



Regulation of the private rented sector in England using lessons from Ireland

by Tom Moore and Richard Dunning

This study compares the effectiveness of different forms of private rented sector regulation in Ireland with existing approaches in England.

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The challenging issues of affordability, security and property management have raised interest in regulation of the private rented sector in England. This report aims to inform policy development in this area through a study of the different forms of regulation used in Ireland, and comparison of their effectiveness with existing approaches in England.

The report argues that:

- forms of tenancy registration and landlord licensing are effective ways of improving market understanding of the private rented sector
- longer-term tenancies with greater protection from eviction can be beneficial for tenants, but may be undermined by wider market conditions, including affordability and poor property standards
- while registration and licensing can be important, they will not alone solve issues in the private rented sector, and complementary levels of enforcement capacity are required
- incentives are an important measure by which regulatory compliance is encouraged, including the use of tax relief eligibility and the withholding of eviction powers for those who fail to comply.

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Executive summary

One of the most significant developments in English housing in recent years has been the growth of the private rented sector (PRS) – the sector now accounts for around a fifth of all households in England. While the role of the PRS has historically been that of a short-term or transitional housing tenure, tenure trends and policy decisions suggest that the sector will become a permanent home to a range of households with different housing needs, including tenants on low incomes, families with children, and previously homeless households. However, evidence suggests that issues of tenure insecurity (Pennington, 2016), poor housing conditions (DCLG, 2016a) and high rents (Tunstall et al, 2013) are causing financial hardship and insecurity for many households.

This has led to interest in the regulation of the PRS, including measures such as greater tenancy length and protection from eviction, control of rent levels, and regulation of relationships between landlords and tenants. This report explores the use of regulations in Ireland that seek to provide more security of tenure for tenants, to control the frequency of rent increases, and to regulate landlords through a system of mandatory tenancy registration. After an initial six months, tenants have the right to stay in their properties for up to four years in Ireland, with eviction permitted only on the basis of certain stipulated conditions. Changes to rent levels within tenancies are only permitted to occur once every two years. Landlords must register each tenancy with the Residential Tenancies Board (RTB), a statutory organisation that also provides a dispute resolution service intended to mediate between landlords and tenants.

Methods

In order to inform policy development in England, research was undertaken in both England and Ireland. The study was structured around the following questions:

- What are the strengths and limitations of the system of mandatory tenancy registration in Ireland?
- What are the regulatory experiences of landlords and low-income tenants in Ireland, and how do these regulations affect outcomes in relation to affordability, tenure security and landlord management?
- Which regulatory measures are most effective in the PRS, and how do outcomes differ according to the different approaches in England and Ireland?
- What lessons can be learnt for future policy development in England?

In Ireland, 12 interviews were held with stakeholders from statutory agencies, local councils, landlord and tenant organisations, housing and real estate experts, and housing charities. In addition, 24 interviews were undertaken with low-income tenants in the PRS in Dublin. Tenants were asked about their experiences of living in the PRS, including a focus on their housing costs, tenure security and property standards, and their relationships with landlords.

In England, 16 interviews were undertaken with stakeholders from landlord and letting agent bodies, housing charities, tenant groups, landlords and local authorities. These aimed to explore experiences of the existing regulatory framework of the PRS, including a focus on the regulation of property standards, perspectives on registration and licensing schemes, and issues of tenure length and security. Policy workshops were held in four local authority areas, purposefully selected due to geography and their different approaches to PRS regulation. These were Birmingham, Blackpool, Newham (in London) and Plymouth. A total of 39 people participated in the workshops, which involved exploration of local regulatory approaches to the PRS and comparison to the Irish system of regulation. Workshops also explored perceptions of future PRS reform.

The strengths and limitations of tenancy registration in Ireland

Mandatory tenancy registration, where landlords are charged €90 per tenancy to register with the RTB, creates a database of who lets property, where it is let and the level of rent being charged. The creation of this database has improved public understanding of the PRS in Ireland, shown by the creation of a Rent Index that provides up-to-date information regarding rents charged at national, regional and local levels. Around 85% of landlords were estimated by research participants to be in compliance with the mandatory registration system. The importance of financial incentives to regulatory compliance was highlighted: eligibility for mortgage interest tax relief is contingent on compliance with tenancy registration.

However, unlike selective licensing schemes in England, registration with the RTB does not involve an assessment of the landlord's management capabilities or practices, nor of the standard of the property being registered. This highlights that registration alone cannot solve problems in the PRS, and it instead needs to be complemented by appropriate levels of enforcement capacity and educational measures that can tackle poor management practices. The new Housing Assistance Programme (HAP) in Ireland may move towards this, involving mandatory-programmed property inspections where landlords let to tenants in receipt of HAP. Landlords who commit to longer-term tenancies for HAP are also eligible for higher levels of Mortgage Interest Tax Relief, highlighting again the importance of incentives in establishing a culture of regulatory compliance.

Longer-term tenancies, rent reviews and tenant rights

In Ireland there are longer-term tenancies than in England, lasting up to four years with eviction permitted only in accordance with stipulated reasons. There is also a dispute resolution service, which tenants and landlords make use of where disputes have arisen. While tenants highlighted that these can help give greater security of tenure, especially improving their protection from retaliatory evictions, this was undermined by wider market conditions, including low housing supply relative to demand and a crippling affordability crisis. These issues often dissuaded tenants from articulating their rights due to the fear of harming their relationship with their landlord and losing their home (even where tenancies theoretically provided greater security), and led to an acceptance of poor property conditions. Consequently, while longer tenancies with greater protection from retaliatory evictions have their merits compared to the insecurity of the English system, these need to be considered in relation to prevailing rent levels and affordability, as well as the regulation of property standards.

The regulatory challenge in England

Issues of access, security and affordability were identified as affecting tenant experiences of the PRS in England. While landlords oppose longer-term tenancies on the grounds that it may make tenancy management more difficult, there was interest from other stakeholders in measures that can mitigate or control rent increases, and provide ways of preventing evictions. Stakeholders also identified concerns around the accuracy of Local Housing Allowance (LHA) calculations, arguing in favour of improvements to the collection, availability and use of rental price information, which could give more accurate understandings of the market.

This also relates to issues of market understanding in the PRS. Research participants highlighted the ways in which landlord licensing schemes can enable a better understanding of the composition, geography and nature of their local PRS, which in turn supports their interventions in enforcement of property standards. While there is variance in the implementation of licensing schemes, they can be effective methods for tackling rogue landlords and improving the reputational image of the sector. While licensing schemes in some areas are mandatory for landlords, examples in this study showed the importance of incentivising compliance through restricting the powers of landlords that failed to comply, for instance preventing use of Section 21 eviction orders by unlicensed landlords. Licensing schemes were also thought to be more effective tools of improving the PRS than voluntary accreditation and educational schemes, which were thought to only engage those landlords already involved in good practice. There was support for a system of 'light-touch' registration that could facilitate the

communication of key information and policy changes to landlords, as well as providing continued professional development.

Conclusions

In both England and Ireland, forms of landlord licensing and tenancy registration were shown to have multiple benefits in improving the circumstances and experiences of tenants in the PRS, and in enhancing market understanding of the sector. In particular, the improved accuracy and monitoring of information on the sector given by forms of registration and licensing make for a compelling argument in favour of some form of registration for landlords. Rental housing costs will soon be incorporated into inflation measures used by the Office of National Statistics, yet data sources on this are unreliable and not comprehensive. Better collection of actual rent information could contribute to this, as well as to improved calculations of LHA rates. In addition, the enforcement of property standards enabled by licensing schemes suggests that recent policies restricting the powers of local authorities to implement these should be reconsidered. Alternatively, new expectations on landlords to register with a body could utilise existing infrastructures such as tenancy deposit schemes, consolidating points of contact and registration for landlords, and enabling information and knowledge to be communicated from a central point.

However, if any new forms of regulation are to be considered, there has to be a consideration as to how compliance can be encouraged. This research identified the importance of incentives in encouraging landlords to comply with regulations in England and Ireland. One way of incentivising registration may be to permit the offset of capital expenditure on improvement works against rental income, helping to tackle concerns that landlords are negatively affected by recent taxation changes.

Regulation will not be the only answer to problems in the PRS. Issues of access and security for tenants in England may be overcome by incentivising landlords to provide longer-term tenancies through tax relief, as has been introduced in Ireland. In addition, given the dramatic expansion of the sector and shift in the nature of households it accommodates, there are opportunities to help landlords adapt to the sector's changing role and pressures. This may include improved marketing of and support for schemes that seek to support low-income households and landlords with tenancy access and sustainment, such as a national rent deposit guarantee proposed by Crisis and the National Landlords Association. These partnership approaches point to the need for a layered, multi-faceted approach to PRS regulation that includes incentives to encourage compliance, and the development of co-ordinated solutions that balance the interests and needs of tenants and landlords in order to improve the experiences and reputation of the sector.

1 Introduction

A significant trend in English and Irish housing systems in the 21st century has been the growth of the private rented sector (PRS). Following a gradual decline of PRS housing for much of the 20th century, it is now estimated that 19% of all households in both countries access their housing through the PRS (NESC, 2014; DCLG, 2016a). While the PRS may offer choice, flexibility and mobility for tenants, there is growing evidence that suggests a significant relationship between private renting and forms of material and non-material poverty. Private renters in England are more likely to live in poorer-standard housing than households in other tenures (DCLG, 2016a), they spend higher proportions of their gross income on housing costs (DCLG, 2016a), and frequently move house due to factors beyond their control, including unaffordable rent increases or 'no fault' evictions (Pennington, 2016). Over a third of homelessness acceptances in the fourth quarter of 2015 were due to the loss of an assured shorthold tenancy in the PRS (DCLG, 2016b). Furthermore, recent studies have shown that significant levels of poverty among private renters are directly induced by housing costs (Tunstall et al, 2013), and rents are forecast to rise by 90% in real terms by 2040, pushing up to half of private renters into poverty (Stephens et al, 2014).

These issues are especially significant given that recent trends suggest that the PRS is becoming a permanent home to a range of households with different housing needs, including families, individuals and previously homeless households, rather than acting as a short-term or transitional housing tenure, as it may have done previously (Rugg and Rhodes, 2008). The growing importance of the PRS has led to calls for greater regulation and control of the sector, particularly in relation to the mitigation of poverty and insecurity that may be experienced by tenants. Such measures include greater tenancy length and security, control of rent levels, and greater regulation of the relationship and interactions between landlords and tenants (De Santos, 2012).

This report aims to inform policy development and debate in this area through a study of the regulation of the PRS in Ireland and exploration of its possible use in England. Introduced in 2004, Ireland has a regulatory system that includes longer tenancies with greater protection from eviction, a national body that mandatorily registers and regulates tenancies, and limitations as to the frequency of rent increases. In addition, Ireland provides a useful reference point, given it has a broadly similar housing tenure mix and trends, with high levels of home-ownership but a growing PRS due to affordability issues in owner occupation and a shrinking social housing sector (NESC, 2014). As Table 1 shows, this contrasts with England, where there is much less regulation of rents, tenancies and landlords:

Table 1: Regulation of the PRS in England and Ireland

	England	Ireland
Tenancy length	Standard six-month tenancy length.	'Part 4' tenancies last for up to four years, following an initial six-month period.
Tenancy termination	Typically 30 days' notice with no requirement to 'justify'.	Notice periods increase incrementally throughout tenancies: the longer a tenant has lived there, the longer the notice period. Eviction notices can only be issued if compliant with designated eviction clauses.
Rent control	No limitations on how rents are determined.	Rents may only be reviewed once every two years.
Landlord registration	Compulsory licensing of houses of multiple occupation (HMOs); selective licensing of landlords in some local authority areas.	Mandatory registration of all private sector tenancies.

This report explores experiences and perceptions of the Irish regulation system, assessing its qualitative impact on the experience and mitigation of poverty in the PRS through interviews with tenants and

public stakeholders. It also seeks to offer lessons from the Irish experience that can contribute to the development and reform of the PRS in England. To do this, it sought to answer four key research questions.

1. What are the strengths and limitations of the Irish tenancy registration system?
2. What are landlords' and low-income tenants' experiences of Irish regulation of tenancies and rents, and how do these regulations affect outcomes in relation to affordability, tenure security and landlord management?
3. Which regulatory measures are most effective in the PRS, and how do outcomes vary according to different approaches in England and Ireland?
4. What lessons can be learnt for future policy development in England?

The following sections present the policy context in England and Ireland, identifying the reasons for the sector's growth and the principles that underpin the current regulatory context. The report then presents findings from the Irish strand of the study, focusing on research questions 1 and 2 above. It then presents findings from interviews and policy workshops in England. The English strand of the study explored different regulatory approaches in four local authority areas of the country, as well as exploring perceptions and views as to the most effective regulatory approaches, and ways in which the sector could be reformed.

2 The growth and development of the private rented sector in England

The PRS has grown substantially in recent years. In England, it has risen from 11% of households in 2003–04 to 19% in 2014–15 (DCLG, 2016a). Much of this growth has stemmed from the increased use of the PRS by young adults aged 25–34: 46% of all households in this age group now privately rent, more than double that of a decade ago. In addition, the proportion of households in the PRS with dependent children increased from 30% in 2004–05 to 37% in 2014–15, indicating a rise in the use of the sector by families (DCLG, 2016a). The reasons for this growth are varied. For some households, difficulty in accessing owner-occupation due to affordability issues has contributed to the use of the PRS, while the contraction of social housing has limited alternative rental opportunities (McKee, 2012).

In addition, alterations to the homelessness duties of local authorities has led to a greater reliance on the PRS for the rehousing of previously homeless households (House of Commons, 2014), though the loss of a tenancy in the PRS is also a primary cause of statutory homelessness acceptances (DCLG, 2016b). Changing tenure trends, including the absolute and relative decline of social housing, as well as welfare reforms of means-tested housing assistance payments such as Local Housing Allowance (LHA), led Kemp (2011) to observe that in England ‘the private rented sector plays a disproportionately important role in accommodating households living in income poverty’.¹ Yet there are a range of concerns as to the sector’s suitability in accommodating low-income households, families and the homeless for longer periods of time than it may have done in the past. This has provoked interest in greater regulation of the sector, particularly in relation to issues of affordability, tenure security, property conditions and landlord management practices. Approaches to regulation differ markedly within and between different parts of the UK. The following section discusses different approaches to regulation, before discussing current regulatory debates in relation to the issues affecting tenants in the PRS.

The changing nature of PRS regulation

The nature and extent of regulation in the PRS is contested and there is little consensus as to the ways in which the sector should be regulated. Regulation can be defined as a:

“... sustained and focused attempt to alter the behaviour of others according to defined standards or purposes, with the intention of producing a broadly identifiable outcome or outcomes, which may involve mechanism of standard-setting, information-gathering and behaviour modification.”

Black (2002)

A traditional approach to regulation has been that of ‘command and control’, where it is assumed that: ‘if the Government changes the rules, people will alter their behaviour, and if they do not, agencies will force them to do so’ (Law Commission, 2008). However, since the 1980s, there has been a shift in government approaches to regulation in a range of sectors. This has included risk-management regulation strategies that target resources on the activities and actors that are most likely to be non-compliant (Law Commission, 2008), and principles of ‘smart regulation’ that use a mix of regulatory techniques and emphasise the involvement of the objects of regulation in the regulatory process, creating a culture of compliance (Cunningham and Grabosky, 1998). Smart regulation may involve the use of incentives to improve compliance, and adopts a flexible use of sanctions, used only in the most difficult or severe cases, where efforts to encourage compliance through education, training and standard-setting have failed.

There has been a gradual shift towards the use of smart regulation principles in the PRS, though as the following analysis shows, there remains a hybrid mix of regulatory techniques in different parts of the UK. This, in part, reflects the particular regulatory challenges associated with the sector: landlords and

tenants can be difficult to identify and communicate with due to a lack of centralised information; and there are resource constraints upon local authorities charged with regulating elements of the sector, therefore reducing the effectiveness of traditional command and control, interventionist approaches to PRS regulation (Marsh, 2006). In 2008, the Law Commission, in summarising a research programme on reform of the sector, argued in favour of smart regulation principles:

“A more effective regulatory structure for the sector required a move away from a system based primarily upon the enforcement of private law rights triggered by court action on the part of occupiers and local authorities. We suggested that instead the regulation of the private rented sector should be more clearly based on a system that fosters a culture of compliance and builds a commitment to quality provision.”

Law Commission (2008)

This suggests a reduction in reliance on the law being invoked through interventionist enforcement of core regulations, and shifting to a culture of compliance where behaviour is shaped in a way to encourage good practice and minimise the likelihood of disputes emerging (Marsh, 2006).

A further regulatory challenge centres on whether to regulate the entire sector or whether to take a more selective, targeted approach (Rugg and Rhodes, 2003). While proponents of more universal approaches argue in favour of consistent levels of standards and services for tenants, and see targeted approaches as potentially open to manipulation or avoidance (Rugg and Rhodes, 2003; London Assembly Housing Committee, 2016), Carr et al (2007) suggest that government policy, embodied through licensing schemes, take a selective and targeted approach. They argue that it distinguishes between a segment of landlords for whom ‘responsible self-government, community regulation and self-policing are appropriate’, and a ‘rogue’ element who are required to comply with license conditions, are subject to management surveillance, and are mandated to demonstrate regulatory compliance.

This selective approach in England reflects the lack of consensus as to the extent to which regulation should apply across the sector. There are concerns that interventionist, universal forms of regulation could penalise landlords that comply with core regulations, and that this could result in landlords withdrawing from the sector (O’Sullivan and De Decker, 2007). These concerns are particularly relevant given recent taxation changes that restrict the amount of tax relief landlords can claim, and increase rates of Stamp Duty (Institute for Fiscal Studies, 2015). A consequence of these issues has been a commitment from the government to avoid over-regulating the sector, responding to concerns that landlords could exit the market and reduce the supply of private rented homes. This view was articulated by a government minister in debating the Housing and Planning Act 2016, stating that: “We [the government] have taken action to support the supply and quality of private rented accommodation by resisting unnecessary and unhelpful regulation, while cracking down on the worst practices of some rogue landlords” (Hansard, 2015). This approach has the hallmarks of smart regulatory principles, in adopting a targeted approach to regulation that uses sanctions only for the persistently non-compliant offenders.

While targeting regulation at those either known or thought to be engaging in the worst landlord practices, the fragmented nature of the sector often means that there is a lack of clarity and difficulty in identifying these landlords (London Assembly Housing Committee, 2016). Furthermore, the growth of the PRS and its developing role in housing those more vulnerable, lower-income households who are less able to negotiate and cope with the cost and insecurity of the sector, and families who may require greater tenure security, means that interest in reform of the way in which the PRS is regulated has renewed (House of Commons, 2014). The following sections address the ways in which regulation has been applied to the sector in relation to affordability, tenure security, property standards and landlord management practices.

Regulation of affordability and tenure security

While there are geographical variations in the size, nature and issues of the PRS across the country, affordability issues in the PRS are highlighted in the English Housing Survey, where evidence suggests that private renters spend up to 40% of their gross income on housing costs, more so than households in other tenures (DCLG, 2015). Tunstall et al (2013) highlight that 18% of private renters in England are in poverty before housing costs are taken into account, rising to 38% after housing costs are paid.

suggesting that levels of poverty in the PRS are directly related to their housing costs. These issues have been exacerbated by alterations to LHA, the rate of which has been frozen until 2020, therefore further affecting the ability of people on lower incomes to meet their housing costs. Since PRS rents were deregulated in the 1988 Housing Act, there has been little interest in forms of rent regulation that can mitigate the growing proportion of income that tenants spend on housing costs in the PRS. However, elsewhere in the UK, Scotland has begun to experiment with 'Rent Pressure Zones', where rents can only be increased in line with Consumer Price Indices.

Access to the PRS is often difficult for households on lower incomes. There is often a need to raise substantial deposits to access tenancies, or to pay what have been described as 'unreasonable and opaque fees' (House of Commons, 2014) when accessing tenancies through letting agents. The Consumer Rights Act of 2015 made it a legal requirement for letting agents to publish information about the fees they may levy during a tenancy, which may include compulsory charges for tenancy applications and recurring fees for tenancy renewals. In November 2016 it was announced that a consultation would take place as to whether fees charged to tenants could be banned.

In addition to the difficulties of raising deposits, retention of a deposit at the end of a tenancy can be a frequent source of dispute between landlords and tenants. In 2007 tenancy deposit legislation was introduced, mandating that landlords hold deposits with one of three government-backed schemes. If there are disputes over the return of a deposit at the end of a tenancy, the tenancy deposit scheme can provide independent dispute resolution, determining whether and how a deposit should be returned to the tenant or held by the landlord. The Tenancy Deposit Scheme, one of the three government-backed places to hold a deposit, dealt with 11,794 disputes in 2015-16, 47% of which were raised by tenants, 43% by letting agents, and 10% by landlords (TDS, 2016).

Other issues of access to the sector for low-income households can arise through private landlords' refusal to let properties to tenants in receipt of welfare benefits or not in full employment, due to perceptions of risk and the possibility of obtaining higher rents from other tenant groups (Clarke et al, 2015).

It is also argued that greater tenure security is required in the PRS, both in terms of length and protection from eviction. The most common tenancy used in the PRS is an assured shorthold tenancy lasting a minimum of six months. After an initial six-month term, landlords are able to evict tenants through the use of a Section 21 order, which means that no reason for eviction has to be provided. The use of Section 21 orders has been criticised for engendering insecurity in the sector. It has been estimated that around a quarter of renters moved home in the last year, that a third of renters have moved three times or more in the last five years, and that a quarter of renters attributed their last move to factors beyond their control, such as eviction notices, non-renewal of fixed term leases, or unaffordable rent increases (Pennington, 2016). Recent legislation has sought to curb the use of Section 21 orders by restricting their use for retaliatory evictions, where tenants are evicted as a consequence of landlord disputes or complaints. However, their wider use is still permitted, showing that this is largely a punitive measure aimed at restricting the powers of landlords whose management practices are identified as poor. The restrictions on use of Section 21 orders embody principles of risk-based and smart regulation, in that it targets regulations at those involved in the worst landlord practices through a flexible and targeted use of sanctions that restricts their powers.

Given the growth in the use of the sector by families and those on lower incomes, this has led to calls for longer tenancies and limitations on the ease with which landlords can evict tenants, as in many European countries where rental contracts may be indefinite or of a limited but long duration, and where the landlord has to supply a valid reason for non-renewal or eviction (Kemp and Kofner, 2010; Scanlon and Kochan, 2011). However, this is often opposed by landlords who argue that while longer tenancies are in fact desirable for them in reducing void periods and turnover of tenants, retaining management flexibility is important, as shorter tenancies allow them to evict tenants that break tenancy obligations quickly and easily, avoiding potentially lengthy disputes and eviction procedures (House of Commons, 2014).

Regulation of property standards

There are also concerns about the quality of accommodation in the PRS. While many landlords provide adequate housing, and survey evidence suggests that many tenants do have a satisfactory renting

experience, PRS tenants in England are more likely to live in poorer standard accommodation than households in other tenures. The most recent English Housing Survey found that nearly a third of homes in the PRS would fail the Decent Homes Standard (DCLG, 2016a).

Analysis for the Joseph Rowntree Foundation (JRF) also found that 20% of private renters live in fuel poverty (Tinson et al, 2016). This may be for varied reasons. The age and nature of much PRS stock is one issue: renters in the JRF report cited the condition of properties as the main obstacle to adequately heating their home, rather than the cost (Tinson et al, 2016). Other factors may include poor management practices in relation to repair and maintenance, or that it may not be financially viable for landlords to undertake improvements in weaker rental markets (Eadson et al, 2013). Research conducted for Shelter (Gousy, 2014) found that over six in ten renters had experienced issues to do with damp, mould, and electrical or gas hazards, and that 10% of renters attributed health issues to poor property conditions. The main form of property standards regulation is the Housing Health and Safety Rating System (HHSRS), which assesses risks within properties. However, the system has been criticised for its complexity, and the lack of awareness of its use and principles among landlords and tenants (House of Commons, 2014).

Selective licensing of landlords is another intervention that has been proposed to address issues of sub-standard accommodation. Introduced in the Housing Act 2004, it enabled local authorities to designate specific areas – which must be evidenced as areas of low housing demand, or as suffering from anti-social behaviour or poor property conditions – where landlords are required to obtain licences, have to prove they are a ‘fit and proper’ person to be a licence holder, and are subject to enforcement action if they fail to do so, or fail to comply with acceptable property standards. Recent government guidance requires local authorities to obtain consent from national government for licensing schemes that cover more than 20% of their geographical area or more than 20% of PRS homes in that area. Proponents of licensing argue that schemes can be an effective way of tackling anti-social behaviour, falling property standards and environmental issues (Wilson, 2015).

The last Labour Government’s response to the Rugg and Rhodes (2008) review of the PRS proposed a national register of private landlords, but a change of government meant that this was never carried forward. There are also perceptions that mandatory and widespread registration or licensing schemes represent an ‘unwarranted and unsustainable burden upon landlords’ (Marsh, 2006). The Law Commission’s work in 2008 recommended a system of ‘enforced self-regulation’, including a legal requirement for landlords and/or letting agents to join professional associations or accreditation schemes, which would in turn enforce standards and compliance. This would involve the professional associations taking responsibility for enforcing good practice, with an independent central regulatory body providing oversight of self-regulatory practices. These proposals quite clearly embodied principles of smart regulation, through involving other stakeholders as regulatory actors (including the objects of regulation themselves), and through using a broad range of flexible regulatory techniques and sanctions. These proposals have, however, not yet been implemented.

Other areas of the UK have adopted mandatory and widespread registration schemes, such as in Scotland and Wales where landlords are required to register with a central body. These operate differently to selective licensing schemes in England, due to their mandatory nature. In Scotland, national registration of landlords has not been proven to have a comprehensive effect on property management standards, due to difficulties in monitoring landlord behaviour and ensuring compliance (Lees and Boyle, 2011). While there is an onus on landlords to register, there is not the same systematic check that landlords are ‘fit and proper’ as with English licensing. Compulsory registration was introduced nationally in Wales in November 2015, combining elements of English selective licensing, as registration is dependent on landlords demonstrating that they have undertaken training regarding their rights and responsibilities as a landlord, and elements of the Scottish approach in mandating all landlords to register (or use a licensed managing agent). In this sense it bears some similarity to the Law Commission’s model of enforced self-regulation. However, initial evidence suggests that compliance has been low (Dickins, 2016).

Regulation of landlord management practices

A further concern with the PRS relates to the management practices of landlords and letting agents within the sector. Recent research into landlords in England suggests that many are unaware of key

property management responsibilities or property standards (Faulkener, 2016; Pennington, 2016), while a survey of landlords conducted in 2010 indicated that 63% of respondents had no relevant qualifications in relation to property letting or management (DCLG, 2011). These management issues were encapsulated by Crisis in a submission to a government inquiry on private rented housing:

“There is little regulation to govern management standards in the PRS. There is no requirement even for a written tenancy agreement, for instance. Anyone can become a landlord without the requirement of training, licensing or background checks.”

Crisis (2013)

These landlords are commonly termed ‘accidental’ or ‘amateur’ landlords, who may be defined as individuals who have often become landlords due to unplanned circumstances or as a way of providing supplementary income to their day job, and do not realise that aspects of property letting may require specialist knowledge and adherence to a wide range of legislation and standards (O’Connor, 2014). There are thought to be around 50 Acts of Parliament and 70 sets of regulations that apply to the PRS (London Assembly Housing Committee, 2016), establishing a complicated framework and system within which landlords are operating, and that they have to understand. This has led to situations whereby many landlords unwittingly break laws or fail to adhere to legislation due to a lack of knowledge and awareness (Faulkener, 2016). Lister (2006) identified that laws and regulations governing the PRS are often difficult for both landlords and tenants to understand, resulting in a lack of clarity over rights and responsibilities.

This is a particularly significant challenge for the PRS, as the sector is fragmented in its ownership and regulation, and there is no overarching statutory oversight of landlords or letting agents. Most landlords tend to own a small portfolio of properties, though the fragmentation of the sector makes it difficult to make conclusive observations as to who operates in the market. A survey conducted for the Department for Communities and Local Government in 2010 (DCLG, 2011) found that around 75% of landlords own a single property and 90% are private individuals rather than companies. This fragmentation of ownership also makes it difficult to communicate with the sector, particularly given there is no requirement for landlords to register with a statutory body (unless they are in an area subject to selective licensing).

One approach to try and overcome these issues has been the creation of accreditation schemes, delivered either by local authorities or through landlord membership bodies, that involve continued professional development and abidance by codes of conduct. Evidence suggests that accreditation schemes can be beneficial in educating landlords around their rights, responsibilities and changes in legislation (Jones, 2015). Accreditation schemes are also supported not just for providing information and educational activities that promote understanding of rights and responsibilities, but for exposing landlords to positive role models and social norms of compliance (Marsh, 2006; Law Commission, 2008). An evaluation of selective licensing and mandatory licensing for houses of multiple occupation (HMOs) revealed similar impacts on improving landlord management responsibilities, such as the provision of written tenancy agreements (BRE, 2010). However, the voluntary nature of accreditation schemes and lack of compulsion tend to engage well-intentioned and knowledgeable landlords that are already engaged in good practice, failing to engage landlords involved in the worst management practices (Jones, 2015).

Moves towards accreditation schemes reflect what Hughes and Houghton (2007) have termed a ‘self-regulating’ industry, aiming to create a culture of compliance through education and professionalisation of non-compliant landlords, rather than through strict methods of enforcement and universally applied regulation. Accompanying this, the Housing and Planning Act 2016 introduced a range of measures intended to tackle and discourage rogue landlords. These include banning orders for the most serious and prolific non-compliant landlords, a database of landlords and letting agents that are convicted of offences, and civil penalties of up to £30,000.

The selective approach to regulation in England contrasts with recent policy developments in Ireland, where some principles of smart regulation have been applied on a universal basis in order to ensure greater consistency in the ways in which private residential tenancies are managed and regulated. The following chapter turns to a description of this, before moving on to present findings from the research.

3 The private rented sector in Ireland

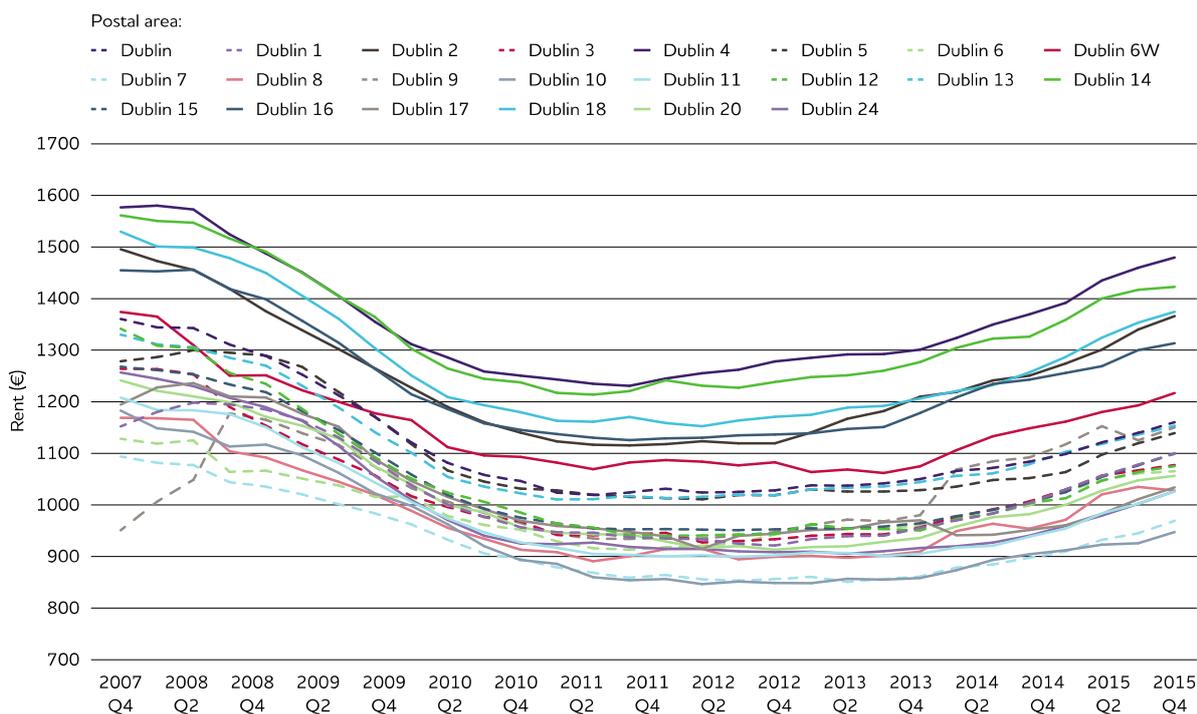
The PRS in Ireland has undergone a similar expansion to that in England, with the sector nearly doubling in size from 10.3% of all housing stock in 2006 to 19% in 2011 (Norris, 2014). There have also been broadly similar drivers for this growth. While home-ownership remains the dominant tenure, it has become difficult to achieve due to affordability issues in the wake of the financial crisis and property crash in the mid-2000s. Social housing in Ireland accounts for only 9% of housing stock, compared to an EU average of 17% (Houses of the Oireachtas, 2016). Social housing supply is also affected by the low construction rates in the sector; in 2015 just 476 homes were constructed by the local authority and voluntary/co-operative sectors, compared to 5,146 in 2004 (Department of Housing, Planning, Community and Local Government, 2016).

These trends mean that the PRS has become a common tenure for a range of social and economic groups, including younger adults, people on lower incomes and families. The composition of the sector is reflected statistically. Some 44.3% of adults aged 25–34 were renting privately in Ireland in 2011, up from 15.3% in 1991. Similarly, 74.2% of heads of households aged under 24 now rent privately, compared to 56.8% in 1991 (NESC, 2014). Around a third of private renters are thought to be in receipt of Rent Supplement, a means-tested housing assistance payment, with higher proportions found in low-income, urban neighbourhoods (Norris, 2014). The role of the PRS in meeting housing needs that may have traditionally been met by social housing has deepened, as a result of these tenure trends (Hayden et al, 2010). Ownership of the sector is broadly similar to that in England, in that around 82% of landlords in Ireland are thought to own one or two properties (Duffy et al, 2016) and are often amateur or accidental landlords. The growth of the PRS in Ireland was also encouraged by easier access to buy-to-let mortgages in the 1990s and 2000s, as well as the ability to claim 100% Mortgage Interest Tax Relief. This was reduced to 75% in 2009, though recent reforms announced in the 2017 Budget enable landlords to claim 80% of interest, rising to full interest deductibility by 2021. This is an effort to mitigate concerns that landlords may exit the sector due to perceived high tax burdens that disincentivise the letting of property (Duffy et al, 2016). In particular, research by Sherry Fitzgerald, a property advisory firm, advised that over 40,000 units had been lost from the PRS between 2011 and 2015 due to buy-to-let vendors selling properties (Sherry Fitzgerald, 2015).

While the PRS in Ireland may appear similar to that in England, the approach to regulation differs in its commitment to regulation that applies universally across the sector. A ‘strong, vibrant and well regulated private rented sector’ (Department of Environment, Heritage and Local Government, 2011) has been a stated goal of the Irish Government. Regulation of the PRS has been a prominent feature of public policy for some time. The Commission on the Private Rented Residential Sector was established in 1999 and led directly to legislation in 2004 through the Residential Tenancies Act (subsequently amended in 2015). This introduced a number of provisions that sought to regulate certain aspects of private renting, including tenancy agreements, rents and management practices.

The Residential Tenancies Act 2004 sought to control rents, by stipulating that landlords cannot charge more than the open market rate for rent. Market rent is defined as ‘the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling’ (Government of Ireland, 2004a). In addition, rent reviews were only allowed to occur once per annum (though this was changed to once every two years in December 2015). Any rent increases theoretically have to be justified in relation to rents for comparable properties. However, after rents fell following the property crash in the mid-2000s, market rents have steadily increased, with recent increases in Dublin amounting to just under 10% in real terms between early 2015 and early 2016 (RTB, 2016). These trends are illustrated in Figure 1, which shows rents in Dublin broken down by postal area. It shows that rents in Dublin have almost returned to their peak of the mid-2000s.

Figure 1: Average rents in Dublin areas, 2007 Q4 to 2015 Q4



Source: RTB (2016)

Provisions to give tenants greater security of tenure were also introduced. This was to be achieved through two forms of tenancy reform. First, following an initial six-month period, tenants have the right to stay in their home for up to four years, provided they abide by the terms and conditions of the tenancy. This is called a 'Part 4' tenancy. Tenancies may still be terminated before the four-year duration, but there are incremental increases in the length of notice that must be given by both landlord and tenant, rising to as much as 224 days notice if a tenant has been resident for eight years or more.

Second, tenancies terminated by landlords must be accompanied by designated reasons for termination, including documented proof, related to one of the following:

- the tenant has failed to comply with the obligations of the tenancy
- the landlord intends to sell the dwelling within the next three months
- the dwelling is no longer suited to the needs of the occupying household, for instance property size
- the landlord requires the dwelling for his/her own or a family member's occupation
- vacant possession is required for substantial refurbishment of the property
- the landlord intends to change the use of the property, taking it out of the PRS.

However, it is important to note that for the first six months of a tenancy, tenants can still be evicted with a 28-day notice period. Therefore, provisions designed to provide more security of tenure do not apply initially, and only kick in after six months of residency.

A further provision in the 2004 Act was the establishment of the Residential Tenancies Board (RTB).² The RTB provides statutory oversight over the PRS, including management and enforcement of a mandatory tenancy registration. Landlords are legally mandated to register new tenancies with the RTB for a fee of €90 per tenancy. This registration regime replaced a former system of registering with local authorities, which had high levels of non-compliance and very little enforcement (Allen, 2000). The RTB also hosts a dispute resolution service, which aims to offer a more informal method of resolving disputes in relation to tenancy agreements, including rent arrears, breaking of tenancy obligations, deposit issues

or illegal evictions. Both landlords and tenants can use the service, though landlords are only able to use the service if their tenancy is registered with the RTB. It offers different approaches to resolving disputes. If there is the prospect of reaching an agreement, the RTB works as a mediator between the two parties to find a solution to the issue in question. The alternative option is an adjudication by a panel assembled by the RTB, where a hearing takes place and a determination will be made by an adjudication panel that has in-depth housing law knowledge, based on the evidence presented. Decisions made by the RTB are legally binding.

This regulatory framework contrasts with the more selective approach in England, where registration of landlords only takes place in areas subject to selective licensing, protection from eviction in tenancies is more limited, and landlords and tenants do not have an obvious method by which tenancy disputes can be resolved. This is not to suggest that the PRS in Ireland is necessarily or definitively well regulated or functioning coherently, as there have been a number of criticisms of the sector. Despite the 2004 reforms, the PRS in Ireland has been characterised as 'a fragmented, under-capitalised "cottage" industry, lacking the professionalism and modern synergy with a strong regulatory framework that prevails in other EU countries' (Taft, 2009). Taft's criticism relates both to the ownership of the PRS, in that the sector is largely composed of small-scale, amateur landlords, and to perceptions that the provisions for tenure security and rent control are relatively weak compared to other European countries' (Scanlon and Kochan, 2011). In addition, the Irish PRS has problems related to the affordability of the sector relative to income, exacerbated by an undersupply of housing, and issues with poor standard accommodation, as 55% of rented homes are in the bottom three tiers of the Building Energy Rating (BER) standard (Department of Communications, Energy and Natural Resources, 2016). Local authorities are responsible for enforcement activity, and in recent years over 90% of homes inspected have failed to meet minimum standards in cities such as Cork (Irish Times, 2015) and Dublin (Irish Times, 2016). In addition, academic research has highlighted that more vulnerable demographic groups such as migrants (Smith, 2015) or young adults (Maycock et al, 2014) face barriers to accessing PRS housing, including: affordability constraints; discrimination against Rent Supplement recipients or migrants by landlords; the poor standard of available rental properties; or poor management practices when renting, including issues to do with disrepair and informal tenancies. As O'Connor (2014) argues, those on the lowest incomes 'are most likely to be exploited and to live in the worst conditions'. However, this is also juxtaposed with survey evidence that suggests a majority of tenants have a positive view of renting, with a correlation between young adults and positive experiences (DKM Economic Consultants, 2014). This evidence suggests a variation and diversity of experience of the PRS.

The Irish system offers a useful comparator to the English system of regulation, particularly given that the two countries have broadly similar housing tenure trends, where owner-occupation is the dominant tenure but the PRS has grown in importance. In addition, while the regulatory regimes have core differences, provisions for tenure security and compulsory tenancy registration in Ireland are similar to some of the ways in which the English PRS may be reformed. With this in mind, the following chapter aims to explain the research that was undertaken for this study and the procedures of data collection.

4 Research methods

The findings of this study are based on qualitative research undertaken between October 2015 and June 2016. Research was broken down into distinct waves of data collection. The first wave involved interviews with stakeholders in England and Ireland in order to establish key principles and perspectives on the PRS in each country, including: regulation of standards; perspectives on the registration and licensing of tenancies and landlords; tenure length and security; and the effect of contemporary policy changes and tenure trends on the PRS. Sixteen interviews were conducted with stakeholders in England, including representatives from landlord and letting agent membership bodies, housing charities, tenant groups, landlords and local authorities. Twelve interviews were conducted with stakeholders in Ireland, composed of statutory agencies such as the RTB, Dublin City Council, housing and real estate experts in the academic and private sectors, and representatives from landlord and tenant organisations, and housing charities.

The second wave of interviews was conducted with 24 tenants in Dublin. The purpose of this was to explore tenant experiences of the PRS, including housing costs, tenure security, property standards, regulatory instruments and their relationships with their landlords. Tenants were also asked about their housing choices and decision-making. Dublin was selected as a case study due to its position in the Irish housing market: it accounts for approximately a third of all private rented homes in Ireland and has witnessed strong levels of rent inflation, rising 9% between 2015 and 2016 (RTB, 2016). Tenants were recruited according to age and income-related criteria, as well as housing circumstances, in order to sample young adults on lower incomes. Age criteria related to participants aged 18–35, a decision taken in order to reflect the significant growth of the PRS among this age cohort in Ireland (NESC, 2014). Income criteria related to median incomes in Ireland, in accordance with Clapham et al's (2012) model of PRS demand, which highlights growing demand from those earning below median incomes. In Ireland, median incomes in 2014 were €349.98 per week. Tenants' incomes were assessed through a questionnaire completed prior to participation.

Tenants were recruited in two different ways. The opportunity to participate in the project was promoted by advisory workers for Threshold, a housing advice organisation operating in Dublin. Tenants were given information on the project and were put in contact with the research team by advisory workers. This process also proved helpful for sampling, as where tenants opted not to disclose information related to their income, communication with advisory workers and tenants could establish whether they were in receipt of means-tested housing payments as a proxy. The second method through which tenants were recruited was a targeted leaflet drop, informed by detailed analysis of RTB data by the research team. This analysis revealed high proportions of tenancies registered in postal areas Dublin 6 (10% of all tenancies in Dublin), Dublin 7 (8%) and Dublin 8 (11%). The study was promoted in this area using flyers and leaflets, detailing key criteria for participation.

Finally, policy workshops were undertaken in four local authority areas in England: Birmingham, Blackpool, Newham (London) and Plymouth. These were purposefully selected according to geography, in order to explore the nuances and differences of local housing markets, and to test research findings in different regions. Table 2 explains the rationale for selecting each area.

Table 2: Rationales for the selection of local authority case study areas

Local authority area	Rationale for selection
Birmingham	<ul style="list-style-type: none">• Expansion of the PRS, rising from 12% in 2001 to 17.9% in 2011 according to Census figures.• Diverse population with several housing market pressures, including a large student population and growing local economy.
Blackpool	<ul style="list-style-type: none">• PRS accounts for 26.1% of all housing stock, higher than the national average.• Changes in the local economy have led to the conversion of former guesthouses to large HMOs.• Identified as one of the most deprived local authority areas in the country, with poor quality PRS housing (Hannaford et al, 2015).
Newham (London)	<ul style="list-style-type: none">• Suffers from significant affordability issues in London that exclude or impact vulnerable households, particularly those in receipt of welfare payments (London Assembly Housing Committee, 2016).• In 2013, the local authority implemented a mandatory borough-wide landlord licensing scheme, providing insight into how the PRS may be regulated at a local level.
Plymouth	<ul style="list-style-type: none">• Plymouth has historically had issues of poor quality private rented housing, as well as an above average proportion of vulnerable households living in the PRS (those on means-tested or disability benefits) (South West Regional Assembly, 2009).

Workshops involved a presentation on the Irish system to participants, most of whom were unfamiliar with regulation in Ireland. The authors presented the key elements of the Irish PRS, including their approach to regulation of tenancy length and security, rent reviews and tenancy registration. They also presented the emerging findings from the Irish strand of the research in relation to the benefits and limitations of mandatory tenancy registration, and on tenancy length, security and affordability. The purpose was to identify key policy priorities and solutions, and to refine emerging findings from the study in relation to local nuances and pressures, through understanding local approaches to PRS regulation. A total of 39 people participated in the workshops: Birmingham (8), Blackpool (14), Newham (8) and Plymouth (9). Participants were identified in conjunction with local authorities and were drawn from a variety of backgrounds, including different parts of local authorities (housing, welfare, enforcement, housing options), local landlords, housing charities and tenant representatives.

5 The benefits of mandatory tenancy registration in Ireland

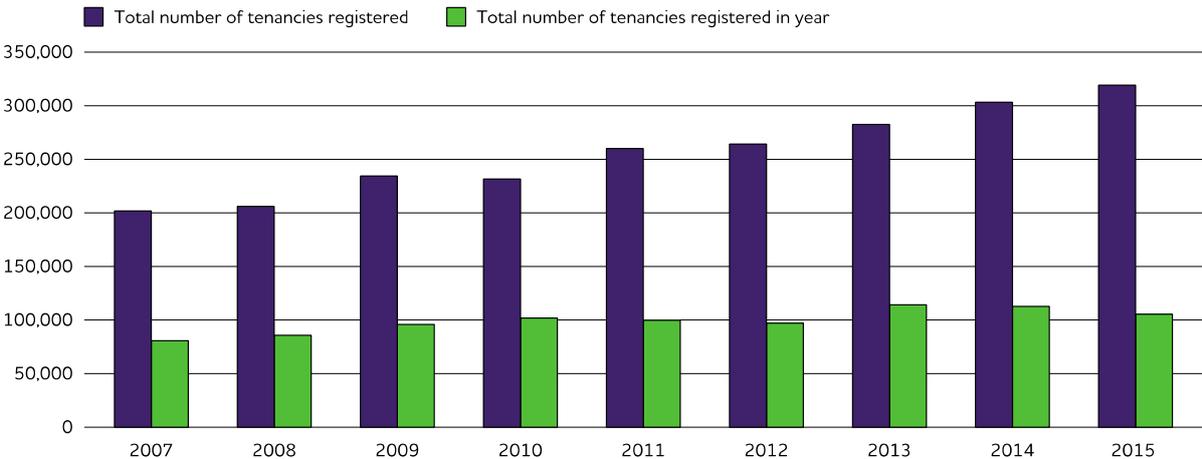
Tenancy registration in practice

There are a variety of terms used in different parts of the UK and Ireland to describe the registration and monitoring of property letting in the PRS. Whether it is 'landlord registration' in Scotland, 'tenancy registration' in Ireland, or 'licensing' in some English local authority areas, the deployment of these schemes is usually based on the thought that a register of who is letting property can support compliance with a range of standards and regulations. There are, however, some key differences in implementation. Differences between England, Scotland and Wales relate to the scale at which registration or licensing occurs and the coverage of schemes, whether they are universally applied or operated on a selective, targeted basis (Moore, forthcoming).

Tenancy registration in Ireland was introduced at a national level through the Residential Tenancies Act in 2004. All tenancies must be registered for a fee of €90, which lasts for the duration of the four-year tenancy cycle. Late registration fees of €180 are levied where a tenancy is registered more than a month after its start date, and landlords can be issued with legally-binding fines if it is discovered that a tenancy is unregistered. In 2014, the RTB detected nearly 30,000 unregistered landlords, the majority of whom subsequently chose to register. However in 17 cases individuals were prosecuted to ensure compliance, resulting in criminal convictions, and total fines and costs of €95,770 (RTB, 2015). Where a landlord has appointed an agent to undertake property management services, it remains the landlord's responsibility to ensure tenancies are registered. It should be noted that all property service companies, such as letting agents or management agents, are compelled to register with the Property Services Regulatory Authority.

Figure 2 shows the number of tenancies currently registered with the RTB at just over 300,000. While there are no conclusive figures as to the number of tenancies that exist below the regulatory radar, research participants estimated that around 85% of tenancies were registered.

Figure 2: Number of tenancies registered in total and in preceding year (as at 31 December)



Source: RTB (2015)

The introduction of compulsory registration was not novel, as landlords had been required to register tenancies with local authorities for an annual fee since 1996. However, in practice only a small number of tenancies were registered, estimated at around 16-17% by Curry (2003). This, however, is important,

for there was an existing context and culture of regulation through registration prior to the RTB, even if it was not properly enforced.

Research participants attributed the higher levels of compliance to two broad areas. First, the compulsion to register tenancies with the RTB was introduced in tandem with tenancy reform and a dispute resolution service housed within the RTB, therefore creating an organisation that has an overarching statutory oversight over key aspects of the sector. In particular, landlords must have tenancies registered with the RTB in order to take advantage of the RTB's dispute resolution service.

“The other incentive for registration is that landlords cannot bring a dispute to the Residential Tenancies Board if they are not registered with the board. So if they have a problem with a tenant, they cannot bring it to the board unless they are registered, so they may register at a time when they feel they are going to need help with a dispute. That slowly brings landlords into the regulatory net as well.”

Housing charity officer, Dublin

While this was thought by some to have been an important incentive for landlords to register tenancies, participants also highlighted that high levels of compliance were achieved, as registration with the RTB – priced at €90 for a tenancy of up to four years – was more financially attractive than the previous local authority licensing regime.

“The landlords were opposed to [local authority licensing] because you had to register every year, €40 every year, and we did propose at the time that if you were to register once every four years it might be less of a burden.”

National landlord representative, Ireland

The perceived improvement in the regulatory framework was therefore thought to be a factor in persuading landlords to register with the RTB. In addition, eligibility for Mortgage Interest Tax Relief was restricted to landlords whose tenancies were registered with the RTB. While this incentive only applied to landlords with buy-to-let mortgages, it was felt that framing registration within the financial interests of landlords was an effective strategy for ensuring high levels of registration.

“I would say that around 85% of tenancies are registered. So from a point of view of bringing landlords within the ambit of regulation, it has certainly been successful and certainly that percentage seems to be growing all the time. One of the things they did, which I think was clever, was to link landlord's entitlement to Mortgage Interest Relief to registration with the Residential Tenancies Board. In other words, you had to be registered in order to qualify for Mortgage Interest Relief.”

Housing charity officer, Dublin

This highlights the use of some elements of smart regulation, by linking a regulatory technique to financially beneficial outcomes for the objects of regulation. It also highlights that incentives can act as an important motivation for complying with regulation. The linking of registration to taxation was enabled through collection of information during the registration process, such as the landlords' Personal Public Service Number (PPSN) tax reference. Collection of this information and cross-referencing between databases also enabled authorities to ensure compliance, for instance checks between landlords housing tenants who received Rent Supplement from the government and RTB databases.

“The number of landlords in receipt of Rent Supplement some time ago that weren't registered was just simply appalling. They were receiving payments from the state to make up the vast majority of their rental income and yet they were not registered with the RTB so there was a check done, I think the check was done with Revenue or Social Welfare, I can't remember which, and that rate of compliance has improved dramatically.”

Housing charity officer, Dublin

The assimilation of a register of tenancies was therefore supported by other data sources. In turn, the RTB shares information with other public sector bodies in accordance with the Residential Tenancies Act, including the Department of Social Protection, the Revenue Commissioners and local authorities.

Understanding a sector through registration

Other information collected through registration relates to the size and type of property, its location and the rent being charged, as well as tenant details. This information is collected not only for regulatory purposes, but also to aid policy understanding and management of the sector, as described by an interviewee involved in the PRS commission that advised on the creation of the 2004 Residential Tenancies Act:

“First of all, there is a need to collect information about the private rented sector, because you can’t manage a market or manage a sector unless you have information. So the question then arose, well what information do you need? The answer was, well, we need to know who landlords are, we need to know who tenants are, we need to know the address of the property, we need to know the rents, we need to know something about the accommodation that is provided, what sort of accommodation, how much accommodation is there, and we thought about how we collect that information: through some registration process.”

Academic expert, Ireland

Interviewees perceived that the collection of this information since 2004 had gradually boosted public understanding of issues and trends within the PRS, particularly in relation to rent monitoring. One of the functions of the RTB, as stated in the Residential Tenancies Act, is: ‘the collection and provision of information relating to the private rented sector, including information concerning prevailing rent levels’ (Government of Ireland, 2004b). The RTB collects the actual amounts of rent being paid by tenants for properties in the PRS and produces a publicly available Rent Index every quarter, which can be used to understand trends in the sector with greater precision, and to inform policy development. The comprehensive nature of this information collection contrasts with the current situation in England, where rental price statistics are either based on relatively small samples, or on business data collected by private companies. The collection and availability of information on rents was deemed important by interviewees, given legislative restrictions introduced in the 2004 Act that limit rent increases to current market rents, as well as limitations on the frequency of rent changes. As such, information and transparency as to rent levels was viewed as key to supporting both the implementation of these policies, and providing tenants with a tool to judge whether a rent was fair in relation to the wider market.

“We thought what we’d also be able to do is, if we captured rent levels and were able to capture some information, that the market would have sufficient information provided to allow the market to understand where rents were going and why. Rents are collected at a micro level, so if somebody wanted to rent a property in a particular location, they could look up some sort of index and find out what the rents were.”

Academic expert, Ireland

The issue of tenant views and experiences of prevailing rent levels in Ireland will be returned to in the following section. In addition to the Rent Index’s relationship to other parts of the 2004 legislation, it was also felt that the greater market understanding garnered through the regular collection and analysis of rent levels could contribute to more informed decision-making and development of appropriate policy mechanisms.

“I would say that the market is much better informed now about rents than it was in the past, and if you have a market informed about prices you generally tend to get better decision-making, and you generally tend to get less disputes about that. But my thinking about this is that the government could mine that for a lot more information if they had the money to do it and were intent in finding out what’s going on and investing in it.”

Academic expert, Ireland

While the Rent Index was regarded as a useful tool, the extent to which it has actually complemented other policy mechanisms could be questioned. The Rent Index provides a useful platform for comparing rent levels in different localities, but there remains a significant affordability crisis in Ireland’s PRS: 32% of private renters in Ireland spend more than 40% of their income on rent (Co-operative Housing Ireland, 2015). In addition, while the Rent Index allows for checking of what a typical ‘market rent’ might look like, low housing supply and high demand in cities such as Dublin can result in upward pressure on rents.

As such, while the availability of rent prices and information can provide a useful tool for exploring existing trends in the PRS, it does not alone result in more control of, or influence over, rent levels.

A common concern with regulation of the PRS is that landlords will exit the market in response to newly imposed costs. This concern has been expressed in Ireland in recent years, citing not only the regulation of the sector through the RTB, but also cuts to initiatives such as Mortgage Interest Tax Relief (Duffy et al, 2016). Landlords in this study expressed contradictory viewpoints around the impact of regulation on landlords. On one hand, regulation was perceived to be burdensome, costly, and to have driven some landlords out of the market. Respondents cited research by Sherry Fitzgerald (2015) that suggests a contraction in supply from buy-to-let investors. However, it was also felt that investment in private rented housing in Ireland remained an attractive proposition, in part due to issues of limited housing supply and growth in market rents in urban areas.

“Tenants come in, they want accommodation, and they don’t want to be bothered. Most of them keep their accommodation well, pay their rent when it’s due and at the end of the day, it is a good investment. I believe that. Just in my own situation, I paid €40,000 for some properties a few years ago. They are now worth €1m. It would take me an awful long time to earn that.”

National landlord representative, Ireland

The impact of regulation on landlords’ behaviour is complex and contextual, in that some landlords will be better placed to withstand new and changing costs of regulation and taxation duties than others. However, the recent analysis undertaken by Sherry Fitzgerald (2015) does highlight the important weight carried by changes to taxation of rental income and eligibility of Mortgage Interest Tax Relief. More stringent taxation and its financial impacts, rather than tenancy registration per se, has been highlighted as a driving force for those landlords that have left the market in Ireland (Irish Examiner, 2016). Forthcoming improvements to Mortgage Interest Tax Relief for buy-to-let landlords may help to reverse this trend.

The relationship between registration and enforcement of property standards

The registration of tenancies and landlords is often framed as a device that can support interventions in the PRS, particularly with regard to the enforcement of property standards. A common critique of the PRS in England is that local authorities are ill equipped to undertake comprehensive enforcement activity, partly due to a lack of resources (Battersby, 2015). In Ireland, registration fees paid by landlords to the RTB not only support the running of the organisation, but also provide a resource to fund enforcement activity undertaken by local authorities, with an allocation of 20% of RTB revenues. In 2014 the RTB funded local authority inspections to the value of €2.3m, with this money available on the basis that local authorities claim back the costs of inspecting properties retrospectively (RTB, 2015). However, there is significant variation in the extent to which inspections are undertaken. In 2014, only 13,913 private tenancies underwent inspection nationwide, with approximately half of these failing basic minimum standards (Irish Examiner, 2016). One reason given for this was that the rapid growth in the size of the PRS meant that, in some locations, the number of inspections required far exceeded the capacity of councils to keep pace with the scale of change, even with the availability of the RTB resource. As a result inspection regimes vary in different places, a situation further exacerbated by general cutbacks in the public sector and the extent to which housing was an internal priority within local authorities.

“The whole system [of inspections] hasn’t worked all that happily, largely because there has been an enormous amount of cutbacks in the public sector here, and the local authorities are not staffed to do all the things they have to do. That’s low on their priorities.”

Academic expert, Ireland

Despite this variability, elements of good practice emerged through interviews with stakeholders in Dublin. Between 2012 and 2015, using a combination of RTB funding and additional funding gained from national government, Dublin City Council undertook an Intensified Inspection Programme of Private Rented Houses. Some 14,009 rental properties were inspected, 10,938 of which were found to be non-compliant and 8,438 of which subsequently achieved compliance. This was, in part, targeted at

properties built before 1963; these properties were felt more likely to be failing to comply with minimum health and safety standards due to pre-1963 rules and regulations that allowed houses to be split into flats and bedsits without planning permission. The implementation of this programme was supported by use of the RTB database, which allowed those leading inspection regimes to identify the landlords of properties that – based on local knowledge – were felt to be likely to be failing to comply with certain standards. This was described by one council official, who felt that mandatory registration of tenancies enabled easier identification and communication with those letting property, particularly the ‘rogue’ element who may otherwise slip under the regulatory radar:

“Pick a street that’s there that needs an inspection. Go to the RTB database and find out who the landlords are, and if they are on that database you can use those properties as your first port of call. The ripple effect will then come and other landlords will follow suit [in compliance].”

Housing officer, Dublin City Council

While the mandatory registration system proved useful, both in terms of an information source and as a funding device for enforcement interventions, interviews revealed some limitations of the system in its ability to actually tackle issues of poor standards. The statutory framework was criticised for its failure to join up mandatory registration with a demonstration that properties were compliant with standards (Academic expert, Dublin). Unlike in licensing schemes in England, where landlords are required to demonstrate compliance with standards to obtain a licence, there is no certification or documentation required upon registration with the RTB to demonstrate compliance with legislation, other than a Building Energy Rating certificate. Consequently, simply registering a tenancy with the RTB does not necessarily lead to better outcomes in terms of property standards, as it is possible for a tenancy to be registered while failing to comply with core standards. This was evident in interviews with tenants, who were often unaware of whether their tenancy was registered with the RTB, and had experienced issues of revenge eviction or poor treatment by landlords as a result of enforcement activity:

“I’ve been asking the landlord since I moved in, could she fix the windows because they don’t close properly and there’s always a draught, then the dishwasher broke and I had a leak under the sink. It’s her responsibility but she still ignored it. I got onto the health and safety inspector [of Dublin City Council]. He made an appointment and inspected the whole apartment. He filed his report and eventually the landlord got a copy, and because I went to the authorities about stuff she did not like at all, she actually gave me two weeks’ notice to move out.”

Single mother with two children (aged 26-29, Dublin 11)

At the time of the interview this tenant had taken her case to the RTB, given that she had been issued with an invalid notice of termination in respect of the reasons for eviction and invalid notice period given. This instance shows the potential consequences of enforcement activity, particularly in a system where the onus is partly on tenants to bring forward cases of poor standards, and make complaints that may risk harming their relationship with their landlord. Aware of these issues, other respondents argued for a regulatory approach that compels landlords to demonstrate adherence to standards either at the point of registration or in a way that enables easy identification of those failing to comply, such as a self-certification process:

“What would be good is a certification system, whereby the landlord really has to certify that their property meets requirements. I think the problem is, at the moment, it’s a system where a landlord can rent out a sub-standard property until they are found out. If there was a certificate displayed in the property saying it meets those standards, it’s much easier, so I suppose the boot really needs to be put on the other foot. Really what the local authorities need to be doing is enforcing the certification and looking at black spot areas where they would have concerns or receiving complaints.”

Housing charity officer, Dublin

This suggested process is an attempt to embed compliance with core standards into other parts of the overarching statutory framework, by linking it to mandatory tenancy registration. In Ireland this approach is, in fact, being phased in through the new Housing Assistance Payment (HAP) scheme. HAP is a new form of housing support that is currently being phased in. It will be paid direct to landlords by local authorities on behalf of tenants. Tenants must make a means-tested contribution to the local authority.

Within 8 months of the first payment, local authorities will inspect properties where landlords are in receipt of HAP in order to ensure compliance with key standards. Landlords who rent to tenants on HAP will be able to claim 100% relief on their mortgage interest, provided they agree to make the property available to qualifying tenants for a minimum of three years, and that this is registered with the RTB.

The HAP regime aims to tackle issues of landlord compliance with regulations through inspections early in a tenancy, and issues of access and security to the PRS for tenants by financially incentivising landlords to offer longer tenancies. This flexible use of intervention to ensure compliance and financial incentives to tackle issues of tenancy security and management again shows how principles of smart regulation emerge in practice. Through HAP, there are business and financial advantages to letting to more vulnerable tenants that are traditionally excluded from the market, provided landlords ensure they comply with property standards prior to inspection and register with the RTB.

Summary

Mandatory tenancy registration is a central element of Ireland's regulatory framework. Through a charge per tenancy, the RTB assimilates and manages a register of who lets property, where it is let, and the price being charged. High levels of compliance with registration have been achieved through the framing of registration as being in the financial interests of landlords, such as eligibility for Mortgage Interest Tax Relief. While registration has been beneficial in compiling this database and using it to understand broader market trends, for instance through the Rent Index, divorce between the registration regime and enforcement of property standards highlights that registration alone will not mitigate more negative experiences in the PRS. Registration instead needs to work in tandem with other aspects of the sector.

The approach of incentivising landlords to participate in a regulatory programme is to be repeated through the introduction of the HAP regime, where landlords who let to tenants on HAP for a minimum of three years will be able to claim 100% of tax relief on their mortgage. By framing this as a financial advantage for landlords, HAP attempts to overcome issues of access and security in the PRS that have affected tenants in Ireland. The following chapter turns to these in order to explore tenant experiences in the Irish PRS.

6 Longer-term tenancies, rent reviews and tenants' rights

Tenancy length, security and affordability in Ireland

The extent of tenure security that should be provided to tenants in the PRS is contested, as is the means and ease by which tenancies can be terminated by landlords or tenants. Reflecting this contestation, as well as the diversity of the sector, informal and unconventional rental agreements may often be used. Research conducted in the UK for JRF highlighted that lower-income and more vulnerable households often reside in the sector without legal or formal tenancy agreements, and instead have short-term informal letting arrangements and may be unaware of their rights as a tenant (Perry, 2012).

These are issues that the reform of the Irish tenancy system through the 2004 Residential Tenancies Act sought to tackle, introducing longer tenancies with clearly stipulated reasons by which tenancies can be terminated. The purpose of this was to clearly articulate the rights and responsibilities of each party in a tenancy, with the linking of this to mandatory tenancy registration giving a clear framework in which landlords and tenants are expected to operate.

“At a principal level, it puts down clearly the obligations of landlords, the obligations of tenants, the means by which they create the bargain between them, and to have that registered and have that acknowledged, along with the consequences of either party not adhering to the obligations that are set down in law with regard to the operation of the agreement between them. The Act was framed with that kind of concept in mind.”

Academic expert, Dublin

The articulation of tenant and landlord obligations described by this interviewee relates specifically to the standard terms and procedures for tenancy termination and requisite notice periods that each party must respect, with the RTB providing statutory oversight of this. This contrasts with the system in England, where Section 21 notice orders essentially mean that a tenant can be evicted from a property for no reason. While this allows flexibility for landlords in terms of their management and ownership of property, it creates instability and insecurity for tenants, given they can be evicted at short notice and through no fault of their own. The Irish system, where reasons for eviction have to be provided after the first six months of a tenancy, and security of tenure increases incrementally over the course of a four-year 'Part 4' tenancy, was thought by some tenants to provide a degree of security and protection from evictions:

“I rented when I was young – I’m only 27 now – but four years ago, I hadn’t really got a clue, to tell you the truth. I was just happy to have a place of our own, with my child, like, and I hadn’t a clue really about leasing and stuff like that. I had to learn as I went along, so when I had a lease, knowing that I had a full year, that was good knowing that they’re not going to kick me out next week. I have a year, so it is good to have a lease there, and knowing that you’re secure.”

Single mother with three children (age 26-29, Dublin 2)

The tenant's reference to a lease lasting “a year” highlights significant variance in terms of tenant understanding and clarity over the extent of tenure security, as notice periods are of a shorter period of time. At a maximum, tenants are entitled to a notice period of up to 224 days where they have been resident for eight years or more. Nevertheless, tenant interviews highlighted that having mandated reasons for tenancy termination, coupled with an organisation such as the RTB providing statutory oversight over this, could support both tenure security and the ability of tenants to exercise their rights, particularly in relation to invalid tenancy terminations. One example was given by a tenant whose family received a notice of termination just a week after renewing a tenancy, on the basis that his landlord wanted the property back.

“A week after we sent the lease back we got served with an eviction notice, because the estate agent said the landlord wants his property back. Technically we have a lease but the landlord wants his property back. We have to contest the eviction and contest the landlord’s breach of obligations, because we have a new lease, he is breaching his terms, and the reason for eviction is not a valid eviction. On the eviction notice it says the landlord’s reason for eviction are that he wants the property for his own use, but he didn’t state whether he wanted it for a tenant or who the tenant is, or what he’s doing with the property. He’s given a blanket statement, which is actually, as far as I was advised, not a valid statement for eviction. So we’re going through the RTB now to contest the eviction notice and to contest the landlord’s breach of obligations.”

Man, co-habiting with three children (age 26–29, Dublin 8)

This example shows how the regulation of the ways in which tenancies can be ended, with the RTB empowered to resolve unlawful behaviour or disputes in relation to tenancy termination, may support the ability of tenants to retain security of tenure. The potential value of an organisation such as the RTB was further emphasised by a tenant who perceived retention of his deposit by a landlord as unfair, and wished to contest this decision. His ability to contact a designated organisation with the statutory ability to intervene and adjudicate in landlord/tenant disputes was thought to be an important tool in attempting to exercise tenant rights. While this tenant did not eventually progress his case through formal dispute resolution services, he commented that informal contact with the RTB and their very presence in mediating disputes could help to ensure a balance of power between landlords and tenants:

“Some landlords don’t want to be involved with [the RTB]. They just want to be immune and keep quiet: they don’t need the problems. So once you seek your rights and once you have contacted the RTB, sometimes one phone call from the RTB to the landlord will sort out everything. It’s good to have that kind of instrument. Even if you don’t use it, just landlords being aware that you can contact them and that you have your rights and that you are aware of your rights. It’s good to have it.”

Man, married with one child (age 30–35, Dublin 24)

Another respondent who had been living in the PRS for 15 years, including a period before the RTB existed, echoed this view. When asked how things had changed, she felt that the existence of the RTB within a prominent national legislative framework helped to promote both awareness and protection of tenant rights:

“In terms of protection, I think they are good. I am more aware of our rights, so therefore the protection is better. I mean, not better, but if there were any issues with the landlord we could fall back on the RTB. I always knew Threshold [a housing advice charity] was there if we ever had any issues, so they are the first port of call and then you can go onto the RTB.”

Woman, married with two children (age 30–35, Dublin 12)

However, while this promotes the idea that the regulatory framework in Ireland has a positive effect in terms of the promotion of tenant rights, in practice both tenants and stakeholders identified issues in relation to the awareness and protection of these rights. The same interviewee had, at the time of participation, recently suffered an illegal rent increase and invalid notice of tenancy termination. Her landlord had invoked the clause by which landlords can evict tenants due to the use of the property for his/her own occupation or that of a family member. Although landlords must make statutory declarations of their intention to use the property for this purpose, in practice it was felt that this measure was difficult to enforce and perceived as the easiest way in which landlords could evict tenants. The interviewee quoted above had been evicted using this clause after contesting an illegal rent increase, but later discovered that the property had been re-let for a higher rent than the landlord had been able to charge her, rather than used for the reason stated in the termination notice. This tenant planned to take this case to the RTB dispute resolution service, but had only identified the issue as a matter of chance. Consequently, while tenancies in Ireland are theoretically more secure than in England, with greater length and longer notice periods, the stipulated reasons for termination were thought by some to be easy to manipulate and difficult to enforce. However, landlords in the study, who felt that obtaining vacant possession of a property was difficult, contested this:

“The notices of termination are very complex, and if there is any part of the notice left out, the whole thing can be deemed invalid. I mean, when you serve a notice on a tenant it can be between four weeks and eight months depending on how long that tenant has been staying. If that notice is contested and then deemed invalid, the adjudication can take a couple of months. Then you have to reissue again and put a notice to correct it. It is extremely, extremely complex getting them out. There is a strong emphasis now on security of tenure and tenants’ rights.”

National landlords representative, Ireland

While the view of landlords may be that the regulation of the PRS was geared towards security of tenure and tenants’ rights, interviews with tenants did highlight significant variance in the awareness and understanding of their rights. This is highlighted in interviewee comments above regarding tenant understanding of tenancy lengths and termination clauses, and was further emphasised by one interviewee who felt that neither he nor many of his peers had a good understanding or strong motivation to utilise their rights. This was attributed not only to awareness, but also to feelings of powerlessness and fear at raising such issues with their landlords. This is highlighted in the following quotation and, as the following section shows, is also related to wider issues of the expense of renting and low housing supply that restrict the availability of alternative housing options:

“I didn’t really know what all of my rights were as such. I had to do a bit of Googling and all that to find Threshold [a housing advice and support charity in Ireland]. I think some people are scared to address a few problems with their landlords, they might be scared to go and see a third party to look for advice, or to sit down and talk to the landlord and express concerns that they have. Maybe a lot of people are fearful of some things. They could be happier in their private rental. They’re afraid maybe to address a few issues with the landlord themselves.”

Man, single (age 22–25, Dublin 3)

The relationship between tenure security, housing supply and tenants’ rights

While there was support for the attempts to establish a clear regulatory framework that provided statutory national oversight of the sector, qualitative evidence suggests that this is partly undermined by wider market conditions in the sector. Affordability was a significant factor that contributed to tenants’ perceptions of their tenure security, rather than whether they had incrementally accrued longer notice periods.

Following the housing crash in the mid-2000s, rents in Ireland have increased steadily. From 2014 to 2015, rents in Dublin increased by 9.2% (RTB, 2016). While legislative limitations on the frequency with which rents can be increased are theoretically designed to shield tenants from unexpected rent increases, interviews with tenants revealed significant difficulties with housing costs, both in terms of current affordability and anticipated future rent increases. The concept of rents only being allowed to increase in line with ‘market rents’ was widely criticised for its ambiguity. The increase in rents in areas like Dublin has partly been attributed to a mismatch between supply and demand of rented accommodation in major population and employment centres. The failure of supply to keep pace with demand was perceived to contribute to increased rents, and the concept of ‘market rent’ was perceived to reflect what landlords were able to charge in an area of low supply and high demand, rather than what tenants were able to pay. This was also reflected in interviews with landlords. While limitations on the frequency of rent changes are, in theory, a form of controlling rents, interviews revealed that in practice, this would result in a larger increase in rent at the end of a review period in order to keep pace with any increases in the local market. Therefore, rent reviews only acted as a measure to ensure affordability in the short term.

“Tenants put a face on when you raise the rent and it can cause bad blood for a while. So landlords tend to avoid it, except if the rent is exceptionally low, but where the real sting in the tail is if you are starting off, you leave the rent very moderate, but capture the increase when the flat or apartment becomes available and you then will advise at what is a market rent.”

National landlord representative, Ireland

Issues of housing supply and high rents were reflected in tenant interviews. Feelings of tenure security related not only to current residency, but also in relation to the ability of tenants to pay their rent and/or to secure alternative accommodation if they were ever evicted. Some tenants felt trapped in their current accommodation and were conscious of the precariousness of their living arrangements due to an inability to exercise choice in the market. These issues were illustrated by a single mother in receipt of Rent Supplement. She wished to move to a better-standard property, but felt her options were restricted due to both a lack of housing options in the PRS, and stigma around welfare recipients:

“I feel that I’m stuck here. I can’t move because there’s no houses around. I wish that I can, I wanted to move maybe 6 months ago, last year thinking I’ll find a house, but no. There’s not much choice. There could be if they were less expensive and if landlords would accept social welfare, but there’s two issues. The landlords, mostly, they’re not accepting social welfare, and the second issue’s the housing market is really expensive. If these two things changed then I could have more choice, but at the moment there isn’t.”

It should be noted that it is unlawful for landlords to discriminate against welfare recipients in their lettings, though tenant interviews revealed this to be, in some circumstances, a regular experience when house hunting, and in others a commonly held perception. Interviews with other tenants revealed circumstances where feelings of insecurity and the restricted options available to people on lower incomes led to compromises in their housing decision-making. One interviewee, a European migrant, reported that he shared a bedroom with another adult male, as it was the only affordable housing option for him. The following quotation describes his frustration at looking for an alternative place to live:

“I look every day for a single room. You go to websites and set up a notification; whenever there’s a single room I get a notification. I think there’s so many people looking for it that I don’t even get an answer whenever I send [landlords] messages. It seems it’s very quick for them to find someone for a place.”

Man, single (age 22–25, Dublin 7)

Compromises in housing conditions also included tolerance of poor property standards.

Interviewee: “The place can get cold, the heating is off all day until about 6, and then it cuts off at about 10 or 11 o’clock. For those couple of hours it isn’t bad but on the days when you’re here it does get cold, especially during the colder months of the year. There’s problems with mice and I noticed that when it gets really cold outside they come inside into the warmth, but thing’s this you wouldn’t dare complain to your landlord because you’d just be asked to leave.”

Interviewer: “Surely there’s not a good position to be in. Have you ever requested your landlord to make any repairs or maintenance?”

Interviewee: “No, I wouldn’t dare. I think there’s a few of us in the building in the same kind of boat. You just deal with it.”

Man, single (age 30–35, Dublin 7)

Despite the strengthening of tenants’ rights in Ireland, which should theoretically enable tenants to have a stronger footing on which they can raise legitimate complaints or issues with their landlord, it was clear that insecurity engendered by broader issues of supply, demand and affordability precluded some tenants on lower incomes from articulating or expressing concerns with renting. One tenant in his early 20s lived in a house-share in Dublin and had identified a number of concerns related to the condition of properties he had lived in. He was, however, reluctant to raise these issues for fear not only of eviction, but also his ability to afford market rents elsewhere in the city. This led to a form of insecurity and feeling of powerlessness relative to the landlord:

“I suppose they own the property, you’re only renting so you’re already seen as inferior in a way. I mean, ‘don’t bite the hand that feeds’, that sort of thing. You don’t want to bring these concerns just in case they say ‘look, your lease is up in three months’ time and then that’s going to be it’. I know in a lot of cases people in Dublin hold onto properties even though they don’t like it. They’re just fearful that if they let it go they won’t get anywhere else.”

Man, single (age 22–25, Dublin 3)

This issue highlights not only the reluctance tenants may have in exercising their rights, but also the way in which this reluctance and feelings of insecurity are engendered by an inability to exercise choice in the market due to high rents. This was reiterated by the representative of a tenants' association in Dublin, who argued that while the existence of a dispute resolution service operated by the RTB was a useful platform for enforcing tenancies, in practice many tenants were dissuaded from using it due to the risk of harming relationships with their landlord:

“It’s very hard because it’s the nuclear option essentially. You’re not going to have a functioning relationship with your landlord; it’s essentially what you do if you’ve managed to be lucky enough to find somewhere else to go. It’s more informal and less costly than going to the major courts, and definitely it’s better to have it than not than have it, but at the same time it’s very much a nuclear option.”

Tenants’ representative, Dublin

Summary

Reform of the tenancy system in Ireland through the Residential Tenancies Act in 2004 created longer-term tenancies of up to four years, with standardised terms and procedures that clearly articulate the means and circumstances by which tenancies can be terminated. In addition, it is coupled with the introduction of a dispute resolution service accessible by both landlords and tenants, which can mediate and resolve disputes that arise over tenancy management.

The evidence presented here highlights both the strengths and limitations of this system. On one hand, the greater security of tenure provided to tenants – through longer tenancies and greater protection from eviction – highlights the ways in which this can at least mitigate some of the symptoms commonly associated with the lower end of the PRS, including insecurity and retaliatory evictions. Having an organisation such as the RTB that is empowered to resolve issues in relation to this may support the ability of tenants to retain security of tenure. However, this is, to a degree, undermined by wider market conditions, including the undersupply and expense of homes in Dublin. As such, despite the theoretical strengthening of tenant rights, there remains insecurity and precariousness that is directly engendered by broader housing market trends. This can dissuade tenants from articulating their rights due to the risk of losing their home and their fear of becoming homeless, even in a system that is designed to provide protection. Consequently, it is apparent that the merits of tenancy length and security, particularly in areas of high housing demand and low supply, need to be considered in relation to issues such as prevailing rent levels and the standard of property.

7 Regulatory issues in the English private rented sector

Following examination of the approach to management and regulation of the PRS in Ireland, a key purpose of this study was to compare and contrast experiences between Ireland and England, with a view to developing recommendations that can contribute to the management of the PRS in England. This was achieved through 16 interviews with stakeholders in England, and four regional policy workshops involving 39 participants in Birmingham, Leeds, Newham (London) and Plymouth, in order to explore commonalities and variations in issues and experience in local housing markets. The purpose of this part of the study was to explore local experiences and perceptions of PRS regulation, including views on local approaches, given the decentralised and selective nature of licensing schemes in England. It also sought to understand the ways in which issues of affordability, security and professionalism are evident in the local PRS, and to explore perceptions and views on the most effective forms and approaches of current and future regulation.

Affordability and security

Housing costs were identified as a significant issue affecting access to the PRS. This was evident in Newham in London, where housing costs are known to be high (Pennington, 2016), but also in other locations such as Birmingham. This was partly attributed to the freeze on Local Housing Allowance (LHA) until 2020, as well as the limiting of annual LHA uprating to 1% rather than in line with Consumer Price Indices in the last parliament. Respondents felt that rents were beginning to outstrip LHA rates, meaning that many private rented properties were becoming unaffordable to people on lower incomes. In addition to this, welfare reform, including the rolling out of Universal Credit and associated changes to direct payments, was thought to reduce the desire of many private landlords to house lower-income families.

“Local Housing Allowance in the city is an issue. It’s not attractive to landlords so therefore any work that we are doing about accessing the PRS for homeless or temporary accommodation becomes more and more challenging.”

Local authority official, Birmingham (interview)

This was echoed by landlords, who perceived there to be a need for incentives for them to house lower-income households, given the reduced rates of LHA relative to rent inflation:

“The only way you’ll get private rented landlords to go more into social housing is they’d have to have some incentive. There would have to be some carrot to make it worthwhile.”

Landlord, Birmingham (workshop)

The reduced pool of accommodation available to those on lower incomes was emphasised in Newham, where a limited supply of homes coupled with high private rental costs was perceived as influencing both whether people could easily access the sector, and their levels of tenure security.

“Those that are working tend to live in the good, nice flats. They get different jobs and they can move because of the flexibility. Then there is the tier that we deal with that have nowhere else to go. The rents are too high. They physically could not afford to go anywhere else and they are trapped.”

Local authority official, Newham (workshop)

This was particularly thought to affect families on lower incomes. Given high housing demand in London, local authority stakeholders felt that landlords could gain greater rental yields by letting properties on a shared accommodation basis to multiple households, rather than letting to a family, further exacerbating the effects of an insufficient supply of affordable accommodation.

There were different perspectives within and between local areas as to how issues of affordability, access and security could be better managed in the PRS. Some felt longer tenancies would be beneficial to tenants who desire greater security of tenure and longer periods of residency, such as families:

“What I have experienced is that you have a family with children, they cannot stay by their school and they would prefer these longer four-year tenancies [as in Ireland] because of their children in school. It is very difficult for families to just up and move. When there is a rent increase or just a stable tenancy from six months running to four years, it is more likely they will stay and will try to afford to keep that rent.”

Local authority official, Newham (workshop)

This identifies tenure length as being an important element of any future reform of the PRS. Landlords in the study reported that they had several long-term tenants in place, but that they would be reluctant to offer longer-term tenancies beyond statutory six-month assured shorthold tenancies, as this allows them to retain flexibility over tenancy management:

“I personally grant six-month leases, because if there is any problem with the rent or whatever I can't react to the issues. People I don't think want to sign more than two-year leases. I think if you sat down, if you were 25 today, they are not going to be here in three years' time, even if they are pushed to say for definite. I don't think people want to be tied down. I tell my tenants if you are good with the lease then it will continue forever and a day, until it suits me or it suits you or whatever, then we will change it.”

Landlord, Newham (interview)

Other respondents felt that longer tenancies would only be meaningful if coupled with other procedures and regulations that helped to overcome other issues that affect tenants' ability to maintain tenancies.

The first of these was affordability. In Newham, given high housing costs relative to incomes, it was felt that it wasn't solely the pre-determined length of tenancies that affected feelings of insecurity, but also the ability of tenants to meet housing costs. As such, when reflecting on the Irish tenancy system, one local authority official commented that: “I wondered if the four-year tenancy is meaningful, but if it is combined with some kind of effective rent control that [length of time] probably does become a lot more meaningful”. Suggestions included model tenancy agreements of a longer length that included programmed rent increases linked to rates of inflation across the lifespan of the tenancy.

Similar perceptions were found in other housing markets. In Blackpool, tenure insecurity was identified as a key issue in the local market, but one that was more likely to affect certain groups of people, such as families or those with long-term vulnerabilities. Other issues included the standard of private rented accommodation, which will be examined in the following section, and the calculation of LHA rates based on Broad Rental Market Areas, which was thought to artificially increase LHA rates in Blackpool due to more expensive housing markets in its vicinity that – unlike Blackpool – do not have a large benefit claimant population residing in the PRS. This was thought to be a problem, as landlords were able to set rents artificially high in order to claim the full LHA rate available, even where accommodation is of a poor standard. Poor standard accommodation is common in Blackpool's PRS, with many former hotels or guesthouses having been converted into large HMOs despite suffering from disrepair. Consequently, there was interest in some element of reform that may allow there to be a greater correlation between housing standards and the ways in which rents are paid through LHA.

“Rent controls could be restrictions on future percentage increases, or they could be set even more prescriptively in terms of the rent that could be charged in relation to standards or size of accommodation.”

Local authority official, Blackpool (interview)

Rent controls were not seen as desirable or important by all stakeholders. Many respondents in different local authority areas, and at a national level, from different sectors, commented on their wariness at dissuading landlords from letting property in an era of low housing supply in some locations.

The second theme that emerged in relation to tenancy reform was a need to provide greater protection for tenants within tenancies. Respondents in Birmingham and Plymouth identified the ease with which more vulnerable tenants could be evicted, often due to a lack of social structures to support more

vulnerable tenants entering the PRS. This was thought to be a key reason for tenancy termination, and something that affected tenure security. In spite of recent legislation to prevent retaliatory evictions, these were also seen to be problematic, where tenants were evicted following complaints against landlords. Local authority officers felt this was a particular issue in places like Newham, where the pool of affordable rental accommodation was already shrinking due to high housing demand in London. As such, it was felt that longer tenancies would only be a truly effective tool if they were coupled with transparent and meaningful terms and procedures that provide both landlords and tenants with opportunities to enforce their obligations to one another.

“Fundamentally we have got to change the balance of power between the landlord, the tenant and the local authority. I think you have to have some expressed obligations on the landlords. That you have to give the tenants some powers to be able to get those obligations enforced and then you have to have the local authority more as an arbiter rather than as the doer, because local authorities haven’t got the resources to do things and take the role that the legislation places on them.”

Local authority official, Newham (workshop)

The respondent’s opinion on the role of the local authority was a comment on their current role in Newham in enforcing standards around the PRS, where it was felt that high levels of inspections, coupled with addressing tenant complaints, were unsustainable due to current resource levels.

In addition, there were concerns that access to the PRS was affected by high access costs, for instance the need to raise large deposits and to pay a range of one-off and recurring fees to letting agents when accessing homes. Organisations such as Plymouth Access to Housing (PATH), a homelessness charity, commented on the difficulties that their clients faced with these issues, and provided support services and deposit guarantees where possible to support access. There were also concerns as to the transparency of the fees. While it is now legally mandated that letting agents must display their fees, the variance in fees for things such as tenancy application, credit checks, tenancy renewal and tenancy termination charged to both landlords and tenants was an area of concern. In particular, it was felt that more unscrupulous agents would benefit from turnover and churn in the sector, due to the opportunity to profit from fees, particularly in high-demand housing markets where void periods were unlikely. It was stressed that not all agents act in this manner, and respondents felt that greater regulation of agents would be necessary to drive up professionalism and transparency in the industry, for instance mandating registration with an organisation such as the Association of Residential Letting Agents (ARLA), which monitors and enforces standards, and provides client money protection.

Potential reform of these issues could occur in different ways. On one hand, there was interest from respondents in different regions in providing greater protection within tenancies for tenants. The means by which this could be achieved varied, from greater stipulations as to how tenancies could be terminated, as in Ireland, to stringent disincentives for terminating longer-term tenancies earlier. Perhaps more feasibly, it was felt that a system of incentivisation would be required, such as reduced licence fees in areas subject to selective licensing for landlords who offered tenancies of a longer length and/or that included agreements as to the rates and periods within a tenancy that rent could be increased.

There was also recognition of the important role played by projects such as PATH in Plymouth, in providing support services and deposit guarantees to low-income households trying to settle in the sector. The role of support services is important in tackling difficulties that low-income households have in accessing tenancies, such as raising large deposits or in overcoming landlord reluctance to let to people with less secure incomes. Their role is also important in helping with tenancy sustainment, particularly in the context of the recent rise in homelessness provoked by the loss of private tenancies. To tackle this, Crisis and the National Landlords Association have proposed a government-funded national rent deposit guarantee scheme, where bonds or guarantees are offered to landlords in lieu of deposits, covering certain costs such as property damage or rent arrears. The impact of this would be to reduce the up-front costs of renting for tenants, while providing security and assurance for landlords. However, among some landlords there appeared to be a belief that lower-income tenants required more intensive tenancy management, which could create voids and impact on their costs. Proposals such as the national rent deposit guarantee scheme could, if marketed and supported adequately, help to tackle these perceptions.

Summary

Participants in all workshop areas identified issues of affordability and security as affecting tenant experiences of the sector. In areas where there are high housing costs relative to incomes, there is interest in forms of regulation that can control or mitigate rent inflation. There is also interest in longer-term tenancies that provide greater protection from eviction for all tenants, not just those suffering from retaliatory evictions. However, despite housing some tenants for long periods of time, landlords oppose this on the grounds that they value flexibility highly in tenancy management. There may be scope to learn from the HAP regime in Ireland, where landlords are incentivised to provide longer-term tenancies to more vulnerable households in return for tax relief benefits. In addition, given concerns as to the payment of high rates of LHA to landlords that provide poor accommodation, such as in Blackpool, the way in which payment of HAP to landlords in Ireland is linked to compliance with housing standards offers an example of the way in which receipt of rents can be linked with, and contingent on, regulatory compliance.

In some areas, there is concern not just about the impact of the freeze of LHA rates, but also about the way they are set according to Broad Rental Market Areas, which may not set an accurate rate in relation to specific local markets. In addition, given rental price statistics are based on either relatively small samples or on business data collected by private companies, there appears to be a compelling case for better collection, availability and use of rental price information. This is especially important given the recent announcement that housing costs are to be included in measures of inflation used by the Office of National Statistics. If housing costs are to be incorporated into important measures of inflation, an improved understanding of the rental market is critical if an accurate measure is to be given. An example of this emerges from the Irish strand of the study, where the RTB's Rent Index was valued for its collection and publication of information on rents, enabling an appreciation of the market's context.

The effects of landlord licensing

The most recent English Housing Survey shows that private renters are more likely to experience poor-quality accommodation that may not meet accepted standards of decency (DCLG, 2016a). This may be linked to the age and nature of stock in some areas, but also due to poor management practices, particularly where landlords may be unaware of key health and safety standards, or where there are disincentives to improve property, such as in Blackpool, where artificially high LHA rates can be charged for local housing regardless of its condition.

The main regulatory tool for tackling issues of property standards, related management practices and related anti-social behaviour in the UK is licensing of landlords. Licence conditions relate to compliance with gas, electrical and fire safety hazards, as well as giving all tenants written tenancy agreements. All applicants are also subject to 'fit and proper person' assessments, though this is usually based on self-declaration on application forms. It is usually the case that an inspection audit of properties is undertaken systematically after licences have been issued, rather than prior to licences being granted. Of the four workshop areas, all had licensing schemes for HMOs as per national legislation; in addition, Newham had a mandatory borough-wide licensing scheme introduced in 2013, and Blackpool had used selective licensing in some areas in order to drive up standards. Landlords were mandated to obtain licences for a set fee over a five-year period, with discounts given for early registration in order to provide an incentive to register.

Licensing was viewed favourably by those responsible for administering schemes in local areas. Firstly, it was viewed as an effective tool for tackling issues such as property standards and issues related to PRS accommodation, including poor management and anti-social behaviour. In Blackpool, it was noted that one area subject to selective licensing had seen a drop of around 18% in anti-social behaviour incidents one year after implementation. In Newham, it was found that landlords without licences were four times more likely to be non-compliant with minimum property standards than licensed properties. In both areas, there had been careful investment into the enforcement of licence conditions, often involving multi-agency inspections including the police, fire service, immigration officers and social support agencies.

Licensing also supported local authorities with identification of, and enforcement against, rogue landlords. Statistics in Newham show that mandatory licensing has delivered: 800 prosecutions against

criminal landlords; identification of landlords failing to pay tax; and banning orders issued to 28 landlords in relation to 230 properties (Inside Housing, 2016). These achievements have led to recognition of the advantages of licensing, including perceptions from local landlords who comply with core standards that action against poor landlords could improve the reputational image of the sector, as well as acting in the public interest through tackling issues such as tax avoidance. However, this recognition was based on the results that it had yielded, and it was emphasised that it was not merely the mandatory condition of obtaining a licence that produces such outcomes, but the enforcement action that sits behind it.

“Newham put teeth behind their licensing and that’s that. If you are going to have a licence it has got to have enforcement behind it. I think it’s good that the residents of the area have seen that something is being done. I think that it is bringing the industry the right way forward. I mean, personally, the licensing has done nothing for me. I haven’t changed my business practice. I have done nothing different.”

Landlord, Newham (workshop)

The ‘teeth’ behind the licence related not only to the prospect of enforcement activity, but to core incentives for landlords to become licensed. For instance, use of Section 21 orders in Newham is restricted to landlords who hold a licence. This utilises principles of smart regulation, in restricting the powers of those who fail to comply with regulation, and offering incentives to those who do. The core advantage of licensing in this area was perceived as being a means to improving management and property standards in the sector, rather than an end in itself. This contrasted with some of the perceptions of the Irish system, as some participants perceived there to be a divorce between the registration of tenancies and enforcement of standards, due to the lack of conditions imposed upon landlords at the point of registration. One local authority official argued that licensing provides the framework and information source through which issues such as poor management or unlawful activity can be tackled:

“What licencing really does is, at an operational level, separate out the good from the bad and that as a policy is one of its great advantages. It also tells you where things are going wrong. You’re able to track where those landlords are because you have a name and address of the person in control. Then you have the extra powers to make being a bad landlord more expensive.”

Local authority official, Newham (workshop)

This was reiterated in interviews with national stakeholders, who argued that perceptions of licensing schemes vary significantly across the country according to the extent to which it is used to help tackle criminality and poor practice in the sector:

“I think the local licensing schemes, they vary hugely on the reinvestment that’s been made by the local authority, so I think essentially some local authorities have just seen it as a money-making opportunity, and the licence fees that landlords have paid, have paid for all manner of other things. Whereas the London Borough of Newham and in Oxford, where the income from licensing has gone into paying for more boots on the ground and housing officers knocking on doors, tackling those rogue landlords, you see the real benefits.”

Landlord association representative (interview)

It should be noted that, in accordance with the Housing Act 2004, revenue from licence fees can only be spent on the administration of schemes. However, the perception that licence fees would be used for the purpose of generating revenue was commonly expressed in interviews and workshops. This highlights the need for extensive education and raising awareness of the advantages and administration of licensing schemes prior to implementation, in order to combat negative and incorrect assumptions as to its purpose.

The evidence above related to the identification of non-compliant landlords highlights a further advantage, in that the implementation of a licencing scheme such as Newham’s helped to assimilate a database of landlords and build a more robust picture of the PRS. It was recently reported that Newham had estimated there were 4,000–5,000 landlords operating in the borough in 2012, but it had issued licences to nearly 22,000 landlords by March 2015 (Wilson and Tacagni, 2015). While this discrepancy may be particularly large given the rapid increase of private rented housing in London, it was felt that the collection of key information related to who owns and lets property in the PRS could contribute to

targeted enforcement activity, and a resulting improvement in compliance with minimum standards and basic management practices, such as the issuing of tenancy agreements. This need for information was emphasised in Birmingham, an area without additional licensing schemes, where it was felt that there was a need for greater information and data in order to better understand the issues and composition of the local market.

“What I don’t have is a register. I don’t have a register of all private rented sector properties in the city, and if there were one you could see where there was growth, where there was decline or movements in the market, but fundamentally who owns the property? It’s all covered in rubbish [meaning it is difficult to find out], so then we have to go through Land Registry searches and all these things. As part of the process I would like to see all private rented sector properties ideally licensed, but certainly registered.”

Local authority official, Birmingham (interview)

This highlights one of the advantages of licensing and registration schemes. Participants in the English strand of the study reacted positively to the ways in which the registration scheme in Ireland enabled a greater understanding of the PRS, including its size, composition and rent levels.

While these advantages of licensing were highlighted, it was also felt there are limitations of schemes and issues that need to be addressed. The consistency of licensing schemes was raised as an issue. Each local authority has the ability to create different procedures and conditions for licences, as well as to charge different fees for processing. This was felt to create confusion and hinder clarity, both in terms of public understanding of schemes and for landlords who operate portfolios across different local areas,

“We would like to see greater consistency, in terms of licencing. Every local authority has different licensing conditions, different fees, different procedures, and we would like to see much greater consistency of this. ‘These are the conditions you should use’, because agencies who operate across local authority boundaries are having to say to landlords, ‘well your property in local authority X needs to do A, B, C and D, but your property that’s in local authority Y needs to do A, B, F and G’, which is incredibly confusing and it makes it so easy to accidentally fall foul of the regulations, because they can differ from one side of the street to the other.”

National letting agent representative (interview)

This questions whether a piecemeal approach to licensing schemes is appropriate, and whether more standardisation at regional and national levels could improve understanding. However, a further criticism of licensing was related to the potential bureaucratic and financial burden it places on landlords who are already compliant. While seeing the benefits of licensing, some interviewees in areas of lower housing demand recognised that further financial impositions on landlords could result in reducing supply, or the creation of financial problems for landlords. As such, it was felt that a broad-brush regulatory approach that applies universally could result in unintended consequences.

“Some of the HMOs, you can achieve extraordinarily high gross yields of maybe 20%, 25%, but there’s also very high management costs and high levels of vacancy and having to pay for refitting when things get smashed up. So in terms of profitability of this as an enterprise, some of the richest people in town are the landlords, but then others say we’re under pressure, we’re not making much money out of this, we have to work hard. Notionally yields are high, but in practice many landlords struggle to make a good or a reliable living out of it anyway.”

Local authority official, Blackpool (interview)

Finally, there was debate as to the permanence of licensing schemes. While some respondents argued that continuation of licensing schemes would embed information monitoring and deterrents to poor or unlawful management practices into the regulatory system, others argued that their value was as a relatively short-term approach that could distinguish between the good and the bad, and take relevant, time-limited interventions to remedy this. This was particularly the case in Newham, where it was felt by landlords that the mandatory licensing might have assimilated enough information to create a more selective and targeted scheme in the future:

“I think that their computer system is giving them enough information, where they could go back to a selective license area. Because I am pretty sure they have got a couple of areas, which are particularly bad, and I feel they could concentrate their efforts on them.”

Landlord, Newham (interview)

This raises questions as to how permanent and episodic regulation may be. While a more episodic form of licensing over a short period of time may tackle the worst management practices and properties in an area, and avoid tarring all landlords with the same brush, the transitional nature of landlordism and the ease with which people can become landlords may mean that any knowledge gained through episodic forms of licensing could become dated. However, the debate as to how much coverage licensing schemes may have in the future is, in any case, hamstrung by recent policy changes that require consent from national government for schemes that cover more than 20% of their geographical area, or 20% of homes in that area. This suggests that national policy is deviating away from widespread coverage of mandatory licensing schemes, and trying to instil a more targeted approach.

Summary

Licensing in England is the main tool for tackling issues of property disrepair and poor management practices. The evidence presented here suggests that, while there is some variance in the implementation of licensing schemes, they can be effective methods of tackling rogue landlordism and improving the reputational image of the PRS. This is achieved through comprehensive programmes of licensing and enforcement that make it more difficult to be a poor landlord, and incentivise good practice.

As in the Irish example, where eligibility for Mortgage Interest Tax Relief was dependent on tenancy registration, the examples shown here highlight the importance of incentivising compliance with regulations in order to make it attractive for landlords and avoid perceptions of it being a bureaucratic burden. In Newham, use of Section 21 orders was restricted to landlords who hold a licence, utilising principles of smart regulation in restricting the powers of those who fail to comply with regulation.

Licensing schemes can also have additional benefits, including enabling a greater understanding of the composition, geography and nature of the PRS. Respondents in areas without selective or mandatory licensing schemes (beyond those that exist for HMOs) highlighted this knowledge deficiency. This suggests a potential role for some form of registration system that can improve market understanding. However, there are also issues to consider related to the imposition of additional costs and expectations upon landlords, particularly given recent punitive taxation changes imposed on landlords (Institute for Fiscal Studies, 2015).

Education and professionalisation

One of the more significant issues to emerge in this study was that of the professionalism of the sector, both in terms of landlords that act unlawfully and the large proportion of non-professional landlords who may be unaware of their responsibilities (Faulkener, 2016). This issue was raised by stakeholders in Plymouth, who identified a major problem in the city as being one of education, and awareness of the role and responsibilities of property management:

“It’s pure ignorance on the landlord’s behalf that they don’t recognise or realise their responsibilities. Often if they did realise their responsibilities, the problems that do arise wouldn’t arise. So it’s the education of landlords [that is of significance], whether you do it forcibly or voluntarily, but it’s the good landlords who seek out the information, become accredited and adhere to the rules, and it’s the bad ones who remain in ignorance.”

Landlord, Plymouth (workshop)

This was also highlighted in Newham, where it was observed that there were a large proportion of “single-property landlords who aren’t very good at managing properties; they have no formal qualifications”. All four local authority areas participating in the workshops were operating or had previously run landlord accreditation schemes. While these were felt to have benefits, such as education on legislative issues and continued professional development, it was largely felt that the lack of compulsion to participate meant that a relatively small proportion of landlords took part, and that those who did tended to be landlords who were already operating in a professional and compliant manner.

As a consequence of this, there was broad support in some workshops for the creation of a registration system similar to that in Ireland, but one with an educational purpose targeted at raising awareness of rights and responsibilities, and at professionalising the less compliant elements of the sector.

“Certainly what you're looking for, it's got to be a register or something similar, where landlords are forced to sign up, forced to become educated, very much like the Welsh scheme. The penalty for not signing up and putting your head above the parapet has to be greater than not doing it.”

Landlord, Plymouth (workshop)

This suggestion hints at a mandatory registration system, including a process through which action can be taken against those who fail to comply, and a system of incentivisation for those who do. The additional advantage of a registration system was perceived to be its potential to enable greater communication within and between those in the sector, both by collecting information on landlords letting property, and through having some means of supplying core educational materials, information or details of legislative change to landlords:

“When you think about how many landlords come and go, there's so many landlords across the country who've only got one property and they're coming into the business all the time. So how do you get information out to all the people? That's why I like registration. If you've got to register then you can get the information out to everybody.”

Letting agent representative, Plymouth (workshop)

This suggestion bears similarity to the Irish system in mandating registration, but aims to utilise the registration system as a conduit for communicating key information and change to landlords. This is, in practice, similar to the registration scheme launched in Wales, though early indications suggest registration has been slow (Dickins, 2016). This also bears similarity to the Law Commission's proposal for 'enforced self-regulation' in 2008, which recommended a system of mandatory registration with an accredited professional body (such as the different national landlord associations that exist).

An alternative suggestion to this was to link reform of landlord responsibilities to the financial industry, either through the provision of information at the point of individuals gaining buy-to-let mortgages, or through stipulating that obtaining mortgages would be dependent on registration with some form of regulatory system or agency. It was clear that there should be some element of compulsion and incentive, but less clear on what this should be. Where there is compulsion, lessons from areas that had experienced landlord licensing schemes emphasised that merely mandating landlords to register would not contribute to the mitigation of poverty, or of the more punitive aspects of the sector. For instance, workshops offered criticism of the Irish regulatory framework, in that registration with the RTB does not directly lead to, or result in, inspections. While this was not a call for centralised inspections – indeed, it was felt important that local authorities retained autonomy on enforcement action due to their familiarity with, and knowledge of, the area – it was felt that mandating registration would require a clear and transparent link to local enforcement to ensure compliance.

Scepticism of mandatory registration services was also founded on concerns that any additional fees associated with reform of the PRS would place pressure on landlords' finances and potentially result in upward pressure on rents. Respondents from the landlord sector, including both those broadly supportive of some form of registration, and those firmly against additional regulation, felt that any additional fees would simply act as a 'tenant tax' and be built into rents. Yet, analysis undertaken in London suggests this effect may be overstated. The average full fee for borough-wide licensing schemes at the time of analysis amounted to £447 for five years, equivalent to £89 per year or £7.50 per month (Wilson and Tacagni, 2015). While it is clear that rents in London are generally higher than elsewhere, the concern that additional fees may jeopardise landlord finances has to be contextualised within these figures.

A further suggestion to professionalise the sector related to the introduction of dispute or redress schemes, similar to the dispute resolution service in Ireland, and similar to what exists for tenancy deposit protection. From the perspective of tenant organisations, the mediation and resolution of disputes was seen as something that could mitigate the experiences of eviction. Rather than allowing problems to

develop, resulting in eviction, it was felt that earlier intervention could resolve many of the disputes that arise between landlords and tenants. Local authorities participating in workshops recognised the potential for the use of dispute resolution services to act as an incentive to ensure compliance with licensing schemes, in the same way that use of the service in Ireland is restricted to those registered with the RTB. This was a view echoed by the representative in Newham, who had already incentivised licensing compliance through the right to use Section 21 orders, but felt more incentives could be required:

“We didn’t have anything else other than that incentive from Section 21, and I think that is where Ireland has got some interesting lessons about how you could look at things like dispute resolution as an option, which we thought about in the original scheme, and we also thought about linking longer-term tenancies to lower licence fees.”

Local authority official, Newham

From the perspective of some landlords, some sort of dispute resolution system was seen as fundamental to a professional sector:

“To get the faith of people to rent the property from you, I think you have got to be transparent and up-front. If you are below standard, if the tenant feels the need to complain they can. You have got to have that side of it. The Royal Institute of Chartered Surveyors charges people to be part of their redress scheme as a surveyor, why isn’t a landlord technically doing a similar thing? Being part of a professional body. There are enough organisations out there that, if the government wanted, they could just take their format and roll it out across the country.”

Landlord, Newham (interview)

This opportunity for redress was seen as an essential component of a system that attempts to enforce the obligations and responsibilities of both landlords and tenants. Others saw the potential value of it in resolving issues commonly faced by the sector, though still expressed concern at the cost implications of this, particularly where they felt such regulation would not be relevant to their day-to-day operation as a landlord:

“I can see where a dispute resolution service would be fabulous, because sometimes it gets a bit hairy and you could have a third party having discussions rather than going to court. You don’t want people having County Court Judgements against them unnecessarily, so I can see that would be a really great idea. But don’t charge me £90 a pop for doing this because my tenants are never going there, I’ve never had a dispute before, so why have I got to pay?”

Landlord, Birmingham (workshop)

This raises questions as to the most appropriate way of introducing new regulatory systems and services. Given dispute resolution is already in existence for tenancy deposits, it may be that this could be used as a mechanism for dealing with other disputes, broadening its remit and avoiding the creation of new layers of bureaucracy and organisation.

The debate over how best to fund new forms of regulation returns us to issues of the balance between universal and selective approaches to regulation, and the varied levels of compulsion within different approaches. This study extracted a variety of responses from the landlord community in different areas and, while there is some acceptance that universal schemes have some merit, there is scepticism as to the cost implications of this, with a view that additional regulation will hit landlords in the pocket. While this is, to a degree, understandable, this needs to be balanced against the requirements from other stakeholders in the sector, including the need for greater information and understanding of the sector’s composition, the need to raise compliance with core management and property standards among less professional landlords, and the need to mitigate the more negative and punitive aspects of the sector that create insecurity and poverty for tenants.

Summary

In recent times the regulation of the PRS has shifted from ‘command and control’ to strategies of smart regulation. A key principle of smart regulation is that it seeks to support those subject to regulation

through education and training, in order to attempt to create a culture of compliance. However, one of the key issues emerging in this study relates to a lack of professionalism in the sector, including the role of rogue landlords and the large proportion of non-professional landlords unaware of their responsibilities (Faulkener, 2016).

As such, there was broad support, including from the landlord community, for systems of light-touch registration that can facilitate the communication of key information and policy change to landlords, as well as providing education and training. This differs from the Irish example, as there is no compulsion for landlords to demonstrate awareness of rights and responsibilities at the point of registration.

One of the more attractive elements of the Irish regulatory model to English stakeholders was the dispute resolution service housed by the RTB, offering mediation and resolution of disputes between landlords and tenants. While such a service already exists in relation to disputes over deposits, through tenancy deposit protection schemes, the opportunity for resolution of other disputes was seen as an essential component of any system that attempts to enforce the obligations of both landlords and tenants. Given there are potential cost implications of this, a prudent method of implementing new forms of registration and/or dispute resolution may be to utilise existing services and infrastructures, such as tenancy deposit schemes. One option may be to expand the remit of one of the existing schemes, consolidating this as a registration point for landlords and becoming a single point of contact. Making use of existing structures would be beneficial in providing ease and clarity for landlords and tenants, rather than creating new organisations that may be perceived as additional layers of bureaucracy, and could avoid punitive cost implications through utilising and broadening existing infrastructure.

8 Conclusions and policy implications

The starting point for this research was the growth of the PRS in England and Ireland, and the difficulties faced by tenants in terms of affordability, tenure security and sometimes-negative relationships with their landlords. These issues are ones that may affect different tenants in different circumstances, but appear likely to exacerbate problems faced by low-income tenants, given the impact high rental costs are having on their financial situations (Tunstall et al, 2013). The purpose of this study was to explore the effectiveness of regulatory techniques that attempt to mitigate these issues, comparing different approaches in England and Ireland.

The strengths and limitations of tenancy registration in Ireland

The main advantage of mandatory tenancy registration that emerged in this study was its ability to improve analysis and understanding of the PRS in Ireland. Unlike in England, where no comprehensive data source exists, the mandatory tenancy register allows the RTB to collect and collate key information regarding who lets property, where it is let and the price being charged. This can provide more accurate data on the sector, evidenced by the creation of the Irish Rent Index, which allows rent levels to be monitored. In addition, tenancy registration can support information sharing with other public bodies in order to ensure compliance with other regulations, including taxation. The high proportion of tenancies thought to have been registered in Ireland enables this. The scale of registration can be attributed to the role of incentives, as addressed below, but also the culture of registration that was already in existence in Ireland, even if this had historically been poorly enforced.

The main limitation of tenancy registration was found to be its failure to tackle poor management practices, particularly property standards. The lack of compulsion on landlords to demonstrate compliance with core property standards at the point of registration was strongly criticised in this study. While a portion of registration fees are collected for local authorities to use for enforcement, in practice this depends on capacity and staffing at a local level. Requiring some compulsion for landlords to demonstrate that they are 'fit and proper' to let property at the point of registration may be one route to ensuring that tenancy registration processes can make additional contributions to improving tenant experiences of the sector.

Landlord and tenant experiences of Irish regulation

Compared to England, Ireland has longer tenancies, with stronger protections from eviction built in for tenants, and restrictions on the frequency with which rents can be changed. Longer tenancies clearly have advantages in Ireland, as landlords can only evict tenants according to strict conditions and criteria. This can be beneficial for tenants in providing security of tenure, compared with the 'no fault' evictions that can still be used at short notice in England. There is a risk, however, that these conditions can be evaded by some landlords, even in spite of the illegality of this and the threat of punishment through the RTB. This shows that merely introducing legislation will not resolve problems faced by tenants, and that this has to be backed up with enforcement capacity.

The main strategy for enforcing landlord and tenant obligations is through the dispute resolution service hosted by the RTB. This provides a forum to resolve unlawful behaviour or disputes between parties, and theoretically provides a platform for tenants to exercise and enforce their rights. However, this report has shown that there can be a lack of awareness of rights among tenants: many tenants were not aware of the RTB. This suggests a need for better marketing and awareness-raising of the support available to tenants. In addition, there is a reluctance to exercise rights among tenants due to fears of retaliatory eviction (whatever the legality of this) and of causing harm to their relationships with landlords. The root cause of this is the wider housing market conditions in Ireland and the lack of affordable alternative accommodation in the case study area of Dublin. There is a severe and crippling affordability crisis faced

by many tenants, including those in this study who reported stories of shared bedrooms with strangers, poor property conditions and unaffordable rent increases. It is these issues, rather than a contractual form of tenure security, that engenders feelings of unease and fear of displacement. This is also affected by the cuts to tax relief faced by landlords, which may place them in a more difficult financial position. This suggests there are limits to the PRS and its suitability for low-income tenants. There are, however, promising approaches to try and mitigate the difficulties they face, such as the programmed inspection regime as part of HAP and the incentives available for landlords to offer longer-term tenancies. Programmes such as HAP may also offer lessons for England in its attempt to improve the suitability of the PRS for low-income and vulnerable households.

The effectiveness of different regulatory approaches

The English strand of the study explored different regulatory approaches at a local authority level. The principal form of PRS regulation used at a local level was that of landlord licensing schemes, which are used to tackle issues of property standards and management practices. While licensing schemes divide opinion, the examples shown here – particularly from Newham – highlight the positive impact such schemes can have on improving property standards and management practices, on weeding out rogue landlords, and on improving information and understanding of the scope and scale of the sector. While voluntary accreditation schemes have similar objectives in professionalising the industry, it is the mandatory nature and compulsion attached to licensing that compels landlords to comply. This, however, is very much dependent on there being appropriate enforcement capacity and resources within local authorities. Ensuring this is imperative to the success of any regulations that try to tackle the PRS. This suggests that it is not only the regulatory law and standards with which people are expected to comply that is important, but also the extent to which there is effective enforcement of these regulations.

The report began by describing the evolution of PRS regulation, from centralised command and control approaches to methods of smart regulation, involving a mix of regulatory techniques, provision of education and training that can lead to self-regulation, and incentives for compliance. These manifested in different ways in the study. It is clear that in England, a voluntary approach to self-regulation, for instance through joining an accreditation scheme that educates and professionalises landlords, has significant limitations due to difficulties in reaching those engaged in the worst practices. There was a clear call for a system that enabled landlords to be provided with key information to overcome issues of ignorance and lack of knowledge of their core responsibilities. The idea of providing this information at the point of obtaining buy-to-let mortgages, while only partially covering the sector, warrants further consideration due to the ease with which this could be implemented.

Key to the effectiveness of regulation in this study was incentives to comply. In Ireland, mandatory tenancy registration was incentivised by eligibility for Mortgage Interest Tax Relief. After a period of cuts to this benefit, Mortgage Interest Tax Relief is to be increased in response to concerns that taxation is punitive to landlords and provoking exits from the sector. There are further tax incentives for landlords in Ireland who offer low-income households long-term tenancies. Incentives are a potentially powerful tool in building acceptance of, and compliance with, registration schemes. There is an argument for considering how incentives can be applied appropriately in England, particularly given recent taxation changes that have been unpopular with the landlord community. Without compelling incentives, regulation is likely to continue to be resisted.

Policy implications in England

The implications of different issues in the PRS, and attempts to regulate these, have been considered in previous chapters. Here, we draw these together to highlight the major policy implications for England, drawing upon evidence from Irish and English contexts.

The Irish and English examples presented here show that tenancy registration and landlord licensing can have multiple benefits in improving the experiences and circumstances of tenants, and enhancing understanding of the sector. This suggests a need to reconsider recent policies that restrict the licensing ability of local authorities. The restrictions imposed on local authorities, to 20% of their geographical area or 20% of PRS homes in that area, will prevent local authorities with the desire to thoroughly regulate their PRS from adequately doing so.

More radically, there may be scope for a system of tenancy or landlord registration that helps to improve professionalism in the industry. This does not have to be the bureaucratic or costly burden that may be portrayed. The ways in which existing infrastructures can be utilised to enable and encourage regulation, including stakeholder bodies that represent landlords, should be explored. Existing forms of regulation such as tenancy deposit schemes could be harnessed in order to consolidate points of contact and registration for landlords.

One of the most compelling arguments in favour of registration and licensing is the improved accuracy of information on the sector that would be gathered. This is critically important, not only because of the growing role of the sector in the housing system, and the consequences of insecurity and affordability faced by tenants, but also for policy-making. Rental housing costs are to be incorporated into inflation measures used by the Office of National Statistics. More accurate rental data collected through registration processes would make a significant and valuable contribution to this. Similarly, collection of actual rental information in a more comprehensive way and at a granulated scale could improve the calculation of LHA rates, currently done on Broad Rental Market Area calculations, which can result in unrealistic rates in some housing markets. This could lead not only to more accurate data, but to cost savings where LHA is calculated to be a lower rate in some markets. As in Ireland, collection of data could also enable information sharing between different authorities, including the Inland Revenue and local authority Housing Benefit departments.

However, if forms of licensing and registration are to be pursued, there has to be a consideration as to how compliance can be enabled. This study has clearly identified the importance of incentives in persuading landlords to comply with legislation. Simply imposing new forms of regulation will not necessarily result in compliance; rather, new ways of managing the sector need to work in tandem with the financial considerations and motivations of landlords. One way of incentivising registration may be to permit the offset of capital expenditure on improvement works against rental income. Currently, only general repairs and maintenance are allowable expenses. While landlords have been negatively affected by recent taxation changes in England, landlords in Ireland are set to benefit from incentives built into the taxation system if they comply with certain conditions in the sector. These conditional arrangements are potentially powerful and there is an argument for their use in England, in order to incentivise particular types of behaviour. As in Ireland, tax relief for landlords willing to agree to longer-term tenancies may help to combat their reluctance to offer these, particularly to low-income tenants.

The size and composition of the PRS has changed quickly and dramatically in England, with a higher number of low-income households living in the sector, and growing issues of affordability and insecurity. Regulation is not the only answer to problems in the sector. There is also work to be done to help landlords adapt to the changing role of, and pressures on, the PRS. This suggests a need for improved marketing of, and support for, projects that seek to support low-income households with tenancy sustainment and affordability issues, such as the national rent deposit guarantee proposed by Crisis and the National Landlords Association. In addition to helping tenants, these projects can help to tackle financial concerns and the unfair stigma associated with low-income and vulnerable households in the PRS.

This also points to the requirement for a layered, multi-faceted approach to the PRS, involving not only regulation, but also incentives to encourage compliance, enforcement capacity to tackle standards, and support measures to help groups of tenants suffering from issues of tenure insecurity and affordability. There is a strong case for a contemporary policy response that seeks to tackle these issues, involving co-ordinated solutions that balance the interests of tenants and landlords in order to improve the experiences and reputation of the PRS.

Notes

1. Households are defined as living in poverty if their disposable (ie net) income is below 60% of the median.
2. The RTB was known until 2016 as the Private Residential Tenancies Board.

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About the authors

Dr Tom Moore is a Lecturer in the Department of Urban Studies and Planning at the University of Sheffield. His research specialism is in the area of housing policy and practice, with a particular focus on the private rented sector and on community land trusts. Tom has undertaken housing research for a range of organisations and funding councils, including the British Academy, local and national government, third-sector organisations, and JRF.

Dr Richard Dunning is a Lecturer in Planning in the Department of Geography and Planning at the University of Liverpool, where he teaches housing economics and urban regeneration. His principal research interest is in applying behavioural economic approaches to infrastructure, housing and commercial property markets. Richard has undertaken housing research for a wide range of organisations across local and national governments, and the charitable sector.

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The Homestead

40 Water End

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