

WEBINAR

Housing Act 2004 & the Private Rented Sector – where are we now?

Speakers: Andrew Lane & Riccardo Calzavara

● ● ●
● ● ● cornerstone
● ● ● barristers



Your speakers

Andy Lane



Riccardo Calzavara



What we are covering

Housing Standards

- Housing Act 2004, Part 1 **brief** overview
- **Enforcement & investigatory powers extension - Renters' Rights Act 2025**

On PowerPoint

- *Private Rented Sector Database*
- *Private Rented Sector Landlord Ombudsman*
- *Impact of Building Safety Act 2022*

Housing Licensing

- Housing Act 2004, Parts 2 + 3 overview
- Offences
- Defences



Housing Act 2004, Part 1

Overview



The current system – Housing Act 2004

- Was at the time a new system for assessing & enforcing standards in the PRS (s.1)
- Hazard definition:
any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling or in any building or land in the vicinity: s.2(1)
- Duties to:
 - Review housing conditions in the area: s.3(1)
 - Inspect to ascertain whether a hazard exists if it considers it appropriate: s.4(1)

Two categories of hazard

Category 1 hazards

- **Duty** to take enforcement action (s.5, HA 2004)
 - improvement notice
 - prohibition order
 - hazard awareness notice
 - emergency remedial action
 - emergency prohibition order
 - demolition order
 - declaring a clearance area

Category 2 hazards

- **Power** to take enforcement action (s.7, HA 2004)
 - improvement notice
 - prohibition order
 - hazard awareness notice
 - demolition order
 - slum clearance declaration

Financial Penalties – Current law

Section 249A, HA 2004

- Covers Parts 1 to 4
- Re Part 1 deals with a failure to comply with an improvement notice
- Can be Category 1 or 2 hazard
- Fine limit presently £30,000 (£40,000 for post-1 May 2026 offences)
- The local authority may elect to impose an alternative to prosecution for non-compliance if they are satisfied beyond reasonable doubt that there has been a want of compliance.
- Procedure and appeals set out in Schedule 13A



Renters' Rights Act 2025

Enforcement & Investigatory powers extension





Overview



Renters' Rights Act 2025

Primary changes to Part 1, Housing Act 2004

01

Decent Homes Standard

- Section 100
- Extends DHS to the PRS
- DHS can be enforced by LA
- From 2035

02

Financial Penalties

- Section 6A
- New financial penalty
- Category 1 hazards
- Type 1 requirement

03

Enforcement

- Extension of duty (DHS)
- Type 1 requirements
- Qualifying residential premises
- Prohibition orders/emergency remedial action

04

Investigatory powers

- 27 December 2025
- Powers to require documents/of entry revised
- ss.235 + 239 HA 2004

Civil penalties under the Renters' Rights Act 2025 and other housing legislation Guidance

- Replaces the Civil Penalties under the Housing and Planning Act 2016 – Guidance for LHAs (2017)
- Applies to s. 249A offences, s. 1 Protection from Eviction Act 1977 and all offences/contraventions created by the RRA 2025
- Has starting points for individual offences which a LHA must apply
 - when assessing the seriousness of the offence (Step 1)
 - before going on to identify aggravating and mitigating factors (Step 2) and
 - to consider localised or landlord-specific financial matters (Step 3)
- LHA still need own policy re how it will calculate penalties

All LHAs will have needed to have substantially revised and replaced their existing policies relating to CPNs under the 2004 Act, before commencing use of the new powers from 1 May 2026.

Three Phases

“Implementing the Renters’ Rights Act 2025: Our roadmap for reforming the private rented sector” (Nov 2025)

01

1 May 2026

- New tenancy regime
- LAs must report on enforcement activity
- Civil penalties expanded
- RROs to superior landlords
- New investigatory powers (27/12/25)

02

From late 2026

- Database
- Landlord Ombudsman (2028?)

03

Various

- Awaab’s Law (2025 ff)
- Decent Homes Standard
- Extended to PRS (2035)

Guidance

13 November 2025

01

Enforcement of the new tenancy system under the RRA

- Separate guidance for landlords
- Still has Rogue landlord enforcement guidance (2019)

02

Investigatory powers under the RRA

- New powers came in on 27/12/25
- Includes the powers re poor housing conditions

03

Civil Penalties under the RRA

- Must be considered by LHAs
- In terms of standards and Part 1, deals with s. 30 (failure to comply with an IN)

04

Rent Repayment Orders

- FTT may use the guidance
- Pre-commencement law/guidance still relevant



Investigation



Investigation Powers

Sections 114-136 RRA 2025

- From 27 December 2025

E.G.

- s. 114 – power of LHA to require information from a relevant person
- s. 115 – power of LHA to require information from any person
- ss. 118/121 – powers to enter a rental sector business premises without, and with, a warrant
- ss. 126 - power of entry into suspected residential tenancy without a warrant
- ss. 128-129 – power of entry under a warrant into suspected residential tenancy
- **LHAs will need to consider adopting policies and procedures to ensure that information gathered using these powers are stored securely, only used for permitted purposes, and comply with parallel legislation such as the Investigatory Powers Act 2016.**



Enforcement – introduction



Enforcement

Section 102-113, RRA 2025

- As is already the case under the 2004 Act, LHAs will be entitled to use the revenues collected from financial penalties to meet the costs of their housing enforcement work in the PRS
- The procedure for issuing penalties and bringing appeals to the FTT will be essentially identical to that already applicable under s.249A and Schedule 13A of the HA 2004: see Schedule 5 RRA, Schedule 2ZA to the 1988 Act and Schedule A1 to the 1977 Act.

107 Enforcement by local housing authorities: general duty

(1) It is the duty of every local housing authority to enforce the landlord legislation in its area.

(5) In this Part “the landlord legislation” means—

(a) Chapters 3 and 6 of Part 1 of this Act,

(b) Part 2 of this Act,

(c) sections 1 and 1A of the Protection from Eviction Act 1977, and

(d) Chapter 1 of Part 1 of the 1988 Act.

(6) For the purposes of this Part, a reference to taking enforcement action is a reference to—

(a) imposing a financial penalty, or

(b) instituting proceedings against a person for an offence, under the landlord legislation.

- Can enforce outside area – ss. 108-109
- Must report to SoS regularly re exercise of enforcement functions



Enforcement – new breaches



New breaches – ss. 12/14 RRA 2025

Fines for landlords/agents/acting on their behalf

- ss. 16D-H Housing Act 1988
 - claim to let the property on a fixed-term tenancy instead of a rolling tenancy, for example, by adding an end date
 - claim to end a tenancy verbally
 - require a tenancy to be ended verbally
 - fail to give a tenant written notice that a specified ground might be used where this is required by law . For example, Ground 1B, sale of dwelling-house after rent to buy agreement
 - fail to give a written statement of terms containing the information required by regulations
 - fail to give existing tenants a copy of the Government published 'information sheet' before 1 June 2026.
 - use a possession ground in a section 8 notice, 'purported' notice of possession or claim form when they do not reasonably believe that a possession order will be granted by the court on that ground
 - try to end the tenancy using a notice to quit or purported notice of possession
-
- Up to £7,000

New offences – sections 15/16 RRA 2025

Landlords/those acting on their behalf

- relet or remarketed a property within the 12 month no relet and remarketing 'restricted period' after using statutory grounds for possession 1 or 1A, unless they took all reasonable steps not to or an exception applies
 - knowingly used a ground for possession despite knowing that a court would not order possession on it, or being reckless about that, resulting in the tenant leaving within 4 months without an order for possession being made
 - committed a breach within 5 years of a previous offence
 - committed a breach within 5 years of receiving a financial penalty for a previous breach that has not been withdrawn
 - continued to commit a breach for more than 28 days after receiving a financial penalty for that breach that has not been withdrawn and is not the subject of an ongoing appeal.
-
- Up to £40,000



Enforcement – further changes



Further changes

Renters' Rights Act 2025

**Imposes
Requirements
- ss. 2A-2B**

**Financial
Penalties**

**Consequential
amendments**

What are the “requirements”?

s.2A, HA 2004

- Specified by Regulations, to include
 - (a) the state of repair of the premises,
 - (b) things to be provided for use by, or for the safety, security or comfort of, persons occupying the premises, and
 - (c) the means of keeping the premises at a suitable temperature.
- Fall into two categories
 - Type 1 requirements, which are those which the Secretary of State considers appropriate to be subject to enforcement as if they were category 1 hazards
 - Type 2 requirements, which are those which the Secretary of State considers appropriate to be subject to enforcement as if they were category 2 hazards

Qualifying residential premises - s.2B(1), HA 2004

**5
possibilities**

**Dwelling
let under
relevant
tenancy**

**HMO let
under
relevant
tenancy**

**Single
occupant
HMO**

**Part 7 –
not social
housing**

**Common
parts**

Some further definitions

Relevant tenancy - s.2B(2)

- an assured tenancy
- an assured agricultural tenancy
- a Rent Act tenancy

- Secretary of State has residual power to amend the definition of relevant tenancy, following consultation

Supported exempt accommodation

- Defined in Supported Housing (Regulatory Oversight) Act 2023

- Accommodation that has an element of support

- Excluded from local housing allowance

Enforcement of Requirements: Schedule 4, RRA 2025

Decent Homes Standard

Type 1 requirements

- Duty to inspect (s.4, HA04)
- Duty to take enforcement action

Type 2 requirements

- Duty to inspect
- Power to take enforcement action



Enforcement – financial penalties



Financial Penalties – new law

Section 6A

- If a local housing authority is
 - (a) Required/decides to take enforcement action against a type 1 hazard or type 1 requirement
 - (b) satisfied that it would have been “reasonably practicable” for the responsible person to secure the removal of the hazard or the meeting of the requirement
- Then:
 - when first taking that action, the authority may also impose a financial penalty of up to £7,000
- The financial penalty may relate to
 - more than one category 1 hazard on the same premises,
 - more than one failure to meet type 1 requirements by the same premises, or
 - any combination of such hazards or failures on or by the same premises.

Financial Penalties – procedure

- Notice of intent within 6 months of having sufficient information to take enforcement action, which must -
 - Include the date on which it is given,
 - Specify the amount of the proposed financial penalty,
 - Give reasons for proposing to impose the penalty,
 - Afford information about the right to make representations
- The recipient has 28 days to make representations in response to the proposal
- Having considered those representations, if the authority still propose to impose a financial penalty, they must give final notice, requiring payment within 28 days
- An authority may withdraw the final notice or reduce the amount of payment required at any time
- Right of appeal
 - within 28 days of the final notice
 - by way of re-hearing and may take into account matters of which the authority was unaware

Financial Penalties – procedure (2)

RECOVERY

- Any financial penalty not paid is recoverable as a civil debt in the county court

PROCEEDS

- Any financial penalty may be applied towards meeting the administrative and legal costs and expenses incurred in, or associated with, carrying out any of its enforcement functions
- Any proceeds of a financial penalty which are not so applied must be paid to the Secretary of State.

Key Takeaways

**Training for
appeals**

**Developing
policies for
financial
penalties**

Likely appeals-
- Reasonably
practicable
- Quantum



Private Rented Sector

Database



What is the database?

Sections 75-99, RRA 2025

- Expected late 2026
- It will be mandatory for PRS landlords to register
- Failure = fines up to £7,000 for 1st offence...can rise to £40,000
- Will provide LL contact details and include safety certificates (RPC, Gas, EICR)
- It does not replace Parts 2 + 3 licensing schemes



Private Rented Sector

Landlord Ombudsman



Why an Ombudsman Service?

Part 2, RRA 2025 (ss. 64-74)

- Expected in 2028 (Phase 2 – from late 2026)
- No decision yet as to who will run it
- It will be mandatory for PRS landlords of assured/regulated tenancies to join
- The Ombudsman will be able to order apologies, remedial actions, and compensation up to £25,000.
- Local councils will be able to take action against landlords who fail to join, or against anyone who markets a PRS property where the landlord is not registered.
- This will include civil penalties of up to £7,000 for initial breaches and up to £40,000 or criminal prosecution for continuing or repeated breaches.
- Tenants will be able to seek rent repayment orders against their landlord if the landlord commits an offence by persistently failing to join the ombudsman service.



Building Safety Act 2022

The Impact



Four key areas of change

Post-Grenfell Inquiry

01

Building Safety Regulator

- Health & Safety Executive
- Can obtain interim safety injunctions
- LAs now 'supporting bodies' re HRBs

02

Implied terms

- Higher-risk buildings (7+ storeys or 18 mtrs+)
- Building safety
- Access rights

03

First-tier Tribunal

- Remediation orders
- Remediation contribution orders
- Triathlon Homes LLP v Stratford Village Development Partnership

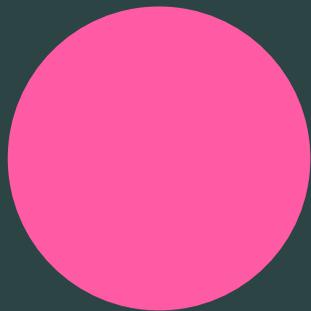
04

Electrical safety

- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

An overview

- Building works to a HRB needs an application to the HSE
- HSE has various enforcement powers
- Local Authority retain the formal enforcement powers for all non-HRB buildings covered under the Building Regulations 2010 (as amended) and the BA84
- Building Control inspectors work in line with the Regulators' Code (2014)
- Entry warrants obtained through the magistrates' courts



Housing Act 2004, Parts 2-3

Overview



Old s.72 Housing Act 2004

A person who is managing or having control of (“operating”) an unlicensed licensable HMO commits an offence: sub.(1).

A person who is operating a licensed HMO and who knowingly permits another person to occupy the house, resulting in it being occupied by more households or persons than permitted commits an offence: sub.(2).

A licence-holder commits an offence if he fails to comply with any condition of the licence: sub.(3).

If a TEN has been sought or a licence application is outstanding, the non-licensing offence is not committed: sub.(4).

There is a reasonable excuse defence in respect of all three offences: sub.(5).

Each of the offences is punishable by an unlimited fine: sub.(6)-(7). Or a £30,000 penalty: s.249A

The person in control

The person who receives the rack-rent directly from the occupiers.

The person who receives the rack-rent via an agent.

Any agent.

The person who would receive the rack-rent if the premises were let at a rack-rent.

It is not necessary to own any interest in the premises nor to have any contractual entitlement to rent to be the person in control: *Global Guardians Management Ltd v Hounslow LBC* [2022] UKUT 259 (LC) at §79.

The person managing

The “owner or lessee” who receives payments directly from the occupiers.

The “owner or lessee” who receives payments from the occupiers via an agent.

That agent.

The “owner or lessee” who would receive payments from the occupiers but for having entered into an arrangement with a third party whereby that third party receives the payments.

The “owner” is the freeholder or the person with a tenancy whose unexpired term exceeds three years, and who is entitled to the rent.

The “lessee” is any person with a tenancy: s.262(1), (3)-(4).

New s.72 Housing Act 2004 offences

A person who is managing or having control (“operating”) of an unlicensed licensable HMO commits an offence: sub.(1).

The immediate landlord of such HMO commits an offence: sub.(1A)(b).

Any superior landlord of such HMO commits an offence: sub.(1)(b).

A person who is operating a licensed HMO and who knowingly permits another person to occupy the house, resulting in it being occupied by more households or persons than permitted commits an offence: sub.(2).

A licence-holder commits an offence if he fails to comply with any condition of the licence: sub.(3).

New s.72 Housing Act 2004 defences

If a TEN has been sought or a licence application is outstanding, the non-licensing offence is not committed: sub.(4).

There is a reasonable excuse defence in respect of non-licensing for the operator and the immediate landlord: sub.(4A).

There is a new defence for any superior landlord: sub.(4B).

There is a reasonable excuse defence in respect of over-occupation and non-compliance: sub.(5).

Each of the offences is punishable by an unlimited fine: sub.(6)-(7). Or a £40,000 penalty.



Quantum



Statutory guidance: Civil penalties under the Renters' Rights Act 2025 and other housing legislation (13 November 2025)

Mandatory HMO unlicensed (s.72(1))	£17,000
Additional HMO unlicensed (s.72(1))	£17,000
Property subject to selective licensing unlicensed (s.95(1))	£12,000

New s.95 Housing Act 2004

A person who is operating an unlicensed licensable Part 3 house commits an offence: sub.(1).

The immediate landlord of such house commits an offence: sub.(1A)(b).

Any superior landlord of such house commits an offence: sub.(1)(b).

A licence-holder commits an offence if he fails to comply with any condition of the licence: sub.(2).

If a TEN has been sought or a licence application is outstanding, the non-licensing offence is not committed: sub.(3).

There is a reasonable excuse defence in respect of non-licensing for the operator and the immediate landlord: sub.(3A).

There is a new defence for any superior landlord: sub.(3B).

There is a reasonable excuse defence in respect of non-compliance: sub.(4).

Each of the offences is punishable by an unlimited fine: sub.(5)-(6). Or a £40,000 penalty.

ss.75, 98 Housing Act 2004

“No section 21 notice may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.”

“No section 21 notice may be given in relation to a shorthold tenancy of the whole or part of an unlicensed house so long as it remains such a house.”

Ground 6B Housing Act 1988: “New ground for possession to allow compliance with enforcement action”.

s.11A Housing Act 1988: “compensation of tenant”.

Information

s.235(1)(aa): Require documents “for any purpose connected with the exercise of any of the authority's functions under this Part in relation to any qualifying residential premises within the meaning given by section 2B”.

s.237(1)(aa): Use information “for any purpose connected with the exercise of any of the authority's functions under or by virtue of Part 7 in relation to any qualifying residential premises within the meaning given by section 2B”.

s.239(5A): “In relation to any qualifying residential premises within the meaning given by section 2B, notice need not be given (a) to any owner; (b) to any occupier who has waived the requirement to give notice.”



Thank you

Andrew Lane

alane@cornerstonebarristers.com

Riccardo Calzavara

rc@cornerstonebarristers.com