

The Private Rented Housing Market

Regulation or Deregulation?

Edited by

DAVID HUGHES

De Montfort University, UK

and

STUART LOWE

University of York, UK



THE PRIVATE RENTED HOUSING MARKET

*This book is dedicated to the memory of Prof. Bengt Turner (1946–2007)
who was a founder member and Chairman of the
European Network of Housing Research*

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Preface

This collection follows on from our previous publication *The Private Rented Sector in a New Century: Revival or False Dawn?*¹ Nearly five years on the question in the title of that volume has been decisively answered with the unpredicted, rapid expansion of buy to let investment injecting new capital into the British PRS after nearly a century of decline. At last a new generation of investors, many with no previous experience in property investment and untainted by the ghost of Rachman and ‘slum landlordism’ of deeper history, have ridden to the rescue. So recent and so rapid has been the revival of this market that questions still remain about its sustainability in the long-term, for there is evidence of considerable turnover both in properties and investors. Adding to this sense of fragility there is also a package of potential constraints arising from the government’s attempts to improve the management of the PRS, new Health and Safety standards for rental housing (all of which has already found legislative form in the Housing Act 2004) and European Commission directives on fair trading. This new package involves at the ‘hard’ end of the regulatory spectrum mandatory licensing of landlords and, at the softer end, voluntary accreditation schemes. All this adds up to a new agenda for the PRS and this volume, as with its predecessor, has brought together the latest research from policy analysts and legal experts to answer the new questions facing the PRS. Buy to let was an industry-led initiative that has snowballed. How attempts at state regulation will play in this precocious market is the subject of this collection.

With the imminent retirement of Prof Hughes this volume is the last in a modest canon of works and collections written and edited by David Hughes and Stuart Lowe, which date back to 1991.² Such professional collaboration could not be sustained without mutual respect and shared interests. Of particular significance has been the cross over between law and social policy, the one a core discipline the other a more inter-disciplinary field but with a strong political science foundation. We hope to have contributed to understanding British housing policy and issues of housing need by utilising our combined intellectual resources. If nothing else our collaboration has enabled each of us to see more clearly the real world outside our disciplinary traditions. Perhaps because of this meeting of minds there has never been a cross word said or thought, many lighter moments and time to inquire about the health and well-being of our families.

Finally, we would like to thank all the contributors to this volume who without exception have produced the goods in the context of already over-busy lives. Thanks are due also to Claire O’Kell who proof-read the draft chapters and to our publisher,

1 Lowe, S. and Hughes, D. (eds), *The Private Rented Sector in a New Century: Revival or False Dawn?* (Bristol, The Policy Press, 2002).

2 Hughes, D. and Lowe, S., *A New Century of Social Housing* (Leicester, Leicester University Press, 1991).

especially Ashgate's commissioning editor Caroline Wintersgill for being quietly supportive and unflustered.

David Hughes and Stuart Lowe,
Leicester and York.

Chapter 1

The New Private Rented Sector – Regulation in a Deregulated Market

Stuart Lowe

Introduction

The purpose of this collection is to consider the related questions of what kind of market the private rented sector (PRS) has become in the early years of the twenty-first century, and how it might respond to, and be affected by, the new regulatory framework, imposed particularly through the licensing of certain types of landlord and new health and safety regulations arising from the Housing Act 2004. The wider question, touched on by all the contributors in one way or another, is how the performance of a new and thriving market might respond to attempts at its regulation. This form of governance is typical of the ‘new’ Labour agenda, attempting both to loosen the delivery of public policy – in this case by endorsing the earlier deregulation of the PRS – and at the same time to steer from the centre, imagining that a socially responsive, more efficient and better-managed market can be created by centrally directed policy.

The idea that the government increasingly ‘steers’ rather than ‘rows’ as it responds to the pressures of globalization,¹ becoming in the process more ‘hollowed out’, is intriguingly tested in the case of the attempt to reform the modern PRS, a market that has ‘grown like Topsy’ in recent years and is showing no signs of slowing. ‘Hollowing out’ refers to the idea that modern governance is increasingly less about the old central–local relationship, based on a hierarchy of power from the top down (‘command and control’), and is more about a variety of agencies, quasi-governmental bodies, private companies and the voluntary sector that together have taken on the main role in delivery and implementation of public policy, and have become increasingly influential in shaping it.² While it is not the intention here to examine this issue in any detail, it is perhaps worth remembering that the PRS is not alone in being part of the new ‘regulatory governance’, in which there is a tension between market and state. A related example of this is the creation of the Housing

1 Osborne, D. and Gaebler, T., *Reinventing Government*, (Reading, MA., Addison-Wesley Publ. Co., 1992).

2 Rhodes, R.A.W., The New Governance: Governing without Government. *Political Studies* 44 (1996) pp. 652–67;

Rhodes, R.A.W., *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (Buckingham, Open University Press, 1996).

Market Renewal Fund, the latest policy designed to tackle urban regeneration. Previous regeneration policy was centrally managed, but this time, with the aim of integrating housing, planning and economic development, there is a much looser – but complex – governance structure built around a network that involves regional development agencies (RDAs), local authorities, local housing forums (representing businesses, builders and voluntary groups as well as local authorities) and a Housing Board, under the umbrella of the government regional offices. These bodies work as an autonomous network with much less central direction, although implementation is monitored by the Audit Commission.

What then is the practical evidence of what is happening in the PRS, and what kind of market has it become since it was deregulated in the late 1980s and 1990s? Who are the new landlords, tens of thousands of whom have invested in property for the first time? Above all is the question of how such a loose market, which is characterized by a rapid turnover of both properties and tenants, will respond to the new-style regulatory framework that is descending on it. The possibility of over-regulation is very real, as the new regulatory framework encompasses, at least in theory, a very large part of the market. Of most immediate significance is the Housing Act 2004, with three varieties of landlord licensing, a tenants' deposit scheme and a new health and safety rating system. Waiting in the wings is the EU competition directive, intent on compelling companies, including most probably landlords, to trade fairly – in addition to existing 'fair trade' regulation of landlords (see Chapter Seven) and the Law Commission's proposals to define tenancy conditions more transparently. The danger, of course, is that in attempting to regulate the PRS, the government may kill the golden goose – if indeed it is golden.

This chapter provides an introduction and context for the rest of the collection, beginning with a brief historical overview of the traditional PRS and its rebirth in a different form in the late 1980s and 1990s. While this is primarily meant to be 'context', it provides evidence of the nature of the PRS in Britain, and so adds to our understanding of what might happen in the future. The chapter then briefly introduces the key features of the 'new PRS', and explains how and why it differs from what went before, particularly in terms of the rise of the buy to let market and the problems that have arisen in areas where housing demand is very low – giving rise to a limited form of licensing of landlords, which replaces the criminally-based sanctions previously applicable to Houses in Multiple Occupation (HMOs) with a new style of regulatory control.

Private Renting – A Brief History

Private renting was a housing tenure in terminal decline through most of the twentieth century. In the 1920s, powerful and subsidized competitors, owner occupation and council housing began to eat into the historic position of private renting as the normal housing tenure of nineteenth-century industrial society. Ninety per cent of the population, rich and poor alike, rented their housing from private landlords up to

the early 1920s. The detailed histories have been written, and there is no need here to revisit this well-trodden path,³ except to sketch issues relevant to this book.

The origins of the long decline

Some scholars⁴ argued that it was the introduction of rent controls during World War I that set in motion the decline of the sector, but the evidence suggests that it was already severely stressed by then, and declining sharply to such an extent that had the war not happened, there would still have been a major crisis with similar outcomes. The war, however, did happen, and rent control was imposed by the government in 1915, capping rents for working-class housing (and also mortgage payments) at pre-war levels. The origin of the crisis is rather more deeply embedded in the character of nineteenth-century landlordism causing problems, then as now.

The critical factor is that private renting in the nineteenth century was largely the domain of small-scale landlords owning only one or a few properties, more or less as an income supplement and ‘pension’ fund. Then as now, private renting was a cottage industry run by amateurs. The *petit bourgeois* character of private landlordism is one of the main reasons for the onset of its decline. In the first place, it was never an easy task to collect rents – often on a weekly basis – and manage the investment. When easier alternatives came along, many landlords took the opportunity to get out of such a troublesome market and invest in more easily available financial stocks and equities.

It should particularly be remembered that because private landlords were a disparate group of people, they were not represented by either of the major political parties, so that when it came to the debate about what to do about the provision of working-class housing before and during World War I, theirs was not an organized voice, unlike landlords on the wider European continent, where private renting took a very different path.⁵

Because of the huge scale of shortages after World War I and the inflated costs of building, rent control was continued, indeed expanded to include middle-class housing. Put simply, the perception was that private landlords could not be trusted with a national reconstruction programme, and it was on the one hand state-subsidized ‘council housing’, and on the other state-subsidized (and unsubsidized) owner occupation, that provided the new supply of housing in the inter-war period. Only in the late 1930s, when building costs were cheap and interest rates low, were houses again built for private renting, but then not for people at the bottom end of

3 Harloe, M., *Private Rented Housing in the United States and Europe* (Beckenham, Croom Helm, 1985).

Holmans, A.E., *Housing Policy in Britain* (London, Croom Helm, 1987).

Kemp, P.A., *Private Renting in Transition* (Coventry, Chartered Institute of Housing, 2004).

4 Damer, S. (1980), ‘State, Class and Housing: Glasgow 1885–1919’ in Melling, J. (ed.) *Housing, Social Policy and the State* (London, Croom Helm, 1980) pp. 73–112.

5 Dauntton, M.J., *Housing the Workers* (Leicester, Leicester University Press, 1990).

Lowe, S., *Housing Policy Analysis: British Housing in Cultural and Comparative Context*, (Houndmills, Palgrave/Macmillan, 2004).

the market. Rent and mortgage controls were again imposed during World War II, and it was not until the 1957 Rent Act that an attempt was made to deregulate large parts of the PRS. This was decades too late. At the bottom end of the market, yields from rental income were too low to produce a corresponding investment surge. Rent control had made rental housing much more affordable to millions of households in controlled tenancies, but there was virtually no new supply at such low rents. It was this gap that subsidized council housing continued to fill. Higher up the market, the costs of renting and buying a property with a mortgage were equivalent, so that home ownership continued its inexorable growth. Once landlords found it easier to gain vacant possession of properties, and as house prices began to accelerate, they took the opportunity to sell. Nearly 40 per cent of the growth of owner occupation during the twentieth century was accounted for by sales by private landlords (often to the sitting tenant) quitting an uneconomic market. Slum clearance in the 1950s and 1960s also accounted for the demolition of well over a million privately rented houses (usually replaced by council houses), a significant number in a total stock in 1950 of about 12 million dwellings.

Because it was an uneconomic investment, especially in the rent-controlled sectors of the market, the PRS declined by the mid-1980s to only 8.5 per cent of households. Early attempts at a renaissance of the sector in the 1980 Housing Act, particularly through the introduction of assured tenancies (which allowed approved landlords to charge a market rent outside the prevailing fair rent system), had only limited success. There was a growing consensus, however, that there was a role for a PRS suited to a younger, more mobile market, including an increasing demand arising from the expansion of higher education. The notion of an easy-access tenure able to facilitate employment mobility was the immediate motivation for a major rethink of law and policy.

The Consequences of Deregulation

The full-scale deregulation of the PRS began in the 1988 Housing Act, through the provision of assured shorthold tenancies. The 1996 Housing Act made assured shortholds the standard tenancy: these can provide agreements for as little as six months, with assured tenancies generally applying only to tenants of 'registered social landlords'. The new regime completely changed the logic of the relationship between landlord and tenant, providing landlords with much easier access to their properties in the event of rent arrears, and enhanced powers to gain possession.

The speed with which the 'traditional' regulated PRS was reconfigured into a mainly unregulated market was astonishing. In 1988, nearly 60 per cent of tenancies were regulated (under previous legislation); a decade later, the figure had fallen to just 8 per cent, a decrease from 1.1 million tenancies to only 190,000. Currently, rather fewer than 5 per cent of tenancies fall into this group, and the figure is still falling. Most remaining regulated tenancies fall under the system of 'fair rents' of the Rent Act 1977. As Table 1.1 shows, there are a few other sources of lettings, most of which are not publicly available – accommodation that is 'tied' to a particular job or status (health authorities, landowners, police authorities and university and college