The Government is determined to drive criminal landlords out of the private rented sector. While the vast majority of landlords provide decent and well managed accommodation, there is a small minority who exploit and endanger tenants, many of them vulnerable, by renting out unsafe and substandard accommodation which is poorly maintained and often overcrowded. They frequently intimidate and harass tenants who make a complaint.

These measures are designed to give local authorities additional powers to crack down on the small minority of rogue/criminal landlords in the private rented sector by:

- introducing a database of rogue landlords and letting agents who have been convicted of serious offences;
- seeking banning orders for the most prolific and serious offenders;
- applying a more stringent ‘fit and proper’ person test for landlords letting out licensed properties;
- issuing civil penalty notices of up to £5,000 for certain breaches of housing legislation;
- extending Rent Repayment Orders to cover situations where a tenant has been illegally evicted or the landlord has failed to rectify a serious health and safety hazard in the property; and
- allowing local authorities to access local data on landlord and property addresses held by Tenancy Deposit Protection schemes.

These measures will not impact on the majority of good landlords who comply with their legal responsibilities.

In addition, the legislation will introduce a process for abandoned tenancies which would enable a landlord to recover a property without the need to go to court.

What are the policy objectives and the intended effects?

The proposed measures will:

- **Tackle the worst offenders** by monitoring and stopping them from letting or managing rented accommodation. There is a small persistent minority of landlords, who currently feel they can ignore existing legislation and sanctions. The database will make it easier for local authorities to monitor known criminal landlords. This will enable speedier intervention, preventing harm and danger to tenants. Banning orders will stop serious offenders from letting unsafe and dangerous accommodation to tenants.

- **Provide a better enforcement regime** which follows the ‘polluter pays’ principle. The cost of enforcement will fall primarily on rogue landlords rather than the good landlords. Local authorities will be able to fine rogue landlords through Civil Penalty Notices or rent repayment orders. Local authorities will be able to keep these fines to fund further enforcement activity.

- **Specify a clear abandonment procedure** for landlords who want to regain possession of their property. This will enable landlords to access their property; stop it standing empty and lose rental income, but also place it back on the rental market without fear of being prosecuted for illegal eviction or trespass.
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

**Option 1)** do nothing – will not result in driving rogue landlords out of the sector.

**Option 2)** a national register of landlords - this option has been considered but rejected as being too regulatory/burdensome as it would impact on all landlords, not just the criminals, resulting in additional costs being passed through to tenants. Our preliminary analysis suggests that a National Register would cost at least £40m per year.

**Option 3)** voluntary accreditation - while such schemes are supported by the Department, they will not do anything to help councils tackle rogue landlords in the sector.

**Option 4)** new regulation measures (preferred) - the problems identified in Options 1-3 are well known and recognised and the Department has engaged extensively with landlord groups on how to address this criminal behaviour. The most recent engagement was in August 2015 when the Department published a discussion paper (Annexes A and B for document and brief analysis). As noted above, these practices are engaged in by a small minority of rogue landlords who have little concern for their tenants and are not receptive to 'nudge based' policy solutions. They evade enforcement officers and are not open to persuasion. Only regulation with clear sanctions will force them to change their behaviour. The alternative of allowing these practices to go unchecked is not fair on the large majority of good law abiding landlords who are in competition with the rogues, or their tenants who suffer because of the poor practice.

**Will the policy be reviewed?** It will be reviewed. If applicable, set review date: 5 years

<table>
<thead>
<tr>
<th>Does implementation go beyond minimum EU requirements?</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</td>
<td>Micro  Yes</td>
</tr>
<tr>
<td>What is the CO₂ equivalent change in greenhouse gas emissions? (Million tonnes CO₂ equivalent)</td>
<td>Traded:</td>
</tr>
</tbody>
</table>

_I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options._

Signed by the responsible Minister: ......................................... Date: 16/11/2015
**Analysis & Evidence**

**Description:**

**FULL ECONOMIC ASSESSMENT**

<table>
<thead>
<tr>
<th>Price Base Year 2015</th>
<th>PV Base Year 2015</th>
<th>Time Period Years 10</th>
<th>Net Benefit (Present Value (PV)) (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Low: Optional</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>High: Optional</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Best Estimate: 27.23</td>
</tr>
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</table>

**COSTS (£m)**

<table>
<thead>
<tr>
<th></th>
<th>Total Transition</th>
<th>Average Annual</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Optional</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td>High</td>
<td>Optional</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td><strong>Best Estimate</strong></td>
<td>10.5</td>
<td>1.2</td>
<td><strong>20.6</strong></td>
</tr>
</tbody>
</table>

**Description and scale of key monetised costs by ‘main affected groups’**

The only ongoing costs are built around extending the fit and proper person test, where about 165,000 (out of 1.4m landlords) will have to pay for background checks and spend additional time processing licensing forms. The remaining costs are transitional, and account for the familiarisation time required by the sector to acknowledge new changes to legislation and process.

**Other key non-monetised costs by ‘main affected groups’**

There are no non-monetised costs.

**BENEFITS (£m)**

<table>
<thead>
<tr>
<th></th>
<th>Total Transition</th>
<th>Average Annual</th>
<th>Total Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Optional</td>
<td>Optional</td>
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</tr>
<tr>
<td>High</td>
<td>Optional</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td><strong>Best Estimate</strong></td>
<td></td>
<td>5.2</td>
<td><strong>44.5</strong></td>
</tr>
</tbody>
</table>

**Description and scale of key monetised benefits by ‘main affected groups’**

Changes to abandonment offer the sector significant savings, brought about by recovery of lost rent and avoidance of legal fees. Without a need to go to court, and the ability to recover a property on average 3 months sooner, a typical landlord can save in excess of £2,500 for every abandoned property.

**Other key non-monetised benefits by ‘main affected groups’**

Improvements to the sector as a whole, by targeting criminal landlords who undertake black market activity that undercuts the earnings of compliant landlords.

**Key assumptions/sensitivities/risks**

Discount rate (%): 3.5

The private rented sector is expected to grow by 5% year on year, and equally any subset of it is expected to grow at the same rate.

**BUSINESS ASSESSMENT (Option 1)**

<table>
<thead>
<tr>
<th>Direct impact on business (Equivalent Annual) £m:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs: 2.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefits: 5.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net: 2.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In scope of OITO? Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Measure qualifies as Out</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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3
Context

This validation Impact Assessment confirms an equivalent annual net saving of £2.7m pa to the private rented.

The Department’s Housing and Planning Bill Impact Assessment was published on 19 October 2015; this Impact Assessment provides an overarching assessment of the impact of the measures aimed at the private rented sector.

Prior to the private rented sector provisions coming into force; further separate impact assessments will submitted for each of the statutory instruments that implement the individual policies. These separate future impact assessments will provide more detailed evidence of costs and benefits.¹

The Department published a discussion document in August 2015² which sought views on how to best improve property conditions in the private rented sector. We received 615 substantive responses which have helped inform this policy. Although a formal Consultation Impact Assessment was not produced alongside the discussion document; we consider the validation Impact Assessment at this stage to be sufficient for the following reasons:

1) there were no policy proposals made with the discussion paper; the purpose of the document was to canvass opinion on possible policy measures;

2) the Department has been testing alternatives to regulation in the private sector and has a relatively good understanding about the potential behaviour changes achieved with alternative approaches compared to regulatory policies;

3) the key costs to landlords from these policies are based on assumptions used to quantify familiarisation costs in past Impact Assessments by the Department³. These have been used in this analysis to ensure consistency;

4) there has been extensive stakeholder engagement (see discussion document⁴ and list of stakeholders met in Annex B) and further consultation would arguably not result in any additional evidence being submitted. Given the nature of policies being considered all affected stakeholders made substantive responses to the engagement activity;

5) no amount of consultation would enable the monetisation of the expected benefits. The increase in certainty for tenants is unlikely to be quantifiable when taking a proportionate approach;

¹ These will cover: database of landlords, banning orders, fit and proper person test, rent repayment orders, tenant deposit data, abandonment and civil penalty notices.
6) we have carried out appropriate sensitivity analysis to capture any uncertainty;

7) given the estimated cost of this policy it would be disproportionate and costly for the Department to commission further research, at this stage, in an attempt to gather further data.
Background

1) The Private Rented Sector is an important part of the housing market. It has overtaken the social rented sector in size and is now the second largest tenure with 19% (4.4 million) of households in England\(^5\). The quality of private rented housing has improved rapidly over the past decade.

2) 89% of landlords are individual landlords responsible for 71% of all privately rented dwellings, with a further 5% of landlords being company landlords responsible for 15% of dwellings. Only 8% of landlords are full-time landlords\(^6\). The majority of landlords are reputable and provide decent well maintained homes.

3) The English Housing survey states that 84% of tenants are satisfied with the service they receive from their landlord. However, the fact that 16% of tenants are dissatisfied with the service from their landlord indicates a minority of landlords do not respect or meet their obligations towards their tenants. Within this group there are a small number of rogue or criminal landlords who knowingly rent out unsafe or substandard accommodation, as evidenced by the Department’s Rogue Landlord Funding Programme.

4) The Government wants to ensure the flourishing of a large and healthy private rented sector that provides good housing, security of tenure, a genuine housing choice and supports increased investment. This is only possible by ensuring the reputation of the sector. **Government wants to do more to drive out the small minority of rogue landlords by disrupting criminal landlords’ business models and putting them out of business.** This will prevent good landlords from being undercut by rogue practice.

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\(^5\) Department for Communities and Local Government; *English Housing Survey 2013 – 2014: Headline Report*; 2015

\(^6\) Department for Communities and Local Government: *Private Landlords Survey*, 2010
Purpose of Legislation

5) Ministers want to do more to tackle the worst offenders and drive rogue and criminal landlords out of the sector. We know from our engagement with local authorities that a small number of rogue landlords frequently cause the most problems. For example, Lewisham have regularly cited that the majority of their rogue landlord issues stem from just 50 landlords within the borough.

6) The profits made by criminal/rogue landlords significantly outweigh the deterrent of current sanctions. In most cases rogue landlords are receiving thousands of pounds of rental income per annum for renting overcrowded and dangerous properties, often financed through Housing Benefit. Figures released this summer following a freedom of information case against the Ministry of Justice, showed that there were just 2,006 convictions of rogue landlords between 2006 and 2014. The resulting fines totalled £3m – less than £1,500 per conviction. This is not a meaningful deterrent, and such fines are frequently treated as a business cost to be absorbed. For example the London Borough of Newham prosecuted a landlord of a property that was found to have burn marks on the electrical consumer unit, where no smoke alarms were fitted, lacks hot water, occupants used portable electrical heaters to warm the property and there was a cockroach infestation. The rental income he received from this property was £9,000 pa however; the landlord was only fined £350 along with £324 costs and a victim surcharge of £35 by the Magistrate courts. See annex D, Improving the private rented sector and tackling bad practice: a guide for local authorities, for more detail including case studies.

7) We aim to bring forward the following measures to tackle this issue:

- A database of rogue landlords and letting agents who have been convicted of certain offences;
- Banning orders for prolific or serious offenders, preventing them from being allowed to rent out property, work as a letting agent, or be employed by another landlord/letting agency;
- A strengthened ‘fit and proper’ person test to ensure only suitable landlords are allowed to rent out properties which require a licence;


Civil Penalty Notices for certain breaches of housing legislation;

Extension to Rent Repayment Orders to include illegal eviction, breach of a banning order and failure to comply with a statutory notice, such as an Improvement Notice or Prohibition Order, issued by the local authority under the Housing Act 2004.

Tenancy Deposit Protection Scheme Data Sharing to allow local authorities, if they wish, to access local data held by the companies operating the Tenancy Deposit Protection schemes in order to more easily identify PRS housing that they should be monitoring.

These measures will strengthen local authorities’ resource and capacity to investigate and sanction rogue landlords. With the exception of the ‘Fit and Proper’ person test which will only apply to a minority of landlords, these measures do not present new burdens or costs for landlords, but rather introduce a new range of financial penalties for breaching existing legislation and a means for using funds generated for enforcement purposes.

New abandonment procedures will speed up a landlord’s recovery of their property, without the need to go to court. Current abandonment procedures are unclear and landlords need to seek a court order to recover their property. This is a time consuming and expensive process, during which a landlord is losing rental income. These new procedures would introduce a faster and clearer process which will make savings for affected landlords.

Policy Options considered

Several options were considered prior to publication of our discussion document, but these were rejected as either too regulatory or insufficient:

Do nothing – this would not meet the Government’s policy objective of driving rogue landlords out of the sector. Moreover, doing nothing could send the wrong message to rogue landlords who already evade compliance requirements that there is not significant risk to their exploitative business model.

A national register of landlords – would require a central database listing all the landlords in the country. Such a large database would be expensive to maintain with little benefit - preliminary analysis suggests such a register could cost as much as £40m per annum. Ministers rejected this option as too regulatory as it would impact all landlords, not just the rogues, and the desired impact can be more effectively achieved through selective licensing.
13) **Landlord accreditation** – the Department welcomes accreditation schemes as means of improving standards. Such schemes are already being set up by local authorities for example Leeds and London. These schemes are only successful with ‘willing’ landlords, but have no impact on rogue and criminal landlords. This is because rogue landlords wish to remain unknown to local authorities.

14) **Proposed Housing Bill Measures** – will tackle the problems caused by rogue landlords. The problems which need addressing are already identified and clearly understood. This is due to the Department’s extensive engagement with landlord groups and local authorities on how to tackle criminal behaviour. The most recent consultation (August 2015) on proposals to tackle rogue landlords received emphatic support (see table below). The consultation was substantive with over 600 responses from landlord bodies, local authorities, stakeholder groups, tenants and individual landlords.

<table>
<thead>
<tr>
<th>Question</th>
<th>For (Yes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should there be a database of rogue landlords?</td>
<td>93%</td>
</tr>
<tr>
<td>Do you agree with the proposed reasons for being entered onto a database?</td>
<td>89%</td>
</tr>
<tr>
<td>Is the Fit and Proper person test sufficiently robust?</td>
<td>83%</td>
</tr>
<tr>
<td>Should Rent Repayment Orders apply in cases of illegal eviction</td>
<td>84%</td>
</tr>
<tr>
<td>Should Rent Repayment Orders apply where there has been failure to comply with a statutory notice?</td>
<td>89%</td>
</tr>
<tr>
<td>Do you agree with civil penalties for the proposed contraventions?</td>
<td>79%</td>
</tr>
<tr>
<td>Do you agree that data held by the Tenancy Deposit Protection schemes should be made available to local authorities?</td>
<td>84%</td>
</tr>
<tr>
<td>Does the lack of a court process for abandonment introduce too much uncertainty?</td>
<td>57%</td>
</tr>
</tbody>
</table>

A response to the consultation is available on

**For tenants, the proposals will**

15) Help improve housing conditions and provide greater certainty over the quality of accommodation rented and good character of the landlord. It will also provide greater assurance that when things do go wrong they can report such issues with greater confidence that they will be dealt with in a decisive manner.
For local authorities, the proposals will

16) Provide greater data on private rented stock in the local area and provide additional powers to take faster and more decisive action without recourse to the courts, which can be expensive and resource intensive. Local authorities will frequently be able to retain the income from civil penalties and rent repayment orders which will help strengthen their enforcement capacity.

For landlords, the proposals will

17) Help remove rogue landlords who may undercut the market by not adhering to legislative requirements. The abandonment measures will save landlords significant time regaining their property (if abandoned), which will save them solicitor fees, time and loss of rental income.

Database of rogue landlords and letting agents and Banning Orders

18) The identification of rogue landlords and letting agents can be a difficult problem for enforcement agencies. By their very nature rogue landlords and letting agents do not wish to reveal their activities as to do so would place their business model at risk of disruption. This situation is exacerbated by rogue landlords and agents who often extend their operations by moving into a new area.

19) We are proposing that landlords and letting agents will be entered onto the database if they have been:

a) convicted (or sentenced) in the Crown Court for any offence involving fraud, violence, drugs or sexual assault which was committed at any residential premises which the offender (or a person associated with him) owned or was involved in the management of and which neither he, nor the associated person, occupied as their main residence;

b) convicted (or sentenced) in the Crown Court for any offence that was committed against or in conjunction with any person who was residing at the residential premises owned by the offender (other than a person associated with him);

c) found guilty on two or more occasions of a relevant housing offence (whether in the magistrates’ court or in the Crown Court).

Where a director, secretary or officer of a company commits an offence, as set out above, the company may also be included on the database.
20) A Database would need an appeals mechanism which would be considered at a First-Tier Tribunal (Property Chamber - Residential Property). Local authorities would be responsible for updating the list after successful prosecutions.

21) It is envisaged that local authorities and Government Departments would have access to the database and any personal data would be protected in accordance with the Data Protection Act 1998. The database itself is likely to be hosted on a web portal which could be accessible by local and central Government.

22) Whilst we will be enabling Tenancy Deposit Data to be shared with local authorities (see para 74 below) so that they can identify landlords that are operating in their area, this data would not necessarily help them identify which landlords are breaching regulations or endangering their tenants, nor will it root out determined rogue operators who do not protect deposits. Rossendale’s Operation CARL (co-ordination against rogue landlords) noted that when a rogue operator’s business is at risk, they will move across local authority borders and slip into relative obscurity until they commit a breach of legislation. The database would enable local authorities to quickly identify landlords convicted of housing offences operating within their locality.

**Banning Orders for Rogue landlords and letting agents**

23) In serious cases, it might be necessary to obtain a banning order for rogue landlords, letting agents or property managers to prevent them from letting out or receiving rental income from a property. During the time the ban is in effect it would be an offence for them or any one associated with them to be involved in the letting and managing of a property.

24) A local authority would apply to the First Tier Tribunal for a banning order to be made for a specified period of time. Before issuing a banning order the First Tier Tribunal must consider: the seriousness of the offence, any previous convictions, whether the person is already on the rogue landlord and the likely effect of the banning order. A right of appeal will be made available to ensure fairness.

**Benefits of Policies**

25) The introduction of a database will allow local authorities to focus limited resources on the known rogue landlords in their area and begin to take pre-emptive action by monitoring landlords known to be prone to illegal activity. A lot

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9 The amount of time involved in doing so would be minimal.
of enforcement action is reactive rather than pre-emptive due to the hidden nature of rogue landlord activity problems which only become reported after an incident has occurred. Where local authorities have been proactive by gathering rogue landlord data through street surveys or tenure mapping, they have required high level political commitment and significant upfront costs to fund the enforcement officer resource. For example, London Borough of Newham (which currently operates a borough-wide selective licensing scheme) has an enforcement team of approximately 25 officers in a Borough which contains approximately 40,000 Private Rented Properties (costing £875,000 pa)\(^\text{10}\). By comparison, it is estimated that most large local authorities have between 5 – 7 housing enforcement officers (costing £210,000 pa)\(^\text{11}\). Smaller district local authorities would have between 1 – 3 enforcement officers (costing up to £105,000 pa)\(^\text{12}\). Not all local authorities have resources or the imperative to put such a large investment into housing enforcement when deciding between competing priorities.

26) The banning of criminal landlords will reduce pressure on local authorities to investigate tenant complaints and improve local standards. The London Borough of Lewisham has stated that the majority of their private rented sector issues stem from just 50 rogue/criminal landlords operating within their locality. The time taken to pursue these criminal operators ‘crowds out’ resource to deal with other valid complaints within the sector but may not be treated with the same level of priority. Removing these operators from the sector will reduce costs and improve standards for tenants.

Support for Policy

27) The Department’s online survey in support of its discussion document\(^\text{13}\) invited views on these proposals which showed an overwhelming support (93%) for the use of a rogue landlord database and banning orders:

Prevalence of Activity

28) The Rogue Landlord Funding programme supported 23 local authorities with known or acute rogue landlord issues from December 2013 to March 2015 (Annex C). The programme made £4.1 million available. The programme over delivered on the majority of projected outputs. This resulted in an additional

\(^{10}\) This is an assumption based on the average cost for an enforcement officer to £35,000 pa.
\(^{11}\) ibid
\(^{12}\) ibid
\(^{13}\) DCLG, Tackling rogue landlords and improving the private rental sector, 2015
3,000 enforcement actions and prosecutions carried out by local authorities. Due to the relatively small level of funding provided, there is still demand from local authorities for support to identify and tackle rogue landlords. For this reason, the Department has recently announced a further £5m of funding support in 2015/16.

**Familiarisation Costs**

29) Evidence on the total number of landlords in England is limited. Most recent industry estimates suggest there are about 1.4 million landlords and letting agents in the Private Rented Sector (of which 11,560 are letting agents\textsuperscript{14}). This figure is corroborated by the Private Landlords Survey (DCLG 2010).

30) There is no database of landlords convicted of criminal offences. Given the evidence available and taking into account the disproportionate cost of commissioning primary research into the number of landlords who engage in criminal action (not to mention the difficulties of obtaining accurate data in this area), we have used the practice of retaliatory eviction as a proxy to base our cost assumptions. Retaliatory eviction occurs when a landlord evicts a tenant for raising a legitimate concern about the condition of a property. Research suggests about 2% of tenancies\textsuperscript{15} are ended each year as a result of retaliatory eviction. 2% equates to about 28,000 landlords. The 2% is likely to be an overestimate, as far fewer landlords are likely to commit a criminal offence, so for the purposes of this Impact Assessment we have assumed that between 0.5 – 1% of landlords maybe banned or placed on the rogue landlord database. The central case analysis has assumed 0.75% of landlords may be banned or added to the database.

31) For the estimated 0.75% of landlords who do engage in criminal activity, they will need to understand that in future, they will be placed on the database or banned from letting a property. We estimate that a landlord would need to spend a short amount of time to read and understand the new requirements, (that if convicted of a housing offence in the future they maybe placed on the database or banned) and that it should take no more than 15 minutes to undertake this basic familiarisation process. The 15 minute assumption is consistent with the estimated time take for landlords to familiarise themselves with other regulatory changes in the private rented sector\textsuperscript{16}. We consider this to be a reasonable estimate given the issues above.

\textsuperscript{14} http://www.tpos.co.uk/annual_reports.htm
\textsuperscript{15} Shelter, Shelter’s response to the review of property conditions in the private rented sector, 2014
\textsuperscript{16} E.g. See Impact Assessment on Smoke Alarms in the Private Rented Sector
32) For the remaining 99.25% (c1.4m) of landlords, the only cost will be ascertaining that the legislation does not affect them.

33) The Annual Survey of Hours and Earning indicates that the average hourly wage for letting agents is £10.22. We use this as a proxy for a landlord’s cost of time, in line with other assessments on regulation in the sector. When uplifted by a factor of 1.3 to allow for non-wage cost, we can assume an hourly cost of a landlord’s time as £13.29. This works out £0.2215 per minute.

34) On that basis, and using the assumptions outlined above (15 minutes to familiarise themselves) the cost for all landlords will be £4.7m; this is a one off cost with no further costs in subsequent years. See table below

| Familiarisation costs for all 1.4m landlords | £4,651,500 (£0.2215 x 15 minutes x 1,400,000 landlords) |

**Fit and Proper Person Test**

35) We intend to strengthen the Fit and Proper Person test for mandatory licensing schemes\(^\text{17}\). The proposals will provide increased rigour to the test and help ensure it identifies landlords who are suitable to perform that role.

36) Rented properties that are subject to a licence require the landlord or the letting agent to be subjected to a fit and proper person test. This was introduced as part of the Housing Act 2004 in order for local authority to satisfy itself of the suitability of the proposed licence holder; so that the landlord can demonstrate integrity and good character and not pose a risk to the well-being or welfare of his/her tenants.

37) At present a licence can be refused if the landlord has:

a) committed any offence involving fraud, violence, drugs or sexual assault;

\(^\text{17}\) There are three types of licensing schemes one is a mandatory requirement for the
- licensing of large Houses in Multiple Occupation;
and two are discretionary local authority powers for the;
- Additional licensing of smaller Houses in Multiple Occupation; and
- Selective licensing of all types of private rented housing.
b) discriminated on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with the carrying on of any business;

c) contravened any provision of the law relating to housing or landlord and tenant law; and

d) for Houses in Multiple Occupation, has breached a condition in any applicable code of practice.

38) The test is to be strengthened by the introduction of the following additional criteria by:

a) undertaking a basic Disclosure and Barring Check on each landlord. This would provide information about all previous criminal convictions that are required to be disclosed and the information could be taken into account by the local authority when considering the application;

b) establishing whether the landlord has previously received a civil penalty because they failed to carry out a Right to Rent check (as required under the Immigration Act);

c) establishing whether the landlord is an illegal immigrant;

d) establishing whether the landlord is bankrupt or insolvent; and

e) requiring the landlord or their managing agent to have an office in the UK.

39) Where a landlord fails to meet this new set of criteria, the licence request could be refused. The local authority will notify the landlord of the outcome of their application refusal. In such cases it will be an offence if the landlord were to subsequently rent out the dwelling. Landlords will have a right of appeal against the decision not to grant a licence. They can also appoint an agent to act on their behalf. The local authority will notify the landlord as to how an appeal can be made.

40) There will be a transitional period after a refusal decision is made to allow any affected tenants sufficient time to find alternative accommodation; or allow the landlord time to sell the property.

Benefit of Policy

41) The main benefit of an effective fit and proper person test is that it will prevent unsuitable landlords from renting out licensable property. This will offset future enforcement costs alleviating the resource burden on local authorities to
investigate, take action and prosecute rogue landlords. The benefit of a fit and proper person test will present a significant saving of local authority enforcement time through preventative measures.

Support for Policy

42) The Department’s online surveyed showed 85% of respondents supported the introduction of a ‘Fit and Proper’ person test.

Familiarisation Costs

43) We assume there will be in the region of about 161,000 - 174,000 fit and proper person tests for those seeking to rent a licensable property. This is based on there being:

a) about 200,000 licensable properties in the country\(^{18}\);
   i) of which 60,000 are Houses in Multiple Occupation;
   ii) five borough wide selective licensing schemes of about 25,000 properties each; and
   iii) additional licensing schemes of about 15,000 properties (data not held centrally - this figure is an assumption based on discussions with local authorities).

b) Data suggests 26%\(^{19}\) of landlords will own more than one property, which suggests that at least 74%, or 148,000 landlords will apply for one license for the one property they own. The same data source also illustrates that 95% of landlords own between one to four properties. Using this assumption the remaining 52,000 properties are assumed to be owned by landlords with between 2 and four properties to their name. In the high case scenario, the remaining landlords own two properties, which is equivalent to a further 26,000 landlords or 174,000 people requiring a Fit and Proper Person test. In the low case, we assume the remaining 52,000 properties are split amongst private landlords with four properties to their name, so 161,000 landlords.

\(^{18}\) Parliamentary Question 193639 31 March estimated that the number of HMOs to be 462,693 built on previous years’ Housing Strategy Statistical Index, as of 2012-13 it was estimated that 59,441 houses in multiple occupancy to mandatory licensable dwellings. We can now assume this has risen to 60,000. http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140331/text/140331w0002.htm (retrieved 13/11/2015)

\(^{19}\) Department for Communities and Local Government: Private Landlords Survey, 2010
(148,000 + 13,000). In the central scenario there are therefore approximately 165,000 landlords who will request a licence application.

44) For the estimated total number of landlords who do submit a licence application, they will need to understand that in future, they will need to submit further documentation to prove their suitability to be a licence holder. We have therefore assumed a higher familiarisation cost equal to a maximum of 30 minutes (i.e. 15 minutes familiarisation time and a further 15 minutes to understand how the legislation will affect them). We consider this to be a reasonable estimate given the issues above. This additional time is likely to be spent considering the impact of the change on their business model and adjusting it accordingly.

45) The Annual Survey of Hours and Earning indicates that the average hourly wage for letting agents is £10.22. We use this as proxy for a landlord’s cost of time, in line with other assessments on regulation in the sector. When uplifted by a factor of 1.3 to allow for non-wage cost, we can assume an hourly cost of a landlord’s time as £13.29. This works out £0.2215 per minute.

46) On that basis, and using the assumptions outlined above (30 minutes to familiarise themselves) then the cost for the 165,000 landlords that will be affected is calculated as a one off cost in year 1 equal to £1.1m\(^{20}\), There are no further familiarisation costs to landlords who enter the market within the appraisal period as they would have had to familiarise themselves with any legislation in the counterfactual as well.

47) We do not believe the remaining landlords who currently do not need to apply for a license will be subject to any new costs or burdens.

<table>
<thead>
<tr>
<th>Familiarisation costs for 165,000 of landlords who will be affected by the legislation</th>
<th>£1,098,425 (£0.2215 x 30 minutes x 165,000 landlords)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>£1,098,425</td>
</tr>
</tbody>
</table>

This is a one off nominal transition cost in the year of implementation.

**Cost to Business**

48) The regulations will require landlords to provide local authorities information to enable them to verify their suitability to be a landlord. Some of these checks will incur a cost as part of the licence. Our initial assessment of the likely new costs are based against the following check criteria:

\(^{20}\) (£0.2215 x 30 minutes x 165,000 landlords)
a) Disclosure and Barring Service check;
b) Immigration status; and
c) Evidence of a UK office.

49) This will not be an onerous requirement. Landlords will be required to submit some basic identity documents to local authorities for the checks to be completed. We expect landlords to provide the same identity documents that are required to open a bank or credit account these. These include:
a) a passport,
b) bank statement,
c) a utility bill; and
d) a copy of their Companies House registered address or tax return address

50) The aim would be for local authorities to verify the following checks on landlords;

a) Disclosure check - Disclosure Scotland’s example of a basic check would represent a cost to landlords of £25, but a one off cost over the 5 year period of the license is not excessive. The process requires the landlord to submit three standard piece of ID online and it should take no more than ten minutes to complete and 14 days for a landlord to receive their disclosure certificate.

b) Immigration status local authorities will require evidence of a landlord’s immigration status and will be required to provide a copy of their:
i) passport, or
ii) evidence of their leave to remain.

c) Solvency status checks can be completed for free through using the Insolvency Services’ Individual Insolvency Register. Companies House will shortly provide free access to their database of dissolved companies and disqualified directors.

d) Office in the UK check – landlords will provide a copy of their Companies House registered address or their tax return address.

51) Landlords will only have to do a DBS check once every five years. We estimate the requirement should take the maximum of 10 minutes of a landlord’s time to submit papers and a further 10 minutes to submit documents for a DBS check. These documents should be accessible by all landlords.

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21 https://www.disclosurescotland.co.uk/basicdisclosureonline/index.htm
The annual survey of Hours and Earnings indicates that the average hourly wage for letting agents is £10.22. We use this as a proxy or a landlord’s cost of time, inline with other assessments on regulation in the sector. When uplifted by a factor of 1.3 to allow for non-wage costs, we can assume an hourly cost of a landlord’s time as £13.29. This works out as £0.2215 per minute or £2.25 for 30 minutes.

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Familiarisation costs for 165,000 of landlords who will be affected by the legislation</td>
<td>£1,098,640 (£0.2215 x 30 minutes x 165,000 landlords)</td>
</tr>
<tr>
<td>Processing time costs</td>
<td>£1,794,445</td>
</tr>
<tr>
<td>DBS Cost</td>
<td>£10,126,667</td>
</tr>
<tr>
<td>Total</td>
<td>£13,019,752</td>
</tr>
</tbody>
</table>

**Rent Repayment Orders and Civil Penalty Notices**

To support the Government’s stated aim of driving up standards and tackling criminal landlords, the existing enforcement regime needs to be more effective. New penalties for breaching existing legislation are to be introduced. This will be done by extending Rent Repayment Orders and introducing Civil Penalty Notices. It will ensure the cost of non-compliance does not fall on good landlords or the tax payer, but will be underpinned by the “polluter pays” principle. This will enable local authorities to penalise rogue landlords the cost of inspection or enforcement action, where breaches of legislation have occurred.

**Rent Repayment Orders**

Introduced in the Housing Act 2004, Rent Repayment Orders are where a landlord is required to repay up to 12 months rent for failing to licence a licensable property (mandatory HMO, additional HMO licensing and selective licensing). Where rent has been paid through Housing Benefit the local authority can retain the money and use it for housing purposes. The issuing of rent repayment orders are effective, as the costs incurred can damage a landlord’s business model and require them to accept their responsibilities.

The Housing Bill will extend Rent Repayment Orders to include where a landlord has been convicted of:

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22 Assumes 20% of the population of landlords requiring a fit and proper person test will require a renewal every year i.e. over the 5 year duration period 100% of the population will require renewal. 20 mins to complete DBS check and submit paper work, wage costs to represent landlord’s time costs.

23 Assumes 20% of landlords carry out a DBS check each year. Also assumes a 5% growth in number of landlords requiring a FPP test, in line with growth trends in the PRS market.
a) illegally evicting a tenant; and

b) failing to comply with a statutory notice, such as an Improvement Notice or Prohibition Order, issued by the local authority under the Housing Act 2004.

56) These behaviours are harmful and damage the reputation of the sector.

57) Illegal eviction is a criminal offence and if found guilty, a landlord can be sentenced to up to 2 years imprisonment and/or a fine. However, fines have to be set at a level that takes into account a landlord’s means, so may not reflect how much rental income the landlord has received from the tenant. Furthermore, the fine does not compensate the tenant who has been illegally evicted.

58) On inspection, The Housing Act 2004 requires local authorities to take action when discovering a category 1 ‘serious’ hazard. If the inspection uncovers a less serious category 2 hazard, the local authority can at its discretion take further action including:

a) an improvement notice which specifies the work that must be done to remove the hazard and the time it must be completed by; and

b) a Prohibition Order prohibiting the use of all or part of a building, because the potential danger to health and safety.

59) Where a landlord does not comply with either the Improvement Notice or the Prohibition Order they can be prosecuted and fined. However, like illegal eviction the tenant will not receive any financial compensation and where housing benefit has been paid, tax payer’s money has been used to pay rent for substandard accommodation.

60) The proposed legislation will enable the courts to transfer the case following a conviction to the First Tier Tribunal to consider whether a Rent Repayment Order would be appropriate. Where rent has been paid through Housing Benefit or Universal Credit, the council will retain the money and reuse it for housing purposes. There would be a right of appeal against a Rent Repayment Order.

Civil Penalties

61) Local authorities find civil penalty notices, or on the spot fines, a useful tool for promptly dealing with a series of civil offences, this can be timely way to rectify breaches of legislation without recourse to the courts. Currently fixed penalty notices can be issued for:
a) local parking infringements;
b) the failure of letting agents to make their fees transparent; and
c) breaches of energy performance building regulations.

62) The prosecution of landlords and letting agents is expensive and time consuming and displaces other enforcement activity. A way of raising standards and speed up enforcement action is to give local authorities the power to impose a civil penalty for breaches of housing legislation.

63) We are proposing the following infractions to be eligible for a civil penalty notice:
   a) overcrowded property;
   b) breaches of licensing rules;
   c) hazardous disrepair;
   d) poor sanitation;
   e) illegal outbuildings;
   f) electrical faults;
   g) damp; and
   h) vermin infestation.

64) Local authorities will be able to impose a civil penalty of up to £5,000. Landlords will have the right to appeal any civil penalty to the First Tier Tribunal. The Tribunal will be able to confirm, vary or cancel the penalty.

**Benefits of policy**

65) The introduction of rent repayment orders and civil penalty notices will incentivise good behaviour as the cost of enforcement will fall on the offender. The bad landlords undercut good landlords because they avoid funding the cost of business compliance.

66) For local authorities the imposition of Civil Penalty Notices will reduce the need for local authorities to resort to court action, which is expensive and resource intensive (see paragraph 42). This is because local authorities will be able to impose a civil penalty as an alternative to prosecution. This is a cost effective enforcement measure, as local authorities are also able to retain the fines to fund further enforcement action.

67) Tenants who are subject to poor letting conditions will be the beneficiaries of improved conditions, as landlords will be subjected to decisive decision making and swifter outcomes. Landlords will be required to make repairs to avoid a substantial fine and further enforcement action including prosecution, blacklisting and a banning order.
68) Good landlords who already comply with housing regulations will benefit from not being undercut by criminal and rogue landlords, whose business model relies on compromising health and safety working requirements through lack of investment or maximising their returns by dangerous overcrowding of rented accommodation. The proposed legislation will allow flexibility of not being immediately criminalised on issues of neglect or lack of oversight. It will force recalcitrant landlords to take a more proactive approach to their asset management, such an investment that will improve the long term value of their property, as it will no longer depreciate through low investment.

**Support for policy**

69) The Department’s online survey showed significant support for both Rent Repayment Orders and Civil Penalty Notices:

   a) Rent Repayment Orders - 88% of respondents agreed they should be introduced

   b) Civil Penalty Notices - 78% of respondents agreed on the proposed contraventions for which they could be used.

**Familiarisation Costs**

70) For the compliant majority of landlords, we are assuming a familiarisation time of 15 minutes. The Annual Survey of Hours and Earning indicates that the average hourly wage for letting agents is £10.22. We use this as proxy for a landlord’s cost of time, in line with other assessments on regulation in the sector. When uplifted by a factor of 1.3 to allow for non-wage cost, we can assume an hourly cost of a landlord’s time as £13.29. This works out £0.2215 per minute, or £3.32 per landlord. The cost for the 99.25% of affected landlords that will be a one off cost in year 1 equal to £4.6m, with no further costs in subsequent years.

71) For the estimated 0.75% of landlords who engage in criminal activity (see paragraph 34), they need to understand that in future, they will be subject to Rent Repayment Orders and Civil Penalty Notices. We have assumed a higher familiarisation cost, than compliant landlords, equal to a maximum of 45 minutes (i.e. 15 minutes familiarisation time and a further 30 minutes to comprehend how the legislation will affect them). This additional time is likely to be spent considering the impact of the change on their business model and adjusting it accordingly. We consider this to be a reasonable estimate given the issues above.

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24 (£0.2215 x 15 minutes x 1,389,000 landlords)
72) Using the same cost assumptions, but allowing a further 30 minutes for the 0.75% landlords who do engage in criminal activity (in addition to the initial 15 minutes) to understand the new requirements, the maximum cost in year 1 for that group will be £104,517\textsuperscript{25}.

73) We estimate the total familiarisation costs will be £4.7m in the first year of the policy. These are repeated in the table below.

| Familiarisation costs for 0.75% of landlords who will be affected by the legislation | £104,658 (£0.2215 x 45 minutes x 10,500 landlords) |
| Familiarisation costs for 99.25% of landlords who will not be affected by the legislation | £4,616,614 (£0.2215 x 15 minutes x 1,389,000 landlords) |
| Total | £4,721,272 |

This is a nominal cost in the year of policy implementation

**Tenancy Deposit Protection (TDP) data**

74) Local authorities have a duty to review housing conditions to identify any action which needs to be taken to improve the quality of PRS accommodation in their area. They also have functions in assessing housing conditions and enforcing housing standards. However, they frequently have a very limited picture of the size and scale of the PRS in their area which can make it difficult for them to identify rented housing and ensure that it meets basic standards. TDP data (landlord address and PRS property address) will help local authorities to more easily identify privately rented housing - and specifically landlords - that they should be monitoring, by matching the data with other datasets. This should in turn cut the costs of enforcement and reducing the need to operate borough-wide licensing schemes that impact on good landlords. (The intention is to make this requirement retrospective, so that existing data is able to be shared as well as data relating to new deposits registered with the schemes.)

**Benefits of policy**

75) Access to TDP data will help local authorities build a more accurate picture of the size and scale of PRS accommodation in their area in order to help enforce housing standards and tackle rogue landlords.

\textsuperscript{25} (£0.02215 x 45 minutes x 10,500 landlords)
Support for policy

76) The Department's online surveyed showed 84% of respondents supported the idea of data held by the Tenancy Deposit Protection schemes being made available to local authorities.

Cost to Business

77) There are no new costs to business. There are currently three schemes authorised by Government to provide TDP services. All three schemes have confirmed that making the data available would be possible by building on the systems already in place to provide data to authorities in Scotland and Northern Ireland, and to HMRC for tax collection purposes. Development costs to build on existing online secure file share portal systems would be negligible; around £15k for each scheme (£45k in total). There would be no cost to landlords.

Abandonment

78) The problem of abandonment is a grey area for landlords as there is no legislation or clear guidance for landlord to regain their property after the abandonment of a property by a tenant. A property is abandoned when the tenant disappears or absconds from the property. As a consequence, the landlord is likely to suffer loss of rent, possible damage to the property, and series of demands and charges posed (for example from utilities companies) which if ignored or not attended to in time can lead to bailiff action. In addition the property maybe unsecured and vulnerable to vandalism.

79) The resolution of abandonment can require landlords to seek a possession order from the courts. This is a time consuming and expensive process during which the landlord is losing more rent.

80) As the process for resolving abandonment is unclear, many landlords are unsure about whether they are entitled to re-enter a property on the ground of abandonment. In the worst case scenario, landlords may find they have committed an offence of unlawful eviction and or harassment.
Prevalence of the problem

81) Abandoning a property is an extreme activity, which involves tenants absconding a property, who leave behind unpaid bills and clean up costs for landlords to resolve. Obtaining accurate data on the prevalence of abandonment is difficult, as this issue although documented has not been fully explored. This is mostly because landlords are unsure of their legal status and do not wish to report the incidence of abandonment. The Department’s discussion document sought evidence on the prevalence of abandonment, but no firm evidence was returned. The Ministry of Justice hold information on the number of landlord repossessions a year (on average 40k), of which only 28% relate to private landlords. This equates to approximately 11,000 private landlord repossessions. The vast majority of these repossession cases will not involve abandoned properties. Data on the number of abandoned properties is not available. However, a number of landlord associations have stated that about 1% of calls to their helpline are about abandonment. On that basis, we have assumed that approximately 1,750 abandoned properties will benefit from this measure for the following reasons:

a) About 1% of calls to landlord associations are about abandonment. There are about 1.4m landlords so extrapolating the 1% of calls to the total number of landlords suggests that about 14,000 nationally may experience problems with abandonment.

b) Landlord associations estimate that about 50% of queries received about abandonment are repeat calls (50% of 14,000 = 7,000);

c) Of the 7,000 remaining calls, landlord associations estimate a further 75% of queries resolve themselves (75% of 7,000 = 5,250, therefore 1,750 remaining).

d) On the basis that the majority of private landlords own one property, we can assume that the 1,750 landlords equate to 1,750 abandoned tenancies, which are currently resolved through the courts per year.

e) Given the size of the PRS sector (4.4m households) and the level of queries about abandonment cited by a number of landlord associations, we believe these are reasonable assumptions.

Speeding up the process

82) The process that we are proposing to introduce is described in broad terms below. We estimate that it would reduce the amount of time involved in repossessing a property by about 2 – 3 months:
a) A landlord may recover their abandoned premises, where the unpaid condition is met. Depending on the tenancy this can be unpaid rent arrears of between eight consecutive weeks or three consecutive months. This is to allow for variations between weekly, monthly quarterly and annual payment of rent.

b) Before bringing the tenancy to an end the landlord must issue two separate warning notices;

i) the first warning notice can be served before the unpaid condition is met, it must include a date for when tenancy will end; allows a minimum of eight weeks from when the notice was served; and

ii) the second notice can only be issued once the unpaid rent condition has been. The second notice must be given at least two weeks, but no more than four weeks after the first notice was served.

c) If a response is not received by the end date, the landlord can regain possession of their property.

Benefits of legislation

83) Introduction of abandonment legislation will reduce landlord costs and alleviate pressure on the courts to resolve such cases.

84) Based on the assumed costs of abandonment, we have estimated the amount of savings that could be realised and checked these with several landlord groups to check that they were reasonable.26 These savings are estimated to be:

a) 2 – 4 months rent saved. To complete our calculations, we have taken the midpoint of 3 months.

b) 2 hours solicitor costs saved

c) 2 hours landlord court time plus £300 court fees.

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26 We discussed the range of costs and possible savings with Association Resident Landlords and Letting Agents; and Landlord Action
Total amount of savings realised

85) For total calculation of costs we have taken the mid point on the range of suggested values. Based on the table of calculations the introduction of abandonment legislation will save landlords approximately £4.6m in the first year of the policy.

<table>
<thead>
<tr>
<th>Item</th>
<th>Time period</th>
<th>Typical cost</th>
<th>Total saving</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent saved</td>
<td>3</td>
<td>£600</td>
<td>£1,800</td>
</tr>
<tr>
<td>Solicitor</td>
<td>2</td>
<td>£167.50</td>
<td>£335</td>
</tr>
<tr>
<td>Landlord</td>
<td>2</td>
<td>£13.29</td>
<td>£26.58</td>
</tr>
<tr>
<td>Court cost</td>
<td></td>
<td></td>
<td>£280</td>
</tr>
<tr>
<td>Sub total</td>
<td></td>
<td></td>
<td>£2,442</td>
</tr>
<tr>
<td>Costs nominalised over 10 years</td>
<td></td>
<td></td>
<td>£52,341,371</td>
</tr>
</tbody>
</table>

Total costs and benefits of policy measures

86) There are expected to be approximately £22.3m of costs imposed on the sector, of which £10.5m are transition costs as a result of familiarisation. In present value (2015) terms this is equivalent to £20.6m. These costs are summarised below.

The abandonment measures are expected to create approximately £52.3m of savings over the ten year appraisal period, which is equivalent to £44.5 in present value (2015) terms. A summary of the net benefits has been illustrated below.

<table>
<thead>
<tr>
<th>Total costs over 10 years (nominal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Database &amp; Banning orders</td>
</tr>
<tr>
<td>Familiarisation cost</td>
</tr>
<tr>
<td>Fit and Proper Person Test</td>
</tr>
<tr>
<td>Familiarisation cost</td>
</tr>
<tr>
<td>Ongoing processing costs</td>
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<tr>
<td>Disclosure and Barring Service Check</td>
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<tr>
<td>Rent Repayment Orders and Civil Penalty Notices</td>
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<tr>
<td>Familiarisation Cost</td>
</tr>
<tr>
<td>TOTAL COSTS</td>
</tr>
<tr>
<td>Abandonment</td>
</tr>
<tr>
<td>Savings</td>
</tr>
<tr>
<td>TOTAL BENEFIT</td>
</tr>
</tbody>
</table>

27 Average number of possessions based on a growth rate of 5% pa in the rental sector, and therefore 5% increase in abandonment.
87) There are £30m of net benefits in nominal terms, which is equivalent to £23.92 in present value terms (2015)

88) The equivalent annual net cost to business is £2.74m in Net Present Value, discounted to 2014 prices. Overall, the proposed policy change is classified as OUT under One In Two Out.

**Small and Micro Business Assessment**

89) We are not proposing to exempt small and micro businesses, as data suggest that 74% of all private sector landlords own one property and 95% own between one and four properties. While this data does not inform is how many employees these landlords have, if any, it is highly likely that they will either be a small or a micro business. Therefore, exempting these businesses would result in policy failing to meets its objectives of reducing rogue landlord activity and other exploitative behaviour. With a significant proportion of the landlords affected likely to be small and micro businesses we estimate that the impact on each landlord should be quite minimal, with the main upfront cost being taking the time to become familiar with the regulations. This approach is consistent with the Impact Assessments for Retaliatory Eviction; and Smoke Carbon Monoxide Alarms.

90) Data from the Office for National Statistics reveals that there are 42,305 businesses in England involved in ‘renting and operating of own or leased real estate’, which does not disaggregate for the different types of tenure a landlord can offer (private rented, social rented). But this data suggests that 87% of overall landlords are small and micro businesses, again showing that if small and micro business were exempt, a large proportion of the benefits of this policy would not be achieved.
Tackling rogue landlords and improving the private rental sector

A technical discussion paper
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Tackling Rogue Landlords

Introduction

The private rented sector is an important part of our housing market, housing 4.4 million households in England. The quality of privately rented housing has improved rapidly over the past decade with surveys showing that 84% of private renters are satisfied with their accommodation, and staying in their homes for an average of 3.5 years.

The government wants to support good landlords who provide decent well maintained homes, and avoid further regulation on them. Unnecessary regulation increases costs and red tape for landlords, and can stifle investment. It also pushes up rents and reduces the choice for tenants.

However, a small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords so that they either improve the service they provide or leave the sector. We have already made significant progress in doing this:

- £6.7 million was made available to a number of local authorities to help tackle the acute and complex problems with rogue landlords in their area, including “Beds in Sheds”. So far nearly 40,000 properties have been inspected and over 3,000 landlords are now facing further enforcement action or prosecution;
- We have introduced protection for tenants against “retaliatory eviction” where they have a legitimate complaint, which will come into effect in October 2015;
- We have introduced measures to ensure fairness for landlords, making the eviction process more straightforward in appropriate circumstances such as the persistent non-payment of rent. These changes will also come into effect in October 2015;
- Subject to Parliamentary approval from October 2015, landlords will also be required to install smoke alarms on every floor of their property, and test them at the start of every tenancy, and to install carbon monoxide alarms in high risk rooms.

The government is determined to go further and drive rogue landlords out of business. This discussion paper sets out our proposals, which include a blacklist of rogue landlords and letting agents, tougher penalties for the worst offenders, extending Rent Repayment Orders and introducing civil penalties.

We also want to support good landlords and this document invites views on tackling the problem of abandonment in the sector, where a tenant simply disappears, leaving the landlord uncertain over their right to repossess.

We are keen to engage with local authorities, landlords, letting agents and tenant groups on all of these issues. We want to understand how best to implement our proposals and avoid any adverse outcomes.
We will publish a separate discussion document in due course about the proposed extension of mandatory licensing for Houses in Multiple Occupation.

The measures proposed in this paper would apply to England only.

The closing date for comments is Thursday 27 August 2015 which should be submitted via our preferred online form [https://www.surveymonkey.com/r/CLR9WGX](https://www.surveymonkey.com/r/CLR9WGX).

You can also respond by email to prsreview@communities.gsi.gov.uk but these should be submitted by Thursday 20 August 2015 to ensure they are taken into consideration.
Section 1– Tackling the worst offenders

A small number of rogue or criminal landlords in England deliberately exploit vulnerable tenants by knowingly renting out unsafe or overcrowded accommodation. When landlords are convicted of housing offences the only real sentencing options available to the courts are a fine or a conditional discharge, even where they have previous convictions and/or multiple convictions for similar offences.

Recent examples of this include:

- A fine of less than £1,500 for operating an unlicensed HMO which was severely overcrowded and in extremely poor condition;

- A £350 fine for failure to comply with an Improvement Notice to a property which contained a range of hazards, including electrical faults, lack of hot water or heating facilities and an infestation of vermin.

The reason that fines are set at these levels is because the courts must take account of an offender’s ability to pay when determining an appropriate fine. It would appear that some rogue landlords have recognised this and simply built into their business models an assumption that they will occasionally be prosecuted for offences and the rents they charge take that into account.

We are determined that rogue landlords should not be able to profit from renting out poor quality and unsafe housing and not complying with the law. We want to ensure these landlords face appropriate penalties when they continue to offend and those who still do not comply with the law are banned from operating in the sector. We have set out proposals later in this document to do just that by extending Rent Repayment Orders and introducing civil penalties. Rent Repayment Orders involve requiring a landlord to repay rent, including any rent paid through Housing Benefit. They are currently only available in limited circumstances.

We want to target rogue landlords who wilfully flout the law. Good landlords who seek to comply with their obligations would not be adversely affected by any of the proposals set out in this document. Cracking down on rogue landlords will benefit the vast majority of good landlords who obey the law and rent out good quality and well managed housing but can be undercut by rogue landlords who evade their responsibilities and so incur less costs.

Aggravating factors in housing offences

Until March 2015 the maximum fine for a housing offence dealt with in the magistrates’ courts was £20,000. In March that cap was lifted, so that magistrates’ courts could impose unlimited fines. Whilst the lifting of the cap is a significant step, in practice, since fines must take account of the means (including any assets) of the offender, it seems unlikely it will lead to a significant change in the average levels of fines which are typically around £1,500.
The courts already aggravate sentencing where there have been previous convictions - we are interested in views on whether more needs to be done to ensure the courts do this. Whilst the court would be able to impose an unlimited fine, we would welcome views on the merits of specifying a minimum fine on repeat offenders, including whether the minimum fine level should be increased for subsequent offences.

Views are also invited on whether more should be done where the offence was committed by a company and the offence was the result of a deliberate act or omission, by an officer or officers of that company (including a director or secretary). The reason for treating an offence as aggravated in such circumstances would be that it is generally characterised by a deliberate act or omission, rather than an accidental error. We want to ensure that such persons should also be regarded as guilty of the offence and punished accordingly.

It is suggested that the following could be "relevant housing offences":

- Providing a local authority with false or misleading information following a statutory enquiry;
- Permitting or causing overcrowding;
- Illegally evicting or harassing a residential occupier;
- Continuing to let to an illegal immigrant; or
- Any offence under the Housing Act 2004.

Questions:

- Do you think that current fines for housing offences generally reflect the gravity of the offence? If not, how can this best be tackled?
- What has been the impact (if any) of removing an upper limit on potential fines for certain housing offences?
- Should we consider setting minimum fines for repeat housing offences which have aggravating features? If so, what would be an appropriate level? Are there alternative approaches?
- Are the relevant housing offences listed appropriate?
- How should we deal with offences committed by a company if the offence was the result of a deliberate act or omission by an officer or officers of that company?

Blacklisting and banning rogue landlords

The private rented sector has grown considerably in recent years. This can make it difficult for local authorities to identify rented property in their area. We are, therefore, considering whether data for privately rented dwellings held by the Tenancy Deposit schemes should be made available to local authorities. This will not have any impact on the vast majority of landlords who provide a good service and rent out decent accommodation. However, it will make it easier for local authorities to identify and tackle rogue landlords in their area.

In addition, we are considering whether persistent rogue landlords and letting agents should be prevented from continuing to operate in the private rented sector. One option
circumstances currently to make management orders, under which they (or their agents) take over the properties from the landlords.

We could consider extending those circumstances to include where a landlord has been blacklisted. A local authority, or an agent that it appoints, would be able to collect the rent from the tenant (or end the tenancy in certain circumstances) and would be able to recover its costs in running the property. Potentially, the local authority could force the sale of a property where the owner is subject to a ban in order to recoup any losses or costs incurred by the authority (for example costs of repairs and costs incurred in management of the property). Where there was a surplus after deduction of costs, one option may be for the local authority to retain that surplus and use it for housing purposes.

Questions:

- Do you agree that data held by the Tenancy Deposit schemes should be made available to local authorities?

- Do you agree that there should be a blacklist of persistent rogue landlords and letting agents?

- Do you agree with the proposed reasons for placing someone on a blacklist and issuing a ban?

- Do you think it should be at the court’s discretion as to whether to include an offender on the blacklist or should this be mandatory?

- Should local authorities have the right to place the offender on the blacklist on any of the above grounds?

- Do you agree with the penalties proposed for breaching a ban?

- If a local authority took over management of a property, how could we ensure that they did not incur a loss in managing the dwelling?

- Should we consider stronger penalties, for example, seizing the property of persistent offenders who ignore bans? What safeguards would be needed to ensure that this power was used proportionately?

**Fit and proper person test**

In deciding whether to issue a property licence, for example for a licensable HMO or under a discretionary licensing scheme, the local authority should be satisfied that the licence holder is a “fit and proper” person. The test was introduced by the Housing Act 2004 and its purpose is to ensure that those responsible for operating the licence and managing the property are of sufficient integrity and good character and do not pose a risk to the welfare or safety of persons occupying the property. Currently local authorities can refuse a licence if the landlord has:

- committed any offence involving fraud, violence, drugs or sexual assault;

- *discriminated on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with the carrying on of any business;*
- contravened any provision of the law relating to housing or of landlord and tenant law;
- for HMO licences, has breached a condition in any applicable code of practice.

We are considering whether the fit and proper person test needs to be made more rigorous and less open to differing interpretations. This would help ensure that local authorities are able to identify individuals who should be refused a licence.

At present, where an applicant fails a fit and proper person test and there is no alternative fit and proper person to whom the licence could be issued, the local authority must arrange to take over management of the HMO itself. We are considering whether there:

- should be a power to issue a provisional licence which would be subject to regular review and could be revoked at any time;
- are circumstances in which a licence can be refused or revoked without the need for a management order to be put in place.

Where a local authority chose the second option and refused to issue a licence, the effect of this would be that the applicant would not be permitted to rent out a licensable property. There would need to be a transitional period after such a decision was made to give any tenants of that property adequate time to find alternative accommodation and/or to give the landlord time to sell the property. It would be an offence for a landlord who was refused a licence to subsequently rent out a dwelling. Landlords would have a right to appeal a decision not to grant a licence.

More generally, we propose to strengthen the fit and proper person test by introducing additional conditions which the local authority will be required to consider. Possible additional criteria include:

- Undertaking a standard Disclosure and Barring check on each landlord. This would provide information about all previous criminal convictions that are required to be disclosed and the information could be taken into account by the local authority when considering the application;
- Whether the landlord has previously received a civil penalty because they failed to carry out a Right to Rent check;
- Whether the landlord is an illegal immigrant;
- Whether the landlord is bankrupt or insolvent;
- Requiring the landlord or their managing agent to have an office in the UK.

Where a landlord failed to meet these additional criteria, their licence application could be refused. The local authority would inform the landlord this has happened and how they can appeal the decision.

Questions

- Should local authorities be required to refuse a licence to anyone who fails the fit and proper person test? If so, what impact is this likely to have on the number of licences granted?
• Is the revised fit and proper person test sufficiently robust or are any elements too stringent?

• Should other criteria be added?

• How much more expensive would it be for a local authority to apply a revised fit and proper person test?
Section 2 – Rent Repayment Orders and Civil penalties

Introduction

An effective enforcement regime is essential to drive up housing standards in the private rented sector and tackle criminal landlords. Following the ‘polluter pays’ principle the cost of enforcement should fall primarily on rogue landlords rather than good landlords, or the general tax payer. Therefore we are considering the scope for enabling local authorities to recover more of the costs associated with proactively inspecting properties and ensuring that landlords comply with their responsibilities.

In particular, we are exploring the scope for extending Rent Repayment Orders (RROs) and the introduction of Civil penalties thereby helping to support more targeted and effective enforcement of breaches of housing legislation.

Rent Repayment Orders

Rent Repayment Orders were introduced under the Housing Act 2004. They currently only apply where a landlord has failed to obtain a licence for a licensable property. Under the current system, a local authority or a tenant can apply to the First Tier Tribunal for a RRO where a landlord has committed the offence of not having a licence for a licensable property. The landlord can be required to repay up to 12 months rent. Where rent has been paid through Housing Benefit, that money can be retained by the local authority and used for housing purposes.

Rent Repayment Orders are effective because they make it unprofitable for a landlord to dodge their responsibilities. We are considering extending them to cover other scenarios. These could include:

- where a landlord has been convicted of illegally evicting a tenant; and
- where a landlord has been convicted of failing to comply with a statutory notice, such as an Improvement Notice or Prohibition Order, issued by the local authority under the Housing Act 2004.

No reputable landlord would behave in this way and it is unacceptable that a small minority of landlords knowingly rent out substandard and potentially dangerous accommodation, particularly where the rent is being paid either partially or in full from Housing Benefit/Universal Credit.

An illegal eviction occurs when a landlord forces a tenant to leave their home without following the correct legal procedure, which generally includes serving a possession notice and obtaining a court order. Illegal eviction is a criminal offence and if found guilty, a landlord can be sentenced to up to 2 years imprisonment and/or a fine. As noted above however, fines have to be set at a level that takes account of the landlord’s means, so may not reflect how much rental income the landlord has received from the tenant. In addition,
a fine does not compensate a tenant who has been the victim of illegal eviction. Therefore, we are considering extending Rent Repayment Orders to cover cases of illegal eviction. Where rent had been paid through Housing Benefit, the rent would be repaid to the local authority.

Where a local authority carries out an inspection of a property and discovers a hazard, they must take action further action if it is a Category 1 or serious hazard. Where it is a category 2, or less serious hazard, the local authority may, at its discretion, take further action. Action by a local authority can include issuing an Improvement Notice requiring the landlord to carry out specified improvement works within a certain timescale, a Prohibition Order banning the use of all or part of a dwelling and a Hazard Awareness Notice.

If a landlord does not comply with either an Improvement Notice or Prohibition Order, they can be prosecuted and fined. Again however, a tenant will not receive any financial compensation and, where Housing Benefit has been paid, taxpayers’ money will have been used to pay rent for substandard accommodation. We are therefore considering extending Rent Repayment Orders to cover situations where a landlord fails to comply with an Improvement Notice, a Prohibition Order or a Hazard Awareness Notice.

The current Rent Repayment Order system requires a local authority to apply for an Order after satisfying a First Tier tribunal that the landlord has rented out a licensable property without having obtained a licence. For tenants, they can only apply for an Order after a landlord has been convicted of doing so. At present, the local authority or tenant has to make a separate application to the First Tier Tribunal for the Rent Repayment Order. This adds extra costs and time and is a potential deterrent. We are therefore considering empowering the First Tier Tribunal to impose an automatic Rent Repayment Order or, where the case has gone to Court, for the Courts to transfer the case following a conviction to the First Tier Tribunal for an automatic Rent Repayment Order. This would avoid the need for a local authority or tenant to make a separate application.

Questions

- Should we introduce Rent Repayment Orders for situations where a tenant has been illegally evicted or a landlord has failed to comply with a statutory notice?
- Should Rent Repayment Orders be introduced for any other situations?
- Should a Rent Repayment Order be limited to 12 months?
- Should issuing of a Rent Repayment Order be automatic?
- How many additional Rent Repayment Orders per year are likely to be issued if they were extended?
- Would the use of Rent Repayment Orders have a significant impact on landlords?

Civil penalties

Local authorities find civil penalties a useful tool for promptly dealing with certain civil wrongs, without recourse to the courts. Currently civil penalty notices can be issued for:
• local parking infringements;
• the failure of letting agents to make their fees transparent;
• breaches of energy performance building regulations; and
• may soon apply to a lack of working smoke and carbon monoxide alarms in a private rented home.

The prosecution of landlords or letting agents for housing offences can be expensive and time consuming. One way of raising standards could be to give local authorities the power to impose a civil penalty for certain breaches of housing legislation. This could help reduce costs and enable local authorities to focus the bulk of their enforcement work against rogue landlords in their area.

Civil penalties could potentially be issued where there has been a relatively minor breach, and would not preclude initiating a prosecution for future or related breaches.

We are considering introducing civil penalties for:
• overcrowded property;
• breaches of licensing rules;
• hazardous disrepair;
• poor sanitation;
• electrical faults;
• damp; and
• infestation of vermin.

Local authorities would retain the income from civil penalties and use them for housing enforcement purposes. Landlords would have the right to appeal against a civil penalty. It would be important to ensure that civil penalties were only served where appropriate, and with the aim of improving housing conditions, not as a way of generating revenue.

Questions
• What situations or contraventions should be covered by civil penalty?
• Assuming civil penalties are introduced based on the suggested criteria, how frequently is such a power likely to be used?
• Are they likely to be a genuine deterrent?
• What would be an appropriate penalty? Should it be similar to the potential fine for not displaying letting agent fees (up to £5,000)?
• Should there be higher penalties for repeat offenders?
• How should the appeal process work? For example, should there be a right of appeal to the First Tier Tribunal?
Section 3 - Abandonment

Current situation

A property is “abandoned” when the tenant simply disappears. A landlord may suffer from rent arrears and, in some cases, find damage to the property. Abandonment may also leave the property unsecured and vulnerable to vandalism.

Abandonment can result in the landlord having to seek a possession order from the court because they are uncertain whether they can legitimately repossess the property. This takes time, during which the landlord is losing more rent.

Currently, landlords can be unsure whether they are entitled to re-enter a property on the ground of abandonment and, in a worst case scenario, may find that they have committed an offence of unlawful eviction and/or harassment if they do so.

Proposed solution

Where it is clear a property has been abandoned under a tenancy, we want to speed up the process so that the landlord can obtain possession of their property without the time and expense of a court process.

The process that we are proposing to introduce is described in broad terms below. We estimate that it would reduce the amount of time involved in repossessing a property by about 2 – 3 months:

- A landlord would have to give the tenant a written warning notice stating the property is believed to be abandoned.
- The tenant would have four weeks to inform the landlord the property has not been abandoned.
- At the end of the four weeks, if the landlord still believed the premises to be abandoned, the contract can be brought to an end.
- Where a lodger occupied the property or any other person does so under a sub-occupation contract, the landlord must provide a copy of the notice to that person.
- During the warning period of four weeks, it is the responsibility of the landlord to make such inquiries as are necessary in order to be satisfied the property is abandoned.
- There would be a period of 6 months after the property had been repossessed during which the former tenant could make an application to the courts if they believe that they were wrongly deemed to have abandoned the property and/or the landlord had acted unfairly. If the court found in the tenant’s favour, they would be able to award an appropriate amount of damages
Questions:

- How widespread a problem is abandonment?
- What costs does a landlord currently face when presented with an abandoned property?
- How effective would the process described above be in tackling the issue?
- Does the lack of a courts process present too much uncertainty?
- What are the reasonable steps and actions a landlord should take to satisfy him/herself that a property is abandoned?
- What happens if a tenant returns to re-claim a property?
- What should the landlord do with the tenant's personal property?
Annex B – Stakeholders engaged

ORGANISATION

National Federation of Property Professionals (incorporating NAEA and ARLA)
National Approved Lettings Scheme (NALS)
British Property Federation (BPF)
The UK Association of Letting Agents
National Landlords’ Association
Residential Landlords Association
Citizens Advice Bureaux (CAB)
National Union of Students
Royal institute of Chartered Surveyors
The Property Ombudsman
Shelter
Crisis
Chartered Institute of Housing
Generation Rent
Advice for Renters
The Deposit Protection Service
The Tenancy Deposit Scheme
Tenancy Deposit Solutions Ltd
Local Government Association
Design on Property
Greater London Authority
Chartered Institute of Environmental Health
Landlord Action
Local Authorities
Annex C - Rogue Landlord Funded Authorities 2013-2015

Barnsley
Blackpool
Bolton
Boston
Bournemouth
Croydon
Derby
Fenland
Hastings
Herefordshire
Hounslow
Lambeth
Leeds
Lewisham
Medway
Newham
Nottingham
Oxford
Pennine Lancashire
Plymouth
Rochdale
Rossendale
Sheffield