



A Decent Homes Standard in the private rented sector: consultation

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The Country Land and Business Association (CLA) is the membership organisation for owners of land, property and businesses in rural England and Wales. Our 26,000 members own or manage around half the rural land in England and Wales and operate more than 250 different types of businesses. Our members are the most significant provider of houses for rent in the private sector in rural areas and our members' businesses also generate housing need and help sustain rural communities. 17% of the population live in rural areas, and research shows that over the next decade, an additional 124,000 households are expected to move to rural areas¹. Any policies related to reforming the private rented sector (PRS) must pay attention to the rural economy and the needs of communities living in and contributing to it.

Question 12²: Do you support bringing in and enforcing the Decent Homes Standard, as set out above, in the private rented sector?

Answer: No

Supplementary answer: There are currently approximately 140 Acts of Parliament and more than 400 regulations affecting the renting of residential properties in the PRS. The sole purpose of any new decent homes standard for the PRS should be to consolidate existing legislation and make it easier for landlords and tenants to understand. There is already a plethora of complicated legislation and standards for landlords to navigate, including:

- The Housing Health and Safety Rating System
- Minimum Energy Efficiency Standards
- The Homes (Fitness for Human Habitation) Act 2018
- Smoke and Carbon Monoxide regulations
- Gas and electrical safety regulations
- Legionella risk assessments
- Right to Rent immigration checks
- Tenancy Deposit Protection
- Licensing

The decent homes standard would not 'fix' anything in the PRS that is not already covered by existing legislation. A decent homes standard for the PRS is at risk of just being a reporting tool for landlords and another layer of audit, as it has become in the social sector.

If the number of homes which would be classed as "non-decent" quoted in the White Paper has been calculated against the decent homes standard in the social sector, this is not an appropriate basis for new policy. A full review of the existing Standard needs to be completed before one can decide whether the PRS needs a Standard at all.

¹ CPRE, Rural Recovery and Revitalisation, October 2020

² NB – Questions 1-11 are related to who is answering the survey.

Furthermore, if the existing 140 Acts of Parliament, and 400 regulations were enforced appropriately then a Decent Homes Standard would not be necessary.

Question 13: How clear is the Standard as set out?

Answer: Quite Clear

Supplementary answer: While we do not support the principle of a Decent Homes Standard for the PRS, the Standard as set out in the consultation document seems to be quite clear.

Question 14: How difficult do you believe the Standard will be to meet?

Answer: Quite easy

Supplementary answer: Our landlord members strive to be compliant with all existing standards, therefore Standards related to category 1 hazards and thermal comfort will not be difficult for most of our members to meet as they will already be doing so. The Standard as written appears to be reasonably low for most properties. However, we do have particular concerns with the level of detail required to determine whether a component of a property would be considered in “poor condition” as Criterion B of the Standard requires. The Standard as written allows for a significant amount of subjectivity to be applied as to whether a component need repairing or replacing because of its condition. This would be particularly open to interpretation for kitchens and bathrooms; one person’s definition of a good standard and functioning kitchen or bathroom could be significantly different to someone else’s.

This openness to interpretation could cause conflict between tenants and landlords, where a tenant may be particularly captious. We have commented on the age requirement in our supplementary answer to question 15.

Question 15: Currently, a property will fail the Decent Homes Standard if a ‘key building component’ (e.g. wall, window, roof) is both old and in poor condition. Should we change the Standard to remove ‘old’ so only the condition is relevant?

Answer: Yes

Supplementary answer: Of particular concern for CLA members would be any inclusion of age being an acceptable measure of adequacy of facilities in a property. We wholeheartedly support the removal of ‘old’ from the standard so that only the condition is relevant. If ‘old’ is not removed, beautiful heritage properties could have their facilities ripped out and character impacted because they’re over a certain age and don’t meet modern standards.

Rural properties are more likely to be of traditional (pre-1919) construction, more likely to be classed as energy inefficient (because of difficulties in upgrading, not discussed in this response), and more likely to be heritage, listed and in a conservation area. This is likely to make them fall within the “non-decent” category by default. In rural areas a significant proportion of housing is older building stock and this needs to be considered before legislation is enacted.

Otherwise, as with MEES, there becomes a need for a complicated system of exemptions and the legislation fails to perform as it was intended.

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

Answer: No

Supplementary answer: The most serious offences in the Decent Homes Standard such as failure to provide a home free of Category 1 hazards are already a criminal offence, therefore duplication is not required. Additionally, if you make it a criminal offence to fail to comply with the less serious failures within the standard, unless the inspection regime changes, we are unconvinced it would act as a deterrent.

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

Answer: Local councils should only issue civil penalties

Supplementary answer: Local authorities should concentrate on supporting landlords to understand their responsibilities under current legislation rather than be required to enforce a further standard which may duplicate what is already required by other legislation. Local authorities do not have the capacity, or in our opinion the expertise, to issue civil penalties or prosecute. No enforcement by way of prosecution should occur outside of the Court system where the landlord would be able to make proper representation. However, if a Local Authority has tried engaging with the landlord, and there is an appropriate appeals mechanism in place civil penalties could be one way of enforcing the Standard.

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

Answer: Yes

Supplementary answer: One way of ensuring compliance could be to extend rent repayment orders to include Decent Homes Standard offences. However, these must only be able to be applied to the most serious of offences and failures to meet the Standard. There should also be a robust appeals process. In particular where an exemption is disputed, rent repayment orders must not be applied.

Question 19: Do you think that a landlord's failure to meet their duty to keep a property at Decent Homes Standard should be included as a banning order offence?

Answer: Unsure/ Don't know

Supplementary answer: The PRS in rural areas is being threatened by overwhelming and countless new pieces of legislation and many landlords are choosing to leave the market as the

administration of renting in the private sector is no longer viable. If landlords who fail on one count, perhaps minor, for one property are then banned from operating as a landlord at all then this presents yet another threat to the supply of rural rented homes.

If a criminal landlord, i.e., one who is deliberately non-compliant with the most serious legislation, is repeatedly found to be in breach of a Decent Homes Standard across multiple properties, and does not willingly engage with attempts to rectify, then there should be a legal route to redress which could include a banning order. However, the bar for a banning order should be high and reserved for only the most lawless landlords who comply with little or no legislation.

Question 20: Do you think that local councils should have the discretion to make properties temporarily exempt from the duty to meet the Decent Homes Standard on a case-by-case basis (with regard to statutory guidance)?

Answer: Other, please specify [free text]

Free text: Where possible, most exemptions should be set out in legislation to ensure that application is uniform. However, there will always be instances which cannot be predicted and covered in legislation, in which case local councils should have discretion to temporarily exempt the duty to meet the Decent Homes Standard. The landlord should be able to make representations to the local council for a temporary exemption, and there must be a route for appeal in a case of an exemption not being given.

Question 21: In some instances, carrying out Decent Homes Standard work or repairs without permission would put the landlord in breach of a statutory obligation, such as in the case of listed buildings. We are proposing to exempt landlords where they have attempted to obtain permission to carry out the works and been refused. Do you think it would be appropriate for this exemption to the Decent Homes Standard to be set out in legislation?

Answer: Yes

Supplementary answer: Although we agree that there should be an exemption in the instance of the landlord being the steward of a listed building, we do not agree that the exemption should be granted at refusal of planning permission or listed building consent. A planning permission or listed building consent is very costly and can take several months, if not years, to get a decision. A more appropriate hurdle to obtain a listed building exemption would be for the landlord to obtain a RICS registered surveyor's opinion of whether any work would harm character, function, or appearance of the property.

Question 22: Do you think local councils should have the discretion to temporarily exempt a landlord from the duty to meet the Decent Homes Standard where the landlord has bought a property with sitting tenants that does not meet the Standard?

Answer: No, this exemption should be set out in legislation

Question 23: Do you think local councils should have the discretion to temporarily exempt the personal representatives of a landlord from meeting the Decent Homes Standard where a letting property is under probate?

Answer: No, this exemption should be set out in legislation

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

Answer: Unsure/Don't know

Supplementary Answer: This is not relevant to most CLA members.

Question 25: Do you think local councils should have the discretion to temporarily exempt someone from the duty to meet Decent Homes Standard where they are taking over the property on a temporary basis due to the landlord being incapacitated?

Answer: No, this exemption should be set out in legislation

Question 26: Do you think local councils should have the discretion to temporarily exempt a landlord from the duty to meet the Decent Homes Standard where accidental damages have occurred (e.g. fires, floods, storms, etc.)?

Answer: No, this exemption should be set out in legislation

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

Answer [free text]: The exemptions which exist for Minimum Energy Efficiency Standards could in some form be replicated for any future Decent Homes Standard. For example, the third-party consent exemption has been useful for landlords particularly where a tenant does not want any works to be completed. Rural properties tend to have longer standing tenants with the average tenancy being 7.5 years. These tenants often see the home as their own and do not want their landlord carrying out invasive and disruptive works.

Some members have particular concern about carrying out improvement or upgrade works where the tenant may be elderly. This is particularly relevant if a kitchen or bathroom needs to be replaced and would leave the tenant without appropriate facilities for some time. One solution would be to allow discretion to be applied if works are particularly invasive and not doing them does not endanger human life, to allow the property to be exempt until the existing tenancy ends and the property is left void.

We discuss an exemption for certain tenancy types later in our response at question 46.

Question 28: Who do you think should be responsible for a Decent Homes Standard failure? Please select one or more responses.

Answer: Other [free text]: The difficulty in determining who is responsible is that there will need to be accommodation for the fact that if it is the immediate landlord who is responsible (for instance if it is a property that they are subletting) they will need to refer to the terms of the main tenancy to decide who is responsible for works. This may take some time to determine, and possibly required some dialogue between the head landlord and the immediate landlord – possibly even leading to dispute resolution. Is it one thing to make the immediate landlord responsible for ensuring action is taken but they should not be held liable if the person actually contractually obliged to carry out the works needed fails to do so in a timely fashion, if at all.

The difficulties have been highlighted by the implementation of HHSRS and the difficulties applying to AHA and FBT farmhouses, this strengthens our suggestion (in our response to question 46) that these be excluded from requirements. There needs to be an awareness when enforcing legislation that there are more scenarios than just a standard short-term AST distribution of responsibilities.

Question 29: Do you think that landlords should use the Property Portal to register Decent Homes Standard compliance of their properties or record where there is an agreed exemption?

Answer: Unsure/ Don't know

Supplementary answer: A property portal may be the most sensible way of administering the Decent Home Standard, but we have reservations.

If the portal is intended to be a helpful checklist of all legislation landlords must be compliant with then this could be helpful for landlords. However, it absolutely must not be landlord registration through the back door. A form of landlord registration would be an administrative nightmare for landlords, who already have to collate and produce information related to their properties, duplication of this would be an undue burden. If the property portal is intended as a tool to help local authorities enforce against existing legislation, then we question the potential effectiveness, as the most unscrupulous landlords will not register on a portal.

Question 30: Tenants only: Would you find it helpful to be able to view whether your current or prospective property had been declared Decent Homes Standard compliant by the landlord or whether an exemption was in place?

Answer: Not applicable

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

Answer: Yes

Supplementary answer: There are criminal landlords who deliberately mislead and would submit false or misleading information. However, the level before prosecution or registering an offence must be sufficiently high so that reasonable landlords who make a mistake when providing information are not punished. These landlords who make a mistake are not criminals and are not deliberately providing substandard homes or falsifying information.

Question 32: Duplicative burdens on landlords at local and national level are undesirable where they can be avoided. We want to work with local councils and other stakeholders to ensure that the transition to a Privately Rented Property Portal is as seamless as possible, including looking at how it can integrate with licensing schemes where practicable. We will also work to streamline requirements for landlords, such as by working with BEIS on synchronising guidance on minimum energy efficiency. It is imperative that the system meets the needs of landlords, tenants, agents and local councils. Please share thoughts on how we can streamline requirements and support compliance.

Answer [free text]: The most appropriate way to avoid duplication is clarity. The 140 Acts of Parliament and 400 regulations make it very difficult for landlords to keep on top of their responsibilities. The continued uncertainty with proposed legislation, including MEES, is hugely concerning. Our members are keen to improve the condition of their properties, including making them more efficient and affordable for tenants; however, uncertainty makes business planning incredibly difficult. Streamlining the legislation, and publishing clarity on what landlords will be required to do for the next 10 years is imperative. Most landlords will not recognise a difference between 'BEIS requirements' and 'DLUHC requirements', this is irrelevant in the real world, landlords just need clarity and certainty on their overall responsibilities.

Of particular concern would be if any proposed cost caps were not streamlined. Currently our members are assuming a £10,000 cost cap to reach EPC 'C', although this is yet to be confirmed, if they are then to assume an additional cost cap for a Decent Homes Standard this would be disjointed. If there were two cost caps how would one decide which works counted towards MEES, and what towards Decent Homes. For example, wall insulation could contribute to reaching EPC 'C', but also towards Criterion D of providing a reasonable degree of thermal comfort.

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

Answer: Yes

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

Answer: Yes

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

Answer: To central government

Supplementary answer: There should just be a requirement for local councils to publish their data, this does not have to be in the format of a formal, length report to central government as this could take limited local authority resource away from more important matters.

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

Answer: Not applicable

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

Answer [free text]: *Not answered*

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

Answer: Yes, they are useful

Supplementary answer: Prior to enforcement, landlords should be given the opportunity to put things right. Landlords should also be allowed to make representations where they do not agree with an assessment of the property or where they believe an exemption should apply.

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

Answer: No

Supplementary answer: However, if local councils do have the power to serve Decent Homes Standard improvement notices then a proper process needs to be in place. It must not be possible for a landlord to receive an enforcement notice out of the blue. An improvement notice should only perform as a summary of improvements previously agreed at an inspection with the landlord present.

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

Answer: No

Supplementary answer: If enforcement processes are adequate then there would be no need for local councils to undertake emergency remedial works. There may be instances where such work will undermine or damage the character of the property, the threat of the local authority

appointing their own contractors who could damage that character through lack of experience or understanding, is disproportionate in the PRS. However, it is understood that if a property presents an immediate threat to human health or life and the landlord can't be reached, then emergency remedial works may be required.

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

Answer: Yes

Supplementary answer: If a property is classed as so unsafe as to be uninhabitable then an enforcement agency must have the ability to prohibit its use. However, the hurdle for this must be a threat to human life or serious harm.

Question 42: Should we amend legislation to make it explicit that a landlord does not have a right to attend inspections [by virtue of receiving notice to that effect]?

Answer: No

Supplementary answer: Those few unscrupulous landlords who delay an inspection taking place should not be legislated for at the expense of perfectly satisfactory landlords. It is important that landlords are able to make representations at a property inspection, to ensure that they understand the concerns being raised, and are treated fairly. One solution for the very few tenants who feel inhibited about discussing their complaint in front of their landlord would be for there to be two inspections: one for the tenant and one for the landlord. In the majority of cases a two-way conversation between tenant and landlord is the most effective way for any complaints to be resolved.

Question 43: Do you think that there is a role for other providers (not just the local council) in providing advice to landlords on whether their properties meet the Decent Homes Standard?

Answer: No

Question 44: Do you think local councils have a role in providing advice to landlords on pre-emptive work to prevent properties failing to meet the Standard in the near future?

Answer: No

Supplementary answer: Local Council resources would be better placed searching for and prosecuting criminal landlords who do not attempt any form of compliance. However, there is a place for positive engagement, targeted advice and a pragmatic approach particularly where rural properties may need a more tailored approach.

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

Answer: No

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

Answer: No

Supplementary answer: Rural properties tend to be let out on a much wider variety of tenure types including Rent Act 1977, Rent (Agriculture) Act 1976, long-term ASTs and a variety of employment accommodation e.g. Service Occupancy Agreements. This range of tenures can mean lower rents, longer-term tenants making major works difficult, and potentially high turnover of occupants meaning void periods are often necessarily short. We would propose the same tenancies apply for the Decent Homes Standard as those which apply for MEEs, namely:

- Short-term Assured or Assured Shorthold
- Rent Act 1977
- Assured Agricultural Occupancy or Rent (Agricultural) 1976

Any other tenancy types, including licences and 1954 Act tenancies, should be excluded from requirements.

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

Answer: Unsure/Don't know³

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

Answer: Unsure/Don't know⁴

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

Answer: Unsure/Don't know⁵

³ NB Out of scope for the CLA

⁴ *ibid.*

⁵ *ibid.*

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

Answer: No

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

Answer: No

Question 52: Should the Decent Homes Standard apply to ‘tied’ accommodation, which is where an individual is required to or has the option to live in certain accommodation for the purpose of their employment?

Answer: No

Supplementary answer: No, the Decent Homes Standard should not apply to ‘tied’ accommodation. However, if it were to apply we would propose some restrictions. Firstly, that it should not be retrospective in nature given the variety of ‘tied’ accommodation and different agreements there are. These existing agreements may be very short-term, charge little to no rent, and may have differing points of responsibility for maintaining the property. It would be sensible for a Decent Homes Standard to only apply to ‘tied’ accommodation agreements entered into post the legislation taking effect, and only apply to permanent buildings (i.e. to exclude caravans, temporary buildings, houseboats etc.) Secondly, the legislation should also only apply to the relevant tenancies as discussed earlier, and should not apply to any form of licence to occupy.

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

Answer: No

Question 54: Do you have any other comments on the scope of the Decent Homes Standard, including other types of accommodation that you think should or should not be included in scope?

Answer [free text]: *Not answered*

Question 55: What do you think will be the main impacts from bringing in a Decent Homes Standard in the private rented sector for both tenants and landlords? Please provide any evidence and further comments on impacts in the free text box.

Answer:

- Financial cost for landlords to make changes
- Landlords reducing their portfolio size

- Increased rents
- Disruption for tenants whilst works are being undertaken
- Other [free text]: CLA members are widely reporting that all the Renters' Reform proposals, including the Decent Homes Standard, are making them consider leaving the market, with many already having sold. For example, the National Residential Landlord Association (NRLA) report that 28% of landlords in Yorkshire and Humber plan to cut the number of properties they let in the next 12 months, this is up from 20% the year before.

One CLA member in Suffolk with four residential lets on their farm currently has two voids, they are considering selling both because of upcoming costs and uncertain, burdensome regulations making them unviable. Another larger CLA member says, "[We] would be willing to work with the various bodies to improve the thermal performance of [our] portfolio but to be effective government need to avoid putting unrealistic requirements in place that will result in many rural properties being sold." This comment was in relation to MEES but accurately states the feeling within the sector.

Question 56: There are risks that bringing in the Decent Homes Standard means landlords exit the market or that they pass costs on to tenants. Which of the below would you support to mitigate the risks of any negative impacts of introducing a Decent Homes Standard in the private rented sector? Choose as many as you would like.

Answer: Other [free text]: We do not support a Decent Homes Standard so do not feel that any of the mitigating factors are appropriate to support. However, if government departments worked together and give certainty to landlords this would alleviate much concern. Focus needs to be realigned to target criminal landlords without punishing the majority who provide perfectly good homes. A refocus on effective enforcement of existing legislation and regulations would negate much of the need for a Decent Homes Standard. Duplication must be avoided, and administrative burden, and cost kept to a minimum.

For example, enforcement of the Housing Health and Safety Rating System has been somewhat of a postcode lottery. It is a matter of real concern that Councils will enforce against the "softer targets" of the *almost* compliant landlord who is trying to keep up with all the changes (and known to them) rather than the totally uncompliant criminal landlords who have brought the sector into disrepute. The *almost* compliant landlord may reconsider leaving the market for fear of being targeted for mistakes leading to enforcement.

Question 57: To what extent would you support bringing in a cost cap on criteria B, C and D of the Standard (e.g. on the non-safety elements of the Standard)?

Answer: Strongly unresponsive

Supplementary answer: While a cost cap can be assumed to provide a limit on what is required to be spent by landlords, MEES has shown the cost cap to be irrelevant in most cases. In reality the landlord ends up spending more than the cost cap as without completing all required works, what is spent up to the value of the cost cap becomes nugatory. On the other hand, any meaningful cost cap to complete works would have a significant impact on the viability

of rural properties, particularly where low rents are charged. A cost cap takes no account of the variable rental levels throughout England. Data from the ONS shows that the median monthly private rent in 2019/20 for a home in the North East was £495, compared to £900 in the South East.

However, there must be limits on the amount of money that a landlord can reasonably be expected to invest in a property to bring it up to Standard. We would propose a 'payback' limit – for example if the works are able to increase the rental value of the property then this must be of sufficient value that the works are 'repaid' within a timeframe, for example 5-10 years. This should be on the actual rental value of the property. If the landlord is unable to recoup the investment through a rent increase, for example in the case of a low-income tenant or rent increase-restricting tenancy, there should either be an exemption or funding available for this scenario.

Question 58: Do you think there should be a transitional 'grace' period before the Decent Homes Standard becomes a requirement, and when enforcement action can be taken?

Answer: Yes, there should be a grace period

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

Answer: Longer than 18 months

Supplementary answer: A grace period is particularly important where there is long-term tenant in place, or if disruption would be too great for the tenant for example if they're elderly. We propose a long grace period, for example 5 years. The average tenancy in rural areas according to a CLA survey is 7.5 years. A grace period would allow for more void properties to become available so that works could be completed without tenants in place, and would allow cases where exemptions may be required to be identified and where necessary discussed with the local authority.

Question 60: Do you think that we should phase in parts of the Standard. For example, to bring in criteria A and B in the first instance, before including criteria C and D at a future point

Answer: No, all elements of the Standard should come in at the same time

Supplementary answer: Landlords need certainty, and a phased approach only complicates the timeframe which landlords will need to understand and comply with. Additionally, by separating out different criteria of the proposed Standard legislation is effectively being duplicated. For example, when Criterion D is phased in this could be seen as a duplication of MEES, and Criteria A, B and C could be seen as a duplication of The Homes (Fitness for Human Habitation) Act 2018.



Question 61: If elements of the Standard were to be phased in, please rank the order you would want them to be brought in from first to last

Question not answered. We do not support a phased approach.

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

Answer: There should not be any phasing.



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