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## POLICY REVIEW



# The convergence, divergence and changing geography of regulation in the UK's private rented sector

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The role of the private rented sector (PRS) has grown in many parts of Europe in recent years, both as an increasing component of housing systems and as the effects of the global financial crisis become apparent. In the UK, the role of the sector has deepened and is increasingly relied upon to house growing and diverse proportions of the population for longer periods of time. This has renewed interest in the regulation of the sector in order to improve its suitability and desirability for tenants. There has been increasing convergence in regulatory approaches between some jurisdictions of the UK, such as Scotland and Wales, and divergence between others, such as England where regulation remains a residual policy concern. Using examples of tenure security, landlord regulation and affordability, this policy review seeks to highlight the emerging differences in the way the PRS is regulated within the UK. It argues that the likely consequence of these differences is that there may be increased variation in the effects and experience of renting in the PRS, in relation to eviction protections and landlord management standards. The paper shows how jurisdictions in Scotland, and to a lesser extent Wales and Northern Ireland, are moving towards models of regulation that more closely mirror those used in Western European countries, with England becoming an outlier in the way in which it regulates private renting.

**Keywords:** devolution; housing; generation rent; private landlords; private tenants

## Introduction

The role of the private rented sector (PRS) in Europe has been brought into sharp focus in recent years, as the effects of the global financial crisis (GFC) and the consequent growth in private renting in some locations emerge (Kemp, 2015). The heightened role of the sector has led to consideration as to how it should be regulated, including recent examinations of European tenancy regulations and rent controls (Deschermeier, Haas, Hude, & Voigtländer, 2016; Huisman, 2016). In the United Kingdom (UK), a recent trend has been convergence and divergence in regulation of the PRS between different jurisdictions. Housing policy in the UK has

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been a devolved policy matter since the late 1990s, with devolved administrations in the different UK jurisdictions of Northern Ireland, Scotland and Wales each having the ability to establish and implement their own laws and regulatory frameworks. In addition, there has been an increased appetite for devolution in England, centring on local and regional tiers of governance as appropriate scales of intervention (Carr, Airey, & Thomson, 2015). This has led to greater divergence in policy-making, questioning the notion of a singular ‘UK experience’ of housing policy and highlighting the need for greater geographical sensitivity in policy analysis (McKee, Muir, & Moore, 2017). Using examples of tenancy management, landlord regulation and affordability, this policy review seeks to highlight the emerging convergence and divergence in the way the PRS is managed in different areas of the UK, and to contribute to broader debates as to the likely effects of changes in PRS tenancy regulation (Huisman, 2016).

One effect of the GFC has been significant growth in the role of the PRS across the UK. The sector has grown considerably in real terms and as a proportion of all housing stock, and in some areas has usurped social housing as the predominant form of rental tenure. Historically seen as a ‘transitional’ tenure, used by people requiring short-term or flexible housing (Rugg & Rhodes, 2008), the PRS is increasingly relied upon to house greater proportions of the population for longer periods of time, including families, people for whom owner occupation is unaffordable and those on lower incomes or in receipt of means-tested housing assistance, who may have previously accessed social housing (Clapham et al., 2014; Cole, Powell, & Sanderson, 2016).

This growth, coupled with concerns over the suitability and desirability of the sector in respect of tenure security, affordability and exposure to eviction for tenants, has provoked interest in stronger regulation. This includes a focus on longer tenancies with greater protections from eviction, regulation of landlords with a view to tackling issues of landlord competence and property standards, and measures to tackle affordability.

Devolution of housing policy controls in the UK mean differences in PRS regulatory frameworks is increasingly evident, with some jurisdictions such as Wales and Scotland taking inspiration from a Western European context with an emphasis on stronger tenant rights and greater regulation of landlords. However, this dispersal of power through different tiers of governance can sometimes be constrained by other areas of public policy. There are varying levels of universality and compulsion in the ways in which tenancies, rents and landlords are regulated. This points towards the need for housing researchers to pay attention to both the likelihood of there being contrasting experiences of the sector in the future within and between parts of the UK, and the need to develop a research agenda that fully captures the wider value and significance of these processes and their impact on the housing precarity of tenants.

### **Understanding the PRS in the UK**

While there are geographical variations in the size and nature of the PRS in different UK jurisdictions, a unifying trend is that of PRS growth. The sector now accounts for around a fifth of all housing stock in England (Department of Communities and Local Government [DCLG], 2016a) and Northern Ireland (Chartered Institute of Housing [CIH], 2015), 15% in Scotland (Scottish Government, 2016) and 14% in Wales (Whitehead & Scanlon, 2015). Within all four jurisdictions, the PRS has particularly grown around major urban centres of housing and employment. In all areas, the prevalence of PRS housing means that the sector is moving from a more marginal position within local housing systems to a sector that is increasingly relied upon to house greater numbers of the population. The PRS, however, may still be understood as marginal in policy terms, in that policies to combat housing issues in the UK often focus on enabling greater access to owner occupation or on reform of social housing.

Growth of the PRS has been driven by a variety of issues. For some households, constrained access to owner occupation due to affordability issues has led to the phenomenon of 'generation rent', whereby young adults have a deepening reliance on the PRS for longer periods of the time (Clapham et al., 2014; Hoolachan, McKee, Moore, & Soaita, 2017). Demand has also grown amongst households with dependent children (Coulter, 2016; DCLG, 2016a; Department for Social Development, 2015), and amongst more vulnerable households in England and Wales as a result of alterations to homelessness duties of local authorities that rely on the PRS for housing homeless people. Analysis of the expansion of the PRS in England and Wales has highlighted that private renting has grown most rapidly amongst less advantaged young adults (Coulter, 2016), a trend which has been mirrored in Northern Ireland where over half of all private sector tenants are in receipt of housing benefit payments (Department for Social Development, 2015). This lends weight to the theory that the contraction of social housing sectors in some areas of the UK has contributed to PRS growth (McKee, 2012; Whitehead & Scanlon, 2015). This point is emphasised by Powell (2015, p. 324) who argues that recent tenure change is a product of longer-term processes of housing privatisation in the UK, dating back to the Housing Acts of 1980 and 1988.

The significance of these trends can be understood in relation to three areas of concern as to the sector's suitability. First, a growing use of the PRS by those on lower incomes may further exacerbate housing disadvantage and inequalities, given the PRS tends to have high and unregulated housing costs relative to social housing. There are particular regional differences within UK jurisdictions, but evidence suggests a growing link between housing costs in the PRS and poverty (Tunstall et al., 2013), particularly in the context of welfare reform that means many PRS tenants in receipt of housing assistance payments are unable to meet the full cost of their rent (Kemp, Cole, Beatty, & Foden, 2014). In addition, high rents in some parts of the country risk

exacerbating exclusion from owner occupation for those already struggling to raise deposits and secure mortgages, particularly given that owner occupation is increasingly stratified by levels of intergenerational support (Hoolachan et al., 2017).

Second, in all UK jurisdictions, there has, for a number of years, been a default tenancy term of six months. While this length of time may be acceptable to some, such as those requiring short-term housing or flexibility, the growing number of households reliant on the PRS for longer periods of time has led to interest in tenancies of a longer duration and restrictions on the ease at which rental contracts may be terminated. Longer tenancies with stronger protections from eviction are more common in Western European countries, highlighting that tenants in the PRS in the UK have been exposed to more insecure and short-term forms of renting than in other countries, such as Ireland, Germany and the Netherlands (O'Sullivan & De Decker, 2007). Overcoming this insecurity has been seen as key to improving the suitability and desirability of the sector in the UK, particularly for those lacking economic resources (Mackie, 2016). As the analysis that follows will show, tenure security is an area of increasing policy divergence in the UK.

Finally, there are concerns with the management practices of some landlords within the sector. There is little regulation that governs management practices and no requirement for professional training or qualifications, leading to concerns that many landlords are unaware of core management responsibilities and property standards (Faulkner, 2016). This is partly a consequence of the type of landlords that are predominant in the PRS across the UK, where landlords tend to be 'amateur' landlords who are letting property due to unplanned circumstances, compared to the sophistication of some European countries, where PRS management can be more professional and institutionalised. The issue of professionalism and competence is a fundamental issue, for PRS homes are most likely to fail basic measurements of property fitness compared to owner occupied or social rental homes (DCLG, 2016a; Gray, McAnulty, & Shanks, 2014a) and situations where landlords unknowingly fail to adhere to legislation regularly arise (Faulkner, 2016).

### **How to regulate the PRS?**

While the problems of the PRS in the UK have been widely acknowledged for some time, there has been less clarity as to how these should be tackled, with the debate as to how to regulate the sector enduring for many years (Rugg & Rhodes, 2003). These disagreements tend to coalesce around the arrangements and procedures for tenancy agreement, management and termination, whether or not rents should be regulated and the extent to which landlords should be required to fulfil obligations prior to and during letting property, including issues of professionalism and compliance with property standards. It is asserted that stronger regulation of the sector is required to better equip it to deal with its growing importance in the housing system (House of Commons, 2014).

However, there is significant difference in opinion as to the extent to which the sector should be regulated, with particular disagreement around whether the sector should be regulated on a universal basis or a more selective and targeted approach (Rugg & Rhodes, 2003). More selective approaches may enable a targeting of legislation and resources at particular elements of the sector that are known to require intervention, allowing ‘good’ landlords to continue letting property unaffected by regulatory burdens (Carr, Cowan, & Hunter, 2007). Approaches that are more universal, however, would tend to involve more consistent sets of standards, procedures and statutory oversight that apply to all, for instance mandating landlord registration or licensing, standardisation of tenancy agreements, or state-led regulation of rents.

The historic lack of consensus over PRS regulation has often stymied reform, leading to a system that has differed with the international context, particularly with the rest of Western Europe where tenants’ rights tend to be stronger, with tenancies that are usually either permanent or long term and contain strong rights to renewal and protection from eviction (Haffner, Hoekstra, Oxley, & Van Der Heijden, 2010). In addition, while the market may dictate rents, limitations on the levels and frequency at which rents can be adjusted are often regulated by the state, such as the recent strengthening of rent regulation in Germany (Deschermeier et al., 2016). Countries such as Ireland also have mandatory registration schemes, where landlords are legally mandated to register tenancies with a statutory body and are restricted in the ways that tenancies may be agreed and terminated. While these examples contrast with the limited regulation in parts of the UK, devolution of housing responsibilities has created space for UK jurisdictions to regulate the PRS in different ways. As the following analysis indicates, there are emerging and identifiable regional and national differences in the way the sector is to be regulated in different parts of the UK, pertaining to tenure security, landlord regulation and affordability.

### **Tenure security**

Tenancies lasting for six months have been the most common form of tenancy in the UK for some time, exposing tenants to insecurity over their living arrangements, particularly in areas where housing demand and rental costs are high (Moore & Dunning, 2017). In England, this uncertainty is exacerbated by the relative ease at which tenancies can be terminated, through the use of ‘no-fault’ eviction orders, which mean that no reason has to be provided for tenancy termination. The use of these orders has been criticised for engendering insecurity in the sector, evidenced by the frequency by which renters in some parts of the country are evicted through this measure (Pennington, 2016). Recent legislative changes have sought to discourage retaliatory evictions by preventing their use by landlords who evict tenants following disputes or complaints. However, this restriction only applies to a small

subset of landlords that have behaved in this way, meaning that the majority can still freely evict tenants. As the following analysis shows, this differs from other parts of the UK, which have sought to increase tenure security by placing constraints on the ease at which tenants can be evicted. Efforts to introduce a default tenancy term of 36 months in the recent Housing and Planning Act 2016 were rejected, based on a view articulated by a Government Minister that it would ‘overburden the market with restrictive red tape, stifling investment and the supply of rented housing’ (Great Britain Hansard, 2015).

The situation in Wales and Northern Ireland is in some respects similar. The new Renting Homes (Wales) Act 2016 introduces more standardised forms of tenancy contract, promoting clarity and transparency as to the rights and responsibilities of landlords and tenants within tenancy agreements. In Northern Ireland, the length of notice a landlord must give to evict a tenant was extended, with notice periods increasing the longer a tenant stays in the property (Department for Social Development, 2015).

In Scotland, however, the regulatory framework has begun to deviate from the rest of the UK. The Scottish Government has sought to move beyond minimum six-month terms, introducing open-ended tenancies and removing the ‘no-fault’ ground for possession through new legislation in 2016. Eviction procedures have also been standardised, with legislative guidance strictly dictating the circumstances under which tenants can be evicted. Landlords must provide evidence that demonstrates the validity of this notice in accordance with legislation, restricting their ability to easily evict tenants, taking inspiration from a similar system operating in Ireland (Hayden, Gray, McAnulty, O’Malley, & Jordan, 2010). We can therefore see that private renters in Scotland are beginning to benefit from greater tenure security and protection from eviction that applies on a universal basis. Meanwhile, other UK jurisdictions, particularly in England, adopt a more selective and targeted approach, largely focused on restricting the eviction powers of landlords already contravening their responsibilities, with limited appetite for greater tenancy durations. The ease at which tenants can be evicted in England is especially concerning given that the loss of a tenancy in the PRS is now the most common cause of homelessness (DCLG, 2016b)

### **Landlord regulation**

A further regulatory debate is the extent to which landlords should be regulated, for instance through the creation of a registration or licensing system that can aid the monitoring of property letting in the sector. Mandatory landlord registration is used in all jurisdictions of the UK apart from England, except where landlords are leasing houses of multiple occupation. Registration involves the creation of a database as to who is letting property, their personal details and the type of property they are managing. In addition to the collection of information, which can aid understanding

of the composition and size of the sector, landlord registration schemes aim to improve housing management practices, standards of service from landlords to tenants and to ensure compliance with minimum property standards.

Scotland's landlord registration system has been in operation since 2006. An evaluation conducted in 2011 observed that while there were some benefits, such as local authorities gaining access to better information on the sector that can help improve the worst landlords in the sector, the initiative was not proven to have a comprehensive effect on property management standards due to difficulties with monitoring landlord activity and ensuring compliance (Lees & Boyle, 2011). In Wales, landlords must register with a national scheme and either obtain an additional licence to manage property, or use a licensed managing agent, though initial evidence suggests that many landlords have been slow to register (BBC, 2016). All landlords seeking a licence must pass checks to ensure that they are suitable to let property (for instance, that they do not have criminal convictions) and must undertake training that raises awareness of management practices and the rights and responsibilities of landlords and tenants, and comply with a code of practice. A national registration scheme is also in operation in Northern Ireland, where a central register can be used by local authorities who are responsible for ensuring compliance and enforcement in the sector. In Northern Ireland, licences are only required for those letting homes of multiple occupation, a requirement which applies across all four UK jurisdictions.

There is no similar systematic collection of landlord information in England, which in turn makes it difficult for local authorities to fulfil their responsibilities regarding enforcement and compliance due to the fragmented nature of the sector and difficulty in identifying who is letting property (London Assembly Housing Committee, 2016). The main tool to regulate the PRS in England is that of selective licensing, where local authorities are permitted to mandate that landlords in designated areas must obtain a license and demonstrate compliance with management and property standards. This is an approach that distinguishes between a segment of landlords who need to be subject to intervention and surveillance, and a more responsible cohort who are left to self-regulate (Carr et al., 2007). The use of selective licensing has grown in recent years, with some local authorities applying conditions universally to all landlords within their boundaries. A Government Select Committee review of selective licensing (House of Commons, 2014) highlighted evidence from different licensing schemes, such as Newham in London, to show how they have created a range of benefits, including improvements in poor quality accommodation, convictions against criminal landlords and improved communication between the local authority and its landlord community. The review recommended that local authorities should gain 'greater freedom over when licensing schemes can be introduced and more flexibility over how they are implemented' (House of Commons, 2014, p. 23). This ethos echoes broader change in policy-making in England, where greater powers are devolved to local authorities and city



regions, including areas of housing policy (MacLennan & O'Sullivan, 2013). However, in 2015, the Government withdrew the powers of local authorities to introduce large-scale licensing schemes, with consent from national Government required for licensing that affects more than 20% of private rented homes in a local authority area.

This intervention means that England, for the time being, is likely to remain an outlier in that it does not systematically or thoroughly regulate its landlords. Indeed, rather than seeking to regulate landlords, the UK Government is beginning to use landlords as regulatory actors in their own right, illustrated by 'Right to Rent' policies that require landlords to carry out legal residency checks on migrant tenants. Commentators have argued that landlords may lack the knowledge or training to do this competently (Bate & Ota, 2016, p. 20), potentially creating discrimination towards migrant tenants (Crawford, Leahy, & McKee, 2016).

### **Affordability**

Affordability is a significant issue in the PRS, though to varying degrees in different parts of the UK. In England, evidence suggests that private renters in some areas are spending up to 40% of their gross income on housing costs, more so than households in other tenures (DCLG, 2015). In Wales and Northern Ireland, affordability is an emerging issue, particularly for those in receipt of housing benefit payments who are having difficulty in paying shortfalls in higher rent (Gray, McNulty, & Shanks, 2014b, p. 25; Whitehead & Scanlon, 2015). In Scotland, rents have spiked in some areas between 2010 and 2016, with rents increasing more than twice the rate of the Consumer Price Index<sup>1</sup> in some locations (Scottish Government, 2016).

Rent controls limiting the rents that landlords can charge applied in the PRS in the UK until 1989, when they were abolished alongside the introduction of short-term six-month tenancies as a way of encouraging investment into the sector. Despite affordability issues, there has been little political appetite for their reintroduction in most of the UK on the basis that they may result in a reduction of supply in the sector or encourage disinvestment in property management. This is despite quantitative analysis which argues that the introduction of various types of rent control in England would have very little effect on landlords' incomes and profit margins (Clarke, Hamilton, Heywood, & Udagawa, 2015). The political reluctance to consider methods of rent control differs from other European contexts, which use different forms of control that may restrict the rate and frequency of rent rises within tenancies (Haffner, Elsinga, & Hoekstra, 2008).

In a further deviation from the rest of the UK, Scotland's new Private Housing (Tenancies) (Scotland) Act 2016 has introduced the prospect of rent control in 'rent pressure zones'. If local authorities feel their area is a 'rent pressure zone', where rents have excessively increased and there are affordability pressures, they are

enabled to apply to the Scottish Government for their area to be subject to a time-limited capping of rent increases in relation to the Consumer Price Index.

Affordability relates not only to the rent charged, but to the ability of households to meet their housing costs. Welfare reform in the UK has limited this in the PRS, where reductions of the amount households receive in housing benefit have created affordability and insecurity issues for tenants (Cole et al., 2016). In addition, housing benefit rates are calculated across broad rental market areas that in some areas cover locations with varying and diverse rental costs, sometimes producing rates that are artificially high or low in towns or cities located in areas with diverse markets, and limiting the ability of local authorities to manage their local PRS (Blackpool Borough Council, 2013). This echoes issues raised by McKee et al. (2017), who argued that welfare reform agendas in the UK have created tensions amongst the devolved settlements of Scotland, Wales and Northern Ireland in their housing policy-making, as welfare policy is not a devolved issue.

## **Conclusion**

This article began by highlighting reasons why the regulation of the PRS may be necessary. Across the UK, notwithstanding geographical variances within each jurisdiction, there are issues to do with tenure insecurity and the ease at which tenants can be evicted from their homes. There are concerns over landlord competence and professionalism, where landlords may be unaware or unwilling to comply with core management responsibilities and property standards. This situation may be exacerbated by new 'Right to Rent' procedures that position landlords as regulatory agents in their own right. There are also issues related to the affordability of the sector, particularly given the growing numbers of low-income households that are navigating the PRS (Kemp, 2011).

Devolution of housing policy responsibilities to UK jurisdictions has created the opportunity for greater divergence in policy-making according to different priorities (McKee et al., 2017). The policy analysis presented here shows that there are emerging and identifiable differences, based on the universality of tenancies and protection from eviction and the varying levels of compulsion on landlords to demonstrate their competence to fulfil their duties. In particular, we can see that the regulatory framework in Scotland is developing a sophistication that may theoretically balance the rights of landlords and tenants, by only permitting evictions under strict and evidenced conditions. In addition, the Scottish introduction of potential rent controls in designated areas where they are required may serve to mitigate crises of affordability that are currently pushing swathes of private renters into poverty (Tunstall et al., 2013). Areas of convergence can be found in Scotland, Wales and Northern Ireland, where mandatory landlord registration may serve to improve management and property standards, as landlords become more aware of their roles and responsibilities and increase their levels of professionalism. While these appear

to be admirable pursuits, there is, however, a research gap as to their operation, strengths and limitations, particularly for schemes in Scotland and Northern Ireland which have been running for a number of years.

The analysis here shows that England is increasingly an outlier in terms of its regulatory approach. There has been little political appetite in England to instigate the type of reform that has been implemented elsewhere in the UK. Indeed, recent welfare reforms have undermined housing policy-making in the other UK jurisdictions (McKee et al., 2017), and recent reforms to selective licensing have centralised decision-making over the most significant regulatory tool in the PRS in England. Interestingly, this appears to undermine the English Government's own devolution agenda, which emphasises local and regional tiers of governance as appropriate scales to 'pursue innovative new approaches including place-based and outcome-focused services, breaking away from Whitehall silos' (Carr et al., 2015, p. 10).

The likely consequence of this is that there will be increasing variation in the role, effects and experience of the PRS in future years. Tenants in particular are likely to have varying experiences, with tenants in England significantly more vulnerable to eviction than their counterparts in Scotland. The greater commitment to raising standards of management and professionalism amongst landlord communities elsewhere in the UK may also result in PRS with varied levels of professionalism. Other UK jurisdictions may also gain a better understanding as to the composition and nature of their sector, which is currently difficult to judge in the English context due to the lack of statutory oversight. The implication of this is that England is becoming an outlier in Europe in the way in which it regulates its PRS. Jurisdictions in Scotland, and to a lesser extent Wales and Northern Ireland, have begun to move towards models of regulation that more closely mirror those used in Western European countries (Haffner et al., 2010). This is a critical development in UK housing policy, reflecting recent calls for a more spatially nuanced approach to analysis of housing policy in the UK (McKee et al., 2017). As major changes take place to regulatory frameworks, this context of devolution may prove fruitful ground for researchers wishing to understand the different values and significance of the contrasting levels of universality and compulsion evident across the PRS in UK jurisdictions.

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## Note

1. The Consumer Price Index is a statistical measure of the price level and inflation of goods and services in the UK. It is produced by the Office of National Statistics.

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