

COUNTRY REPORT FOR ENGLAND

Mark Jordan – University of Southampton

I. INTRODUCTION

1. This chapter outlines and evaluates the legal treatment of student accommodation in the English housing system.¹ England's higher education sector is internationally distinctive in a number of ways. England has one of the highest university participation rates in the Organisation for Economic Co-operation and Development (OECD).² This reflects how, for over three decades, consecutive UK governments sought to increase university participation rates.³ Since the 1990s, policymakers have sought to deliver this policy by promoting a consumerist and marketized model of university education.⁴ At £ 9, 250 per annum, English undergraduate tuition fees are amongst the highest internationally.⁵ This is funded through a government-backed student loan system. One of the most distinctive features of the higher education sector is the prevalence of a residential campus model.⁶ Approximately four out of five students move to live near their university's campus – a rate of migration that is much higher than in other European countries.⁷

These distinctive features of the higher education sector have influenced the student housing sector. The high university participation rate and the prevalence of the residential campus model have meant that large numbers of students migrate each year to study. Consequently, student housing is a substantial subset of the wider housing market in many English cities. Of the students who move to study, just over half live in purpose-built student accommodation – owned either by the university or privately, and the remainder live in private rented housing, owned by private landlords. There is no special regulation of student housing in England, and so, the general law that governs purpose-built student accommodation, private rented housing and shared housing applies, with some exceptions. In order to account for the important differences in the

1 The focus on England, and not the UK as a whole, is explained in Section 2.

2 Philip Augar, *Independent Panel Report to the Review of Post-18 Education and Funding* (Her Majesty's Stationery Office, 2019) pp. 21, 63.

3 *Ibid.*, p. 21.

4 *Ibid.*, p. 20.

5 *Ibid.*, p. 95.

6 There are complex cultural and policy factors behind the prevalence of this model, which are beyond the scope of this work. For a good overview, see Higher Education Policy Institute (HEPI), *Somewhere to Live: Why British Students Study Away from Home – And Why It Matters* (HEPI Report 121, 2019) pp. 17-34.

7 *Ibid.*, p. 9.

legal treatment, this chapter divides student housing into two sectors: (1) private rented housing and (2) purpose-built student accommodation.

Increasing participation rates have created considerable demand for student housing, and this demand has been met by dramatic increases in the supply of the main forms of student housing. This increase in supply has been facilitated, in large part, by a “revolution” in the private financing of purpose-built student accommodation.⁸ The provision of purpose-built student accommodation is big business – the value of such housing has been estimated to be £ 53 billion.⁹ Despite the increase in the volume of student housing, students face serious housing problems, including high costs, unsafe housing conditions, poor information and support and limited legal protections.¹⁰ Many of these problems have been exacerbated by the Covid-19 pandemic.

This chapter is divided into three sections. The general features of the student housing sector are outlined in the first section. This outline covers the wider policy context, including the supply and quality of student housing. The general legal framework governing rental student housing in England is detailed in the second section. In the third section, the specific arrangements that apply to student housing are evaluated, including details on the scope of regulation, the student occupancy agreement, the quality of housing, transfer and financial aspects, termination and dispute resolution. The chapter concludes with a general assessment of the regulatory framework.

II. POLICY CONTEXT: ENGLAND

2. This report is focused on student housing in England rather than the UK. This focus requires some preliminary explanation. The UK is multi-nation state comprising England, Wales, Scotland and Northern Ireland. There are important historical, legal and political differences between the component parts of the UK, and so, there is no UK law or UK housing policy. Rather, political devolution has led to the formation of governmental institutions in Scotland, Wales and Northern Ireland, with competence to develop distinctive housing law and policy.¹¹ There is no equivalent English parliament; instead, the UK government develops housing law and policy for England, and this makes the English housing system an increasingly distinct object for study. Devolution has, in fact, created “four separate and diverging” student accommodation systems.¹² It is not possible to detail these systems in this work; instead, the focus here is on student housing in England.

⁸ Ibid., p. 33.

⁹ www.housinghand.co.uk/news/purpose-built-student-accommodation-market-trends/ (accessed 9 January 2021).

¹⁰ HEPI, *Somewhere to Live* (n 6) pp. 44-47; Augar Report (n 2) p. 196.

¹¹ See J. Mitchell, *Devolution in the UK* (Manchester, Manchester University Press, 2011).

¹² HEPI, *Somewhere to Live* (n 6) p. 31.

1. *General Policy Regarding Student Housing*

3. A number of actors shape student housing policy in England. These include the central government, local authorities, the Office for Students, higher education institutions, students and private actors.

2. *Central Government*

4. Legislative authority in relation to housing in England resides in the Westminster Parliament, and the central government plays the leading role in determining student housing policy. Government functions are conducted through different governmental departments. In housing, these functions are conducted through the Department for Communities and Local Government (hereinafter the Department). Although the Department does not have a specific student housing policy, the general housing functions exercised by it have implications for student housing. Through the Department, the central government directly determines policies aimed at influencing planning and development, house building, affordability, overcrowding, housing conditions and regulation of private renting. More broadly, the central government indirectly influences housing policy through taxation policy, regulation of financial services, administration of social security systems and determining equalities legislation.

Government functions in higher education are conducted through the Department for Education. Higher education policy has decisively impacted the housing and student accommodation market. Since 1998, policymakers in England have sought to create a market in higher education.¹³ Central to this aim was the introduction of student fees and an income contingent tuition fee (and maintenance) loan system.¹⁴ This student loan system replaced central and local government grants as the main source of funding for student fees. This reform created “a demand-led system in which students are lent the money to make a choice between universities (or whether or not to go to university) and universities compete to recruit them”.¹⁵ Universities are funded through fees that follow enrolments, and so, the more students a university attracts, the more income it earns. The marketization of higher education has resulted in universities becoming increasingly commercial-minded institutions.¹⁶ This has had significant consequences for the housing and student accommodation market, as explained throughout this report.

13 Augar Report (n 2) p. 63.

14 Ibid., p. 22. Student loans are provided by the Student Loans Company, a non-departmental public body company and the state eventually writes off any unpaid debt.

15 Ibid., p. 63.

16 Ibid., p. 78.

3. *Local Government*

5. Local authorities play a crucial role in housing, primarily at the lower tier of district, borough or city councils; in parts of the country with a single tier of local government, housing functions reside in these ‘unitary’ authorities. Under the Department guidance on housing market assessments, local authorities are required to develop their approach to housing through consideration of housing need and demand. Local authorities have a wide range of responsibilities that impact the student housing market. This includes overseeing planning and development. For instance, local authorities may set local controls on certain types of housing such as housing in multiple occupation (HMO), which are used for student rentals or to control the development of purpose-built student accommodation. Local authorities also play a key in enforcing shared housing regulations as well as housing health and safety standards in rented housing.

4. *Office for Students*

6. The Office for Students is a non-departmental public body of the Department for Education. The Office for Students was established in 2017, and it has a broad range of statutory functions, including distributing government higher education funding to universities and acting as the regulator and competition authority of the higher education system.¹⁷ One of the primary aims of the Office for Students is protecting students’ interests.¹⁸ Although the Office for Students has yet to develop specific policies on student housing, it has “a legitimate stake in monitoring the provision of student accommodation in terms of costs, rents, profitability and value for money”.¹⁹

5. *Higher Education Institutions*

7. There are 141 higher education institutions in England, of which 134 receive public funding from the Office for Students.²⁰ These institutions are, for the most part, self-governing charitable institutions with a chair and a board of trustees. The university’s vice-chancellor is its senior academic and administrative officer and is accountable to the board. In this role, the vice-chancellor is supported by a number of deputy vice-

17 The Office for Students was established by the Higher Education and Research Act 2017. The Office for Students merged the Higher Education Funding Council for England and the Office for Fair Access and took over their responsibilities. See www.officeforstudents.org.uk/for-students/what-the-ofs-does-for-students/ (accessed 9 January 2021).

18 Augar Report (n 2) p. 98.

19 *Ibid.*, p. 196.

20 *Ibid.*, p. 18.

chancellors with distinct responsibilities.²¹ Individual institutions have considerable autonomy to determine their own student housing policy and have long built and managed their own student accommodation. However, since the marketization of higher education, there has been a “revolution” in the private financing of purpose-built student accommodation.²² Universities have both heavily invested in purpose-built student accommodation and courted private financing of such housing as a means of gaining a competitive advantage over other institutions in the competition for students (both national and international).²³

6. *Students*

8. Students are represented by the National Union of Students (NUS), which is a confederation of students’ unions across the UK. The NUS regularly surveys students, carries out research and advocates for students interests to policymakers. Student concerns over housing issues, including high costs, unsafe conditions and poor management practices by landlords, have repeatedly been highlighted in NUS surveys.²⁴

7. *Private Investors*

9. The dramatic expansion in student numbers since 1990 has been accompanied by a “staggering” increase in the provision of the main forms of student housing.²⁵ Both private investors, which own purpose-built student housing, and private landlords (mainly through the National Residential Landlords Association) seek to influence housing policy that impacts student housing.

8. *Housing and Student Accommodation Market Policy*

10. Residential campus living is a defining feature of the higher education sector in England. Each year approximately four out of five full-time undergraduate students leave home for study.²⁶ England has one of the highest university participation rates (50.2%) among OECD countries.²⁷ In 2018-19, over 1.9 million students were enrolled

21 Ibid.

22 HEPI, *Somewhere to Live* (n 6) p. 33.

23 Ibid., pp. 32-33.

24 National Union of Students (NUS), *Homes Fit for Study* 3rd edn (NUS, 2019) pp. 7-11.

25 HEPI, *Somewhere to Live* (n 6) p. 32.

26 Ibid., p. 9.

27 Augar Report (n 2) pp. 21, 63.

in higher education courses in England.²⁸ Of these, 1.44 million were undergraduates, while just under half a million were postgraduates.²⁹ The participation rate has more than doubled since 1990 – which reflects how successive UK governments have adopted the aim of increasing participation in higher education.³⁰ Since 1998, policymakers have sought to meet this aim by actively creating a market in higher education.³¹ The increase in student participation rates, in combination with the dominance of the residential campus model, has created considerable demand for student housing in England.³² Of the students who migrate to study, a little over half (52%) live in purpose-built student accommodation – owned either by the university or privately – while the rest (48%) live in private rented housing.³³

A. Private Rented Student Housing

11. University students have long sourced accommodation in the private rented sector. Student private rented housing is often prevalent in residential areas close to university campuses. The student rental market may be regarded as a submarket of the general private rented sector.³⁴ The central government does not have a specific policy on private rented student housing; rather, general private renting policy also applies to the student rental market. Since the late 1980s, the dominant policy has been the promotion of a rental market.³⁵ To that end, the private rented sector was deregulated in 1988. This effected a radical reduction in legal protections for tenants and greatly privileged the property rights of landlords. This was followed by tax reform and deregulation of mortgage lending, which, together, facilitated the introduction of so called buy-to-let mortgage products.³⁶

These products allowed landlords to borrow to purchase properties with the purpose of letting them out, on highly advantageous terms. Since the 1990s, the private rented sector has more than doubled in size. In 2018-19, one in five households in England were privately renting, which equates to approximately 4.6 million households.³⁷ The revival of the private rented sector has been driven by a range of factors. On the demand side, acute house price inflation made ownership increasingly unaffordable. Additionally, the

28 www.hesa.ac.uk/data-and-analysis/students/whos-in-he (accessed 9 January 2021).

29 The figure for undergraduates includes 210,000 EU and international students. The vast majority of undergraduates are enrolled in full time courses.

30 Augar Report (n 2) p. 21. Between 1990 and 2018, participation rates among young people in higher education have more than doubled, increasing from 20% to 50%.

31 *Ibid.*, p. 20.

32 HEPI, *Somewhere to Live* (n 6) pp. 9, 17-34.

33 *Ibid.*, p. 9.

34 J. Rugg and D. Rhodes, *The Evolving Private Rented Sector: Its Contribution and Potential* (York, Centre for Housing Policy, University of York, 2018) pp. 49-52.

35 Department of Environment, *Housing: The Government's Proposals* (London, White Paper, Cmnd 214, 1987) 24.

36 P. Kemp, 'Private Renting After the Global Financial Crisis' (2015) 30(4) *Housing Studies* 601, 608.

37 Chartered Institute of Housing, *UK Housing Review 2018* (Coventry, CIH, 2019) Table 30b.

persistent undersupply of social housing left little alternative to private renting, while the increase in student participation rates has also played a role.³⁸ On the supply side, widespread uptake in buy-to-let mortgages facilitated a considerable increase in the supply of private rented housing.³⁹ The revived private rented sector has, however, been beset by significant problems, such as the high cost of rent, poor quality of housing, poor management practices by landlords and general insecurity. Many of these problems are equally, if not more, prevalent in the student private rental market.⁴⁰

1) *Defining features of private renting*

12. The private rented sector tends to be associated with market processes by which landlords let housing to tenants on the basis of their ability to pay.⁴¹ Estate agents play a key intermediary role in matching landlords to tenants. This is the case in student rented housing, where students often find housing through estate agents, but also through websites. While regular official statistics are gathered on private renters, there is relatively limited official data on private landlords. Unlike many other European countries, there is no requirement that private landlords must be licenced and/or registered. There is no official record of the number of private landlords in England. Studies vary in their estimate of the number of private landlords, with one study estimating that there were 2.54 million landlords.⁴² The dominant characteristic of the sector is the prevalence of amateur individual landlords⁴³: approximately half of the landlords own just one rented property, and institutional investors play a minimal role.⁴⁴

2) *Supply of private rented housing*

13. The private rented sector has more than doubled in size in the last two decades.⁴⁵ This increase in the supply of rented dwellings has been facilitated by the introduction of buy-to-let mortgages.⁴⁶ Although these mortgage products were introduced by the banking industry in the mid-1990s in the UK, their development was conditional on the deregulation of both mortgage lending and the private rented sector.⁴⁷ The scale of mortgage lending was remarkable. In the UK, such lending increased from £ 3 billion

38 P. Kemp, *Private Renting After the Global Financial Crisis* (n 36) 601-620.

39 *Ibid.*

40 National Union of Students (NUS), *Homes Fit for Study* (n 24) pp. 7-11.

41 M. Fernández Arrigoitia and C. Whitehead, *Social Housing in Europe* (2015) *European Policy Analysis* 1-12; E. O'Sullivan and P. De decker, 'Regulating the Private Rental Housing Market in Europe' (2007) 1(1) *European Journal of Homelessness* 95, 95-99.

42 J. Rugg and D. Rhodes, *The Evolving Private Rented Sector* (n 34) p. 29.

43 *Ibid.*, p. 103.

44 A. Marsh and K. Gibb, *The Private Rented Sector in the UK* (Glasgow, UK Collaborative Centre for Housing Evidence, 2019) pp. 14-16.

45 Chartered Institute of Housing, *UK Housing Review 2018* (n 37).

46 P. Kemp, *Private Renting After the Global Financial Crisis* (n 36) 601, 608.

47 *Ibid.*, pp. 605-606; T. Crook and P. Kemp, *Transforming Private Landlords: Housing, Markets and Public Policy* (Chichester, Blackwell-Wiley, 2011) pp. 163-170.

in 1999, representing 1% of total residential lending, to £ 46 billion in 2007, accounting for about 12%.⁴⁸ The flood of credit increased the supply of private rented housing and contributed to house price inflation.⁴⁹ Many of these ‘buy-to-let’ landlords are unlikely to have added any new housing to the overall housing stock; rather, they are more likely to have purchased an existing property.⁵⁰

3) Cost and affordability of rents

14. There has been a considerable inflation in private rents over the past two decades.⁵¹ Although there have been some falls in rents, particularly in the wake of the global financial crisis (2008), the overall trend is that rent inflation has generally outpaced the rates of inflation.⁵² During the late 2010s, there was acute rent inflation in London and the South of England, where rents outstripped wage growth as well as the cost of housing in other tenures, contributing to the emergence of rents that were not widely affordable.⁵³ These general trends are also apparent in rents in student rented housing. Indeed, the cost of student housing is now a bigger concern for students than the cost of fees.⁵⁴ Unlike other renters, who may be entitled to rent subsidies to help meet the cost of rents, students are excluded from rent subsidies and instead rely on maintenance loans to pay rents.

4) Living environment and condition

15. The construction of new private rented housing is subject to general planning controls. Where housing has been purchased with the aim of converting it into private rented housing, planning permission is not usually required. However, if the landlord wishes to convert the dwelling into shared housing, that is, an HMO, then planning permission is required. Often, there are local restrictions on the conversion of housing into shared units that allow planning authorities to consider the merits of each conversion, monitor its location and assess any cumulative impact.

Where landlords seek to let out dwellings as HMO, they must apply for a licence from the local authority (see Section 4.1). They must also ensure that proper fire safety measures are in place, gas safety checks are carried out, electrics checked, there is no

48 P. Kemp, *Private Renting After the Global Financial Crisis* (n 36) 601, 607-608.

49 J. Ryan-Collins, T. Lloyd and L. Macfarlane, *Rethinking the Economics of Land and Housing* (London, Zed Books, 2017) p. 134.

50 *Ibid.*

51 Rent increases were particularly sharp in London, where prices rose by a fifth from 1995 to 1999. See Y. Cho, K. Karley and C. Whitehead, *RSL Rents: Evidence from the Existing Tenants Survey 2000* (Cambridge, Cambridge Centre for Housing and Planning Research, 2014) p. 13. D. Bentley, *The Future of Private Renting* (London, Civitas, 2016) pp. 11-12, 31.

52 D. Bentley, *The Future of Private Renting* (n 51) pp. 11-15; J. Hohmann, *Protecting the Right to Housing in England: A Context of Crisis* (London, JustFair, 2016) pp. 13-14.

53 *Ibid.*

54 HEPI, *Somewhere to Live* (n 6) p. 1.

overcrowding and there are adequate cooking and bathroom facilities. These HMO requirements are enforced by local authorities, and enforcement action may be triggered by individual complaint. Despite the various legal standards for housing conditions that apply to student housing, poor student housing conditions are a significant problem in the private sector.⁵⁵ This is particularly apparent in private rented student housing, where, in 2019, approximately 4 in 10 students renting privately lived in unsafe and unhealthy properties, that is, the housing had a category 1 hazard under the Housing Health and Safety Rating System.⁵⁶ There is no special system of quality labels for student housing that confirms the quality of the accommodation (see Section 4.3).

B. Purpose-Built Student Accommodation

16. Student ‘halls of residence’ are a defining feature of higher education in England, and universities have long constructed and managed their own student housing. At an individual level, universities have considerable autonomy to build and manage student accommodation and/or to enter into commercial arrangements with external institutions to build and manage privately owned student housing. The construction of new purpose-built student accommodation are subject to general planning controls, but once built, purpose-built student accommodation tends to be excluded from regulations that apply to private rented housing and shared housing.⁵⁷ Although the central government does not have a specific policy on such housing, the policy of promoting a market in higher education has encouraged universities to act as more commercial-minded institutions when making decisions about purpose-built student accommodation.⁵⁸

1) Defining features

17. Purpose-built student accommodation is housing specifically built for students that is owned by either universities or private companies.⁵⁹ Whether owned by universities or privately, purpose-built student accommodation tends to be multi-unit developments that are segregated (often gated with security systems) from the local community. Providers tend to offer different accommodation options, ranging from a single bedroom in a shared flat to penthouse studios, and even more luxurious “Instagrammable” units.⁶⁰ Purpose-built student accommodation is run by

55 National Union of Students (NUS) (n 24) pp. 7-11.

56 Ibid., p. 25.

57 Purpose-built student accommodation is excluded from the HMO licencing regime that applies to certain forms of shared housing.

58 Augar Report (n 2) p. 78; HEPI, *Somewhere to Live* (n 6) pp. 32-33.

59 See Higher Education Policy Institute (HEPI), *Student Accommodation: The Facts* (HEPI Analytical Report 2, 2020) p. 11.

60 www.shinyshiny.tv/2019/07/top-10-instagrammable-student-halls.html (accessed 9 January 2021).

professionalized management systems that manage the building and services, and often provide student residents with additional services such as cleaning. Universities tend to offer first-year undergraduate students, and international students, a choice of student accommodation in a purpose-built student accommodation. This greatly reduces the role which, intermediaries, such as estate agents, play in supporting students find accommodation.

2) Supply

18. In line with the dramatic rise in the demand for student housing, there has been a “staggering increase” in the supply of purpose-built student accommodation.⁶¹ The number of purpose-built student bedrooms in Britain increased by over 31,000 in 2018-19 to reach a record 627,000 units.⁶² The remarkable increase in the supply of purpose-built student accommodation has been facilitated by universities entering into private financing arrangements. More than half of all purpose-built student accommodation is owned privately – often by international commercial institutions – while the rest is owned by universities.⁶³ This represents a significant increase in private sector involvement since 2014, when just a third of purpose-built student accommodations was owned privately.⁶⁴

The enormous investment in purpose-built student accommodation by universities and, in particular, by private institutions has been driven by the marketization of higher education. Within this model, purpose-built student accommodation is central to university marketing in the competition between universities for students (both domestic and international) besides being a source of income for universities.⁶⁵ This has influenced universities’ decisions to build purpose-built student accommodations of their own and, in particular, to enter into private financing arrangements. This has also influenced the type of purpose-built student accommodations that have been built in recent years. Both private investors and universities have sought to increase the rate of return by developing high-end student accommodation and increasing rents on existing purpose-built student accommodation. As a result, there has been a considerable decline in the availability of low-cost student accommodation.⁶⁶

3) Cost and affordability

19. Alongside the sharp increase in the supply of purpose-built student accommodation, there has been a considerable increase in rents. The average weekly rent has increased by

61 HEPI, *Somewhere to Live* (n 6) p. 32.

62 Ibid.

63 Ibid., p. 33.

64 Ibid.

65 Ibid., pp. 32-33.

66 Ibid., p. 33.

about a third since 2011.⁶⁷ The average cost of a room in England is £ 6,400 per year. There is significant geographical variation in rents – the highest costs are in London, where the average cost of a room is £ 8,900 per year.⁶⁸ Students tend to rely on maintenance loans to pay rents. The scale of the increase in rents is reflected in how the cost of living has become a higher priority for students than tuition fees.⁶⁹

4) *Living environment and condition*

20. The development of purpose-built student accommodation is subject to general planning controls. Where planning permission is granted, it tends to come with restrictive planning conditions that control the design and use of the building. Local authorities have broad powers to include obligations that ensure that the building is in line with local development plans. It is typically a condition that such accommodation is only for students registered at that particular university. However, local authorities can also make it a condition that accommodation is affordable to the student body as a whole.⁷⁰ Once constructed, purpose-built student accommodation tends to be excluded from other forms of regulation that apply to private rented housing. Purpose-built student accommodation may be excluded from HMO licencing where the provider has signed a voluntary code of practice that mimics the standards that apply to HMO licenced properties (see Section 4.1). The considerable investment in purpose-built student accommodation in recent years has resulted in increases in supply and improvements to housing conditions; however, it is apparent that many developments have “not been designed with student well-being in mind”.⁷¹ A 2019 study found that in developments built over the previous decade, often by private providers, there is an “overemphasis on cellular accommodation and underappreciation of need for communal and shared space”.⁷²

III. LEGAL FRAMEWORK REGARDING RENTAL (OR OTHER) STUDENT HOUSING

21. England operates a common law system that comprises the creation of precedents through case law and uncodified legislation. English housing law is primarily legislative and is based on acts passed since the middle of the nineteenth century, but underpinned by the general law of landlord and tenant. These acts tend to distinguish between

67 Ibid.

68 Ibid.

69 Higher Education Policy Institute (HEPI), *At What Cost? Students' Views on Augar, Funding and the Cost of Living* (HEPI Policy Note 17, October 2019) p. 1.

70 Town and Country Planning Act 1990, s. 106.

71 Scott Brownrigg and Galliford Try, *Impact of Accommodation Environments on Student Mental Health and Wellbeing* (Scott Brownrigg and Galliford Try, June 2019).

72 HEPI, *Somewhere to Live* (n 6) p. 45.

different housing tenures, including owner occupied, private rented and social rented.⁷³ This piecemeal and incoherent system is based on different acts that, amongst other things, provide households with residential security rights, set legal minimum housing safety standards and regulate shared housing. There is no special student housing legislation; rather, the general housing law applies, with some exceptions that apply to student housing. The majority of students live in either private rented housing or purpose-built student accommodation, and these sources of accommodation attract distinctive legal treatment (see Section 4).

IV. ANALYSIS

1. *Scope of Regulation*

A. To Which Rental Contracts Does the Scheme Apply?

22. There is no special regulatory regime for student housing in England. As explained in Section 3, the general law governing private rented housing and shared housing applies, subject to a number of exceptions for student housing. The exceptions have important legal consequences, which are discussed next, but they also provide distinct legal definitions of student housing in England.

1) Private rented student housing

23. Student housing is excluded from the residential security regime that applies to the private rented sector. The Housing Act 1988 defines a student tenancy as

a tenancy which is granted to a person who is pursuing, or intends to pursue, a course of study provided by a specified educational institution and is so granted either by that institution or by another specified institution or body of persons.⁷⁴

Thus, a student tenancy is defined according to the purpose of the letting rather than the type of dwelling. This is a broad definition that includes full-time, part-time and working students and those intending to become students. Although student lettings are excluded from the residential security regime under the Housing Act 1988, it is typical for landlords to adopt the assured shorthold tenancy under the Act when letting a dwelling to a group of tenants or letting a room in a shared house to an individual student. Thus, for many students living in private rented housing, the provisions of the Housing Act 1988 govern their occupancy arrangement.

⁷³ See P. Sparkes and P. Orgi, *Tenlaw Report on England and Wales* (ZERP Bremen, 2014).

⁷⁴ Housing Act 1988, schedule 1, paragraph 8.

2) Purpose-built student accommodation

24. The exclusion of student lettings under the Housing Act 1988 also applies to purpose-built student accommodation. However, providers of purpose-built student accommodation tend not to grant residential leases to student occupiers; rather, they tend to use occupation licences. This is an important point because residential security regimes tend to confer statutory protections on a residential lease. Functionally equivalent occupancy arrangements, such as licences, are excluded from such regimes. There is minimal statutory regulation of residential occupation licences. Distinguishing a licence from a lease is not straightforward. The English test for a lease is that a tenant must be given exclusive possession of property, and this requires that the tenant is able to exclude the landlord and all others from the property for the duration of the lease.⁷⁵ Providers of purpose-built student accommodation tend to use licence agreements and are careful to retain the right to have exclusive control of the premises as well as provide services such as cleaning.

3) Shared housing

25. A special regulation system under the Housing Act 2004 applies to certain shared housing, termed “Houses in Multiple Occupation”.⁷⁶ This system applies to residential properties where ‘common areas’, such as a bathroom, toilet or cooking facilities, are shared by more than one household as their only or main residence.⁷⁷ Private rented student housing may fall within this definition and attract the licencing requirements for HMO. However, purpose-built student accommodation is excluded from HMO licencing where the provider has a voluntary code of practice that largely mimics the standards that apply to HMO licenced properties.⁷⁸ The Housing Act 2004 defines purpose-built student accommodation as any building that is occupied solely or principally by persons who occupy it for the purpose of undertaking a full-time course of further or higher education at a specified educational establishment or at an educational establishment of a specified description, and where the person managing or having control of it is the educational establishment in question or a specified person or a person of a specified description.⁷⁹ This definition of student housing is considerably narrower than that under the Housing Act 1988. Only those buildings that are occupied primarily by full-time students and that are managed by the university itself or by a private company are exempt.

⁷⁵ *Street v. Mountford* [1985] AC 809, HL.

⁷⁶ Housing Act 2004, Part 2.

⁷⁷ Housing Act 2004, ss 254-260.

⁷⁸ Housing Act 2004, schedule 14, paragraph 4.

⁷⁹ *Ibid.*

4) Licencing of HMO

26. The Housing Act 2004 sets out standards of management for this type of property.⁸⁰ There are two types of HMO: mandatory licencing and additional licencing. Licencing is mandatory for all HMOs that are occupied by five or more persons forming two or more households.⁸¹ Additional licencing is when a council can impose a licence on other categories of HMOs in its area that are not subject to mandatory licencing. Where the licencing requirement applies, the provider of the HMOs must pass a fit and proper person test, that is, have no criminal record or breach of landlord laws or code of practice. Failure to obtain a licence is an offence, and local authorities have wide enforcement powers. If housing does not meet the prescribed standards, the local authority can issue a works notice and may suspend the receipt of rent until the work has been completed.⁸²

Although purpose-built student accommodation is exempt from the HMO scheme, universities that provide purpose-built student accommodation must comply with a government approved code.⁸³ Each university will have signed the first two codes,⁸⁴ while a separate code applies to purpose-built student accommodation that is owned and managed by private companies.⁸⁵ These codes set standards on repairs and maintenance; fire, gas and electrical safety; security; management of the tenancy/licence and complaints that are broadly similar to those that apply to HMO accommodation.⁸⁶

2. *Considering the Occupation Agreement*

A. Do Any Formal Requirements Apply? Must an Inventory Be Compiled? Can an Upfront Fee Be Charged? Are Certain Clauses Prohibited by Law?

27. A distinction should be drawn between private rented student housing and purpose-built student accommodation.

80 Housing Act 2004, Part 2.

81 The Licencing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.

82 Housing Act 1985, ss 375-394.

83 Housing Act 2004, schedule 14.

84 The Universities UK/Guild HE Code of Practice for the Management of Student Housing, dated 1 May 2019; The ANUK/Unipol Code of Standards for Larger Developments for Student Accommodation Managed and Controlled by Educational Establishments, dated 1 May 2019.

85 The ANUK/Unipol Code of Standards for Larger Developments for Student Accommodation NOT Managed and Controlled by Educational Establishments, dated February 2006.

86 The Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order (2019/884).

1) Private rented student housing

28. In order to create rights in land, a deed is required – a formal type of document.⁸⁷ Short leases are an exception to this strict rule of formality.⁸⁸ They can be created informally, even orally – the technical term is ‘by parol’. In order for this exception to apply, the short lease must be subject to a market rent, the term must be for three years or less and the lease must take effect in possession. The term of the tenancy will be monthly, since, if no express term is agreed, the term will be implied from the payment and acceptance of rent, and the precise period following the method by the rent is calculated as opposed to the method of payment. Although formality is not required, student tenancies are, in practice, granted in writing. This ensures that the landlord is able to enforce terms about the permitted use of the property. A written tenancy agreement would be signed by both parties but would not need to be executed as a deed. In the private rented sector, it is typical for landlords to use an assured shorthold tenancy, over the room or over the house. There is no requirement on landlords to provide an agreed inventory; however, landlords typically include an agreed inventory of the property in case any dispute arises over the deposit (see [Section 4.5.2](#)). There is no requirement for private landlords to be licenced or to register the tenancy, unless the dwelling is subject to HMO licencing – in which case, the licencing scheme outlined in [Section 4.1](#) applies.

2) Purpose-built student accommodation

29. The same formality requirements, and exception, apply to short leases granted in relation to purpose-built student accommodation. However, it is generally the case that licence agreements, rather than leases, are used by providers of such housing. This is significant because licences do not generally create a right in land, and so, they are except from the formality requirements that apply to leases. Although formality is not required in law, licence agreements to occupy purpose-built student accommodation are, in practice, granted in writing. This is a requirement of the codes of practice, which all universities or private providers of purpose-built student accommodation are subject to (see [Section 4.1](#)). A written licence agreement would be signed by both parties but would not need to be executed as a deed. Purpose-built student accommodation is not generally let under an assured shorthold tenancy, and so, there is no obligation on providers of purpose-built student accommodation to protect a deposit, if one is required. There is no legal requirement on purpose-built student accommodation owners to provide an agreed inventory; however, they will typically include an agreed inventory of the property in case any dispute arises.

⁸⁷ Law of Property Act 1925, s. 52.

⁸⁸ Law of Property Act 1925, s. 54(2).

B. ~~Are certain clauses prohibited by law?~~

30. In the private rented sector, the charging of letting fees is prohibited.⁸⁹ This ban covers assured shorthold tenants, student lettings and lodgers living with a private landlord. The charging of fees for references, administration, credit and immigration checks and renewing of tenancies is prohibited. The Tenant Fees Act 2019 also limits the amount that can be charged for a holding deposit (up to one week's rent) and a tenancy deposit (up to five weeks' rent).⁹⁰

Unfair terms in contracts concluded between an occupier and a landlord or provider of purpose-built student accommodation are generally prohibited.⁹¹ An unfair term is defined as one that has not been individually negotiated and that, contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the tenant. An example of an unfair term is a term allowing a right of unilateral variation to a landlord.⁹² However, core terms that describe the property, rent or length of term are exempt from a fairness assessment, provided they are clearly written and displayed prominently.⁹³ Unfair contract terms are not binding on the tenant, but the tenancy agreement continues to bind the parties without the unfair term.

Anti-discrimination provisions apply to landlords and providers of purpose-built student accommodation. When a landlord, letting agent or provider of purpose-built student accommodation is letting accommodation, they must ensure that no person or group of persons is treated less favourably than any other person or group of persons because of their race, colour, ethnic or national origin, sex, disability or sexual orientation.⁹⁴ When dealing with persons with a disability, a private landlord must not unreasonably withhold consent to the tenants to adapt the rented accommodation to meet the needs of the disabled occupants.⁹⁵ Equally, it is illegal for a landlord or a provider of purpose-built student accommodation to discriminate because a person is disabled, and any terms to that effect are unlawful.⁹⁶

89 Tenant Fees Act 2019, ss 1-3.

90 Tenant Fees Act 2019, s. 5.

91 The Consumer Rights Act 2015, s. 62. This replaced the European Communities (Unfair Terms in Consumer Contracts) Regulations 1999.

92 *Peabody Trust Governors v. Reeve* [2008] EWHC 1432.

93 The Consumer Rights Act 2015, s. 64.

94 Race Relations Act 1976; Disability Discrimination Act 1995; Sex Discrimination Act 1975.

95 Equality Act 2010, s. 190.

96 Equality Act 2010; Disability Discrimination Act 2005.

3. *Quality of Student Accommodation*

A. Who Is Responsible for the Quality of the Property at the Start of the Lease?

31. The landlord or the provider of the purpose-built student accommodation is responsible for the quality of the property at the start of the occupancy arrangement. However, there are important legal differences in the treatment of private rented housing and purpose- built student accommodation.

1) Private rented student housing

32. Where student housing is let under a lease, occupiers are provided with statutory protections in respect of housing safety and condition. There is an implied statutory term in the contract that rented housing is fit for human habitation both at the start and for the duration of the tenancy.⁹⁷ This places an obligation on the landlord to ensure that the house is safe, healthy and free from defects that could cause serious harm to the occupier. Determining unfitness for human habitation depends on whether the property is not reasonably suitable for occupation in that condition because of one or more of twenty-one factors, including disrepair, damp, ventilation and any prescribed statutory hazard. If the property is not fit for habitation, the tenant may take court action for breach of contract, and the court may require the landlord to address the defect and award damages to the tenant. Furniture and soft furnishings supplied by the landlord in let properties are required to meet the fire safety standards as set by the Furniture and Furnishings (Fire) (Safety) Regulations 1988.

All rented housing is subject to legal minimum safety standards under the Housing Health and Safety Rating System, and these are enforced by local authorities. This is a risk-based model, under which housing defects are assessed and categorized according to a rating system. The landlord is required to keep the property in a state that will not constitute a hazard to his tenants. This requires that the dwelling should

- be free from health and safety hazards;
- be in a reasonable state of repair;
- have reasonably modern kitchens, bathrooms and boilers and
- be reasonably well insulated.⁹⁸

Local authorities are responsible for enforcing this standard. Their inspectors look at specific health and safety areas and score each hazard they find as either category 1 or 2, according to its seriousness. Landlords must take action to fix category 1 faults, which are the most serious hazards. In certain circumstances, the local council can undertake

⁹⁷ Landlord and Tenant Act 1985, ss 9A, 9B, 10; as amended by Homes (Fitness for Human Habitation) Act 2018.

⁹⁸ Housing Act 2004, Part 1; 'Housing Health and Safety Rating System Guidance for Landlords and Property Related Professionals' (Department for Communities and Local Government, 2006).

the repairs itself and claim the costs back from landlords. In order for a local authority to take enforcement action, it is necessary for the occupier (whether private tenant or licensee) to bring the hazard to the attention of the authority by making a complaint. A private tenant, but not a licensee, can also take legal action against their landlord – because of the presence of statutory hazards – for failure to ensure that the dwelling is fit for habitation.⁹⁹ Additional protections apply if the private rented dwelling falls within the HMO licencing scheme, as discussed in Section 4.1.

2) *Purpose-built student accommodation*

33. The implied statutory warranty of fitness for habitation only applies to residential leases. Because purpose-built student accommodation is typically provided under a residential licence agreement, the implied statutory warranty of fitness does not apply to such housing. However, the legal minimum safety standards under the Housing Health and Safety Rating System apply to student housing.¹⁰⁰ Although purpose-built student accommodation is exempt from the HMO scheme, universities that provide purpose-built student accommodation must comply with a government approved code that sets out certain housing condition standards.¹⁰¹

B. How Are Maintenance and Repairs Divided Between the Landlord and the Tenant?

34. There are important differences in how responsibility for maintenance and repairs is apportioned in the private rented and purpose-built student accommodation sectors.

1) *Private rented student housing*

35. In the private rented sector, the landlord is responsible for carrying out major repairs in short leases. The primary source for this obligation is the Landlord and Tenant Act 1985, which cannot be contracted out. This repairing obligation makes the landlord responsible for all things that relate to the structure and exterior of the building, including the roof, guttering, chimneys, plasterwork, walls, windows and doors. The landlord is responsible for ensuring that installations within the flat for the supply of key services utilities are kept in good condition.¹⁰² This includes the pipes supplying gas, electricity or water; flues for gas boilers and ventilation and drains.¹⁰³ The statutory obligation to repair only arises when notice has been given to the landlord.¹⁰⁴ The repairing obligation is limited because it only relates to defects that are the consequence

99 Landlord and Tenant Act 1985, s. 10.

100 M. Davis and G. Robson, *Student Housing and the Law* (Shelter, 2008) pp. 13-14.

101 Housing Act 2004, schedule 14.

102 *Niazi Services v. Van der Loo* [2004] EWCA Civ 53.

103 Gas Safety (Installation & Use) Regulations 1998.

104 *O'Brien v. Robinson* [1973] AC 912, HL; *Hall v. Howard* (1988) 20 HLR 566.

of disrepair. It does not apply to inherent defects arising from the method of construction of the dwelling. However, as noted earlier, this has been supplemented by the implied statutory term or warranty that the property must be fit for human habitation at the start and for the duration of the tenancy.¹⁰⁵

2) *Purpose-built student accommodation*

36. Universities that provide purpose-built student accommodation must comply with an approved code of practice.¹⁰⁶ This code makes clear that the educational establishment or company has responsibility for repair and maintenance. Beyond these internal processes, students living in purpose-built student accommodation have limited legal protections in respect of housing safety. This is because the statutory repairing obligation and the implied statutory warranty of fitness only apply to leases. Purpose-built student accommodation is typically provided under a residential licence agreement, and so, these protections will not apply.

4. *Transfer of Lease and Subletting*

A. May a Tenant Transfer a Rental Contract or Sublet a Student Residence?

37. A private landlord or a provider of purpose-built student accommodation will invariably introduce an absolute bar on all dealings without prior consent with the lease or licence agreement, including transfer, assignment and subletting. In the private rented sector, the term in the contract against assignment or subletting without consent will be implied into assured tenancies that are periodic or statutory.¹⁰⁷

B. Which Regime Applies in This Case (More Specifically, to What Extent Is the Transferring Party or (Main) Tenant Further Held to the Rental Contract)?

38. Where the landlord or the provider of purpose-built student accommodation has consented to a transfer of the student occupancy agreement, the transferring party is released from future obligations. In the case of subletting, the primary tenant remains responsible for meeting all obligations to the landlord. Providers of purpose-built student accommodation generally impose an absolute bar on subletting.

C. Do Specific Regulations Apply When a Student Participates in a Student Exchange Programme (e.g. Erasmus) Or Serves an Internship?

39. There are no specific regulations for such cases.

105 Landlord and Tenant Act 1985, s. 10 (as amended).

106 Housing Act 2004, schedule 14.

107 Housing Act 1988 s. 15. In the case of a non-statutory periodic tenancy, this applies where there is no express provision and no premium was paid.

5. *Financial Aspect*

A. Rental Price and Expenses

1) Can the parties set the initial rent freely?

40. There are no legal restrictions on the setting of initial rents in either private rented student tenancies or purpose-built student accommodation. As explained in Section 2.2 of this chapter, the private rented sector was deregulated by the Housing Act 1988. Since the commencement of that Act, all new private lettings have been either assured or assured shorthold tenancies. Both operate under a market rent regime. Thus, where landlords use assured shortholds when letting to students, the initial rent and the period of payment are left to the parties to determine.

2) To what extent can costs and expenses be charged outside of the rental price (either as fixed fees or actual costs)?

41. The basic rent or accommodation fee comprises payment for the use of the accommodation by the student occupier. Both private landlords and providers of purpose-built student accommodation may set the price to cover additional costs and expenses (e.g. building insurance costs, household waste disposal, maintenance and cleaning of shared parts), as well as utility costs (e.g. energy, water, internet and telecommunications), if these are arranged by the landlord or the provider of purpose-built student accommodation. These costs must relate to actual costs. The charging of costs and expenses that are unrelated to the actual costs would most likely be regarded as a fee or charge, something that is prohibited by the Tenant Fees Act 2019 (see Section 4.2). It is possible for a landlord to include a penalty fee if the tenant is over two weeks late paying their rent fees. The Tenant Fees Act 2019 limits the interest that can be charged at no more than 3% above the Bank of England's annual percentage rate for each day it is outstanding.¹⁰⁸

It is typical for private landlords to charge the basic rent and leave tenants to organize utilities and so forth for themselves. Housing occupied exclusively by students, whether private rented or purpose-built student accommodation, is exempt from council tax – the local tax that pays for local services.¹⁰⁹ Finally, the charging of letting fees and related costs to tenants is prohibited (see Section 4.2).¹¹⁰

¹⁰⁸ Tenant Fees Act 2019, schedule 1, paragraph 4.

¹⁰⁹ This may be a hall of residence or a house. If the property is occupied by both students and non-students, the property is not exempt, but any students in the house are disregarded.

¹¹⁰ Tenant Fees Act 2019, ss 1-3.

3) *Can the initial rent be adjusted during the course of the agreement? What conditions should be met? What about successive agreements?*

42. A distinction must be drawn between private rented student housing and purpose-built student accommodation.

Private rented student housing

43. Typically landlords use assured shorthold tenancies when letting to students. The landlord will not be able to increase the rent under an assured shorthold during any contractual period, but will be able to increase the rent at the end of any contractual period by notice. The tenant could theoretically challenge the rent increase if it takes the rent above market level, and a determination would fix the maximum rent. However, assured shortholds give limited security of tenure, so, in practice, if the landlord wishes to increase the rent, it is difficult for the tenant to object. Eventually, they will have to move out if they are not prepared to agree to an increase. It is possible to include indexation clauses to counteract inflation, but, in practice, the short duration of student accommodation tenancies makes such clauses unnecessary.

Purpose-built student accommodation

44. The accommodation fee is fixed for the contractual term, and student occupiers typically pay this in instalments during the year. The provider of purpose-built student accommodation is required to make available information on the fees and charges for each type of available accommodation. It is possible for the provider to include terms in the occupation contract to adjust the accommodation fee during the term, but this would be unusual.¹¹¹ It is possible to include indexation clauses to counteract inflation, but, in practice, the short duration of student accommodation licences makes such clauses unnecessary.

B. Deposit

~~1) *Is the Tenant Required to Pay a Security Deposit Upon Commencement of the Rental Contract? What Amount? Which Form? How Must the Landlord Treat the Security Deposit?*~~

45. Students are typically required to arrange a guarantor or pay a security deposit to landlords or providers of purpose-built student accommodation. There are minimal legal controls on guarantor arrangements. The National Union of Students has drawn attention to the problems faced by poorer students in securing guarantors for private

¹¹¹ The Universities UK/Guild HE Code of Practice for the Management of Student Housing, dated 1 May 2019, Section 5.5.

rental agreements.¹¹² There are, however, strict legal controls that apply to security deposits. These controls only apply to assured shortholds, which are used in the private rented sector, and so, do not apply to purpose-built student accommodation occupancy licences.

Private rented student housing

46. A private tenant will generally be required to pay a security deposit upon commencement of the rental contract. The Tenant Fees Act 2019 limits the amount that can be charged for a security deposit to five weeks' rent.¹¹³ It is unusual for a tenant to be required to pay a holding deposit to obtain a tenancy; however, if one is required, the amount is limited to one week's rent.¹¹⁴ The function of the deposit is to guarantee the main obligations of the tenant. The landlord may make deductions for unpaid rent or damage to the property but should provide evidence to support any deduction.

Private landlords are required to protect any deposit paid by a tenant at the commencement of an assured shorthold tenancy with an authorized tenancy deposit scheme.¹¹⁵ There are two types of scheme, custodial schemes and insurance schemes, and the choice of which scheme to adopt is the landlord's. A custodial tenancy deposit scheme is free to use. This is because the scheme is funded by the interest generated from the tenancy deposits held by the scheme. In an insurance scheme, the landlord or the letting agent retains the deposit in a suitable account. It is usual for any interest to be retained by the landlord or their agents. In either case, the landlord must comply with the initial requirements of the scheme within thirty days of receiving the deposit, providing information to the tenant and handing over the deposit.¹¹⁶

If the landlord fails to protect the deposit appropriately, they cannot serve a section 21 notice to obtain possession of the property until the landlord returns the deposit. Failure to protect the deposit gives rise in each case to a claim that the tenant receive three times the deposit.¹¹⁷ The tenant or the landlord may apply, at any time after the tenancy has ended, for the whole or part of the deposit to be paid to them. Where the scheme administrator is satisfied that the parties have agreed that the payment should be made or that the court has so decided, the deposit will be paid out in accordance with the agreement or decision. Schemes offer alternative dispute resolution services as ways of settling disputes.

112 HEPI, *Somewhere to Live* (n 6) p. 36.

113 Tenant Fees Act 2019, schedule 1, paragraphs 2-3.

114 *Ibid.*

115 Housing Act 2004, ss 212-215.

116 Housing (Tenancy Deposits) (Prescribed Information) Order 2007.

117 *Johnson v. Old* [2013] EWCA Civ 415.

Purpose-built student accommodation

47. Where a provider of purpose-built student accommodation requires payment of a deposit for the duration of occupation, the provider is generally required to indicate clearly what the deposit will be used for, the amount to be paid and how the scheme will be administered. The various codes of practice that apply to providers of purpose-built student accommodation also require that providers endeavour to return any deposit balances due within 28 days of the end of the contracted period, including details of all deductions from the initial amount paid.¹¹⁸

6. *Duration and Termination***A. Duration of the Rental Contract***1) ~~Is the Initial Length Free or Should Certain Regulations Be Respected (Minimum or Maximum Period)?~~*

48. Once again it is helpful to separate out private rented housing from purpose-built student accommodation.

Private rented student housing

49. Student housing is expressly excluded from statutory residential security regimes under the Housing Act 1988. However, it is typical for private landlords to use an assured shorthold tenancy when letting either a dwelling to a group of students or a room in a shared house to an individual student. Under this tenancy, security is limited to the initial contractual grant and any implied regrant.¹¹⁹ Assured shortholds are typically granted for a fixed term of six months or a year, but they could be periodic. During the initial fixed period, the tenants cannot be removed unless they have breached the terms (see Section 4.6.2). Landlords may provide tenants with greater security rights, and it is typical for students to be granted an assured shorthold for a 10-, 11- or 12-month fixed period. At the end of the fixed term, the agreement is terminated without requiring service of notice.

Purpose-built student accommodation

50. There is no set initial duration of student occupancy agreements in purpose-built student accommodation; rather, the student and the owner of the property may set the term of the occupancy arrangement. It is typical for student occupancy agreements in both the private rented sector and purpose-built student accommodation to be for

¹¹⁸ The Universities UK/Guild HE Code of Practice for the Management of Student Housing, dated 1 May 2019, Section 5.4.

¹¹⁹ Housing Act 1988, s. 19A. This has been the position in England since the Housing Act 1996.

periods of 10, 11 or 12 months. In the case of purpose-built student accommodation, the licence agreement will expire at the end of the term, without requiring service of notice.

2) Are there provisions regarding the extension of the lease? for example, does the tenant have the right to extension?

51. Neither party to a student occupancy agreement, whether in private rented or purpose-built student accommodation, has a right to unilaterally extend the occupation agreement. There is no provision restricting express extension of an existing student occupancy agreement in either private rented housing or purpose-built student accommodation, so in theory, if both parties are in agreement, they can decide to do so.

In the private rented sector, when the contractual period of an assured shorthold ends, a periodic assured shorthold tenancy will arise by implication when rent is paid (e.g. monthly). However, an assured shorthold tenant has no security of tenure, and to obtain a possession order, a landlord need only serve an appropriate notice. Upon doing so, the landlord will have an automatic right to repossession. Equally, if student occupiers are joint tenants of the lease, a notice to quit can be served by any one of the co-tenants, and it will bring the periodic tenancy to an end.¹²⁰

B. Termination

1) Is an early termination of the lease by the tenant or the owner possible (via a notice)? If so, in which cases and under which conditions?

52. Most student occupancy agreements, whether in the private rented sector or purpose-built student accommodation, are for a fixed term. During this period, the student occupier cannot terminate the agreement unless the landlord or the provider has breached the terms or has given consent to early release. It is possible, although unusual, for the agreement to include a break clause that enables either party to end the arrangement before the fixed term. If a student wishes to end their arrangement during the fixed term, they may request this from the landlord or the provider. It is entirely at the discretion of the landlord or the provider whether they grant early release. If they do so, they may make early release conditional on the tenant finding a replacement, but clauses to this effect are rare.

53. There are different rules governing termination by private landlords and providers of purpose-built student accommodation.

Private rented student housing

54. In the case of private rented housing where an assured shorthold has been used, termination is governed by the Housing Act 1988. This provides that, during the fixed

¹²⁰ *Hammersmith London Borough Council v. Monk* [1992] 1 AC 478, HL.

term, the landlord can only take county court possession proceedings against a tenant on specific grounds, such as breach of tenancy conditions.¹²¹ There are numerous statutory grounds of possession, comprising a mix of discretionary (e.g. breach of any obligation, other than rent arrears) and mandatory grounds (e.g. serious rent arrears). These grounds are available once the contractual term has ended and the tenancy is subject to statutory continuation.¹²² Some of the grounds may also be used during the contractual period of the lease where the lease provides for this. During the fixed term, the landlord cannot end the fixed term, except where there is breach of contract.

Purpose-built student accommodation

55. In the case of purpose-built student accommodation, the termination procedure is governed by the terms of the licence agreement. There are limited statutory protections for student occupiers of such housing – the main protection being that the provider must obtain a court order if they wish to remove the occupier.¹²³

7. Disputes

A. What Is the Course of the Judicial Dispute Resolution Process? Do Specific Rules Apply to Student Housing? Are There Any Out-Of-Court Dispute Resolution Options?

1) Private rented student housing

56. Disputes in the private rented sector related to rent, eviction, HMO licencing and so on are resolved before the Property Chamber of the First-tier Tribunal. This is a specialist dispute resolution forum that is a part of the Courts and Tribunals Service. The procedures are regulated by the Civil Procedure Rules 1998, under which the Tribunal is responsible for case management. The Tribunal's practice and procedure are governed by its 'overriding objective', which is to make sure it deals with cases fairly. This is designed to avoid delay-based breaches of the trial right in Article 6 of the European Convention on Human Rights. Proceedings at the Tribunal are relatively informal, and a claimant does not have to have legal representation. However, there are problems of complexity, while restrictions on legal aid mean that many private tenants will represent themselves.¹²⁴ Alternative dispute resolution mechanisms are available through deposit protection schemes where disputes arise about deposits (see Section 4.5.2).

¹²¹ Housing Act 1988, s. 8. This also applies after expiry of the fixed term.

¹²² Housing Act 1988, schedule 2 as amended by Housing Act 1996, ss 144-152.

¹²³ Protection From Eviction Act 1977, ss 1-3. This also applies to assured shorthold tenants.

¹²⁴ *R v. Lord Chancellor ex parte Witham* [1998] QB 575.

2) *Purpose-built student accommodation*

57. Providers of purpose-built student accommodation are subject to codes of conduct that require them to have established internal mechanisms for dealing with complaints from students, including those in relation to accommodation issues.¹²⁵ Failing this, disputes related to non-compliance with an occupation licence can also be resolved before the civil courts. This process is subject to delay, high costs and uncertainty.

V. GENERAL ASSESSMENT OF THE REGULATORY FRAMEWORK

58. A number of leading studies and reports have highlighted “widespread and significant concerns” about student accommodation in England.¹²⁶ The headline problems include provision of inadequate information and support, poor housing quality and unaffordable housing costs.

1. *Information and Support*

59. There is growing evidence that students are not provided with adequate information about accommodation. This appears to be a particular problem in relation to purpose-built student accommodation. In 2019, over 1,500 students entered temporary accommodation because student housing schemes were unfinished at the commencement of the term.¹²⁷ In the relentless competition for students, university marketing of student accommodation during open days may give students and their families a selective and unrealistic impression of the quality of available purpose-built student accommodation.¹²⁸ There is a need for students to be provided with suitable information that gives them the true cost of living and real conditions in purpose-built student accommodation and the private rented sector. There is also a particular need for advice and legal support services for students when dealing with private landlords, given the prevalence of poor management practices among landlords in the sector.

125 The Universities UK/Guild HE Code of Practice for the Management of Student Housing, dated 1 May 2019, Section 5.5.8.

126 Augar Report (n 2) p. 196.

127 Ben Ellery, Rosemary Bennett, Nicola Woolcock, ‘Universities under fire as accommodation crisis hits students’, *The Times*, 7 October 2019, www.thetimes.co.uk/article/universities-under-fire-asaccommodatio-n-crisis-hits-students-3vp2wn8zp (accessed 9 January 2020).

128 Hannah Ewens, ‘How more than 12 students at one university ended up dead by suicide’, *Vice*, 8 October 2019, www.vice.com/en_uk/article/zmqj7x/how-more-than-12-students-at-one-university-ende-d-up-dead-by-suicide (accessed 9 January 2021).

2. *Quality of Housing*

60. There are problems related to the condition and safety of student housing in both the private rented sector and purpose-built student accommodation. This is a particularly significant issue for students. In 2019, approximately 4 in 10 students renting privately lived in unsafe and unhealthy properties that fell below legal minimum standards.¹²⁹ The considerable investment in purpose-built student accommodation has resulted in increases in supply and improvements to housing conditions; however, many recent developments have “not been designed with student well-being in mind”.¹³⁰ For many students, particularly first-year and international students, poor design can exacerbate feelings of loneliness, alienation and be harmful to mental health.¹³¹ During the design and provision of such housing, “students voices are often ignored and their experiences disregarded”.¹³²

3. *Housing Costs*

61. There are significant concerns over the unaffordable cost of student accommodation.¹³³ This is a particularly a problem with purpose-built student accommodation, where the funding model that is central to the enormous recent investment in such accommodation is predicated on rent inflation.¹³⁴ Equally, universities and private developers have tended to prioritize high-end developments over low-cost accommodation in order to generate the higher rent returns.¹³⁵ English students can now expect to pay on average £ 6,400 a year for rooms, while this rises to £ 8,900 in London.¹³⁶ These costs mean that many students source accommodation in the private rented sector. However, there are no effective legal restrictions on initial rents or rent increases, and high housing costs are a problem here too.¹³⁷ A 2019 study found that, on average, rent levels account for three-quarters of the student loan, up from three-fifths only six years ago. Although England has the highest student fees in Europe, it is not surprising that students are most concerned about the high housing costs.¹³⁸ The public subsidy of student maintenance costs has led to growing calls for the Office for

¹²⁹ National Union of Students (NUS) (n 24) pp. 7-11.

¹³⁰ Scott Brownrigg and Galliford Try, *Impact of Accommodation Environments on Student Mental Health and Wellbeing* (n 71).

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ Augar Report (n 2) p. 196.

¹³⁴ HEPI, *Somewhere to Live* (n 6) p. 45.

¹³⁵ *Ibid.*, p. 33.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ HEPI, *At What Cost?* (n 69) p. 1.

Students to intervene and monitor the provision of student accommodation in terms of costs, rents, profitability and value for money.¹³⁹ The Auger Report has recommended that the government should gather evidence of private sector involvement in student accommodation in order to understand the profits that private business and investors are making from student rents.¹⁴⁰

4. *Regulatory Failures*

62. In different ways, the aforementioned problems stem, arguably, from the marketization of student housing. However, they have been exacerbated by the failure to legally recognize the special characteristics of student accommodation. There is no special regulation of student housing; instead, the general law that applies is piecemeal, incoherent and often does little to protect the interests of student occupiers. This is particularly apparent in the distinctive legal treatment of students living in private rented housing and those living in purpose-built student accommodation. In the private rented sector, students are excluded from the statutory security regime but landlords typically use assured shorthold tenancy when letting to students. This means that those students gain some important legal protections, including a statutory right to housing that is fit for human habitation, a statutory right to have repairs carried out and access to independent deposit protection schemes. Further legal protections apply to students living in shared housing that is classified as an HMO.

These protections are often of limited value to private rented students – who often lack advice and support to assert their rights; however, they are not available to students living in purpose-built student accommodation. This is because these statutory protections only apply to assured shorthold tenancies. Providers of purpose-built student accommodation are careful to use residential licences instead of such tenancies. Furthermore, although purpose-built student accommodation is the classic example of an HMO, most purpose-built student accommodation is excluded from the licencing and regulation regime that applies to such housing. Instead, providers of purpose-built student accommodation are subject to a voluntary code of conduct that sets basic standards about how the provider should act. Nowhere in this code is there any recognition of the student as a holder of a human right to housing that is adequate, safe, affordable and secure.

¹³⁹ Augar Report (n 2) p. 196.

¹⁴⁰ Ibid.

SELECTED BIBLIOGRAPHY

- Philip Augar, *Independent Panel Report to the Review of Post-18 Education and Funding* (Her Majesty's Stationery Office, 2019).
- Higher Education Policy Institute (HEPI), *Somewhere to Live: Why British Students Study Away from Home – and Why It Matters* (HEPI Report 121, 2019).
- Higher Education Policy Institute (HEPI), *Student Accommodation: The Facts* (HEPI Analytical Report 2, 2020).
- House of Commons Library, *Student Accommodation FAQs* (Briefing Paper Number 8721, 2 March 2020).

