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Overcrowded housing (England)



Summary

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Summary

This briefing paper explains the statutory overcrowding standard in England, efforts to update the standard, and Government approaches to tackling the problem.

The statutory overcrowding standard was last updated in 1935

When the statutory overcrowding standard was first introduced it was viewed as a threshold that could be strengthened. In practice, the standard has not been updated since 1935. It is currently found in Part X of the Housing Act 1985. It is not a generous standard, the English Housing Survey (EHS) uses a different standard to measure levels of residential overcrowding.

Renters and ethnic minority households are more likely to be overcrowded

The EHS 2019/20 found that around 3.5% of all households in England are overcrowded (around 829,000 households). Overcrowding is more common for renters than owner-occupiers: 1.2% of owner-occupiers are overcrowded compared to 8.7% of social-renting households and 6.7% of private-renting households. The EHS also found that overcrowding is more common in ethnic minority households compared to White British households, and is more prevalent in London.

The impact of overcrowding

Evidence suggests that overcrowding has a detrimental effect on household members' physical and mental health.

The coronavirus (Covid-19) pandemic has highlighted and intensified existing housing problems. For example, reports by [The Health Foundation](#) and [The King's Fund, in partnership with the Centre for Ageing Better](#), identified an increased risk of Covid-19 transmission in overcrowded housing.

[The Homelessness Monitor: England 2021](#) notes that "the pandemic has further exposed England's severe shortage of affordable homes." The authors are calling for, amongst other things, "a large expansion of total and social housing supply" to reduce homelessness.

The Women and Equalities Committee (December 2020) called on the Government to "[produce a strategy to reduce overcrowding due to its poor health impacts](#)" by the end of summer 2021. The Government did not accept

this recommendation, [referring instead to work already underway to support those in overcrowded conditions](#).

Legislation to update the statutory standard has not been implemented

Government amendments to the Housing Act 2004 provided for the statutory overcrowding standard to be amended by secondary legislation. The then-Labour Government described the standard as “no longer defensible in a modern society.” However, secondary legislation to update the standard has not been introduced. There is concern that updating the standard in the absence of a significant increase in affordable housing supply could place additional pressure on local housing authorities.

Governments since 2010 have considered and implemented other means to incentivise households to downsize and free up properties for overcrowded households, e.g. the under-occupation deduction from Housing Benefit for working-age claimants in social housing.

1 The statutory overcrowding standard

The statutory overcrowding standard has not been updated since 1935. It is not a generous standard.

There are two standards in Part X of the Housing Act 1985 which are used to assess whether a home is statutorily overcrowded. If either or both standards are breached, a dwelling will be statutorily overcrowded.

When originally introduced in 1935 the standards were viewed as a threshold that could be strengthened:

The standard laid down need not be regarded as the ultimate ideal to which we should work. It is one upon which it is possible to begin to get this reform underway.¹

The statutory overcrowding standard is not generous; relatively few households are assessed as statutorily overcrowded – a point which was recognised in research published by the Office of the Deputy Prime Minister (ODPM) in 2004:

Households that are statutorily overcrowded are so rare that a reliable estimate of numbers cannot be produced at a national (England) level even using data from the Survey of English Housing and the 2001 English House Condition Survey, which are relatively large surveys.²

1.1 The room standard

Section 325 of the Housing Act 1985 provides that there is overcrowding wherever there are so many people in a house that any two or more of those persons, being ten or more years old, and of opposite sexes, not being persons living together as husband and wife, have to sleep in the same room.

For these purposes, children under ten may be disregarded and a room means any room normally used as either a bedroom or a living room. A kitchen can be treated as a living room provided it is big enough to accommodate a bed.

When applying this definition, a local authority looks at how sleeping arrangements within the dwelling could be organised, rather than how they are organised.³ Therefore, a couple, with two children of opposite sexes and

¹ HC Deb 30 January 1935 c364 (Minister for Health, Sir Hilton Young)

² ODPM, Overcrowding in England – The national and regional picture, May 2004, para 7

³ The assessment of overcrowding is usually carried out by an Environmental Health Officer.

aged ten years or more, with two living rooms (e.g. bedrooms), may not be statutorily overcrowded because the couple could occupy separate rooms, with one each of the children (of the appropriate sex).

There is no limit on the number of people of the same sex who can live in the same room under section 325 although there may be a contravention of the space standard (see below).

1.2 The space standard

This standard works by calculating the permitted number of people for a dwelling in one of two ways. The lower number thus calculated is the permitted number for the dwelling.⁴ One test is based on the number of living rooms in the dwelling (disregarding rooms of less than 50 square feet):

- one room = two persons
- two rooms = three persons
- three rooms = five persons
- four rooms = seven and a half persons
- five rooms or more = ten persons plus two for each room in excess of five rooms.

A child below the age of one is disregarded and a child between the age of one and ten counts as a half person.

The other test is based on floor areas of each room size:

- less than 50 square feet = no one
- 50 to less than 70 square feet = half a person
- 70 to less than 90 square feet = one person
- 90 to less than 110 square feet = one and a half persons
- 110 square feet or larger = two persons.

1.3 Enforcement

Breach of the statutory overcrowding standard is a criminal offence. When the standard was originally devised it was aimed at dealing with overcrowded conditions in the private rented sector before the Second World War.

Local authorities have the power to act against landlords of overcrowded properties on a tenant's behalf. However, where a statutorily overcrowded household lives in council housing, the local authority landlord cannot take

⁴ Section 326 Housing Act 1985

legal action without the express consent of the Attorney General. Shelter has observed that the Attorney General has never agreed to let a case of overcrowding by a local authority proceed to court.⁵

Local authorities have also failed to use their powers under section 334 of the Housing Act 1985 to prepare and submit a report on the extent of overcrowding in their areas, nor have Governments used their powers to direct that such a report should be prepared.⁶

⁵ Shelter's briefing on The Housing (Overcrowding) Bill, January 2003

⁶ HC Deb 19 December 2002 c956-7W

2 The extent and impact of overcrowding

2.1 Extent

Official statistics on the number of statutorily overcrowded households are not routinely collected. A one-off estimate made in 2003 concluded that there were around 20,000 statutorily overcrowded households in England.⁷

The English Housing Survey (EHS) produces an annual estimate of overcrowding based on the number of households living in properties that are one or more bedrooms below the 'bedroom standard'. This standard, which differs considerably from the statutory room/space standards, has been used to measure overcrowding since the 1960s.⁸

The 2011 Census also collected occupancy ratings based on rooms and bedrooms.

Overcrowding in owned and rented homes

Recent estimates of overcrowding and under-occupation based on the bedroom standard are available from the 2019/20 edition of the EHS. Overcrowded households have fewer bedrooms than the bedroom standard indicates they need, while under-occupying households have more.

The EHS estimates are three-year averages of survey data as single-year estimates are not sufficiently reliable. An average of **829,000 households** – or **3.5% of all households** – lived in overcrowded conditions in the period between 2017/18 and 2019/20.⁹

As the chart below shows, overcrowding is more common in the social and private rented sectors and has risen in both. Over the three years to March 2020, an average of 8.7% of all social-renting households were overcrowded

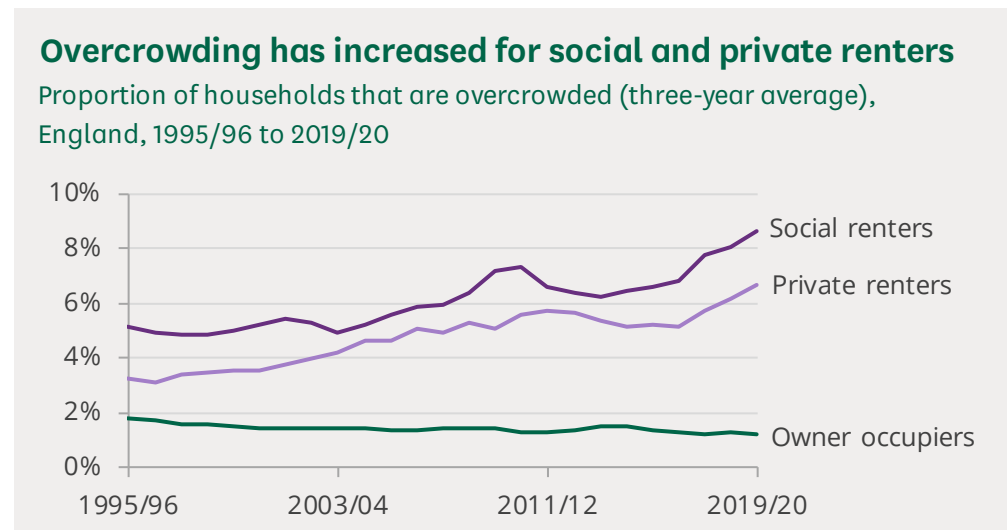
⁷ HC Deb 6 November 2006 c885W

⁸ The survey uses this standard as an indicator of occupation density. A standard number of bedrooms is allocated to each household in accordance with its age/sex/marital status composition and the relationship of the members to one another. A separate bedroom is allocated to each married or cohabiting couple, any other person aged 21 or over, each pair of adolescents aged 10-20 of the same sex, and each pair of children under 10. Any unpaired person aged 10-20 is paired, if possible, with a child under 10 of the same sex, or, if that is not possible, he or she is given a separate bedroom, as is any unpaired child under 10. This standard is then compared with the actual number of bedrooms available for the sole use of the household and differences are tabulated. Bedrooms converted to other uses are not counted as available unless they have been denoted as bedrooms by the informants; bedrooms not actually in use are counted unless uninhabitable.

⁹ MHCLG, [English Housing Survey 2019 to 2020: headline report](#), Annex Table 1.24

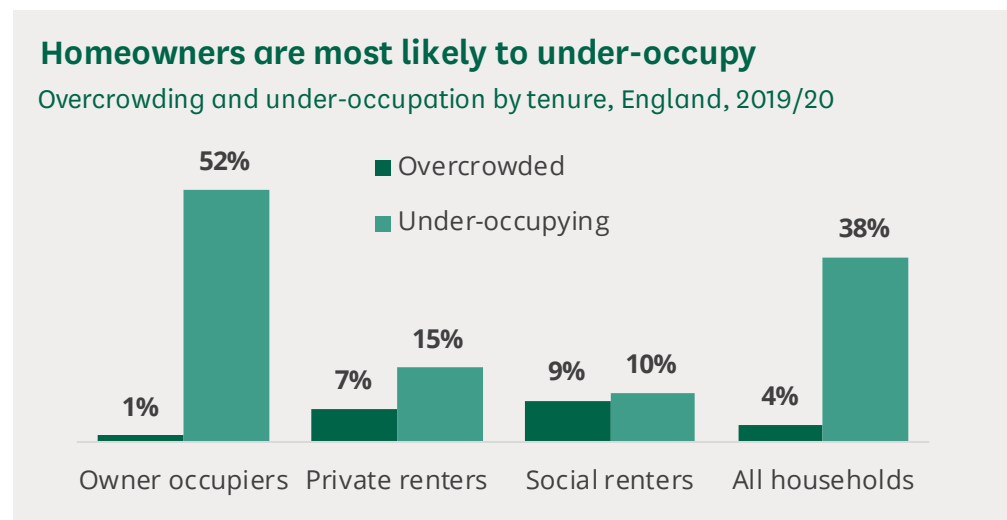
(344,000 households). 6.7% of all private-renting households (302,000 households) were overcrowded in the same period, compared with 1.2% of owner-occupying households (183,000 households).

Overcrowding in rented accommodation started to rise in the late 1990s and early 2000s, before dropping off somewhat in the early 2010s. Recent years have seen a further increase in overcrowding. Rates of overcrowding in the social and private rented sectors have risen to the highest levels seen since data collection began.



Source: MHCLG, [English Housing Survey 2019-2020: Headline report](#), Annex Table 1.24

Households with more bedrooms than they need, according to the bedroom standard, are said to be under-occupying. As the chart below shows, under-occupation is more common amongst households that own their home: 52% were under-occupying over the three years to March 2020, compared with 15% of private renters and 10% of social renters.



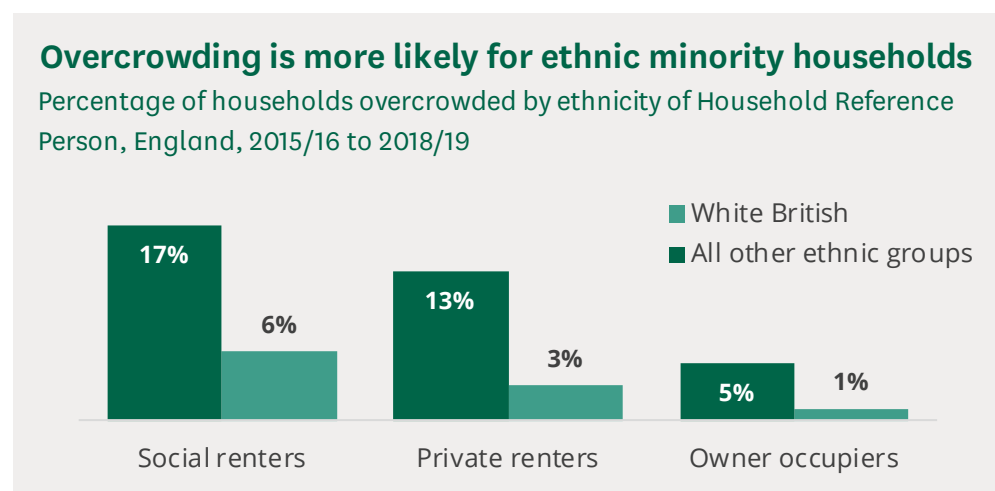
Source: MHCLG, [English Housing Survey 2019-2020: Headline report](#), Annex Table 1.24 and 1.25

Overcrowding and ethnicity

The EHS was also used to analyse overcrowding by ethnicity as part of the Government's Race Disparity Audit, launched in October 2017. The housing section of the [Ethnicity Facts and Figures](#) website published by the Cabinet Office includes [overcrowding figures](#) for the three year period to March 2019.

The analysis looks at ethnicity and socio-economic group, income, region and tenure. Households from ethnic minority groups were more likely to be overcrowded than White British households...

- ...in all tenure groups (see chart below).
- ...in all socio-economic groups, particularly amongst those in intermediate occupations (2% of White British households versus 12% of other ethnic groups) and routine/manual occupations (3% of White British households versus 14% of others).
- ...in almost every region. The difference was greatest in London (3% of White British households compared to 13% of other ethnic groups) and the North West (1% of White British households compared with 11% of other ethnic groups).
- ...in all age groups, with the biggest differences in households led by people aged 45-54.
- ...in all income bands, although the gap was smaller in lower-income groups.¹⁰



Source: UK Government, [Ethnicity Facts & Figures: Overcrowded households](#), 9 September 2020

Note: The Household Reference Person is the person responsible for the household's accommodation, or the highest earner in cases of joint tenancies.

¹⁰ UK Government, [Ethnicity facts and figures, Overcrowded households](#), 14 May 2019

There are substantial differences in levels of overcrowding between different ethnic groups. The table below shows the rate of overcrowding in individual ethnic groups. Overcrowding was more common in almost all ethnic minority groups compared with White British households. The ethnic groups most likely to experience overcrowding were Bangladeshi households (24%), Pakistani households (18%), and Black African households (16%).

Household overcrowding by ethnicity

Percentage of households overcrowded by ethnicity of Household Reference Person, 2015/16 to 2018/19

Asian		White	
Bangladeshi	24%	White Irish	4%
Pakistani	18%	White British	2%
Indian	7%	White Gypsy/Traveller	..
Chinese	4%	White: other	9%
Asian: other	10%		
Black		Other ethnicities	
Black African	16%	Arab	10%
Black Caribbean	7%	Any other	0%
Black: other	3%		
Mixed or Multiple ethnicities		England average	
White/Black African	14%	All ethnic groups	3%
White/Black Caribbean	8%		
White/Asian	4%		
Mixed or multiple: other	8%		

Source: UK Government, [Ethnicity Facts & Figures: Overcrowded households](#), 9 September 2020

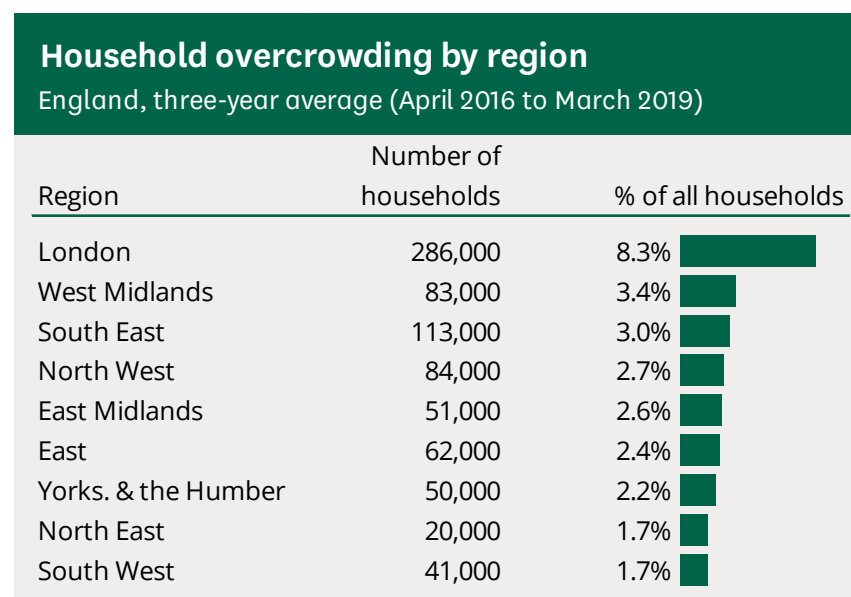
Notes: The Household Reference Person is the person responsible for the household's accommodation, or the highest earner in cases of joint tenancies.

.. indicates a reliable estimate could not be produced.

Overcrowding by region

The table below shows the number and proportion of households in each region that are overcrowded. Figures are averages for the three-year period from 2015/16 to 2018/19. The rate of overcrowding is highest in London, where 8% of all households are overcrowded (286,000 households). This is considerably higher than the average in other regions, which ranges from around 2-3%.

However, regional analysis can hide substantial differences between small areas. The most recent available data for exploring overcrowding at local level is from the 2011 Census and is discussed in the next section.



Source: English Housing Survey: Household datasets for 2015/16, 2016/17 and 2018/19. UK Data Service.

Notes: Figures are the average of each of the three financial years listed above, and are rounded to the nearest thousand.

2011 Census data

The 2011 Census collected occupancy ratings for bedrooms using the same bedroom standard as the EHS. Analysis by the Office for National Statistics (ONS) found that 1.1 million households were overcrowded (a rate of 4.5%), of which 68% contained dependent children.¹¹ The full report, [Overcrowding and under-occupation in England and Wales](#), can be accessed online.

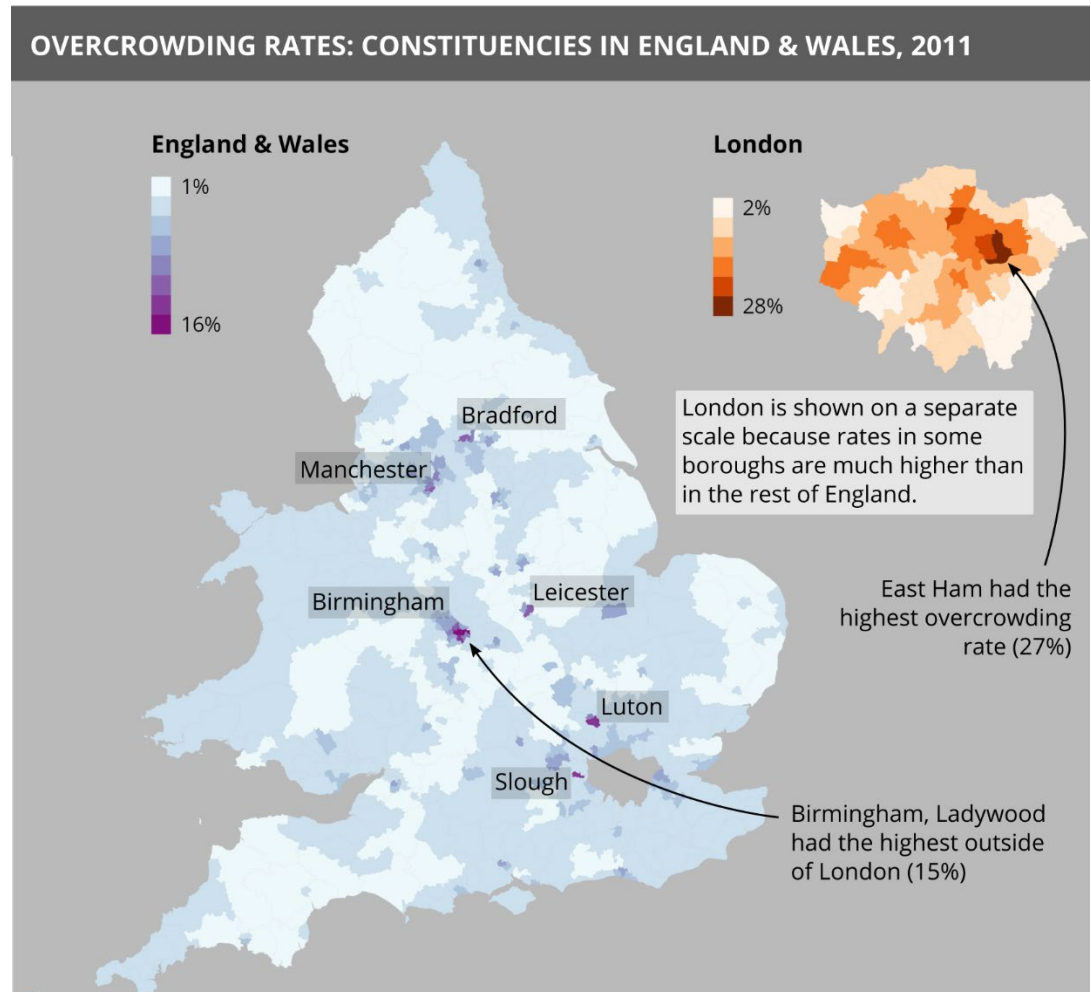
The 2011 Census is the most recent source of local-level data on overcrowding, including data for parliamentary constituencies. The map below shows overcrowding in constituencies in England and Wales. The constituencies with the 14 highest rates of household overcrowding were all in London, with rates highest in East Ham (27%), West Ham (24%) and Tottenham (21%). The highest rates of overcrowding outside of London were in Birmingham Ladywood (15%), Birmingham Hodge Hill (15%) and Slough (13%).

Full data on overcrowding by constituency is available for download from the [landing page of this briefing paper](#) on the Commons Library website.¹²

¹¹ ONS, [Census suggests 1.1 million households in England and Wales were overcrowded](#), 17 April 2014

¹² <https://commonslibrary.parliament.uk/research-briefings/sn01013>

You can download the constituency data used in this map from the [landing page for this briefing paper](#).



Source: 2011 Census, Table QS412EW

Constituency data for Scotland and Northern Ireland is not included here because the Census in those countries did not measure overcrowding using the bedroom standard. Statistics on overcrowding in Scotland using the 'room standard' occupancy rating (which assesses overcrowding based on the number of rooms available, rather than bedrooms) can be accessed from [Scotland's Census website](#). The same measure for some local geographies in Northern Ireland can be accessed from the [Northern Ireland Neighbourhood Information Service](#).

2.2

Evidence of impact

The link between housing and health outcomes is well documented; poor quality housing can have a detrimental effect on household members' physical and mental health.

In May 2004, the Labour Government published [The Impact of Overcrowding on Health and Education: A Review of the Evidence and Literature](#).

The Parliamentary Office of Science & Technology (POST) published a [POSTnote on health in private rented housing](#) (2018) which summarised evidence on the health effects of overcrowding and lack of space:

A 2005 survey by Shelter¹³ showed that most families living in overcrowded homes said their living conditions affected their mental health, stress, privacy and sleep quality. Concerns about children's physical health, as well as their ability to play and study, were frequently raised. The Housing Health and Safety Rating System¹⁴ also refers to the increased risk, from overcrowding and lack of space, of accidents, infectious diseases, condensation and mould. Living in overcrowded housing negatively affects children, including being associated with respiratory issues.¹⁵

[The homeless monitor: England 2018](#) (Crisis) referred to the “persistent experience” of overcrowding for certain households:

Overcrowding can be quite a persistent experience for the households affected. As reported previously in the Monitor, analysis of the longitudinal surveys shows that a majority of overcrowded households in a particular year had been overcrowded the previous year, with many crowded for at least two years. Econometric modelling of overcrowding showed that this was clearly related to housing market conditions, employment, and poverty as well as demographic factors.¹⁶

In 2019, the National Housing Federation (NHF), the representative body of housing associations, commissioned ComRes to conduct a survey of households living in overcrowded homes which focused on the impact of overcrowding on their lives. The sample size was small at 102 so the results should be treated as indicative. The findings reinforced those of earlier surveys – the NHF found:

- In just under half (46%) of overcrowded homes, children are sharing a bedroom with an adult.
- In more than a quarter (27%) of overcrowded homes, children are having to share a bed with someone else.
- In more than a quarter (26%) of overcrowded homes, adults always or quite often have to sleep in places such as a living room, bathroom, corridor or kitchen due to overcrowding.

¹³ [Full house? How Overcrowded Housing Affects Families](#), Shelter, 2005

¹⁴ The Housing Health and Safety Rating System is a tool used by environmental health officers to assess the risk posed by a hazard to health and safety. Overcrowding in the HHSRS is discussed in sections 4-6 of this briefing. See Commons Library briefing [The Housing Health and Safety Rating System \(HHSRS\)](#) for more information.

¹⁵ See POSTnote PN0573 for full references.

¹⁶ Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S., Watts, B. & Wood, J. (2018) [The Homelessness Monitor: England 2018](#), London: Crisis, p75.

- In more than half (51%) of overcrowded families, parents worry that their children don't want to come home because of how crowded it is.
- In more than half (55%) of overcrowded homes, children struggle to do their homework because of the lack of space.
- 45% of overcrowded families argue a lot because their home is crowded.
- 87% of overcrowded families have had their health negatively affected by overcrowding.
- 85% of overcrowded families have had their mental health negatively affected by overcrowding.
- Adults in 81% of overcrowded families have had their personal relationships negatively affected by overcrowding.
- Almost two thirds (64%) of parents in overcrowded homes worry their children are too embarrassed to bring friends home.
- More than half (58%) of parents in overcrowded homes worry their children are getting into trouble more.¹⁷

The coronavirus pandemic

The coronavirus (Covid-19) pandemic has highlighted and intensified existing housing problems. Reports by The Health Foundation¹⁸ and The King's Fund, in partnership with the Centre for Ageing Better,¹⁹ identified an increased risk of Covid-19 transmission in overcrowded housing.

Overcrowding makes it harder to self-isolate and shield from Covid-19 and, it is suggested, may have contributed to higher death rates. Analysis carried out by Inside Housing in May 2020 found a correlation between Covid-19 death rates and the level of overcrowding within local authorities in England.²⁰

A [Public Health England review](#) of the impact of Covid-19 on BAME communities identified poor housing conditions and housing composition as contributors to the increased acquisition and transmission of coronavirus within these groups.²¹

The Covid-19 lockdown restrictions meant that many people had to spend more time at home in overcrowded conditions. A [survey commissioned by the National Housing Federation](#) found that nearly 20% of respondents had experienced mental or physical health problems because of the lack of space in their home during lockdown.²²

¹⁷ NHF Briefing, [Overcrowding in England](#), June 2019

¹⁸ [Better housing is crucial for our health and the COVID-19 recovery](#), The Health Foundation, December 2020

¹⁹ [Homes, Health and COVID-19](#), Centre for Ageing Better, September 2020

²⁰ The housing pandemic: four graphs showing the link between COVID-19 deaths and the housing crisis, Inside Housing, 29 May 2020 [subscription required]

²¹ [COVID-19: understanding the impact on BAME communities](#), Public Health England, 16 June 2020

²² [Poor housing causing health problems for nearly a third of Brits during lockdown](#), NHF, 1 July 2020

The Women and Equalities Select Committee called on the Government to “produce a strategy to reduce overcrowding due to its poor health impacts” by the end of summer 2021.²³ The Government did not accept this recommendation (see section 5.5 for more information on the Government response).²⁴

Stephen Timms led a Westminster Hall debate on [Household Overcrowding: Covid-19](#) on 10 March 2021.²⁵

²³ Women and Equalities Select Committee, [Unequal impact? Coronavirus and BAME people](#), 15 December 2020, HC 384 2019-20, para 115

²⁴ [Unequal Impact? Coronavirus and BAME People: Government Response to the Committee’s Third Report](#), 5 March 2021, HC 1286 2019-21, pp13-14

²⁵ [HC Deb 10 March 2021 c183WH](#)

3

Overcrowded households and re-housing

Even if a household is statutorily overcrowded, this will not necessarily trigger a rehousing duty on the part of the local authority.

A household that is statutorily overcrowded will have this considered if they apply for assistance from the local housing authority, but statutory overcrowding does not give rise to an automatic right to rehousing. The law which applies in these circumstances was summarised in response to a PQ in 2003:

Ms Oona King: To ask the Deputy Prime Minister what obligations a local housing authority has to a household deemed to be statutorily overcrowded.

Keith Hill: Under section 167 of the Housing Act 1996, a local housing authority is required to have an allocation scheme for determining priorities in the allocation of housing accommodation. That scheme must ensure that reasonable preference is given to: "people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions".²⁶

Local authorities' housing allocation schemes are often more generous than the statutory overcrowding provisions set out in section 1 of this paper, i.e. a family may be recognised as living in overcrowded conditions according to an authority's policy but may not be statutorily overcrowded.

New statutory guidance, to which authorities must have regard when exercising their housing allocation functions under Part 6 of the Housing Act 1996 (as amended), was issued by The Department for Communities and Local Government (DCLG, now MHCLG) in 2012 and updated in January 2021.²⁷ The Guidance, [Allocation of accommodation: Guidance for local housing authorities in England](#), recommends that authorities use the bedroom standard when deciding whether or not households are overcrowded for the purposes of assessing housing need:

The Secretary of State takes the view that the bedroom standard is an appropriate measure of overcrowding for allocation purposes, and recommends that all housing authorities should adopt this as a minimum. The bedroom standard allocates a separate bedroom to each:

²⁶ HC Deb 18 November 2003 c807W

²⁷ The Department was renamed the Ministry of Housing, Communities and Local Government (MHCLG) in January 2018.

- married or cohabiting couple
- adult aged 21 years or more
- pair of adolescents aged 10-20 years of the same sex
- pair of children aged under 10 years regardless of sex²⁸

Even if a household is overcrowded according to the bedroom standard, this will not give rise to an automatic duty on the local authority to provide the household with larger accommodation.

The statutory guidance provides that households within the reasonable preference categories, which includes those in overcrowded or insanitary housing, may attract additional preference for a housing allocation if they have “urgent housing needs”. Examples include “families in severe overcrowding which poses a serious health hazard”.²⁹

Measures in the Localism Act 2011 gave local authorities additional freedom over their housing allocation policies (see section 7 of this briefing paper).

Statutory overcrowding will also be considered if a household applies to a local authority for housing assistance under the homelessness provisions of the Housing Act 1996 (as amended):

Where a person applies to a local housing authority as homeless, the authority must decide whether or not he is homeless under section 175 of the Housing Act 1996. In reaching their decision, the local housing authority must not treat the applicant as having accommodation (if he does) unless it is accommodation which it would be reasonable for him to continue to occupy. Where statutory overcrowding exists, it will be a relevant consideration in reaching this decision, but under section 177(2) the local housing authority may also have regard to the general circumstances prevailing in relation to housing in the district.³⁰

²⁸ [Allocation of accommodation: Guidance for local housing authorities in England](#), MHCLG, 29 January 2021, para 4.8

²⁹ *Ibid.*, para 4.13

³⁰ HC Deb 18 November 2003 c807W

4 Attempts to update the statutory standard

In July 2001, Karen Buck moved an amendment to the Homelessness Bill which would have required local authorities to treat overcrowded households as automatically homeless. This amendment was not accepted but on 15 November 2001, the then-Minister for Housing, Sally Keeble, said the Government was reviewing options for updating the overcrowding standard.³¹ The question of modernising the statutory overcrowding standard is a recurring theme.

4.1 The Housing (Overcrowding) Bill 2003

In January 2003, Andy Love MP introduced a Ten-Minute Rule Bill, The Housing (Overcrowding) Bill, to replace the room standard and the space standard in the 1985 Act with a new 'bedroom standard' modelled on that used in the English Housing Survey:

Rooms available as living rooms or kitchens would not count. Any single person aged 21 years or more would be allocated a bedroom, and young people aged between 10 and 20 would be allocated a bedroom together only if they are of the same sex. Two young people under the age of 10 of different sexes could be paired in the same room. The new bedroom standard would take account of the changing nature of family life, recognising the needs of adults, children and infants alike by identifying a suitable number of bedrooms for their use.

The current space standard is based on the number of people who may sleep in a dwelling of a particular size. Children are partially or totally excluded from the count. As a result, four children under the age of 10 could share a room without statutory overcrowding occurring. Under my Bill, all children would be counted in deciding whether overcrowding occurred. That would ensure proper recognition of the impact that they have, in the same way as adults, on overcrowding.³²

The Bill would also have placed a duty on local authorities to undertake periodic surveys of overcrowding in their areas and to estimate the number of

³¹ HC Deb 15 November 2001 c315WH

³² HC Deb 22 January 2003 cc323-5

dwellings necessary to abate overcrowding. The Bill, which did not proceed, attracted cross-party support and was backed by Shelter.³³

4.2 The draft Housing Bill 2003

In December 2002, when questioned about progress on reviewing the overcrowding standard following Sally Keeble's announcement of November 2001, the Labour Government referred to the possibility of tackling overcrowding through a new housing fitness standard:

We are considering whether overcrowding is best tackled through a modern set of standards - updating the present legislative framework or through the new Housing Health and Safety Rating System (HHSRS), which we hope to introduce as a replacement for the housing fitness standard when parliamentary time allows. Our consideration of options will take account of our understanding of the underlying causes of household overcrowding.³⁴

The Housing Bill – consultation on draft legislation, was published in March 2003 and was subject to pre-legislative scrutiny by the ODPM: Housing, Planning, Local Government and the Regions Select Committee.³⁵ The draft Bill did not contain provisions to amend the overcrowding standard, but the Committee received evidence from housing bodies arguing for the inclusion of such measures in the final version of the Bill. When giving oral evidence to the Committee, the Shelter representative said problems of overcrowding outside of houses in multiple occupation would not be identified by the new Housing Health and Safety Rating System:

The housing health and safety rating system will only help in cases where overcrowding is so severe that it causes a serious hazard to the occupants. That is not the case with much overcrowding ... If you took, for example, a family which is so overcrowded that the children have nowhere to do their homework or are forced to play out on the streets because there is nowhere to play in the flat, that is not in itself going to create a serious hazard. It is going to create huge emotional and developmental difficulties for those children and it is going to militate against other government objectives such as trying to improve basic standards of education. What we are looking for is another mechanism to pick up that sort of impact of overcrowding which lies short of a serious, immediate hazard.³⁶

³³ 'Bill would spell end of Victorian overcrowding,' Inside Housing, 24 January 2003

³⁴ HC Deb 16 December 2002 c612W

³⁵ Office of the Deputy Prime Minister, [Housing Bill: consultation on draft legislation](#), Cm 5793, 31 March 2003

³⁶ ODPM: Housing, Planning, Local Government and the Regions Committee, [The Draft Housing Bill](#), July 2003, HC 751-I 2002-03, para 32

The ODPM Committee recommended that the Bill be used to modernise the statutory overcrowding standard.³⁷

Responding to a Westminster Hall debate on overcrowding in October 2003, Yvette Cooper, then-Parliamentary Under-Secretary of State at the ODPM, expressed “some sympathy” with points raised during the debate and explained the Labour Government’s concerns over modernising the standard:

We are investing resources in the London housing problem as fast as we are able. Changing the overcrowding standards will not create any extra homes or expand the housing supply any faster. The concern is that to set statutory definitions at a particular level would be to divert resources away from addressing the issue of bed and breakfasts, the homelessness problem and the wider problem of decent homes. As we invest in the London housing market, we need to ensure that, as well as tackling problems surrounding the bed and breakfasts and homelessness, we tackle overcrowding problems. We need to consider further how we can ensure that overcrowding is addressed alongside bed and breakfasts and homelessness.

...We recognise the strengths of hon. Members' arguments. As we try to expand the affordable housing supply in London and the south-east, we must recognise the needs of all the different groups. We will be having further discussions about these issues over the next few months. Our approach has been to say that all the issues should be addressed together as part of local homelessness and housing strategies. We need to consider further how overcrowding is addressed as part of those strategies. Certainly, putting those strategies on a statutory footing will strengthen the case for that.

We are also considering the matter as part of the housing health and safety rating system (HHSRS). I recognise that hon. Members have raised concerns about that, but it is important to bring overcrowding into the health and safety system in a stronger way than before. The guidance to local authorities will make it clear that, for example, GP or hospital referrals will be relevant to the hazard assessment.³⁸

Subsequently, the Labour Government rejected the ODPM Committee’s recommendation on using the Housing Bill to update the statutory crowding standard:

The Bill enables overcrowding to be dealt with through HHSRS, with the statutory standards remaining in place as a fall-back. The Government takes the view that to raise the overcrowding standards in isolation from other factors would be essentially symbolic and would lead to increased demand for housing, to the detriment of other people whose living conditions may be worse; and would make it more difficult for authorities to juggle their priorities. The

³⁷ Ibid.

³⁸ HC Deb 29 October 2003 c128WH

Government believes that the better approach to the problem of overcrowding is to improve housing supply through the substantial resources which are being provided, rather than try to tackle a single symptom of housing pressure.³⁹

4.3

The Housing Act 2004

Background

The Housing Bill (Bill 11 of 2003-04) was presented on 8 December 2003. The Bill did not, initially, contain measures to amend the statutory overcrowding standard. During the Commons Committee stage Karen Buck moved an amendment to replace the definition of overcrowding in section 324 of the Housing Act 1985 with one that would include a 'bedroom standard' in addition to the existing space standard, and which would have abolished the room standard.⁴⁰ Responding, the then-Minister for Housing, Keith Hill, said he understood the sentiments behind the amendment and went on to explain the Government's concerns:

There are cases of parents sleeping apart, and sometimes of living rooms and other parts of the household being used as bedrooms. On occasion, even the kitchen may be used as a place to sleep. That is unacceptable and we need to do something about that, but there are really difficult issues of prioritisation and resources. I want to refer to them, at least briefly.

[...]

I have to make it clear that the Government do not defend the current overcrowding standards to the letter; those standards are obviously out of date. However, we need to consider what purpose would be served by raising the standards right now, and what the effect would be. Do we want an effect, or are we simply making a symbolic gesture? The issue is one of resources and priorities. Local authorities already have a pretty good idea of the degree of overcrowding in their area, but they have to balance the needs of overcrowded people against those of the homeless and those in poor temporary accommodation whose needs are more urgent. If we raise the standards, we sharpen the issue of priorities for local authorities. Even with current resources, the number of more affordable lettings means that local authorities have to tackle the worst cases first.⁴¹

³⁹ The Draft Housing Bill – Government Response Paper, Cm 2000, November 2003, para 15

⁴⁰ SC(E) 20 January 2004 cc13-16

⁴¹ SC(E) 20 January 2004 cc26-27

He went on to explain how overcrowding would be covered by the Housing Health and Safety Rating System (HHSRS):⁴²

This debate takes place specifically in the context of the health and safety rating system. As has been pointed out, overcrowding may be severe enough to be hazardous in health and safety terms. That is where the health and safety rating system comes in. It will not solve the problem, but it will bring overcrowding into the mainstream of matters that authorities need to consider when looking at the condition of properties and the hazards that they contain. The housing health and safety rating system will give authorities a tool to help them judge circumstances and say, "This person's RSL flat is more damaging to their health than another's bed and breakfast".⁴³

Information on how the Labour Government envisaged the HHSRS would address overcrowded housing can be found in paragraphs 2.12-2.16 of [Tackling Overcrowding in England: a discussion paper](#).

Keith Hill gave a commitment to “consider whether it is possible to devise an approach to overcrowding that allows some incremental improvement over a period”, he said he would undertake to pursue this in time for it to be considered in Committee.⁴⁴ Karen Buck withdrew her amendment.

A new section on overcrowding

During the Report Stage of the Bill in the Commons the Labour Government tabled an amendment on overcrowding:

- (1) The appropriate national authority may by order make such provision as it considers appropriate for and in connection with—
- a) determining whether a dwelling is overcrowded for the purposes of Part 10 of the Housing Act 1985 (c. 68) (overcrowding);
 - b) introducing for the purposes of sections 123 to 128 of this Act a concept of overcrowding similar to that applying for the purposes of Part 10 (and accordingly removing the discretion of local housing authorities to decide particular issues arising under those sections);
 - c) securing that overcrowding in premises to which sections 123 to 128 of this Act would otherwise apply, or any description of such premises, is regulated only by provisions of Part 10.

⁴² The HHSRS was introduced by Part 1 of the 2004 Act.

⁴³ SC(E) 20 January 2004 cc28-29

⁴⁴ SC(E) 20 January 2004 c29

(2) An order under this section may, in particular, make provision for regulating the making by local housing authorities of determinations as to whether premises are overcrowded, including provision prescribing—

- d) factors that must be taken into account by such authorities when making such determinations;
- e) the procedure that is to be followed by them in connection with making such determinations.

(3) An order under this section may modify any enactment (including this Act).

(4) In this section—

- f) any reference to Part 10 of the Housing Act 1985 (c. 68) includes a reference to Part 10 as modified by an order under this section; and
- g) ("enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

Keith Hill explained that this would allow the universal statutory overcrowding standards in Part X of the Housing Act 1985 to be amended by secondary legislation.⁴⁵ The overcrowding provisions are contained in section 216 of the Housing Act 2004. **The necessary secondary legislation has not been introduced.**

4.4

The Labour Government's action plan (December 2007 - 2010)

In July 2006 the Department for Communities and Local Government, which took over responsibility for housing matters on the disbandment of the ODPM in early 2006, published [Tackling Overcrowding in England: a discussion paper](#). In this document DCLG posed questions about the best way to tackle overcrowding while recognising that "there is no point raising aspirations we cannot meet."⁴⁶ The aim of the discussion paper was to generate debate and stimulate ideas to help the Department "shape a realistic set of proposals for the then forthcoming Comprehensive Spending Review."⁴⁷ The suggested options for a new definition of overcrowding are reproduced below:

- a) We might adopt and move to the bedroom standard. Such a move might be implemented in one or more stages over a period of time.

⁴⁵ HC Deb 11 April 2004 c275

⁴⁶ [Tackling Overcrowding in England: a discussion paper](#), 2006, para 1.8

⁴⁷ *Ibid.*, para 1.9

For example, a first stage in improving the standard might be to remove the worst excesses immediately by ceasing to designate kitchens and bathrooms as sleeping areas, not requiring couples to sleep separately and lowering the age at which children need to be split by gender. We might then move to a second stage by bringing the rules on children in line with the bedroom standard and designating only bedrooms for sleeping rather than living rooms, with a view to implementing the full standard. Other timescales and mixes of options could be considered.

b) We could align the definition of overcrowding with the ideal set out in the Housing Health and Safety Rating System Operating Guidance.

c) We could create a new definition of overcrowding, although this would need wide discussion and consultation.⁴⁸

One of the issues raised by amending the statutory overcrowding definition includes the that this might have on local authorities' allocation policies. The discussion paper suggested an amendment to the requirement to give overcrowded households 'reasonable preference' in allocation schemes might be necessary to help authorities to balance competing demands from households in housing need.⁴⁹

On 12 December 2007 the Labour Government published [Tackling Overcrowding in England: An Action Plan](#). In this document, the Government said it was committed to updating the overcrowding standard to the bedroom standard.⁵⁰

Most respondents favoured an incremental move to the bedroom standard. Initially at least, the Labour Government said it did not intend to implement this standard across the board. The standard was initially piloted in 38 pathfinder authorities, including those with the highest levels of overcrowding and which comprised the London authorities together with Birmingham, Bradford, Leicester, Liverpool and Manchester.⁵¹ Subsequently, additional authorities were added to the pilot. The work of the pathfinders was to be used to assess the timeframe for implementation of a new statutory standard across the country.

When questioned on the timescale for introducing secondary legislation to update the statutory overcrowding standard during the committee stages of the Housing and Regeneration Bill in January 2008, the then-Parliamentary Under-Secretary of State at DCLG, Iain Wright, said that evidence from the

⁴⁸ Ibid., para 3.4

⁴⁹ Ibid., para 3.5

⁵⁰ See footnote 8 for an explanation of the bedroom standard.

⁵¹ It was estimated that these 38 authorities accounted for 60% of overcrowded households in the social rented sector at that time.

pathfinders would have to be considered - this evidence was expected around 2009:

Once we have that evidence, we will be able to devise a phased and manageable move to a new national standard with authorities well positioned to manage a new definition positively and proactively. I do not want to box myself in, but I hope that that will be in 2009.⁵²

In November 2009, Ian Austin gave the following response to a PQ concerning when an update to the statutory overcrowding standard might be forthcoming:

Prior to making any change to the statutory standards we want to establish the impact, timing and cost of undertaking a phased and manageable move to a new statutory standard. Evidence is being generated through the 54 overcrowding pathfinders.⁵³

Also, in November 2009, Ian Austin said that since April 2008 the 54 authorities in the pathfinder programme had re-housed around 30,000 overcrowded households.⁵⁴ Funding for the pathfinders beyond 2011 was to be considered as part of the next spending review.⁵⁵

In addition to setting out proposed amendments to the statutory overcrowding standard the [Action Plan](#) listed a series of other initiatives to reduce severe overcrowding.⁵⁶

4.5 The Housing and Regeneration Act 2008

Further attempts were made to update the statutory overcrowding standard during the Commons committee stages of the Housing and Regeneration Bill.⁵⁷ Responding, Iain Wright pointed out that the Government already had the power to amend the standard through secondary legislation – he emphasised that the real need was to increase the overall supply of housing:

Housing is sorely needed in some parts of the country to tackle the overcrowding problem. We have already announced the target of 240,000 additional homes a year by 2016, with the delivery of 2 million homes by that date and 3 million by 2020. In order to achieve that we are providing unprecedented levels of investment.⁵⁸

⁵² PBC 24 January 2008 c512

⁵³ HC Deb 26 November 2009 c311W

⁵⁴ HC Deb 25 November 2009 c183W

⁵⁵ HC Deb 26 November 2009 c311W

⁵⁶ DCLG, Tackling Overcrowding in England: An Action Plan, 2007, paras 16-23

⁵⁷ PCB 24 January 2008 cc492-504

⁵⁸ PCB 24 January 2008 c500

Responding to issues raised by the Communities and Local Government Select Committee Report, [The Supply of Rented Housing](#) (May 2008), the Labour Government said that the Homes and Communities Agency (HCA)⁵⁹ would inherit the Housing Corporation's target that 30% of all new social rented homes should be for families (3+ bedrooms) in 2008-09 rising to 33% by 2010-11. The Labour Government brought forward £400 million from the 2010-11 affordable housing budget to deliver an additional 5,500 social rented homes as a response to market pressures. They said they would consider the need for a minimum space standard when reviewing the definition of overcrowding and would "consult on these proposals in due course."⁶⁰

⁵⁹ The HCA was created by the Housing and Regeneration Act 2008 through a merger of the Housing Corporation and English Partnerships. Its role is now performed by Homes England.

⁶⁰ Department for Communities and Local Government, [Government Response to the Communities and Local Government Committee's report: The Supply of Rented Housing](#), Cm 7326, September 2008, p12

5

Policy developments since 2010

The Coalition Government did not extend the previous Government's pathfinders initiative:

Asked by Baroness King of Bow

To ask Her Majesty's Government, further to the Written Answer by Baroness Hanham on 6 July (WA 74), why they have discontinued the Overcrowded Housing Pathfinder Initiative to support local authorities develop innovative approaches to helping families living in overcrowded conditions.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): The pathfinder programme was time-limited and was always scheduled to end in 2010-11.

We are providing £13 million over the next four years (2011-12 to 2015-16) to help local authorities support under-occupying social tenants who wish to move, thus freeing up stock for overcrowded families. These monies are also helping to fund an action team within the Chartered Institute of Housing to work with all social landlords to help them promote moves.

In addition, the reforms to social housing allocations, homelessness and tenure which are being taken forward in the Localism Bill will make it much easier for social landlords to manage their stock to reduce overcrowding.⁶¹

The Coalition Government issued a consultation paper, [Local decisions: a fairer future for social housing](#), on 30 November 2010. Section 7 of the paper said the Government was "seeking views on the reforms needed to enable local authorities and landlords to tackle overcrowding."

The document set out proposals to amend local authorities' powers in relation to the allocation of social housing, including a proposal to enable authorities to offer flexible (fixed-term) tenancies to new tenants. These measures were included in the Localism Act 2011.⁶² The measures were described by the Government as "removing inflexible barriers and equipping

⁶¹ HL Deb 19 July 2011 cc270-1WA

⁶² Library briefing paper [Social housing: flexible and fixed-term tenancies \(England\)](#) provides more information.

local authorities and landlords with the tools they need to support local strategies to reduce overcrowding.”⁶³ Briefly, the measures included:

- removing transferring tenants from the allocation rules to make it easier for landlords to support move requests by people under-occupying properties;
- strengthening “home-swap” provisions to enable overcrowded and under-occupying households to “help each other”;
- reforming the homelessness rules to allow authorities to house homeless households in suitable private sector accommodation;
- retaining the “reasonable preference categories” to ensure “that overcrowded households continue to receive priority;” and
- giving authorities discretion to offer new tenants a flexible tenancy with a minimum fixed-term. Prior to the expiry of the tenancy the landlord would review whether the household still needed the housing or whether they could be expected to find an alternative home.

The consultation document asked for responses to the following questions:

Question 28: What powers do local authorities and landlords need to address overcrowding?

Question 29: Is the framework set out in the 1985 Housing Act fit for purpose? Are any detailed changes needed to the enforcement provisions in the 1985 Act?

Question 30: Should the Housing Health and Safety Rating System provide the foundation for measures to tackle overcrowding across all tenures and landlords?⁶⁴

A summary of responses to the consultation document, together with the Government’s intentions on next steps was published in February 2011, [Local decisions: next steps towards a fairer future for social housing - Summary of responses to consultation](#). Responses on overcrowding were summarised as follows:

Four hundred and six respondents commented on overcrowding. Those who commented on the impacts of overcrowding agreed, in the main, that it was detrimental to the health and well-being of those who experienced it.

A significant number of respondents considered that overcrowding was primarily a result of a lack of supply of large family homes, and that attention should therefore be focused on making better use of

⁶³ DCLG, [Local decisions: a fairer future for social housing](#), November 2010

⁶⁴ Ibid.

existing stock through tackling under-occupation, and on increasing the supply of larger homes.

It is clear from the responses to the consultation that many authorities and providers believed that tackling overcrowding is a complex issue and that careful consideration needs to be given to the best mechanisms to address it.⁶⁵

On the three specific questions concerning overcrowding, most respondents indicated that the key to tackling the issue would be dealing with under-occupation through allocation policies and incentives. Tenant respondents observed the need for sensitivity around the circumstances of under-occupiers. Most respondents who mentioned existing powers believed those powers were sufficient to deal with overcrowding.

The overwhelming majority of respondents said Part X of the Housing Act 1985 was not fit for purpose, commenting that it failed to reflect what was acceptable for modern living standards and needed to be reviewed. Some suggested a need for more clarity and consistency around the various definitions of overcrowding and use of the Housing Health and Safety Rating System and statutory standards.⁶⁶ The Government's approach to tackling overcrowding was set out in section 8 of the paper:

We believe that our reforms to tenure, allocations and homelessness will go a long way to help local authorities and landlords to tackle overcrowding. The changes which we are introducing through the Localism Bill will contribute to the better use of our social housing stock and contribute to the reduction of overcrowding.

In January 2011, we announced an additional £13m to assist the 50 authorities with most social housing to tackle underoccupation. At the same time we announced the intention to establish a new national team, based at the Chartered Institute of Housing, available to offer support to councils looking to help tenants downsize.

We will continue work with local authorities, landlords and interested parties to assess the effectiveness of the reforms set out in this paper and to consider the need for new practical approaches to tackling overcrowding.⁶⁷

⁶⁵ DCLG, , [Local decisions: next steps towards a fairer future for social housing - Summary of responses to consultation, February 2011](#)

⁶⁶ Ibid.

⁶⁷ Ibid.

5.1

Housing and Planning Act 2016: proposed amendments

There were further attempts to bring in new provisions on overcrowding aimed particularly at the private rented sector during the Lords stages of the Housing and Planning Bill 2015-16, although these were subsequently withdrawn. Amendment 84A was moved by Baroness Gardner of Parkes:

Overcrowding in shared residential buildings

(1) Local authorities may set limits for the number of residents that may lawfully reside in each rented property in a shared residential building.(2) Local authorities may set limits under subsection (1) for each relevant rented property whenever the contract for renting the property changes at any point after the day on which this section is brought into effect.(3) If a complaint is made to a local authority about overcrowding in a rented property for which a limit has been set under subsection (1), the local authority may investigate whether the limit is being exceeded and, if so, order the landlord of the property to take action to end the overcrowding.(4) Where the local authority orders a landlord to take action under subsection (3), the local authority may charge the landlord a fee to cover the reasonable costs of the investigation and action undertaken by the local authority.⁶⁸

The proposed new clause would have allowed authorities to set occupation limits, investigate complaints and charge reasonable costs for investigation and any required resulting action.⁶⁹

It was argued that new measures were not needed as local authorities already had powers to tackle overcrowding as defined under Part X of the Housing Act 1985. Existing powers include: gaining entry to measure rooms to work out the permitted number of occupants; accessing information about the number of people sleeping in a dwelling; and inspecting, reporting and preparing proposals on overcrowding:

In deciding whether a dwelling is overcrowded, a local authority must apply an objective test and not its own perceptions or those of others. My noble friend's amendment would enable local authorities to set standards in individual cases in addition to the national standards and existing hazard rating systems. This would cause confusion and uncertainty.⁷⁰

⁶⁸ [HL Deb](#), 17 March 2016, c1961

⁶⁹ *Ibid.*, c1963

⁷⁰ *Ibid.*, c1966

In a subsequent session on 20 April 2016, the issue was raised again, with Baroness Gardner of Parkes proposing amendment 98, which covered the same issues as amendment 84A:

But clearly we now need to update the legislation, in particular because, even if the percentage of overcrowded accommodation has stayed reasonably static, the net amount is increasing because the private rented sector is increasing, and as the private rented sector grows, this becomes more of a problem.⁷¹

Baroness Evans of Bowes Park, for the Government, argued the amendments were not necessary:

- Clause 118, dealing with the contravention of an overcrowding notice for an HMO under Section 139 of the Housing Act 2004, would take the level of fine to unlimited, removing the restriction on the fine that may be imposed.
- Under Section 49 of the Housing Act 2004, local authorities can already recover administrative and other expenses incurred by them in making a prohibition order (limiting the number of persons who can occupy a property).
- Through the new civil penalty measures outlined in the Bill, the ability of local authorities to enforce these measures will be strengthened as they will be able to retain penalties of up to £30,000 to use for housing-related activities.⁷²

5.2

Fixed-term council tenancies

In the Summer Budget 2015 the Government announced it would “review the use of lifetime tenancies in social housing to limit their use...and ensure the best use is made of the social housing stock.”⁷³

Amendments to the Housing and Planning Bill 2015-16 were introduced to prevent local authorities in England from offering secure tenancies for life in most circumstances. The Minister noted that social landlords had not taken advantage of discretionary powers introduced by the Localism Act 2011 to offer flexible tenancies with a minimum fixed-term of at least two years, and went on:

...we believe that continuing to offer social tenancies on a lifetime basis is not an efficient use of scarce social housing. The new clauses will significantly improve landlords’ ability to get the best use out of social housing by focusing it on those who need it most for as long as

⁷¹ [HL Deb](#), 20 April 2016, cc633-4

⁷² *Ibid.*, cc636-6

⁷³ Summer Budget 2015, para 1.155

they need it. That will ensure that people who need long-term support are provided with more appropriate tenancies as their needs change over time and will support households to make the transition into home ownership where they can. In future, with limited exceptions, local authority landlords will only be able to grant tenancies with a fixed term of between two and five years, and will be required to use tenancy review points to support tenants' move towards home ownership where appropriate.⁷⁴

On publication of the social housing Green paper on 14 August 2018, [A new deal for social housing](#), the May Government announced **it would not implement these provisions “at this time”**.

5.3 Minimum room sizes for licensed HMOs

In October 2016, then-Housing Minister, Gavin Barwell, announced an intention to amend the House in Multiple Occupation (HMO) regulations to require local housing authorities, when considering HMO licence applications, to disregard rooms of less than a prescribed size from being included as a room suitable for sleeping accommodation.⁷⁵ A consultation paper on this and other proposals, [Houses in multiple occupation and residential property licensing reforms](#), was open until 13 December 2016. The aim of the measure is to reduce overcrowding in smaller HMOs.

The prescribed room size is 6.51 square metres for one person aged over ten years of age and 10.22 square metres for two people aged over ten years.⁷⁶ A room used as sleeping accommodation by one person aged under ten years must not be less than 4.64 square metres.

Since 1 October 2018,⁷⁷ the provision means that where a landlord lets a room in breach of the licence condition, an offence will be committed which renders the landlord liable on conviction to an unlimited fine or financial penalty of up to £30,000.⁷⁸ **The measure applies to new licences issued after 1 October 2018.** The Regulations provided for an 18-month period during which landlords could be given time to comply with a breach:

We will make transitional arrangements, where licensed HMOs do not immediately comply with the maximum occupancy mandatory condition, to enable landlord to regulate the number of occupiers permitted under the licence within a reasonable time allowed by the

⁷⁴ PCB Deb 10 December 2015 (morning) c650

⁷⁵ [New measures tackle overcrowded housing](#), MHCLG, 18 October 2016

⁷⁶ [Licensing of Houses in Multiple Occupation \(Mandatory Conditions of Licences\) \(England\) Regulations 2018](#)

⁷⁷ 1 October 2018 was also the date on which mandatory licensing of HMOs was extended in England to all HMOs with five or more occupants who do not form a single household.

⁷⁸ [Houses in Multiple Occupation and residential property licensing reforms: A consultation paper](#), DCLG, October 2016, p11

local authority, up to a maximum of 18 months from the grant of the licence. During the transitional period, providing the landlord is taking steps to reduce the number of occupiers which exceed the permitted number, no offence of breaching the condition will be committed.⁷⁹

The room sizes are a statutory minimum. **Local housing authorities can use their discretion to set standards based on housing conditions in their areas.**

Concerns were raised about the position of a pregnant woman who gives birth when living in a licensable HMO in a room measuring 6.51 square metres (i.e. suitable for only one person aged over ten years). The statutory overcrowding standard disregards children under one year old. The Government response to the consultation exercise said:

There is no intention to criminalise landlords who do not create overcrowding, or require tenants to be evicted immediately because they have given birth since moving into the HMO. However, overcrowding whether deliberate or accidental cannot go unchecked.

[...]

...where a room becomes unsuitable to be used as sleeping accommodation for the number of occupiers because it does not meet the minimum size requirement in the regulations, the local authority must allow a reasonable period (of up to 18 months) for the overcrowding to be remedied, before it is able to prosecute the landlord for breach of the licence condition.

In the case of a tenant giving birth and the arrival of the child causing a room to be overcrowded, potential remedies could include securing alternative accommodation in the HMO or elsewhere. Alternatively, and if practicable, the overcrowding might be remedied by the enlargement of the room or the provision of an additional room (of not less than 4.64 sqm) for use as sleeping accommodation by the child.⁸⁰

⁷⁹ DCLG, [Houses in Multiple Occupation and residential property management reforms – Government response](#), December 2017

⁸⁰ [Houses in Multiple Occupation and residential property management reforms – Government response](#), DCLG, December 2017

5.4 The Homes (Fitness for Human Habitation) Act 2018

Overcrowding and lack of space might render a property unfit for human habitation.

The [Homes \(Fitness for Human Habitation\) Act 2018](#) (the 2018 Act),⁸¹ which came into force on 20 March 2019, amended the Landlord and Tenant Act 1985 to require landlords in England to ensure their properties, including any common parts of the building, are fit for human habitation at the beginning of the tenancy and throughout. The Act achieves this by implying a covenant to this effect in the tenancy agreement.

Implementation of the 2018 Act was phased in. The Act applied to:

- all new tenancies with a fixed-term of less than seven years that began **on or after 20 March 2019**.
- all tenancies that began as a fixed-term tenancy before 20 March 2019 but became a periodic tenancy **on or after 20 March 2019**.
- And extended to all periodic tenancies in existence on 20 March 2019 **from 20 March 2020**.⁸²

In determining for the purposes of the Act whether a property is unfit for human habitation, regard should be had to its condition in respect of several factors including:

any ‘prescribed hazard’ - defined as any matter or circumstance amounting to a category 1 or 2 hazard under the [Housing Health and Safety Rating System \(HHSRS\)](#).⁸³

The HHSRS includes an assessment of crowding and space:

Includes all the hazards associated with lack of space and crowding. It takes into account the psychological needs for both social interaction/privacy. It also looks at the effects of crowding on space requirements for household activity.

Health effects

Crowding and lack of space has been linked to psychological distress and various mental disorders. It is also linked to increased heart

⁸¹ The House of Commons Library briefing paper CBP08185: [Homes \(Fitness for Human Habitation\) Bill 2017-19](#) provides the background to Karen Buck’s Private Members’ Bill on housing fitness, and explains its provisions and amendments made at Committee Stage.

⁸² Nearly Legal: Housing Law, [Fitness for Habitation – a thumbnail guide](#), Giles Peaker, 21 December 2018

⁸³ Section 10 of the Landlord and Tenant Act 1985 (as amended). The HHSRS recognises [29 ‘matters and circumstances’ that give rise to hazards](#).

rate, increased perspiration, intolerance, inability to concentrate, hygiene risks, accidents and spread of contagious disease.⁸⁴

A property will be unfit for human habitation if it is “so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition”.⁸⁵

Where a landlord lets a property that is not fit for human habitation or fails to maintain it so it ceases to be fit, the tenant has the right to take legal action for breach of contract on grounds that the property is unfit for human habitation. The court can make the landlord carry out repairs or address the health and safety problems and can order compensation to be paid to the tenant.

In October 2018 the May Government [announced](#) a review of the HHSRS.⁸⁶ On 11 July 2019, following a scoping exercise, the Government [confirmed](#) its intention to carry out further work to “make the system easier to understand for landlords and tenants, correct the disconnect between the HHSRS and other legislative standards, and facilitate the effective enforcement of housing standards by local authorities.”⁸⁷

A two-year review of the HHSRS is now underway and is being led by RH Environmental Ltd. Surveys of stakeholders were carried out earlier in 2021.

5.5

Government response to the Women and Equalities Select Committee (March 2021)

As noted in section 2.2, the Government did not accept the Committee’s call for a strategy to be produced to reduce overcrowding by the end of summer 2021. Instead, the Government set out work already underway in this area, some of which has already been referred to in this paper:

The government’s strategy to increase supply and improve affordability is crucial to addressing overcrowding issues. We delivered 244,000 homes in 2019/20—the highest figure for 33 years.

The government is investing over £12bn in affordable housing over 5 years, the largest investment in affordable housing in a decade. This includes the new £11.5bn Affordable Homes Programme, which will provide up to 180,000 new homes across the country, should economic conditions allow. The government has also brought

⁸⁴ [Housing Health and Safety Rating System - Guidance for Landlords and Property Related Professionals](#), DCLG, May 2006, p33

⁸⁵ Section 10(1) of the Landlord and Tenant Act 1985 (as amended)

⁸⁶ [Greater protection for renters thanks to plans to tighten tenant safety](#), MHCLG, 26 October 2018

⁸⁷ [Outcomes of report on Housing Health and Safety Rating System \(HHSRS\) scoping review](#), MHCLG, 11 July 2019

forward proposals to simplify the planning system, make the best use of surplus public sector land, and invest in infrastructure to unlock sites for the supply of new homes.

The government has also taken steps to tackle the issues faced by those living in overcrowded conditions by giving local authorities duties and enforcement powers, introducing the Homes Fitness for Human Habitation Act, providing allocation preferences and additional preferences for social housing where households are overcrowded, clarifying minimum room sizes in houses in multiple occupation (HMOs), introducing a national home swap scheme (HomeSwap Direct) and by providing guidance in line with the latest evidence on COVID-19 to support households.

Alongside this, we have initiated our two-year review of the Housing, Health and Safety Rating system (HHSRS), the tool used to assess hazardous conditions in residential properties. This review will prioritise work around overcrowding and other health related issues including indoor air quality. The government believes the most appropriate course of action is to continue with the comprehensive review that is already underway before embarking on a new review.

The review of the Decent Homes Standard (DHS) announced in the Social Housing White Paper also represents the commitment we have made to drive up standards. MHCLG expects to publish the first part of the review considering the case for change in Autumn 2021.⁸⁸

5.6

Shelter's Living Home Standard 2016

Shelter, in consultation with the public, developed the [Living Home Standard](#) as an understanding of what the British public need in a home. It was described as “the housing equivalent of the Living Wage”. Shelter committed to an annual measure to show how many people live in homes that meet the Standard and to track progress on a national and regional scale.⁸⁹ The 39 statements which make up the Standard are split across five different dimensions: Affordability, Decent conditions, Space, Stability and Neighbourhood. Within each dimension some attributes are classed as essentials, i.e. conditions that every home must meet. Other attributes are classed as ‘tradables’ which are important features but not applicable or essential to everyone.⁹⁰ Space was considered in terms of functional and social requirements:

⁸⁸ [Unequal Impact? Coronavirus and BAME People: Government Response to the Committee's Third Report](#), 5 March 2021, HC 1286 2019-21, pp13-14

⁸⁹ [Living Home Standard](#), Shelter, 2016

⁹⁰ *Ibid.*, p6

The number of bedrooms in the home is adequate for all members of the household

Having somewhere to sleep was seen as one of the most basic aspects of a home. The ability to have a good night's sleep was widely understood to be essential for physical and mental wellbeing.

Amongst households with children, the extent to which siblings should be required to share bedrooms was much debated. By and large, some degree of sharing was felt to be acceptable but circumstances such as the genders and ages of the children had to be considered. They also discussed other factors such as differing personalities and additional needs such as behavioural issues that meant it was difficult to develop a 'one size fits all' consensus.⁹¹

Other factors considered essential include:

- There is enough space to allow all members of the household to have privacy, for example when they wish to be alone.
- There is enough space for all members of the household to comfortably spend time together in the same room.
- There is adequate space to prepare and cook food.
- There is adequate space to store essential items, such as a reasonable amount of clothes, towels and bedding.⁹²

⁹¹ Ibid., p23

⁹² Ibid., pp23-24

6

The London Housing Strategy

London has the highest rates of overcrowding in the country. [The 2017 London Strategic Housing Market Assessment](#) said:

Overcrowding in London has also increased since the start of the century, peaking around five years ago. Around 7.6% of households in London are overcrowded, but this rate varies widely by tenure, from just 3.3% of homeowners to 12.9% of households in social housing.⁹³

[Housing in London 2020](#) (October 2020), the evidence base for the London Housing Strategy, noted that the percentage of overcrowded households rose to 8.3% in 2018/19.⁹⁴ The current [London Housing Strategy](#) (May 2018) states:

In total, around 250,000 homes in London are overcrowded, including around one in nine private renting and one in seven social renting households. These 250,000 homes contain around 380,000 distinct 'family units', suggesting a mix of those with a single family who need a bigger home, and those in which overcrowding is caused by there being more than one family.⁹⁵

The Strategy goes on to set out how the Mayor planned to tackle overcrowded housing:

The Mayor is committed to doing all he can to end overcrowding as a critical strand of London's wide ranging work to address its housing crisis. We need a step change in investment and powers from Government to be able to build all the affordable homes Londoners need, and thereby be able to end overcrowding. In the meantime, the Mayor is using his existing resources to their fullest extent, as set out in a number of policies from across this strategy and the draft London Plan, including:

- Housing targets and the level of affordable housing:** Tackling overcrowding is integral to the draft London Plan, since the principal evidence base for its housing targets, the SHMA, assumes that London needs to build enough of the right sort of homes to eradicate overcrowding. The Plan

⁹³ [The 2017 London Strategic Housing Market Assessment](#), GLA, 2017, para 5.25

⁹⁴ [Housing in London 2020 - The evidence base for the London Housing Strategy](#), GLA, October 2020, p11

⁹⁵ [London Housing Strategy](#), GLA, May 2018, para 2.18

includes ambitious housing targets and strong policies to increase levels of affordable housing in new developments.

- **Low cost rented homes for overcrowded households:** As Policy 5.2 highlights, the Mayor's draft London Plan also includes – for the first time – a requirement that boroughs' planning policies set out guidance on the size mix of homes for low cost rent to be delivered in their area. Boroughs should determine local guidance by using evidence of local housing needs, including the numbers and types of overcrowded and under-occupying households. This guidance applies to all new low cost rented homes in a borough, irrespective of how they are funded or delivered, and should be used to help ensure the supply of new low cost rented homes is well suited to helping tackle overcrowding in a borough.
- **More homes in outer London:** Both the London Housing Strategy (policies 3.1 and 3.3) and the draft London Plan encourage a shift in development towards outer London. Market homes delivered in these areas are likely to be cheaper than those delivered on larger sites in inner London, and so building family-sized homes that families can afford will be more viable.
- **Helping people to downsize:** Enabling would-be downsizers to move out of larger homes is also important, as it frees up these homes for families who are currently in homes too small for their needs. Delivering high quality specialist homes for older people (Policy 5.2) will help here, along with local authorities' and housing associations' transfer policies and the Mayor's schemes that create opportunities for social housing tenants to move (Policy 4.3).
- **A welfare benefits system that helps to eradicate overcrowding:** By heeding the Mayor's call to review its welfare reform measures (Policies 6.2 and 7.1), Government could ease the affordability pressures that are preventing many overcrowded Londoners from moving. The Benefit Cap, in particular, can leave families with just two or three children where nobody is able to work with very little money to cover housing costs.⁹⁶

The Strategy was reportedly criticised by some members of the London Assembly for failing to include specific targets for the delivery of family-sized homes.⁹⁷ A motion proposed by Assembly Member Andrew Boff in September

⁹⁶ [London Housing Strategy](#), GLA, May 2018, pp149-150

⁹⁷ ["Overcrowding is a growing concern according to the London Assembly,"](#) Government News, 12 February 2018

2020 called on the Mayor “to review all planning and housing policies to tackle overcrowding and ensure that suitable provision is made for family-sized homes.”⁹⁸

[The London Plan 2021](#) (March 2021) directs boroughs to take account of overcrowded households when providing guidance on the size of units to be developed.⁹⁹

⁹⁸ [Mayor must tackle overcrowding](#), London Assembly, 3 September 2020

⁹⁹ [The London Plan 2021](#), GLA, March 2021, p190

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