in adopting best practice, including staffing and wider resourcing challenges, the complexity of the legislative framework and the variety of local team structures. The Department provides guidance on legislative changes and before the COVID-19 pandemic it engaged with local authorities directly through roadshows and newsletters. Local authorities we interviewed found these helpful but identified common areas where they would like more support and sharing of best practice, such as setting civil penalties or cross-team working in two-tier authorities. Authorities we interviewed that had applied to the Department for selective licensing schemes also said the process was resource-intensive, slow and they received little communication from the Department, which made it a barrier to enforcement (paragraphs 3.11 to 3.14).

Providing support to tenants

17 There are limited redress options for tenants when things go wrong.

Redress mechanisms, such as dispute resolution services, are a common feature of well-designed consumer markets. They provide a more accessible path to resolving disputes than the legal system, can be used to provide insight and trigger intervention by regulators and provide valuable data and insight on the prevalence of problems. In the social rented sector, all housing providers must be part of an ombudsman scheme. This is actively used by tenants, with 7,881 complaints closed in 2019-20. In 2018, the Department introduced mandatory redress arrangements for letting agency work. However, private landlords are not required to be members of a redress scheme. The redress scheme administrators we interviewed indicated that voluntary membership among landlords is very low, and there are no formal data on overall membership levels (paragraphs 4.3 to 4.6).

18 Tenants face a number of barriers in enforcing their rights, such as costs and lack of awareness of their rights.

The regulatory system relies heavily on tenants enforcing their own rights, since there are limited redress arrangements and the system requires neither the licensing of most landlords nor inspections of properties. This means tenants must often negotiate with landlords directly or take action through the courts, which comes with costs and a risk that the action is unsuccessful. Surveys estimate that 35% of tenants say a lack of knowledge of their rights made negotiating with their landlord difficult, and that 22% of private renters who considered making a complaint to their landlord or letting agent had not done so. Other barriers raised by stakeholders we interviewed included a lack of recourse to public funds, tenants having a poor understanding of the options available to them, language barriers and distrust of services among tenants, and a complex system (paragraphs 4.7 to 4.9).

19 The Department finds it difficult to target guidance and support schemes towards vulnerable tenants due to limitations in its understanding of tenants' experiences. There is a wide variety of tenants in the sector, from those in short-term student accommodation or hoping to buy a home, to lower-income renters and those receiving housing support who may be eligible for social housing. Many of these will be vulnerable in different ways. For example, estimates indicate that approximately 35,000 privately renting households live in properties unsuitable for their illness or disability, and 7% of privately rented properties were overcrowded in 2019-20 (which doubled to 15% during the COVID-19 pandemic). Some also experience discrimination, with an estimated 25% of landlords unwilling to let to non-UK passport holders and 52% unwilling to let to those on Housing Benefit. The Department collects some demographic and satisfaction data through surveys, but does not have a sufficient understanding of the causes and impacts of tenant experiences. This means it cannot provide tailored guidance and support to those who need it most (paragraphs 4.10 to 4.14).

Conclusion

20 The private rented sector in England has grown to house more than 4.4 million households, and there is evidence that a concerning proportion live in unsafe or insecure conditions with limited ability to exercise their rights. In recent years, the Department has made various regulatory changes aimed at improving experiences for renters, including banning letting fees and introducing temporary protections during the COVID-19 pandemic.

21 However, the way that private renting is regulated means that these changes are not effective in ensuring the sector is consistently fair for renters. There are differences in the extent to which landlords comply with the law in different regions, and tenants from certain demographic groups experience worse property conditions or treatment. The Department is not proactive in supporting local authorities to regulate effectively. Furthermore, it does not yet have a plan to improve the significant gaps in data that prevent it from identifying where problems are occurring, which regulatory approaches work well at a local level, or the impact of regulation on the vulnerable. The Department is developing potential reforms to the sector and plans to publish a white paper. As part of this work, it will need a clear vision for what it is trying to achieve and an overarching strategy for how to address the challenges raised in this report, working across central and local government where necessary, if it is to meet its overall aim to provide a better deal for renters.

Recommendations

22 The Department is planning to introduce reforms to the private rented sector and our recommendations are aimed at supporting this process. The Department should do the following:

- a Define an overall vision and strategy for the regulation of private renting.** This should include consideration of how the sector should be regulated and how it is affected by other policy areas.
- b Be more specific in setting out what its reform programme is intended to achieve.** In doing so, it should set the desired outcomes, key performance indicators and success measures, and clearly demonstrate how they link to the overall vision for the sector.
- c Report publicly on progress against its aims for the sector and the impact of its legislative interventions.** It should use regular reporting in an open and transparent way to enable public understanding and assessment of progress.
- d Improve the quality and availability of data in the sector to support good decision-making at both national and local level.** It should work to understand the barriers it faces in getting good data and plan to address this in the reform programme.
- e Do more to identify and promote good practice among local authorities and support them to use it.** To achieve this, the Department should work to understand the barriers local authorities face in regulating, and evaluate which tools are most effective in which circumstances. It should also ensure it has enough capacity to achieve this, as well as to provide an appropriate level of continued support.
- f Review whether current local authority enforcement powers are adequate.** It should engage with stakeholders, particularly local authorities, to identify which powers and tools are or would be most helpful to local regulation, where they should be placed and how awareness of their use could be improved. This should include consideration of the different tools required to support landlords who want to comply as well as enforcing against those who do not.
- g Review whether current dispute resolution arrangements for private renters are appropriate.** It should consider in particular whether the arrangements are accessible for all tenants, provide appropriate redress when things go wrong and give the Department sufficient insight into emerging issues.
- h Improve its understanding of differential outcomes and experiences among private renters and use this to inform how support and intervention are targeted on those most in need.** It should continue to develop its work to understand different types of tenants and use this understanding to design its regulatory approach.

Part One

How and why private renting is regulated

1.1 There are an estimated 4.4 million privately rented households in England.¹ While most tenants have a good experience of renting, those who do not may find it contributes to serious illness, financial issues, or homelessness. For example, poor-quality housing can pose serious risks to health and safety, through electrical hazards, infestations and damp conditions. Poor conduct by landlords and letting agents can also affect tenants' wellbeing, including overcharging, harassing or illegally evicting them, or ignoring complaints of disrepair (**Figure 1** overleaf).

1.2 The Department for Levelling Up, Housing & Communities (the Department) – formerly the Ministry of Housing, Communities & Local Government (MHCLG) – aims to ensure the rented sector is fair for tenants and to protect them from such harms. To do this, it legislates and creates policies that are used to regulate the sector. There are 36 key pieces of legislation relating to the private renting sector, setting legal obligations for landlords and letting agents and enforcement arrangements. For example, minimum property standards are defined within five different acts of Parliament, including the Building Act 1984, Landlord and Tenant Act 1985 and Housing Act 2004. The Homes (Fitness for Human Habitation) Act 2018 allows tenants to take agents to court if they fail to ensure their homes are safe.

1.3 While the Department sets the overall policy and regulatory framework, local authorities are responsible for regulating the sector and protecting tenants by ensuring landlords and agents comply with legal obligations. Enforcement responsibilities are split across local authority housing teams and Trading Standards services, which in two-tier authorities sit separately within district and county councils respectively. The Department and local authorities also work with a range of other organisations such as redress services, deposit schemes and charities (**Figure 2** on page 15).

¹ Ministry of Housing, Communities & Local Government, *English Housing Survey: Private rented sector 2019–2020*, July 2021.

Figure 1
Examples of harms that private renters can experience

Tenants can experience problems caused either by landlords or letting agents or by their circumstances

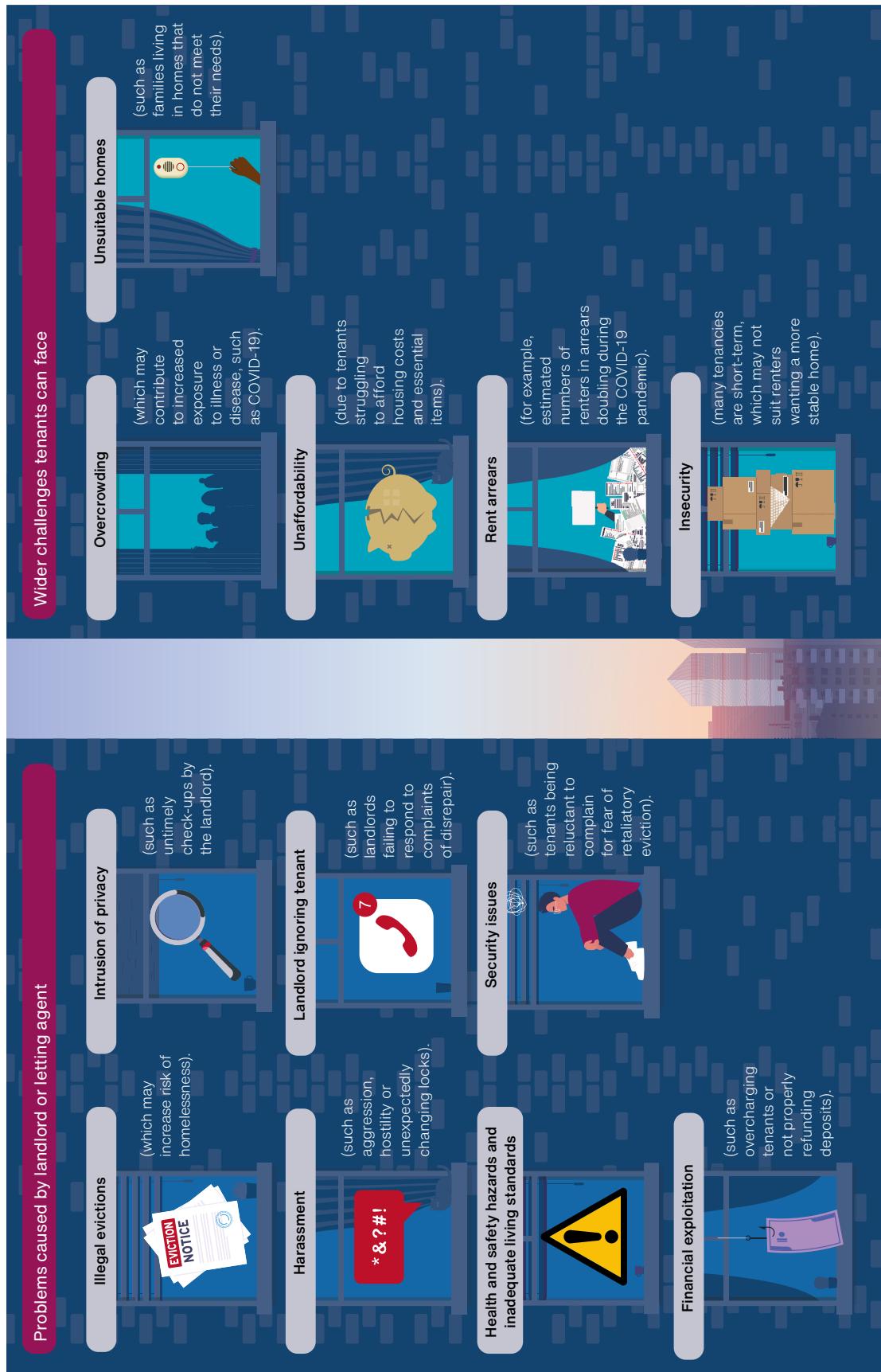
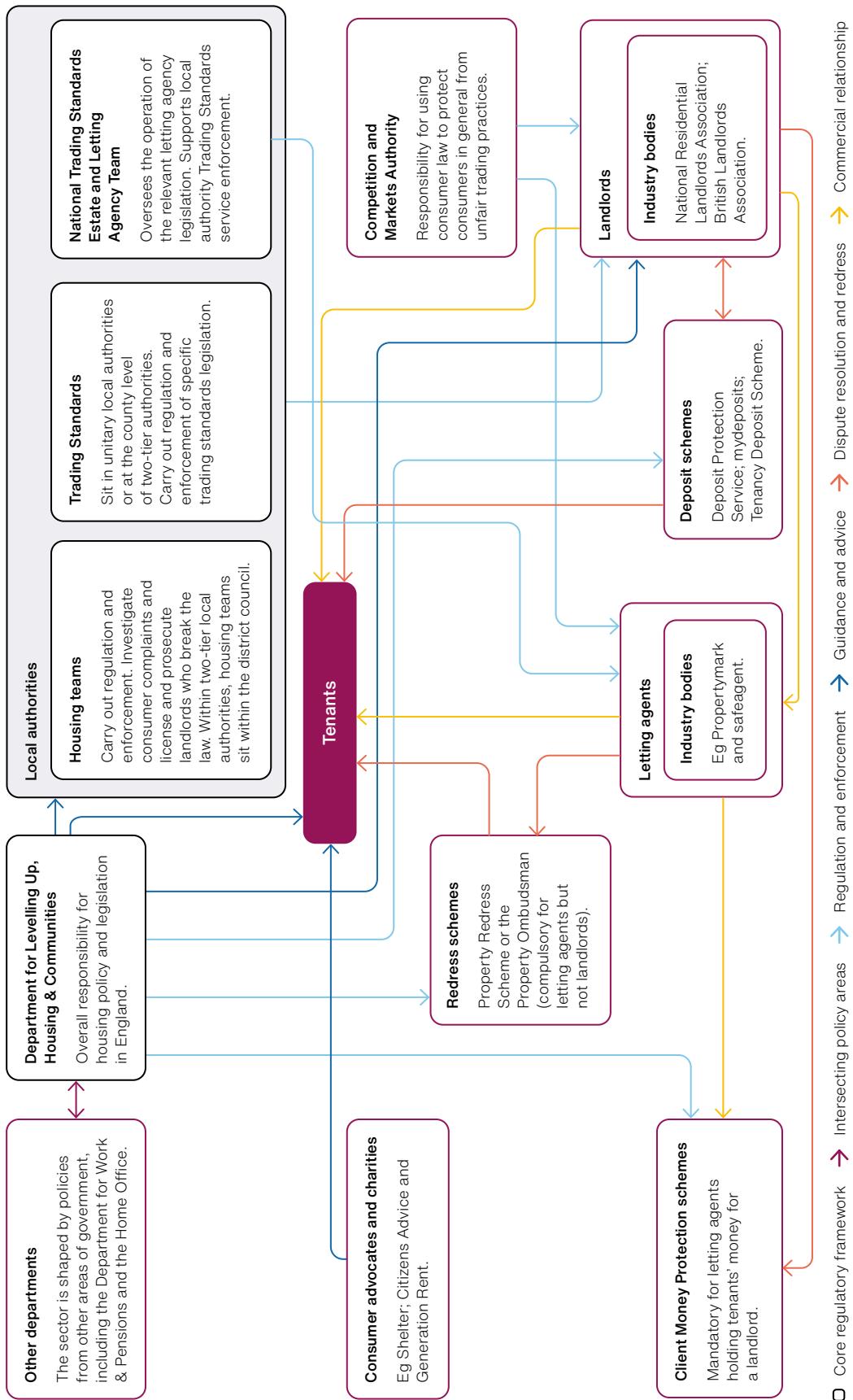


Figure 2

The regulatory regime for the private rented sector

The Department for Levelling Up, Housing & Communities works alongside others to oversee regulation of private renting



1.4 There are 308 lower-tier or single-tier local authorities in England, each responsible for regulating the rental market in their area. They have autonomy to choose how they regulate based on local priorities and have a range of investigative and enforcement tools available to them. Local authorities must process licences for all properties let to five or more people from different households, known as large houses in multiple occupation, (HMOs). However, each authority determines how to administer licences, what fees to charge and whether to set additional conditions. Local authorities also have discretionary powers to license smaller HMOs and single-family dwellings subject to meeting statutory requirements. There is no requirement for properties to be checked before they are rented out, and local authorities can choose when and how they examine properties or landlords (subject to notice to the landlord and permissions from the tenant).

1.5 By comparison, in the social rented sector the national regulator proactively monitors compliance by registered social housing providers (other than local authorities) with economic standards, including governance. These standards assess how well providers manage and oversee their businesses. Social housing is housing let at lower rents to people in housing need, which is often provided by local authorities or housing associations. Registered providers are required to notify the Regulator of Social Housing if there are any breaches or potential breaches of consumer standards. The regulator also receives statutory referrals from MPs, councillors or specific organisations such as the Housing Ombudsman if they have evidence which suggests that standards may have been breached.

1.6 The proportion of households in England living in privately rented accommodation has approximately doubled in the past 20 years, making up 19% of properties in 2020 (**Figure 3** on page 18). The sector faces several challenges:

- On average, private tenants spend more of their income on housing (32%), compared with those living in their own properties (18%) or in social housing (27%).²
- The market is increasingly populated by low-income groups, benefit recipients and families, whose access to other housing may be limited. The Department for Work & Pensions estimates that £9.1 billion of housing support was paid to private renters or directly to private landlords in England in 2020-21 (£7.1 billion in 2019-20).
- Data from the Department indicate that in around 29,000 instances in 2019-20, households were, or were at risk of being, made homeless following an eviction that was not their fault.
- Many local authorities face funding pressures, which may constrain their ability to check properties proactively for non-compliance and therefore place greater reliance on tenants being aware of their rights and reporting housing issues.

² See footnote 1.

- The sector is highly complex and shaped by multiple intersecting policy areas across government that affect the supply and demand of rented properties. This includes areas outside the Department's remit such as energy efficiency (Department for Business, Energy & Industrial Strategy), benefits and welfare (Department for Work & Pensions) and judicial processes for tenant complaints (Ministry of Justice).

1.7 The Department recognises that these challenges affect how the sector should be regulated and is planning large-scale reforms to help address them. To deliver this, it has increased the size of its private rented sector team from an average of 28 full-time equivalent staff members from March to August 2018 to an average of 51 from the same period in 2021. It also budgeted more than £5 million to spend on the reform programme in 2020-21. The Department has committed to publishing a white paper in 2022, which will provide further details on reform proposals.

Scope of the report

1.8 This report examines the extent to which the regulation of private renting in England supports the Department's aim to ensure the sector is fair for renters. Our evaluations were based on our good practice guidance on the principles of effective regulation, supported by comparisons with other regulated sectors where appropriate (**Figure 4** on page 19).³ While we did not seek to assess the Department's current work developing reform proposals, we have considered it alongside our assessment of the current system.

1.9 The rest of this report covers:

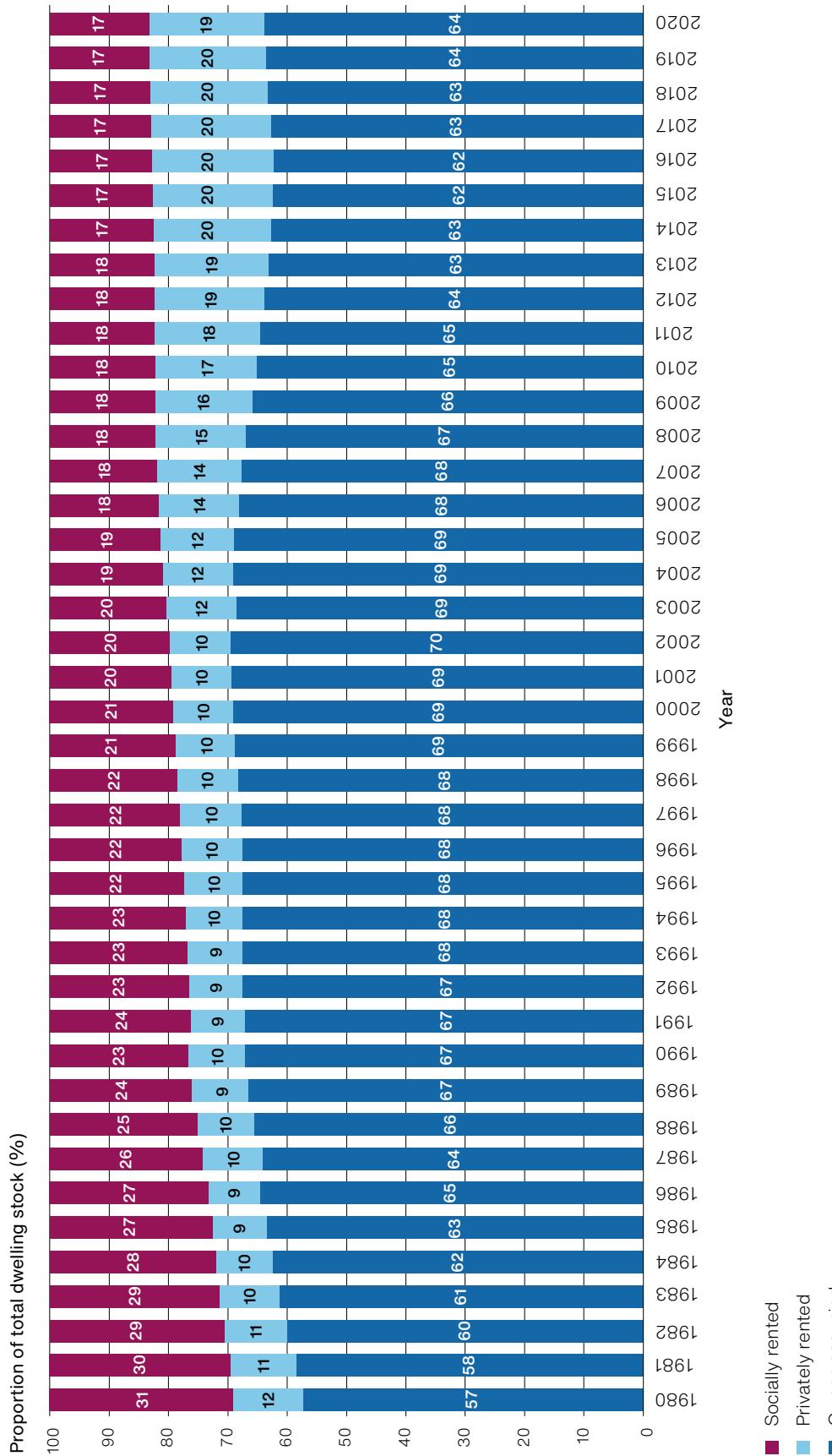
- the coherence of the Department's regulatory strategy, and whether this is based on a good understanding of the challenges within the sector (Part Two);
- the extent to which the Department's oversight of and support for local authority regulation of providers (landlords and lettings agents) contribute to its aims for the sector (Part Three); and
- whether tenants are adequately supported to resolve problems and ensure they get a fair deal (Part Four).

1.10 While this report considers the effectiveness of the overall regulatory regime in improving tenant outcomes, we did not audit local authorities or other stakeholders. We considered the potential impacts of regulatory requirements on landlords but did not seek to evaluate how well the sector works for them. We also did not seek to evaluate wider issues that impact on the sector, such as affordability and access to social housing or property ownership.

³ National Audit Office, *Principles of effective regulation*, May 2021.

Figure 3
Market share of dwelling stock in England from 1980 to 2020

The proportion of housing in England that is privately rented has approximately doubled since 2000



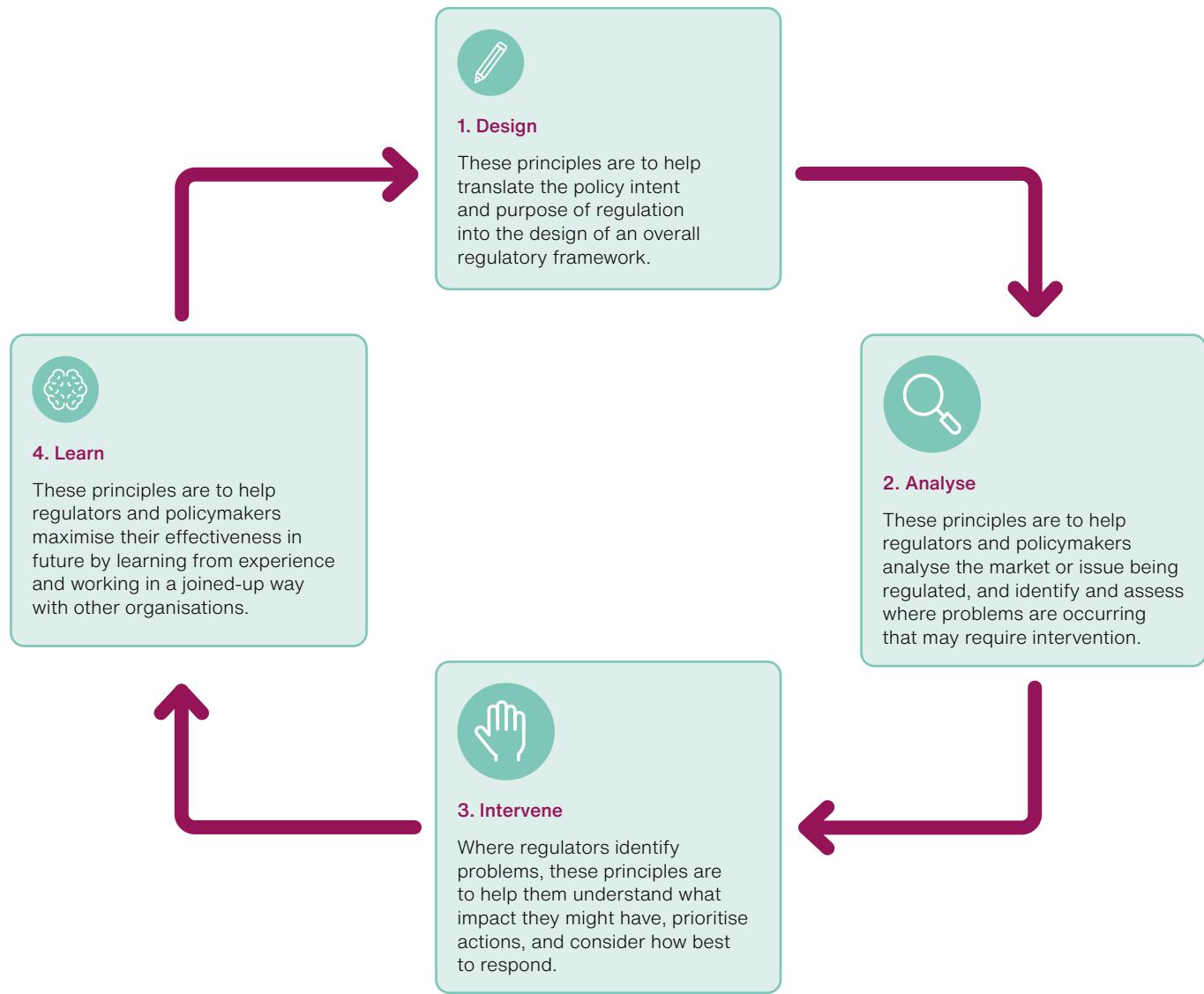
- Notes**
- Total housing stock was 17.9 million properties in 1980, 21.1 million properties in 2000 and 24.7 million properties in 2020.
 - Percentages may not sum to 100% due to rounding.

Source: National Audit Office analysis of data published by the Department for Levelling Up, Housing & Communities

Figure 4

Principles of effective regulation

Our 2021 guide set out a learning cycle that described the key principles of effective regulation in four areas



Source: National Audit Office, *Principles of effective regulation*, May 2021

Part Two

Regulatory strategy for the sector

2.1 The Department for Levelling Up, Housing & Communities (the Department) sets the overall policy and regulatory framework for the private rented sector in England. It works with local government, other central government departments and wider stakeholders to identify and respond to challenges within the sector.

2.2 This part of the report covers:

- how property conditions in the private rented sector compare with other types of housing;
- the Department's legislative changes and the extent to which its actions are guided by an overall regulatory strategy for the sector;
- the extent to which the Department's approach is informed by effective use of data and insight; and
- how well the Department works with other parts of government on issues that affect tenants and landlords.

Property conditions in different types of housing

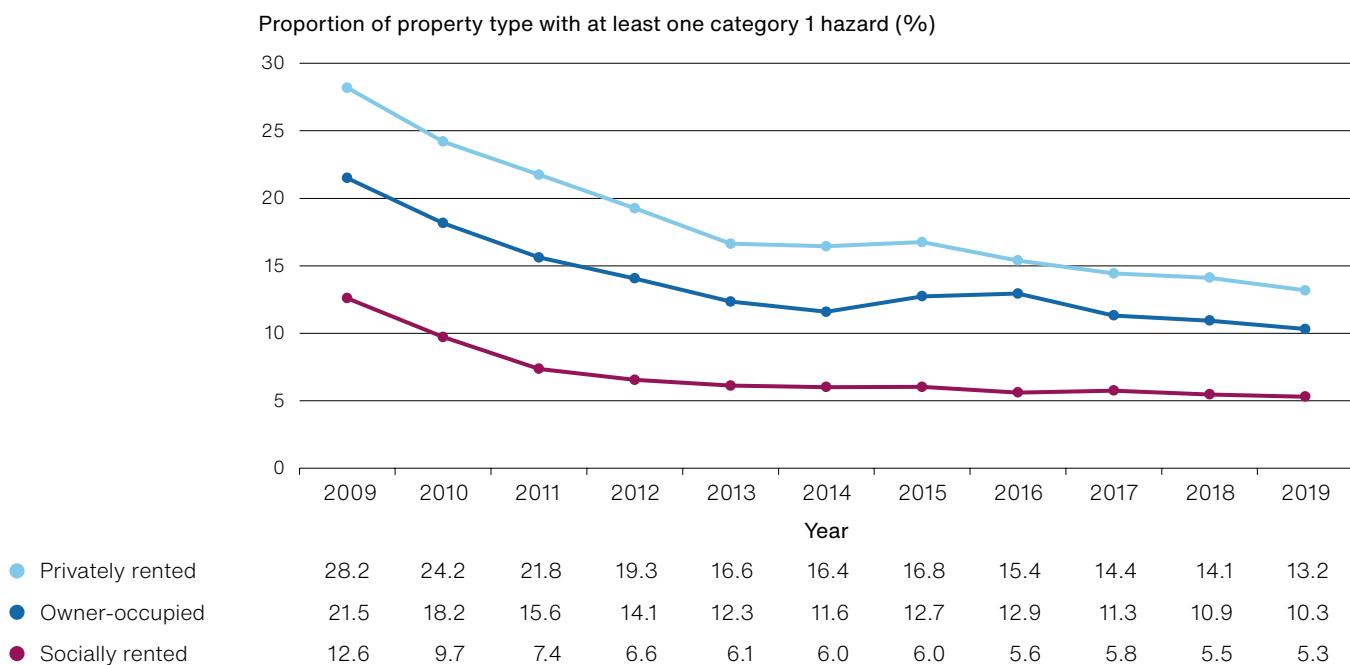
2.3 By law, both privately and socially rented properties must be free of category 1 hazards, defined as a serious and immediate risk to a person's health and safety. Such hazards include excess cold, damp conditions and faulty electrical or gas appliances. Both private and social landlords are legally obliged to resolve these problems.

2.4 Privately rented properties are less likely to comply with these safety requirements than other types of housing. Despite a legal obligation for landlords to resolve category 1 hazards, the Department's latest English Housing Survey, 2019 to 2020, estimated that 13% of privately rented homes (some 589,000 homes) had at least one category 1 hazard, compared with 10% of owner-occupied homes (1,545,000) and 5% of social housing (214,000).⁴ The prevalence of category 1 hazards has reduced over time for all housing types, but has consistently been higher for privately rented homes than other tenures (**Figure 5**). Using published research on associated costs to the NHS for treating the health impacts of category 1 hazards,⁵ and apportioning this to the private rented sector, we estimate that for private renters this cost would be around £340 million a year in 2020 prices. There is also geographical variation in these issues, with category 1 hazards in rented properties ranging from 9% in London to 21% in Yorkshire and the Humber (**Figure 6** overleaf).

Figure 5

Percentage of property types with at least one category 1 hazard from 2009 to 2019

The prevalence of category 1 hazards has reduced over time but has consistently been higher for privately rented properties



Note

1 Category 1 hazards are defined as a serious and immediate risk to a person's health and safety, and landlords are legally obliged to resolve them.

Source: Department for Levelling Up, Housing & Communities, English Housing Survey 2019 to 2020 data tables

4 Ministry of Housing, Communities & Local Government, *English Housing Survey: Private rented sector 2019–2020*, July 2021.

5 Building Research Establishment, *The cost of poor housing in England*, 2021, available at: www.bregroup.com.

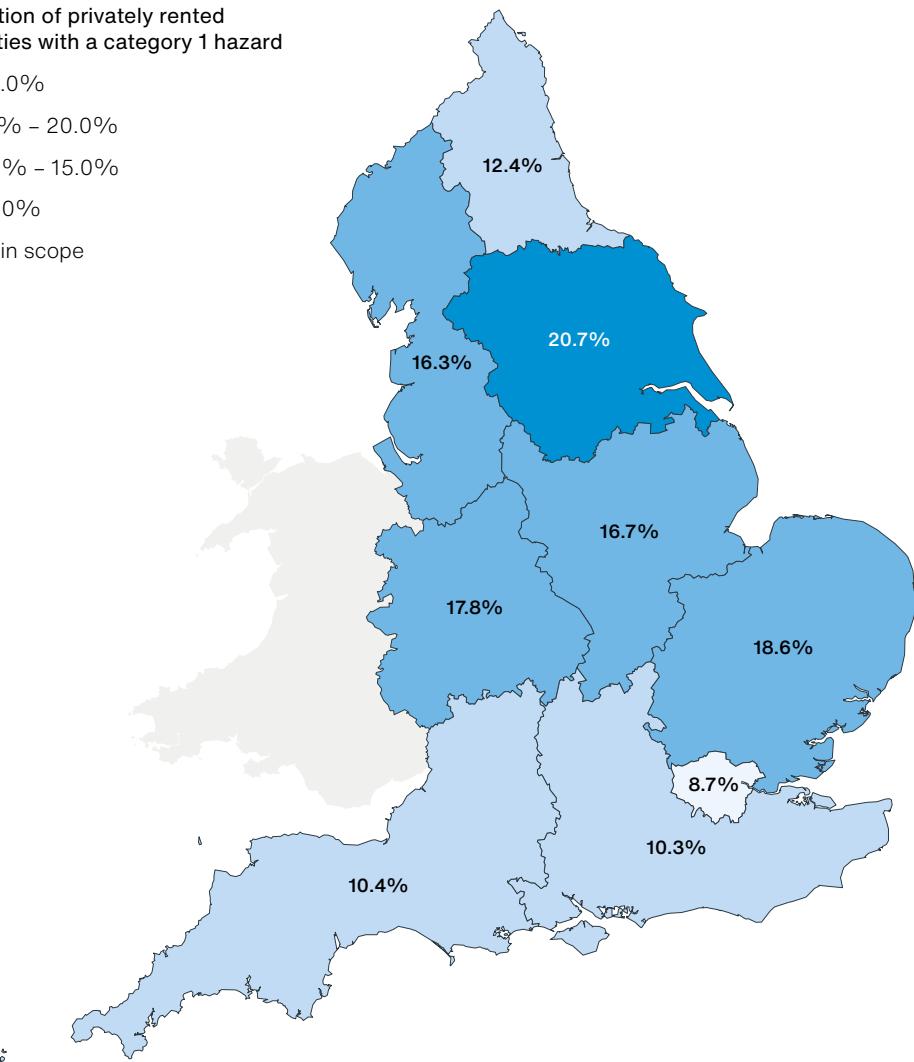
Figure 6

Proportion of privately rented properties in each English region with at least one category 1 hazard, 2019

The proportion of properties in different regions with category 1 hazards in 2019 ranged from 9% to 21%

Proportion of privately rented properties with a category 1 hazard

- >20.0%
- 15.1% – 20.0%
- 10.0% – 15.0%
- <10.0%
- Not in scope



Note

- 1 Category 1 hazards are defined as a serious and immediate risk to a person's health and safety, and landlords are legally obliged to resolve them.

Source: National Audit Office analysis of English Housing Survey data from the Department for Levelling Up, Housing & Communities; and Office for National Statistics licensed under the Open Government Licence v.3.0 Contains OS data ©Crown copyright and database right 2021

2.5 The Department also uses its English Housing Survey to track other key indicators, which show a mixed picture when comparing the private rented sector with other tenures (**Figure 7**). Other measures of property standards have similar trends, such as homes that fail to meet the Decent Homes Standard or have working smoke alarms. But in other areas, such as financial resilience or energy efficiency, the measures are more comparable to other types of housing.

Figure 7

English Housing Survey indicators by housing type, 2019 to 2021

Key indicators show a mixed picture when comparing the private rented sector with other tenures

	Private renting	Social housing	Owner-occupied
Portion of total housing stock ¹	19%	17%	65% (35% owned outright)
Proportion of homes with category 1 hazards ²	13%	5%	10%
Proportion of non-decent homes under the Decent Homes Standard ³	23% (29% for housing support recipients)	12%	16%
Satisfaction with accommodation	83%	78%	95%
Energy efficiency score ⁴	64	69	64
Households with installed and working smoke alarms ⁵	89%	96%	91%
Reported trouble paying utility bills ⁶	17%	25%	8% (3% owned outright)
Reported having no savings	60%	80%	32%

Notes

- 1 Housing stock figures do not total 100% due to rounding.
- 2 Category 1 hazards are defined as a serious and immediate risk to a person's health and safety, and landlords are legally obliged to resolve them.
- 3 The Decent Homes Standard defines decent homes as meeting minimum health and safety standards, providing a reasonable degree of thermal comfort and being in a reasonable state of repair with reasonably modern facilities and standards.
- 4 Energy efficiency is measured by the Mean Standard Assessment Procedure index score, from 1 (highly inefficient) to 100 (highly efficient with zero energy costs).
- 5 At least one alarm per floor is the minimum requirement for the private rented sector.
- 6 Trouble paying bills as of April–May 2021, based on the Department for Levelling Up, Housing & Communities' COVID-19 household resilience Study Wave 3.

Source: National Audit Office analysis of the Department for Levelling Up, Housing & Communities' English Housing Survey 2019 to 2020, except where otherwise stated

2.6 Beyond the legal minimum standards, there are additional requirements on registered social housing providers that do not apply to private landlords and may partially explain differences in compliance. These include:

- social housing providers other than local authorities have a duty to report instances of non-compliance with standards, including all relevant legislation, to the national regulator (although in practice, local authorities will also self-refer);
- as part of the requirements for being a registered provider, social landlords must also ensure properties meet the Decent Homes Standard, which goes beyond the legal minimum; and
- social housing providers need to meet economic and consumer standards as set by the national regulator. The regulator has found from its work a clear correlation among registered providers between being unable to demonstrate effective governance arrangements and failing to demonstrate compliance with consumer standards.

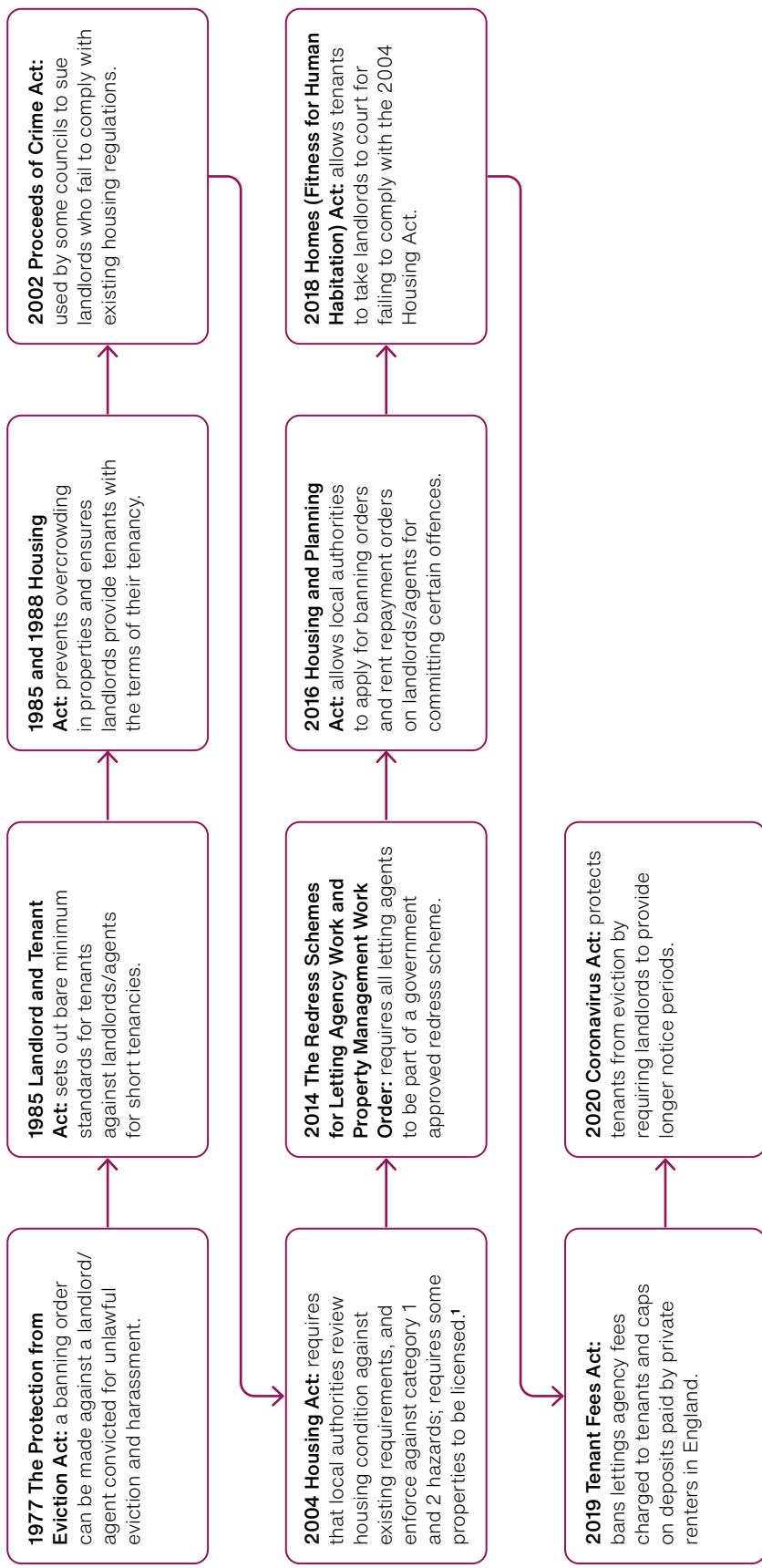
2.7 Private renters also face challenges distinct from other housing types, particularly regarding security of tenure. Under section 21 of the Housing Act 1988, landlords have the right to evict tenants without specific reason, as long as they follow due process set out in law. The latest English Housing Survey found that approximately 22% of households (150,000) had considered making a complaint but did not, of which 14% (21,000) were worried about retaliation from their landlord if they complained.

The Department's interventions in and strategy for the sector

2.8 The Department has introduced multiple legislative changes in recent years to protect tenants' rights in response to concerns raised by stakeholders (**Figure 8**). For example, in 2014 it required letting agents to be part of a redress scheme for lettings processes, and in 2019 it banned letting agency fees that used to be charged to tenants and placed a cap on deposits paid by private renters. Alongside these changes, it has approved redress providers and organised funding for a lead enforcement agency – the National Trading Standards Estate and Lettings Agency Team – to issue guidance and oversee enforcement by local authorities.

Figure 8
Key legislative changes to protect tenants' rights

The Department for Levelling Up, Housing & Communities has introduced several key legislative changes since 1977



Note

1 Category 1 hazards are defined as a serious and immediate risk to health and safety, category 2 hazards are defined as less serious or less urgent.

Source: National Audit Office analysis of Department for Levelling Up, Housing & Communities documents and public information

2.9 The Department also introduced measures, which lasted for 18 months, to help prevent tenants from losing their homes during the COVID-19 pandemic. This included a temporary restriction on eviction proceedings (from March 2020 to September 2020), a requirement for landlords to give longer notice periods for evictions (in force until September 2021) and restrictions on bailiff-enforced evictions (from November 2020 to the end of May 2021). The Department also commissioned survey research to understand the financial resilience of privately renting households throughout the pandemic. It uses these data to monitor the security of tenants and identify whether further intervention may be needed. For example, its Household Resilience Study found that 9% of private tenants were in rent arrears in November–December 2020⁶ (falling to 7% in April–May 2021⁷), compared with 3% before the pandemic.

2.10 The legislative changes the Department has made in recent years were generally well-received by stakeholders of all types that we interviewed. However, the Department does not know how effective these interventions have been in improving outcomes for tenants or how they have affected landlords, as it has not evaluated their overall impact on the private renting market. The Department has also scaled back its COVID-19 measures, which tenant advocacy stakeholders told us risked a sudden increase in court eviction proceedings and exposing tenants to potential homelessness. In October 2021, the Department announced £65 million of funding to address homelessness and support those most in need.

2.11 The Department does not yet have a vision for how it wants the regulation of the sector to look and a strategy to get there but is now looking to take a more strategic approach. A strategic approach to regulation helps ensure that individual activities are aligned to strategic aims, rather than working across each other and failing to achieve their intended impact. Stakeholders we interviewed, including tenant and industry representatives and members of the regulatory regime, considered that the system was fragmented, overly complex and characterised by piecemeal legislative changes. The Department is currently defining the strategic objectives of its reform programme and has begun mapping how potential changes might affect the sector. Its work so far has relied on assumptions of significant behaviour change among both tenants and landlords, but the Department has not yet considered in full how these changes could be achieved.

6 Department for Levelling Up, Housing & Communities, *English Housing Survey Household Resilience Study, Wave 2*, November–December 2020.

7 Department for Levelling Up, Housing & Communities, *English Housing Survey Household Resilience Study, Wave 3*, April–May 2021.

The Department's use of data

2.12 Effective regulation relies on relevant, high-quality data to understand where problems are occurring and therefore where regulatory intervention may be needed. Our good practice guide on the principles of effective regulation sets out what we would expect to see, including a clear understanding of how data and information support regulatory aims and what regular or ad-hoc data are needed to make this work.⁸ We have also previously reported on the challenges in using data across government and developed an evaluative framework to benchmark approaches.⁹

2.13 The Department's approach to the regulation of private renting is constrained by a lack of data. It has some insight into how the sector is working, such as on property conditions and tenants' finances, from its English Private Landlord Survey and English Housing Survey and from engaging with a range of stakeholders. However, there are gaps in the data available that prevent it having a full understanding of the barriers to achieving its aims for the sector that may require intervention. For example, it does not have robust data on issues such as harassment, evictions or disrepair that is not being addressed. The Department has estimates of costs in specific areas, such as electrical and gas safety certificates, but does not know the full cost to landlords of complying with their obligations. Its landlord survey covers only landlords who use a government-backed tenancy deposit scheme, meaning it has little data on those who either do not need to be in such a scheme or who are avoiding them illegally. The Department also has limited data on what local authorities spend on regulating the private rented sector, and how they are regulating in practice, which we examine in Part Three.

2.14 The Department told us it acknowledged the gaps in the data that it can access and use and aimed to collect better data as part of its planned reforms. However, it has not yet developed a plan to do so. Meanwhile the strategic objectives it is developing within its reform programme are measured largely by data it already has access to rather than considering what other data it needs to fully understand outcomes for tenants. Until the Department collects such data, it will struggle to produce meaningful metrics to measure the impact of its reforms. For example, the Deregulation Act 2015 introduced changes to prevent retaliatory eviction of tenants who raise complaints, but the Department has limited data on complaints that lead to eviction and cannot therefore measure the effectiveness of the changes.

⁸ National Audit Office, *Principles of effective regulation*, May 2021.

⁹ Comptroller and Auditor General, *Challenges in using data across government*, Session 2017–2019, HC 2220, National Audit Office, June 2019.

Working with other parts of government

2.15 Policy areas within the remit of several other government departments affect how the private renting sector functions. For example, this includes:

- the Department for Business, Energy & Industrial Strategy (BEIS) – minimum energy efficiency standards in rented properties, which affect utility bills;
- the Department for Work & Pensions (DWP) – benefit payments including housing allowances, which are used to support rental costs;
- HM Treasury and HM Revenue & Customs (HMRC) – tax policy and compliance, which affect landlords' rental income; and
- the Home Office – fire safety regulations and 'Right to Rent' policies, which prevent those without lawful immigration status in the UK from accessing privately rented accommodation.

2.16 To ensure it understands the impacts of these policies on landlords and tenants, the Department works with other parts of government. This includes the following:

- Since 2020, the Department has sat on a cross-government board with BEIS to oversee the implementation of minimum energy efficiency standards in the sector and to support energy efficiency improvements for low-income households. The Department identified the need to balance the shared ambition with BEIS to tackle fuel poverty without overburdening landlords, who might exit the market and affect the supply of privately rented housing. More recently, the Department has been working with BEIS on the potential expansion of minimum efficiency standards in the sector.
- The Home Office and BEIS provide policy expertise to the Department's Housing Health and Safety Rating System (HHSRS) project board. The board oversees the ongoing review of the HHSRS, a risk-based evaluation tool used by local authorities to identify hazards within properties.
- The Department sits on a working group with the Department for Environment, Food & Rural Affairs which explores private landlord responsibilities towards tenants with respect to flood risk.
- The Department has a structured working relationship with DWP to explore how its policies affect housing issues, including private renting.
- The Department told us it has regular discussions with other departments such as HM Treasury and HMRC, and with the Department for Education in relation to student accommodation but does not have formal joint working arrangements.

- As part of the Department's COVID-19 response work, it also worked with the Ministry of Justice (MoJ) and HM Courts & Tribunals Service to implement a temporary restriction on eviction proceedings. However, the effectiveness of this joint working is constrained by gaps in the courts data available. The Department does not know how many illegal evictions there are or what types of tenants are most affected, and the statistics that MoJ collates on evictions do not detail the specific grounds for eviction.
- 2.17** The Department has begun to consider how its planned reforms may impact on, or be affected by, other parts of government. It has mapped its policy areas against those of other departments to see how these overlap and identified departments with which it would like to work more closely. For example, it is exploring the merits of a national landlord register, which may be useful for: BEIS regarding minimum energy efficiency standards; or HMRC for tax compliance work. The Department has not yet established what joint-working arrangements will be needed to ensure it can understand and monitor policy interactions and their effects on tenants and landlords. However, it set up a cross-government group in spring 2021 to begin to consider interactions across the reform programme.

Part Three

Regulating landlords and letting agents

3.1 Lower-tier and single-tier local authorities in England have a range of powers and tools with which to regulate private renting, and each has autonomy over how to use them to ensure landlords comply with the law. There are 308 such local authorities, and the Department for Levelling Up, Housing & Communities (the Department) aims to use its national perspective to support local authorities to regulate effectively, including by providing guidance and by identifying and disseminating good practice and other useful intelligence.

3.2 This part of the report covers:

- to what extent the Department knows which tools are effective at ensuring landlords and letting agents meet their obligations, and in what circumstances;
- how well the Department understands the incentives and behaviours of private landlords in England, and what this means for how they are regulated; and
- whether the guidance and support the Department provides to local authorities helps them regulate effectively.

Understanding what works to ensure compliance with standards

3.3 The Department has introduced successive legislation to give local authorities a range of tools and powers to enforce compliance against standards in the private rented sector. This includes the Housing Act 2004, which gave local authorities powers to inspect properties and issue warning notices and licences, and the Housing Act 2016, which enabled them to ban and prosecute criminal landlords and letting agents.

Approaches taken by local authorities

3.4 Local authorities choose how they regulate based on their local priorities and housing market, and there is considerable variation in approaches across England. Authorities we spoke to described taking a light-touch approach to regulation, only taking stronger action in high-risk circumstances. The extent to which they use their full regulatory powers varies widely, with some relying on informal approaches such as advice and guidance to achieve compliance. For example:

- Freedom of Information data provided to Generation Rent by 81 local authorities in 2019-20 indicated that numbers of inspections of privately rented properties ranged from 30 to more than 14,000.¹⁰ While these data are indicative only, our analysis indicates that this equates to a range of 0.1% to 24.2% of all rented properties within the local authority being inspected;
- we have been able to identify 65 local authorities in England (out of 308) that have run a licensing scheme beyond minimum requirements since 2010. However, the exact number of local authorities that have run a scheme is unknown, as the Department does not collect data on this; and
- in 2018, the Department set up a database for local authorities to share intelligence on landlords and letting agents who had been convicted of banning order offences or had received financial penalties at least twice within 12 months. Only 10 landlords and letting agents have so far been banned, and only 10 receiving two penalty notices have been added to this database. Banning order offences cover a range of housing, immigration and serious criminal offences.

¹⁰ Generation Rent, “Three quarters of tenants in unsafe homes go unprotected”, press release, 28 April 2021, available at: www.generationrent.org.

3.5 Stakeholders of all types that we interviewed, as well as academic research papers, have highlighted barriers to local authorities' understanding of the tools at their disposal. These include insufficient staff with the right skills, limited resources and funding, the complexity of the legislative framework and the variety of team structures within local authorities. The legal powers to regulate the private rented sector come from 36 key pieces of legislation and are dealt with by different functions of local authorities (**Figure 9** on pages 34 and 35). This creates challenges:

- Trading Standards services exist in upper-tier authorities (such as counties) or single-tier authorities (such as unitary authorities or London boroughs), while Environmental Health teams sit in lower-tier councils (such as districts). Local authorities we interviewed indicated that joint working is more complex when responsibilities are split between organisations in a two-tier authority.
- Even within single organisations, different local authorities use different team structures. The various relevant regulatory functions can, for example, be included as part of Environmental Health teams, separate housing teams, Trading Standards services or wider regulatory services departments.
- Local authority officials responsible for regulating private renting often need to manage this alongside wider responsibilities, potentially limiting capacity for enforcement activity. For example, some perform tenancy relations duties to directly support tenants who experience harassment or illegal eviction.

Understanding which approaches work in practice

3.6 The Department does not know which tools are effective at ensuring landlords comply with their obligations, and in what circumstances. The Department has limited data on what tools and approaches are used by local authorities. There is no requirement for local authorities to record their regulatory activity in relation to the private rented sector, or to report such information to the Department. Data are not collected, for example, on the number of complaints, the number of inspections, or the number of staff who carry out tenancy relations duties that tackle harassment and illegal eviction. The Department informed us that some data are collected on the number of specific hazards found following an inspection and the number rectified, but these are not available for all authorities and are of limited use. Without a more complete picture of how local authorities are using the tools available to them, the Department cannot meaningfully analyse which ones are effective at improving compliance, and in what circumstances.

3.7 To examine what might be possible with better data, we conducted exploratory analyses using the limited data available to look for relationships between local authorities' regulatory approaches and several outcome indicators.

- We found that the more active a local authority is in inspecting privately rented properties, the more likely it is to have seen a better improvement in compliance with energy efficiency requirements from 2008 to 2020. We also estimate with 95% confidence that, in England and Wales, the average utility bill saving for non-compliant homes (approximately 2% of rented properties in 2020) becoming compliant with minimum requirements would be between £730 and £832 a year.¹¹ These analyses are indicative only, due to data limitations – in particular, inspection activity was based on Freedom of Information (FOI) data that covered less than half of local authorities.
- Using the same FOI data on inspections, and property conditions data from the English Housing Survey, we found that more rented homes in the quartile of local authorities that are least active in inspecting properties had category 1 health and safety hazards (17.5% in 2018) than in the most active quartile (10.8% in 2018). This difference is statistically significant, but again did not include local authorities for which there were no inspections data.
- We attempted to analyse trends in other regulatory approaches, such as use of licensing schemes, and in other outcome indicators such as levels of improvement over time in property conditions. However, we were unable to establish further associations owing to:
 - the lack of robust data on regulatory approaches taken by local authorities;
 - the fact that geographical indicators for the English Housing Survey, including local authorities, are only retained for the latest five years, which limits measurement of trends over time; and
 - small sample sizes at local authority level in the English Housing Survey.

¹¹ Estimated savings are for heating, lighting and water.

Figure 9

Current legislation affecting the private rented sector in England

A range of local authority teams and other bodies are responsible for enforcing private rented sector legislation

Environmental Health

- 1925 Law of Property Act:** allowed local authorities to enforce the sale of a property following non-compliance with certain notices.
- 1936 Public Health Act:** set requirements for tenants to remedy filthy and verminous properties.
- 1949 Prevention of Damage by Pests Act:** landlords must treat properties with large numbers of rats and mice.
- 1961 Public Health Act:** allowed local authorities to carry out drain repair works themselves.
- 1976 Local Government (Miscellaneous Provisions) Act:** landlords must remove obstructions from private sewers.
- 1982 Local Government (Miscellaneous Provisions) Act:** landlords are required to secure properties that are a danger to public health.
- 1984 Building Act:** set requirements for property safety and sanitation.
- 1985 Housing Act:** prohibited overcrowding in properties.
- 1990 Environmental Protection Act:** landlords must remedy any situations that are a statutory nuisance or dangerous to a tenant's health.
- 2004 Housing Act:** set minimum property safety standards and requires local authorities to license HMOs¹ and inspect properties for category 1 hazards using the HHSRS.²
- 2015 The Smoke and Carbon Monoxide Alarm (England) Regulations.**
- 2015 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations:** set a minimum level of EPC for properties.³
- 2016 Housing and Planning Act:** introduced the database of rogue landlords and allowed local authorities to issue financial penalties, rent repayment orders and banning orders for certain offences.
- 2020 The Electrical Safety Standards in the Private Rented Sector (England) Regulations:** required landlords to have electrical installations checked by an electrician every five years.

Trading Standards

- 1953 Accommodations Agencies Act:** prevented charges for finding accommodation.
- 2002 Proceeds of Crime Act:** allowed the confiscation of assets and banning orders to be issued to criminal landlords.
- 2006 Fraud Act:** prevented false representation of properties.
- 2008 The Consumer Protection from Unfair Trading Regulations:** prevented unfair contract terms between tenants, landlords and letting agents.
- 2012 The Energy Performance of Buildings (England and Wales) Regulations:** landlords must provide tenants with an EPC certificate.
- 2014 The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order:** required letting agents to be a member of a redress scheme.
- 2015 Consumer Rights Act:** required letting agents to be members of client money protection schemes.
- 2019 Tenant Fees Act:** banned letting agent fees charged to tenants and capped deposits paid by tenants.
- 2019 The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations:** required letting agents to be members of an approved scheme.

Tenancy relations

- 1977 Protection from Eviction Act:** banning and rent repayment orders can be given to landlords who illegally evict tenants.
- 1985 Landlord and Tenant Act:** set minimum standards for landlords/letting agents, such as repairing obligations.
- 1988 Housing Act:** required that landlords provide tenants with the terms of their tenancy.

Tenants

1985 Landlord and Tenant Act: required landlords to carry out basic repairs to properties.

2012 The Energy Performance of Buildings (England and Wales) Regulations: landlords must provide tenants with an EPC certificate.

2015 Deregulation Act: prohibited retaliatory evictions when local authorities have served a certain notice to landlords, eg repair notice.

2015 The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations: required landlords to provide 'How to Rent' guides, EPCs and gas safety certificates to tenants.

2018 Homes (Fitness for Human Habitation) Act: tenants can take landlords to court if they fail to comply with property standards set out within 2004 Housing Act.

Courts

2020 Coronavirus Act: ensured that landlords met the legal requirements for eviction notice periods.

Planning

1990 Town and Country Planning Act: set requirements for landlords to repair properties that adversely affect the amenity of the area.

Licensing

1936 Public Health Act: moveable dwellings (tents, vans and sheds) must be licensed.

Health and Safety Executive

1974 Health and Safety at Work etc. Act: set gas safety duties for landlords.

1998 The Gas Safety (Installation and Use) Regulations: set further gas safety duties for landlords.

Immigration, compliance and enforcement

2014 Immigration Act: required landlords to check tenants live in the UK legally and therefore have a Right to Rent.

Police

1977 Criminal Law Act: prevented landlords or letting agents from using or threatening violence to gain access to tenants' homes.

Fire and Rescue Authority

2005 The Regulatory Reform (Fire Safety) Order: landlords must ensure their properties meet required fire safety standards.

Notes

- 1 Houses in Multiple Occupation (HMO) that require licences are properties let to five or more people from different households, with shared facilities.
- 2 Housing Health and Safety Rating System (HHSRS) is a tool used by local authorities to assess hazards within the home.
- 3 Energy Performance Certificates (EPCs) measure the energy efficiency of a property on a scale of A–G.
- 4 The legislation is grouped by which local authority team or other body is responsible for enforcement, including tenants themselves.
The list includes some duplication where a piece of legislation is enforced by more than one body.

Source: Department for Levelling Up, Housing & Communities documents, and publicly available information

Understanding landlords

3.8 It is estimated that there are at least 1.5 million private landlords in England, with varied characteristics such as commercial investors with many properties or accidental landlords who may never have intended to rent property. For regulation to be effective in influencing regulated providers, it is important to understand their incentives and behaviours. For example, understanding different landlords – why they enter the market, how they rent, the type of properties they rent and who they rent to – helps inform how to improve awareness and compliance, how to ensure standards are effective at keeping tenants safe and how landlords may respond to different regulatory approaches.

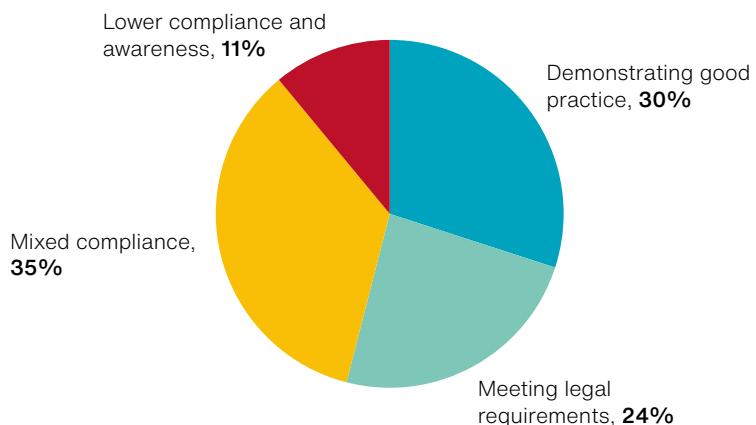
3.9 The Department has taken steps to understand landlords better. It regularly engages with landlords and letting agents through trade bodies such as the National Residential Landlords Association. In 2020, it also used its 2018 English Private Landlord Survey data to segment the landlord population. This categorised landlords as demonstrating either ‘good practice’, ‘meeting legal requirements’, ‘mixed compliance’ or ‘lower compliance and awareness’ and explored common characteristics of the landlords within these categories such as their age and how many properties they let (**Figure 10**).

3.10 However, the Department has not yet made this analysis available to local authorities, so they are unable to use its insights to inform their regulatory approaches. The work also has some limitations – in particular, it only covers landlords who protect deposits in a government backed scheme. In 2017-18, an estimated 76% of private renters had paid a deposit for their current accommodation, 73% said their deposit was protected, while 7% said their deposits were not protected and a further 20% did not know if they were. The Department’s analysis may therefore omit many landlords who are non-compliant.

Figure 10

English landlord segmentation analysis, 2020

The Department for Levelling Up, Housing & Communities has segmented landlords in England based on compliance with regulations



1 Demonstrating good practice:

- Most likely to conduct legally required checks, to be self-employed and be a member of a professional association.
- Most aware of, and reports, concerns on recent and proposed legislative changes.
- Tend to have multiple properties, with the most compliant owning five or more properties.

2 Meeting legal requirements:

- Less likely to conduct legally required checks, but most landlords in the segment are still compliant with legislation.
- Less likely to be a member of and engaged with professional associations, and more likely to receive information and advice from letting agents.

3 Mixed compliance:

- Compliant with some but not all legal requirements.
- Limited awareness of changes in regulatory and legislative requirements.
- More likely to be retired, over the age of 65 and be outright owners of just one property that was not bought with the intention of letting.
- Likely to have a relatively low income from renting, with little borrowing.

4 Lower compliance and awareness:

- Most informal in terms of their practice as landlords, largely unaware of regulatory and legislative requirements.
- Much more likely to have let their last property before 2015, which is before some requirements took effect.
- More likely to have bought their property with the intention of living in it themselves.
- More likely than cluster three to report that they were in other full-time employment.

Note

- 1 The analysis was based on a survey of 7,823 landlords.

Source: National Audit Office analysis of Department for Levelling Up, Housing & Communities documents

Support and guidance to local authorities

3.11 Local authorities we spoke to described their capacity to regulate as limited, which causes them to take a risk-based or reactive “fire-fighting” approach to regulation. Where there was proactive monitoring and enforcement to ensure landlords comply with their obligations, this was typically project-based, time-limited and dependent on funding.

3.12 In light of these challenges and its aim to ensure the sector is fair for tenants, the Department therefore has an important role in using its national perspective to identify and disseminate good practice among local authorities. For example, the Department has:

- published guidance on relevant legislative changes, including specific advice for landlords, tenants and local authorities about their rights and responsibilities during the COVID-19 pandemic;
- provided grant funding to local authorities for project work, such as to tackle rogue landlords – since 2019, the Department has provided £6.7 million in funding; and
- held a series of roadshows in 2019, attended by more than 300 stakeholders from local authorities, to learn about their experiences of implementing recent legislation. The Department followed these up with newsletters for local authorities.

3.13 Local authorities we interviewed told us the roadshows were helpful, but that they could regulate better with more support and sharing of good practice. The COVID-19 pandemic has meant that most direct engagement between the Department and local authorities, such as the roadshows, had to be stopped to prioritise emergency response work. The Department told us that it intends to resume this work, but that to date its own capacity to do this has remained limited. Local authorities also highlighted areas where more guidance and sharing of best practice would be particularly helpful, including evaluations of what regulatory tools are effective and when, and guidance on topics such as setting civil penalties or cross-team working in two-tier authorities.

3.14 Local authorities we interviewed that had applied to the Department for selective licensing schemes all expressed concern that the application process was itself a barrier. Since 2015, Secretary of State approval has been required for selective licensing schemes which cover more than 20% of the geographical area or would affect more than 20% of privately rented homes in the local authority. The Department introduced this requirement as it considered it necessary to ensure that consistency and oversight are applied to the largest schemes. Since 2015, 19 applications have been made, of which 10 were approved and a further two were partially approved. Local authorities we spoke to that have run such schemes identified positive impacts, including: better data and understanding of their rented sector; an increase in awareness of tenant and landlord rights and responsibilities; increased landlord accountability and compliance; and resources for proactive enforcement. However, they also raised several issues with the process which hindered local enforcement, including:

- the time and resource needed to reach the level of evidence required to support an application, given capacity constraints and lack of data on the sector (particularly where there was not already a previous scheme in place) and the fact that schemes only last for five years;
- poor communication from the Department, limitations in the feedback provided for unsuccessful applications and a concern that the process is not as open and transparent as it could be; and
- long wait times made worse by the COVID-19 pandemic, which had a knock-on effect on the set-up and resourcing of the scheme.

Part Four

Providing support to tenants

4.1 In addition to regulators, many regulated markets have other support mechanisms for consumers to ensure clear accountability and resolution when things go wrong, such as dispute resolution services. Government and regulators also often provide advice and guidance to consumers to help them understand their rights and make good decisions. Understanding what issues consumers are facing, and addressing any barriers to ensure they are able to enforce their rights, is important in ensuring these mechanisms are effective.

4.2 This part of the report covers:

- the extent to which redress arrangements are available for tenants to raise and resolve complaints;
- the extent to which private renters face barriers to enforcing their own rights, such as costs or lack of awareness; and
- whether the Department for Levelling Up, Housing & Communities (the Department) has good insight into what makes renters vulnerable, and how to ensure support reaches those who need it most.

Redress for private renters

4.3 Redress mechanisms, such as ombudsman or other dispute resolution services, are a common feature of well-designed consumer markets. They provide a more accessible path to resolving complaints for consumers than the legal system, which typically comes with higher costs. They can also provide insight and trigger intervention by regulatory bodies. A government research paper in 2018 highlighted the effectiveness of alternative dispute resolution services in providing fair outcomes for consumers.¹²

¹² Department for Business, Energy & Industrial Strategy, *Resolving Consumer Disputes: Alternative Dispute Resolution and the Courts System*, April 2018.

4.4 For example, in the social housing sector, all providers must be part of an ombudsman scheme, which gives all residents access to dispute resolution services. The Housing Ombudsman handles such disputes between residents and all social housing providers, as well as a small number of for-profit landlords who join the scheme voluntarily. In 2019-20, the Housing Ombudsman closed 7,881 complaints, concluded 2,138 investigations and ordered more than £400,000 of compensation to be paid to tenants.

4.5 Private landlords are not currently required to be members of a redress scheme, and stakeholders we interviewed indicated that voluntary membership is very low. This leaves most private sector tenants unable to access redress if they are unhappy with landlord behaviour, outside of the courts system. The Department's latest English Housing Survey indicates that less than half (45%) of private renters who had made a complaint were happy with at least some of the response to their complaint.¹³ The Department has acknowledged these limitations and is considering them as part of its policy development.

4.6 Through the Redress Schemes for Lettings Agency Work and Property Management Work Order 2014, the Department introduced a mandatory requirement for letting agents to be a member of a government-approved redress scheme (currently the Property Ombudsman and the Property Redress Scheme). These provide dispute resolution for consumers who remain unhappy after complaining to a letting agent about its conduct in the renting process. Compliance with this legislation is enforced through the National Trading Standards Estate and Letting Agency Team in conjunction with local authorities. However, the Department has not yet made an overall assessment of how the legislation has affected tenant experiences of the lettings process.

Barriers tenants face in enforcing their rights

4.7 The regulatory system relies heavily on tenants taking action to enforce their own rights. This is because of gaps in redress arrangements as well as the fact that the system requires neither the licensing of most landlords nor inspections of properties before they are let.

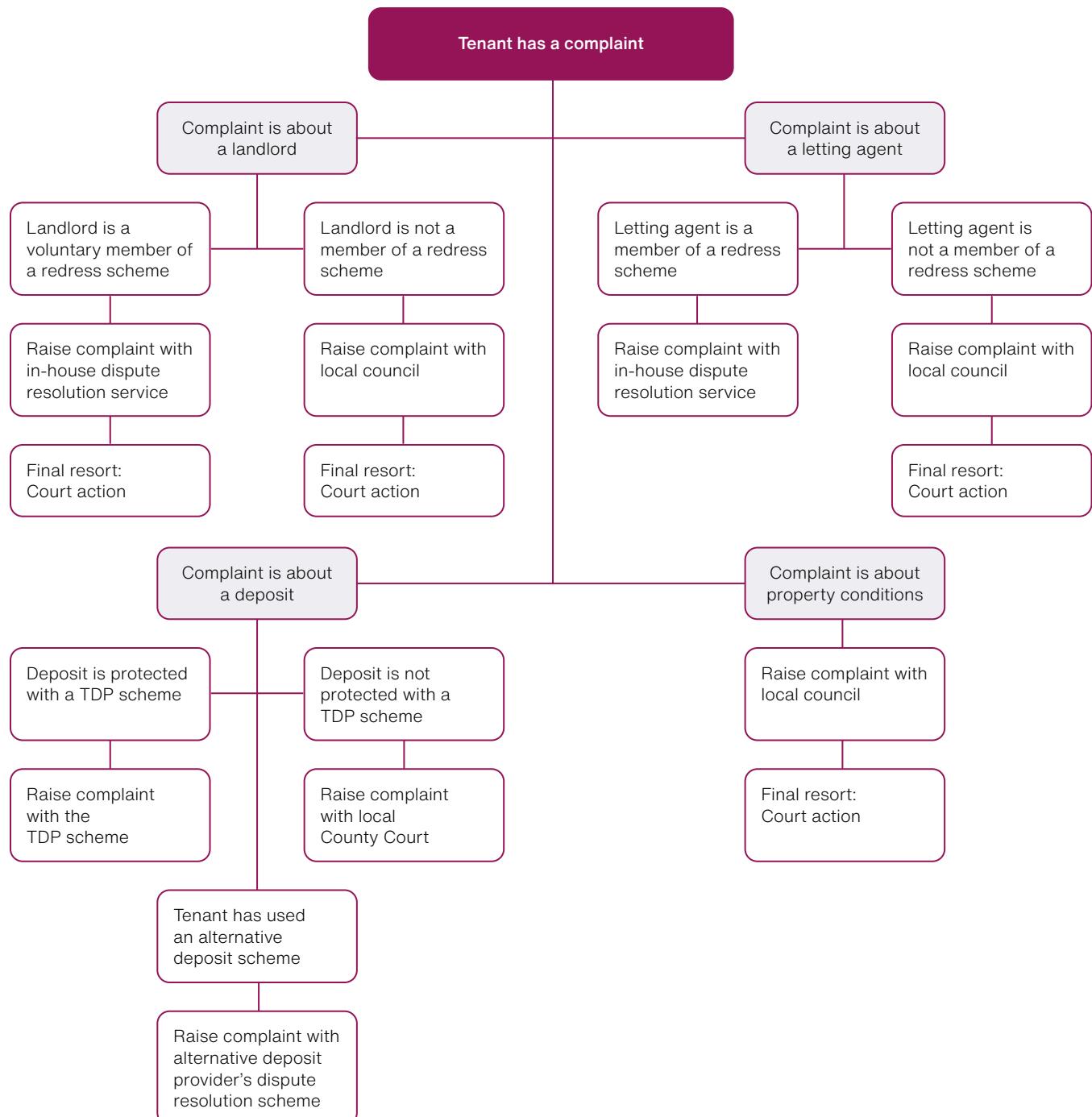
4.8 There are different routes for private renters to resolve disputes with a landlord or letting agent, depending on the nature of a complaint. This can be complicated to navigate for tenants and often needs to be done through the courts (**Figure 11** overleaf), which comes with legal costs and a risk that the action is unsuccessful.

¹³ Ministry of Housing, Communities & Local Government, English Housing Survey: *Private rented sector 2019–2020*, July 2021.

Figure 11

Routes to dispute resolution for tenants

Tenants have different routes to redress depending on the nature of their complaint



Note

1 A TDP scheme is a Tenancy Deposit Protection scheme approved by government.

Source: National Audit Office analysis of public information and stakeholder interviews

4.9 Some renters therefore rely on seeking advice or support from charitable organisations such as Shelter and Citizens Advice, or do not make complaints at all. For example:

- the latest English Housing Survey covering 2019–2020 estimated that 22% of privately rented households who had considered making a complaint to their landlord or letting agent had not done so;
- from our interviews with stakeholders of all types, it was considered that tenants' awareness of their rights is low and they are unaware of how to take a landlord to court. A Citizens Advice survey from 2017 estimates that 35% of tenants say a lack of knowledge of their rights made negotiating with their landlord difficult;¹⁴ and
- other barriers raised by stakeholders we interviewed included a lack of recourse to public funds, language barriers and distrust of services among tenants, and a complex system. The Department does not have a full picture of these challenges or how they can be overcome.

Ensuring support reaches those who need it

4.10 The private rented sector has grown in the past 20 years and is now 19% of households in England. There is a wide variety of tenants in the sector, including students in short-term accommodation, aspirational homeowners, lower-income renters and those receiving housing support who may be eligible for social housing.

4.11 The varied characteristics of renters mean they have different experiences and needs, and support and guidance will be most impactful if it is targeted at those who are most vulnerable. Vulnerability can be difficult to define precisely, can depend upon circumstances and can be exacerbated when people have been excluded from, or had bad experiences with, other services. For example, the latest English Housing Survey estimated that 35,000 privately renting households requiring adaptations due to a disability or long-term health condition felt their home was unsuitable for their needs. Furthermore, an estimated 7% of rented properties were overcrowded in 2019-20, a figure which doubled to 15% during the COVID-19 pandemic.¹⁵

Figure 12 overleaf includes examples of other factors that may make renters vulnerable, such as discrimination.

¹⁴ Citizens Advice, *It's broke, let's fix it*, July 2017, available at: www.citizensadvice.org.uk.

¹⁵ Department for Levelling Up, Housing & Communities, *English Housing Survey Household Resilience Study, Wave 2*, November–December 2020.

Figure 12

Examples of potential vulnerability within the private rented sector

Tenants can be vulnerable in different ways, and this can affect their experiences

Non-British tenants

In the UK, immigrants are three times more likely than average to live in private renting. The 'Right to Rent' scheme requires landlords to check tenants have a right to live in the UK.

Vulnerability can arise from lack of awareness of their tenant rights and how to enforce them. A lack of recourse to public funds may also lead to reluctance to ask for help.

There is also evidence of discrimination, with an estimated 25% of landlords reporting to be unwilling to let to non-British passport holders.¹

Benefits recipients

In 2020, housing support rates were increased to allow benefit claimants to access the cheapest 30% of the private rental market. Before this change, it was estimated that only the cheapest 8% were affordable.

Certain demographics are more likely to be in receipt of housing benefits, including women, disabled people and some ethnic minorities.

An estimated 29% of private renters receiving housing support live in non-decent homes, compared with 21% of those not receiving benefits.

There is also evidence of discrimination, with an estimated 52% of landlords reporting to be unwilling to let to tenants who receive Housing Benefit.¹

Low-income groups

An estimated 24% of private renting households say they have difficulty paying their bills, while 60% have no savings.

It is estimated that, due to the COVID-19 pandemic, around 163,000 households were in rent arrears in April–May 2021.

Landlords can stipulate income thresholds in affordability checks, which are designed to ensure tenants can pay their rent. However these checks can also therefore prevent low-income groups from accessing their properties.

Note

- 1 Figures based on survey evidence from the English Private Landlord Survey (2017–18) and only cover landlords who are registered with a tenancy deposit protection scheme.

Source: National Audit Office analysis of public information, including from the Department for Levelling Up, Housing & Communities (set out in Appendix Two)

4.12 Government and regulators can support consumers by informing them of potential risks and encouraging them to protect themselves when purchasing or accessing services. Other stakeholders including industry, charities and consumer organisations can also help consumers to make safe choices. The Department has produced guidance for tenants on specific topics and published *How to Rent* and *How to Rent a Safe Home* guides containing key information on standards and rights in the sector. The Department has sought input from stakeholders such as Citizens Advice and Shelter, who are experienced at supporting citizens, to help make these guides useful and accessible to renters.

4.13 Despite a requirement for landlords to provide a copy of these guides to tenants, the Department cannot demonstrate an understanding of which tenants are receiving this information, and whether it is accessible and understood by those who need it the most. Neither guide is available in languages other than English, unlike other government guidance such as on penalty charge notices or for victims of domestic violence. The Department is aware that tenants can be at risk of vulnerability at different points in their rental journey but has not articulated in detail how it interprets which tenants may be vulnerable and when.

4.14 The Department collects some demographic and satisfaction data on private tenants through its English Housing Survey but recognises it does not currently have a sufficient understanding of the causes and impacts of tenant experiences and outcomes. It is therefore constrained in ensuring the regulatory regime provides tailored guidance and support to those who need it most. By comparison, in the social rented sector, housing providers are bound by a requirement to outline their approach to tenancy management, with specific consideration given to vulnerable tenants.

Appendix One

Our audit approach

1 This study examined the extent to which the regulation of private renting in England supports the Department for Levelling Up, Housing & Communities' (the Department's) aim to ensure the sector is fair for renters. It focuses on the role and work of the Department and the effectiveness of the overall regulatory regime in improving tenant outcomes. It covered:

- the coherence of the Department's regulatory strategy, and whether this is based on a good understanding of the challenges within the sector (Part Two);
- the extent to which the Department's oversight of and support for local authority regulation of providers (landlords and lettings agents) contribute to its aims for the sector (Part Three); and
- whether tenants are adequately supported to resolve problems and ensure they get a fair deal (Part Four).

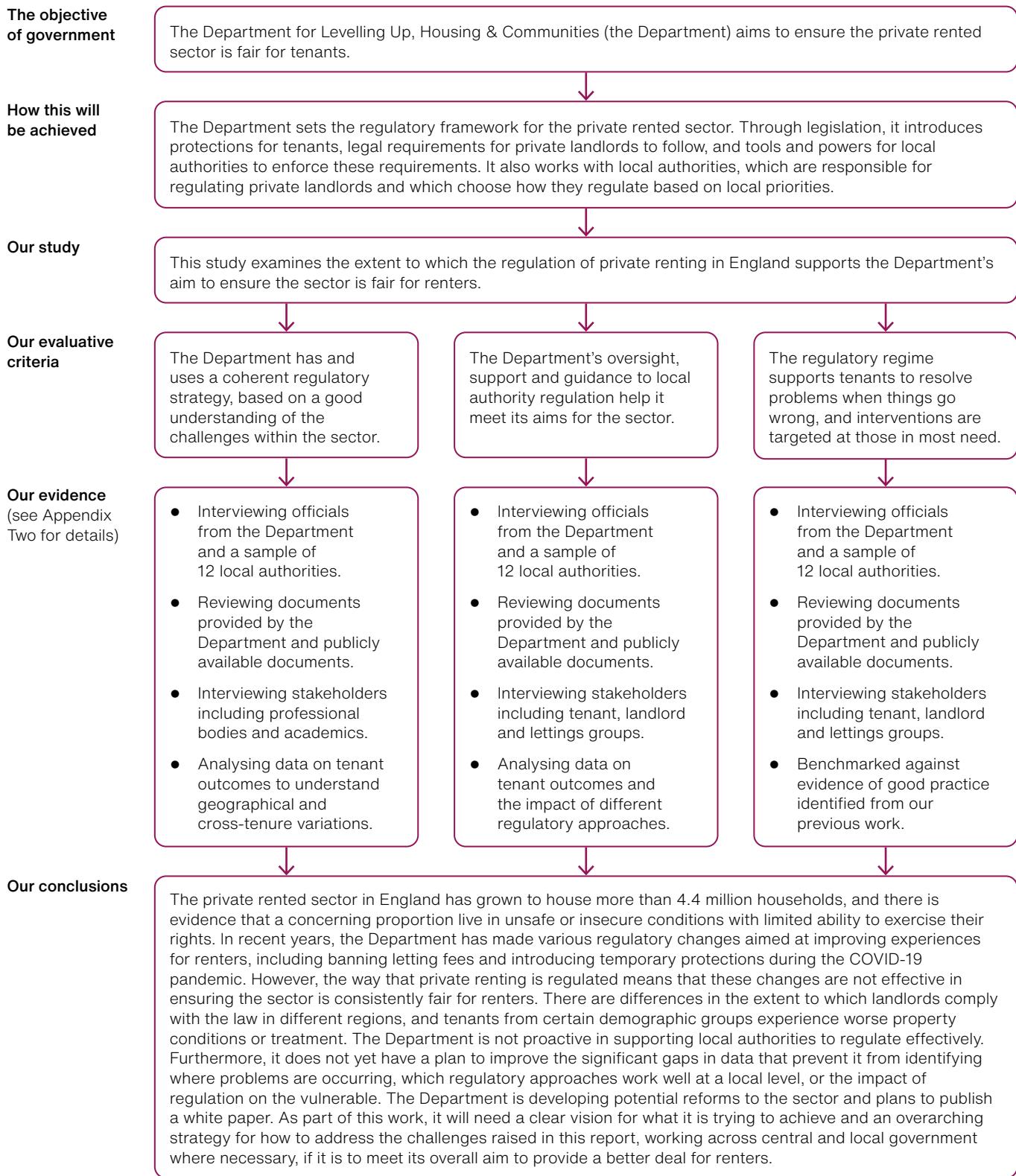
2 Our evaluation focused on the Department's objective to make the private rented sector fairer for tenants. Our assessments were based on our good practice guidance on the principles of effective regulation, supported by comparisons with other regulated sectors where appropriate. Appendix Two sets out specific past work we used to inform our assessments.

3 While this report considers the effectiveness of the overall regulatory regime in improving tenant outcomes, we did not audit local authorities or other stakeholders. We considered the potential impacts of regulatory requirements on landlords but did not seek to evaluate how well the sector works for them. We also did not seek to evaluate wider issues that impact on the sector, such as affordability and access to social housing or property ownership. The Department is currently developing reform proposals, with which it aims to improve tenant experiences. While we did not seek to assess the work that is still in development, we have considered it alongside our assessment of the current system.

4 Our audit approach is summarised in **Figure 13**. Our evidence base is described in Appendix Two.

Figure 13

Our audit approach



Appendix Two

Our evidence base

1 We reached our independent conclusions, on the effectiveness of the regulation of private renting in supporting the Department for Levelling Up, Housing & Communities' (the Department's) aim to ensure the sector is fair, by analysing evidence collected between June and September 2021.

2 We applied an analytical framework with evaluative criteria to our analysis, which considered the extent to which the Department has and uses a coherent regulatory strategy, based on a good understanding of the challenges within the sector; the extent to which the Department's oversight of the regulatory regime and support to local authorities help it meet its aims for the sector; and whether tenants are adequately supported to resolve problems and ensure they get a fair deal. Our analytical framework was primarily based on:

- our 2021 good practice guide, *Principles of Effective Regulation*;¹⁶
- standards and criteria identified in other published guidance and reports such as our 2019 report on the challenges in using data across government;¹⁷ and
- evaluative approaches we have developed and used in previous assessments of regulatory frameworks, including our previous reports examining vulnerable consumers, problem debt and gambling, our work on local authority delivery including food standards and housing, and our report examining the financial sustainability of local government.^{18,19, 20,21, 22,23}

16 National Audit Office, *Principles of effective regulation*, May 2021.

17 Comptroller and Auditor General, *Challenges in using data across government*, Session 2017-2019, HC 2220, National Audit Office, June 2019.

18 Comptroller and Auditor General, *Vulnerable consumers in regulated industries*, Session 2016-17, HC 1061, National Audit Office, March 2017.

19 Comptroller and Auditor General, *Tackling problem debt*, Session 2017-2019, HC 1499, National Audit Office, September 2018.

20 Comptroller and Auditor General, *Gambling regulation: problem gambling and protecting vulnerable people*, Session 2019-20, HC 101, National Audit Office, February 2020.

21 Comptroller and Auditor General, *Ensuring food safety and standards*, Session 2017-2019, HC 2217, National Audit Office, June 2019.

22 Comptroller and Auditor General, *Planning for new homes*, Session 2017-2019, HC 1923, National Audit Office, February 2019.

23 Comptroller and Auditor General, *Financial sustainability of local authorities*, Session 2017-2019, HC 834, National Audit Office, March 2018.

3 We conducted interviews with representatives from the Department, and a sample of local authorities, to inform our audit.

- **Semi-structured interviews with the Department:** we conducted several semi-structured interviews with officials from the Department to discuss topics including strategy, cross-government working and governance; interventions and local authority enforcement; understanding landlords and tenants, performance monitoring and evaluation; and redress options for tenants.
- **Structured interviews with local authorities:** we carried out structured interviews with a sample of 12 local authorities from across England, including housing teams, Environmental Health and Trading Standards services. Our questions covered day-to-day regulatory practices with the private rented sector, including how they understand their local housing market and their use of regulatory powers and tools; capacity and expertise; and the impact of the Department's oversight. We sampled purposively to provide a range of perspectives based on different sizes and types of local authority, from different regions, and including both urban and rural environments. Our sample was: Croydon Council, Great Yarmouth Borough Council, Liverpool City Council, Newham Council, Norfolk County Council, Oxford City Council, Sheffield City Council, Shropshire Council, Tamworth Borough Council, Teignbridge District Council, Warwickshire County Council and West Northamptonshire Council.

4 We conducted semi-structured interviews with other stakeholders within the private rented sector regulatory regime, to gather perspectives, experiences and evidence across all of our study areas. We interviewed representatives from the following organisations:

- **Other regulatory stakeholders and public bodies:** Association of Tenancy Relations Officers; Chartered Institute of Environmental Health; Local Government Association; National Trading Standards Estate and Letting Agency Team; and Regulator of Social Housing.
- **Redress, deposit, and client money protection schemes:** the Housing Ombudsman; Propertymark; Property Redress Scheme; mydeposits; and safeagent.
- **Tenant advocates, representative bodies and charities:** Advice for Renters; Citizens Advice; Generation Rent; London Renters Union; Shelter; St Mungo's and Wonkhe.
- **Industry bodies:** British Property Federation; British Landlords Association; Designs on Property; The Lettings Industry Council; London Property Licensing; Marks Out Of Tenancy; National Housing Federation; and National Residential Landlords Association.

- **Data and research organisations and academics:** The Centre for Public Data; Dr Amy Claire; Dr Julie Rugg; GeoPlace; Middlesex University Advanced Housing Practitioner Course; Resolution Foundation; and the UK Collaborative Centre for Housing Evidence.

5 To examine the coherence of the Department's regulatory strategy and its understanding of the challenges within the sector, we did the following.

- Analysed secondary evidence, including published data, information and research, on tenant experiences within the private rented sector and other housing tenures. Data was examined and triangulated from the following sources:
 - **Continuous national survey commissioned by the Department:** *English Housing Survey* (2008–2020). The survey is randomly sampled from private addresses, 13,300 households take part in a face-to-face survey and 6,000 household also take part in a physical survey of their property. When reporting on the percentage of properties within each tenure with category 1 hazards (paragraph 2.4), figures are drawn from Annex Table 4.5 of the English Housing Survey: Private Rented Sector 2019-20 report, which uses the household weight of privately rented properties and excludes vacant dwellings.
 - **The Department's English Housing Survey Household Resilience Study, Wave 2 of the study,** conducted during November–December 2020, had 4,345 respondents who had previously participated in the English Housing Survey 2019-20.
 - **Briefing paper by the Building Research Establishment:** *The cost of poor housing in England, 2021*. The paper used 2018 English Housing Survey and 2017-18 indicative NHS costs, to estimate the cost of poor housing to the NHS. We used this analysis in conjunction with 2019-20 English Housing Survey data to estimate the cost to the NHS of private rented sector homes with at least one category 1 hazard, inflated to 2020 prices. This apportion to the private rented sector is based on the assumption that the cost per property is the same for each tenure.
- Conducted primary data analysis on tenant outcomes to understand geographical variations. Using English Housing Survey data, we examined the prevalence of category 1 hazards in each of the English regions. We did this at regional level rather than individual local authority level, due to bigger sample sizes and therefore more robust comparisons.
- Reviewed published documents and internal management information relating to the Department's strategy for the private rented sector, cross-government working, stakeholder engagement and recent legislative changes.
- Analysed the Department's current data collection arrangements, and its development of objectives and performance targets for the reform proposals.

6 To assess the extent to which the Department's oversight and support to local authority regulation of landlords and lettings agents support its aims for the sector, we did the following:

- Reviewed published documents and internal management information relating to the Department's oversight of the sector, including its provision of guidance and enforcement powers to local authorities, its landlord segmentation analysis and data returns of local authority housing statistics and spend.
- Analysed secondary evidence, including published data, information and research, on local authorities' enforcement activity and use of licensing schemes. This evidence was triangulated with the Department's data on approved selective licensing schemes and included:
 - **research undertaken by Generation Rent through a Freedom of Information (FOI) request:** *Generation Rent FOI local government enforcement* (2017-18, 2018-19 and 2019-20). The FOI requests in 2018 and 2019 were sent to 100 local authorities across England with the highest number of private rented properties, and in total the sample covered an estimated 62% of all private rented sector properties. In 2020, 110 local authorities were contacted. In total, 101 authorities provided data on the number of inspections they had undertaken in response to one or more of the three requests;
 - **research undertaken by Chartered Institute of Environmental Health and Chartered Institute of Housing:** *A licence to rent* (January 2019). A survey of 20 local authorities with selective licensing schemes. Our analysis focused on the appendix, which listed details of all selective licensing schemes in operation at the time;
 - **research conducted by National Residential Landlords Association on local authorities licensing schemes:** FOI request to local authorities across England – received 200 responses (November 2019 to February 2020). Research was published by Which? in April 2020; and
 - **research undertaken by The Centre for Public Data:** *A national register for England – how to make it work* (September 2021). Research on selective licensing schemes in operation during September 2021.

- We conducted exploratory primary analyses using the limited data available to look for relationships between regulatory approaches between local authorities with several outcome indicators. In the absence of official data on approaches taken by local authorities, we used the data sources set out in the previous bullet to identify which authorities had run a licensing scheme, and to estimate levels of inspection activity by comparing the number of inspections as reported by each local authority in at least one of Generation Rent's FOI requests with the number of rented properties in that authority. Using these, we did the following analyses:
 - **A regression analysis comparing inspection activity levels for each local authority with improvement in compliance with energy efficiency requirements.** This used publicly available Energy Performance Certificate (EPC) data from 2008 to 2020. We found a positive correlation between higher inspection levels and better improvement in compliance with minimum requirements (EPC grade E) in the period. However, while statistically significant with 95% confidence, the association was not strong. The inspection data available covered less than half of local authorities.
 - **An estimate of the average potential savings on utility bills for non-compliant homes becoming compliant with energy efficiency requirements.** This used the same EPC data as above, and was a weighted average of the potential savings for rented properties that were graded F or G but could have been improved to an E.
 - **A cohort analysis using the FOI data on inspections to group local authorities into quartiles and examining trends in property conditions between the most active and least active quartiles.** We did this as a cohort analysis rather than for individual local authorities, due to small sample sizes in the English Housing Survey that the property conditions data came from. Our finding that the most active authorities saw fewer category 1 hazards than the least active was statistically significant with 95% confidence. There was a similar difference in homes classified as non-decent, but this was not statistically significant. We also attempted to examine whether more inspection activity also led to better improvement over time, but only had geographical indicators for the English Housing Survey for the latest five years, and so were not able to identify any robust trends.
 - **We also attempted a cohort analysis that grouped local authorities together by licensing arrangements to examine trends in property conditions.** However, we were unable to identify any clear trends. The small sample sizes and lack of longer-term geographical indicators in the English Housing Survey were barriers here, as different local authorities have run schemes at different times.

7 To assess the extent to which the regulatory regime empowers consumers to resolve problems when things go wrong, and if guidance and support can reach those in most need, we did the following:

- Reviewed published documents and internal management information relating to the Department's oversight of redress schemes, including policy development, initial approval of providers and performance monitoring.
- Analysed secondary evidence including published data, information and research on tenants' barriers to and experiences of redress. This included:
 - **research by Citizens Advice: *It's broke, let's fix it: improving redress for private renters*, July 2017.** A nationally representative survey of private tenants which explored their attitudes and experiences of disrepair disputes with their landlords. The survey was conducted from 10 March to 17 March 2017 with a sample of 762 privately renting adults. The survey was conducted online and therefore only reflects the views of tenants who have access to the internet.
 - Examined secondary evidence including published data, information and research on the outcomes and experiences of vulnerable tenants, including:
 - **the Department's English Private Landlord Survey (2017-18):** An online survey of 8,000 landlords and letting agents, sampled through the tenancy deposit protection schemes' administrative data (September 2017). The sample does not include landlords who do not have deposits registered with a tenancy deposit protection scheme. Because the survey was conducted online, it only represents the views of landlords who have access to the internet;
 - **the Department's English Housing Survey: *Home Adaptations Report, (2019-20)*:** the report provides the findings from the 2019-20 English Housing Survey on home adaptations, which can range from simple grab rails and ramps to accessible shower rooms and stair lifts, can make homes safer and promote independent living for the people who require them;
 - **the Department's English Housing Survey Household Resilience Study, Wave 3 of the study,** conducted during April-May 2021 involving 3,906 respondents who had previously participated in the English Housing Survey 2019-20. This provided the latest estimate of the number of renting households in rent arrears;

- **research produced by Shelter:** *Denied the right to a safe home*, May 2021. The report uses data from the Department for Work & Pensions Family Resources Survey (2019-20) and Housing Benefit caseload data (March 2018), to identify demographic groups most likely to be in receipt of housing support. It also uses data from the Understanding Society Survey Wave 9 (January 2017 to January 2019);
- **research produced by the National Housing Federation:** *Renting at local housing allowance*, July 2019. The research analysed private rental listings extracted from Zoopla in July 2019 to explore what proportion were affordable for households in receipt of housing support. The latest 100 private rental advertisements for each postcode area in England were collected, producing a final sample of 74,154. The monthly rent of each property was then compared with the monthly local housing allowance rate, to determine if they were affordable; and
- **research produced by The Migration Observatory:** *Migrants and housing in the UK: experiences and impacts*, October 2019. The research uses data from the Annual Population Survey (2018) and the Understanding Society Survey (2016–2018) to provide statistics on migration and housing in the UK.
- Benchmarked the Department's targeted guidance for vulnerable tenants to other forms of consumer guidance produced by central government.

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