



Decent Homes Standard in the Private Rented Sector

Safeagent Consultation Response

14 October 2022

An Introduction to safeagent

Safeagent is a not for profit accrediting organisation for lettings and management agents in the private rented sector. Safeagent (formerly NALS) provides an overarching quality mark, easily recognised by consumers, with minimum entry requirements for agents. Safeagent operates a Government approved Client Money Protection Scheme and is a training provider recognised by the Scottish and Welsh governments for agents meeting regulatory requirements in those devolved nations.

Safeagent agents are required to:

- deliver defined standards of customer service
- operate within strict client accounting standards
- maintain a separate client bank account
- be included under a Client Money Protection Scheme

Agents must provide evidence that they continue to meet safeagent criteria on an annual basis to retain their accreditation. The scheme operates UK wide and has 1,700 firms with over 3,000 offices.

We very much welcome the opportunity to contribute to this consultation exercise.

Overview

We fully support the principle that everyone deserves to live in a safe and secure home, and we welcome the opportunity to explore the merits of introducing a Decent Homes Standard for the Private Rented Sector.

Whilst we support the principle, we have reservations about the drafting of the Standard and the proposed new enforcement regime. As such, we do not support implementing and enforcing a Private Rented Sector Decent Homes Standard in the format currently proposed in the consultation paper.

Within this submission we have explained our reasons and would encourage government to further refine these important policy proposals.

The Decent Homes Standard

Fundamental to this consultation is what is meant by a 'decent home'. The Decent Homes Standard incorporates the existing risk based assessment methodology together with reasonable repair, facilities and thermal comfort standards. At present, the Housing Health and Safety Rating System (HHSRS) is enforceable, but the other parts are not.

Rather than simplify and streamline the current housing regulatory framework, the proposals add another layer of legislation which further complicates regulation of the Private Rented Sector.

The proposed Decent Homes Standard also fails to encapsulate all the key components that most people would associate with a safe and secure home.

For example, it would include no requirement for an annual landlord gas safety record. That requirement is the Gas Safety (Installation and Use) Regulations 1998, enforced by the Health and Safety Executive.

It would include no requirement for an Electrical Installation Condition Report (EICR) at least every five years. That requirement is in the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, enforced by local authorities.

It would include no requirement for smoke alarms on each floor of a rented home, nor carbon monoxide alarms in every room containing a fixed combustion appliance. That requirement is in the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022, enforced by local authorities.

It would include no ban on letting the most energy inefficient properties with an Energy Performance Certificate rating of F or G. That requirement is in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, enforced by local authorities.

Whilst important components are absent from the proposed Decent Homes Standard, other components of housing regulation are unnecessarily duplicated by the proposed Standard.

For example, take electrical safety. Safeagent was delighted to participate in the Government's Electrical Safety Working Group and welcomes the new requirement for minimum five-yearly electrical checks for all private rented homes. The new prescriptive requirements are set out clearly in regulations and are easy to understand. Alongside the regulations, local authorities can risk assess and enforce electrical safety hazards under the HHSRS. The proposed Decent Homes Standard covers electrical safety in Part A (HHSRS) and introduces a new layer of electrical safety regulation in Part B (reasonable state of repair). Neither of these clauses replicate the new electrical safety standards which are contained in separate regulations. This adds to regulatory complexity with no apparent gain.

We would also highlight the issue of thermal comfort. Local authorities can already intervene to resolve any category 1 or 2 excess cold hazards. Under minimum energy efficiency standards, we also have the ban on letting properties with an EPC rating of F or G, with proposals to raise the minimum energy efficiency rating. These two complementary enforcement regimes adequately address the issue. We see no benefit in adding further layers of regulation through the proposed Decent Homes Standard, with new reasonable repair and reasonable degree of thermal comfort standards. Again, this adds to regulatory complexity with no apparent gain.

We also have concerns about the proposed 'reasonable facilities' requirement for private rented homes. Whilst we agree all tenants should have access to adequate kitchens and bathrooms and should benefit from reasonable degree of sound insulation, these matters are already actionable by local authorities under the HHSRS. Any additional prescriptive requirements must be clearly defined. Terms such as 'adequate' and 'appropriate' would require detailed statutory guidance to ensure consistent and objective interpretation.

For these reasons, we do not believe the Decent Homes Standard, as currently drafted, provides a clear statutory framework for a new minimum housing standard. Any new minimum housing standard must be clear and simple for landlords, agents, tenants and local authorities to understand, interpret and apply.

Enforcement regime

As the consultation document makes clear, local authorities are under a duty to tackle serious category 1 hazards. They also have discretionary power to tackle less serious category 2 hazards. Local authorities have an extensive toolbox of enforcement options. If a landlord fails to comply with an improvement notice or prohibition order, they can be prosecuted in the Magistrates Court and face an unlimited fine. In some circumstances, they can be issued with civil financial penalties of up to £30,000, rent repayment orders, and face restrictions on possession proceedings.

This robust regulatory framework has been in place since 2006. The barrier to better regulation of the Private Rented Sector is not the lack of regulatory powers. It is underfunding within local authority regulatory services, combined with a shortage of skilled staff to undertake the work. That is the key challenge that needs to be overcome.

With the Government's HHSRS review due to complete this year, we think it is vital to consider the outcome of the review and the Decent Homes Standard consultation in tandem, to ensure a consistent joined-up approach.

Based on the current drafting of the Decent Homes Standard, we do not support making any breach of the Standard a strict criminal offence. There are several reasons for this.

Firstly, the Decent Homes Standard includes any category 1 hazard. An HHSRS assessment can only be undertaken by trained assessors and involves professional judgement. For example, changing the likelihood of harm from 1 in 1,000 to 1 in 560, or adjusting the spread of harm outcomes, could make the difference between a category 1 and a category 2 hazard. These nuanced judgements by trained assessors would determine whether a criminal offence has been committed. Yet these decisions fall outside the skillset of a competent landlord or agent.

Secondly, it would create two parallel but contradictory enforcement mechanisms. If there is a category 1 hazard, the local authority has a duty to act. They could serve an improvement notice or prohibition order, with non-compliance being a criminal offence. Yet under the proposed Decent Homes Standard, the local authority could also prosecute or issue a civil financial penalty without serving a legal notice or issuing a warning. Similar inconsistencies would apply to rent repayment orders eligibility criteria.

Thirdly, a strict offence based on HHSRS assessments would bring complex technical arguments before the Magistrates Court. At present, if there is a dispute on an HHSRS enforcement intervention, any appeal is heard by the First-tier Tribunal (Property Chamber). The Tribunal possess the technical and professional skills to rule on such matters. Once any appeal process has been exhausted, a Magistrates Court prosecution involves a much narrower set of issues. Under the proposed Decent Homes Standard, strict offences involving complex HHSRS assessments would be heard in the Magistrates Court, with a much greater reliance on expert witness testimony in the criminal court. This would add to the cost and complexity of criminal prosecutions.

Rather than create a new strict criminal offence, the proposed Decent Homes Standard could utilise the existing suite of enforcement interventions already available under Part 1 of the Housing Act 2004. If a landlord fails to comply with a legal notice, it would be a criminal offence. The same enforcement sanctions for non-compliance would then apply – prosecution, civil financial penalties or rent repayment orders. Any prosecution could also amount to a banning order offence.

Adopting this approach avoids the need to create Decent Homes Standard exemptions. Instead, the existing ‘reasonable excuse’ defence would apply. This enforcement model is already well understood by local authorities, the Courts and Tribunals.

We would also discourage the Government from reinventing the wheel about the nature of properties subject to the Decent Homes Standard. It should adopt the same definitions used under Part 1 of the Housing Act 2004. This issue has important implications for the social housing sector.

Whilst the consultation refers to an enforceable Decent Homes Standard for the Private Rented Sector, it makes no reference to social housing providers. We think this is a significant omission. The HHSRS already applies across all housing tenures, except that a local authority cannot take enforcement action against itself.

It cannot be right that a breach of Decent Homes Standard in a private rented property would amount to a strict criminal offence with the risk of prosecution or civil financial penalty, but a breach of the Decent Homes Standard in a social housing property located in the same street would not. The same scenario could equally apply to private rented and social housing flats within the same building.

Likewise, it cannot be right that private tenants could apply for rent repayment orders for breach of the Decent Homes Standard, but social housing tenants could not. This important issue needs further consideration, particularly given the catalogue of severe maladministration findings by the Housing Ombudsman.

Regarding who is the responsible person for any enforcement intervention, we would encourage the government to mirror the existing provisions under Part 1 of the Housing Act 2004, and utilise the same ‘person having control’ and ‘person managing’ definitions in section 263 of the Housing Act 2004.

Property Portal

We have concerns about the practical implications of a landlord certifying that their property meets the Decent Homes Standard when registering on the proposed Property Portal.

Only a trained assessor who undertakes a full inspection of the property can identify category 1 hazards, with the assessment only valid on the day it is undertaken. A landlord cannot certify compliance against a standard they are not qualified to assess. If it is decided every landlord must commission a full HHSRS inspection before registering a property on the Property Portal, the financial costs would need to be considered in the impact assessment.

If the Decent Homes Standard was redrafted in a simplified format, it would become a more realistic proposition for the landlord or agent to certify compliance.

When entering information on the Property Portal, we agree it should be an offence if someone knowingly provides false or misleading information or is reckless as to whether it is false or misleading. Such a provision is contained in section 238 of the Housing Act 2004.

It is unclear how the Property Portal certification would apply if the condition of a property deteriorates or suffers accidental damage whilst it is occupied. For example, if the heating system breaks down or the brickwork to a chimney stack becomes unstable, would the information on the Property Portal have to be adjusted whilst remedial work is being arranged, or would any certification only apply on the date the property is registered?

Right to attend council inspections

We see no need to amend legislation to make clear the landlord or agent has no right to attend local authority inspections arranged under section 239 of the Housing Act 2004.

Instead, landlord guidance on the HHSRS could be updated to reiterate this point. HHSRS enforcement guidance could also be updated to remind council officers cannot demand the landlord or agent attends the inspection to let them in if the tenant has not granted permission. Updated guidance should resolve this issue.

Information and Advice

It is important that local authorities work with the lettings industry to cascade information on new regulatory requirements and signpost to relevant advice and guidance.

Other parties have an equally important role to play. For example, training and professional development is an important part of the support package we provide to our safeagent members. From Accredited Lettings qualifications to CPD courses, shorter Letting Learning Snacks and regular webinars, we keep our members abreast of regulatory requirements.

Where there is lack of clarity about interpretation of the law, we do not think a local authority should charge for answering queries. It supports better regulation of the Private Rented Sector, which we are collectively striving to achieve.

Impact Assessment

We would urge the Government to commission a full impact assessment before moving forward with the implementation and enforcement of a new Decent Homes Standard.

If failure to comply with the Standard became a strict criminal offence, this will significantly increase the compliance risk and could further restrict supply within the Private Rented Sector.

If a strict criminal offence was introduced, landlords and agents would become increasingly reliant on trained HHSRS assessors to undertake verification checks. Not only would this drive up costs, it could also reduce the supply of trained HHSRS assessors within local authorities if there is strong demand for assessors in private sector consultancy roles.

Should you wish to discuss any aspect of this consultation response, please do not hesitate to contact me.

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