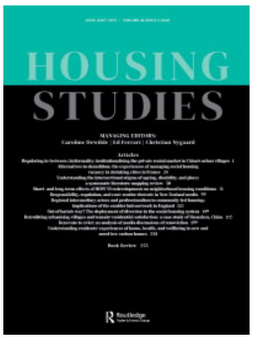

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Licensing as governance: the case of the UK private rented sector

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ABSTRACT

Across the UK private rented sector (PRS), an increasingly prominent regulatory instrument has emerged: registration and licensing of landlords and property. Expanding from the most risky housing – HMOs – to encompass defined geographical areas or the entire sector, registration and licensing now appear to be key tools for managing the sector. This article analyses the different licensing regimes operating across the UK's constituent jurisdictions against the Webbs' assertion that, 'The function of licensing … has always included three distinct forms of control: the power of selection, the power of withdrawal, and the power of imposing conditions'. We add the power of the 'platform' as a further form of control through reshaping and integrating regulatory architectures. The scope for (re)configuring these forms of control makes licensing a flexible governance technology, and we explore why governments have adopted such schemes and, in doing so, have varied their design. The article draws on data from a UK-wide qualitative study conducted in 2018–2020.

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Introduction

The private rented sector (PRS) is the least legible part of the housing system. It is fast changing and fluid, and lack of knowledge of the sector is chronic. In England, as elsewhere, interventions are 'constrained by a lack of data' (NAO, 2021: 2.13). However, the sector is known to include some of the poorest property conditions, and most problematic management practices and tenant behaviours (LUHC Select Committee, 2023; Spencer *et al.*, 2020).

As private renting has played a more important role in the housing system and a more diverse range of households experience renting privately (Rugg & Rhodes, 2018: Ch 3), so longstanding questions about the sector's capacity to provide good quality affordable accommodation have moved up the policy agenda in the UK (DLUHC, 2022a; Roberts & Satsangi, 2021) and internationally (Kemp, 2023).

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Rather than addressing the contractual imbalance in the landlord-tenant relationship (Chisholm *et al.,* 2020), the policy response has been to superimpose a variety of public policy instruments, including instruments that are novel in this context.

In this article, we focus on one such set of policy instruments: the registration and licensing of landlords and properties. Across the UK, the scope of registration and licensing has been expanded to encompass defined geographical areas or the entire sector. Consequently, registration and licensing now appear to be key tools for governing the sector, with proposals to extend it further in England (2025 Renters Rights Act). Theoretical engagement with these developments has been limited. The early contribution by Carr *et al.* (2007) interrogated the operation of HMO licensing, but their focus was the specific question of crime control through housing regulation.

Our aims are broader: we examine why licensing and registration were chosen as the appropriate regulatory device, differences in their framing across the devolved jurisdictions of the UK, and how they have operated. We emphasize the spatial nuance in their use (McKee *et al.*, 2017). We draw on data from a study of the regulation of the UK PRS conducted in 2019–2020. Our analysis draws on the structure employed by the Webbs in their classic study of pub licensing in England which argued that licensing includes three forms of control: selection, withdrawal, and imposing conditions (Webb & Webb, 1903: 4). However, we also posit the 'platform' as a further site of control because, in our digital world, new ways of integrating regulatory architectures become possible.

Although our interest is the UK, our concerns are not parochial. The use of registration and licensing appears to be growing internationally – in Canada, for example, some municipalities require landlords to obtain licences, and their greater use has been advocated; licensing in Australia applies to rental property managers, and it is under active consideration in New Zealand (Residential Property Managers Bill 280-1, cl 9). As states and municipal governments grapple with how to overcome the issues in the PRS (Chisholm *et al.*, 2020: 155) the questions raised by registration and licensing are of greater significance. Indeed, in our concluding discussion, we explore rather more fundamental questions which problematize this emerging international discourse: why, in advance of compelling evidence of their effectiveness, have governments adopted licensing schemes in the rented sector, and done so differently? These questions arise from our data but have so far attracted limited consideration.

Our theoretical interest in licences and registration lies in their 'governmental' nature, as Foucault uses that term. In contrast to neo-liberal interventions (e.g. Flint, 2003; McKee, 2009), licensing and registration are not 'married' to specific governmental rationalities (Valverde, 2011: 279). They purport to create sites of security, but we argue that these novel forms of police powers have created new problematizations of the sector itself. Our central arguments concern the flexibility of the licence as a technology of governance, its uses to produce knowledge, and its capacity to responsibilize licensees into the management of behaviours.

In the next section, we develop that theoretical approach and argue for a modified version of the Webbs' (1903) framework as an analytical structuring device. We also provide a policy chronology of the development of licensing in the UK PRS. Following a summary of our empirical methods, we then develop our argument using our framework to structure the discussion.

Licensing as a governance tool

We start by outlining a theory of licensing as it has developed in studies of government, before briefly providing a chronology of the development of licensing in private renting, noting the divergent approaches taken across the UK.

A theory of licensing

Whether one is talking about public houses, sex-related attractions or rental housing, the epistemological basis for licensing is taken-for-granted common sense (Valverde, 2003: 237–9), often locally produced and inexpert (Nicholls, 2015; Beckingham, 2017). This is quite different from other governmental techniques and technologies, which rely on statistical measurement and the production of the norm. However, once in place, licensing regimes can produce new knowledge (Valverde, 2011: 298).

Like other forms of police science, the licence is a regulatory device: 'We are in the world of the regulation, the world of discipline. … a general regulation of individuals and the territory of the realm in the form of a police based on an essentially urban model' (Foucault, 2008: 340-1). This idea of the police, according to Foucault (2008: 313), was an apparatus to 'ensure the state's splendour'. It was a science, with minute calculations and techniques which would '… make it possible to establish a mobile, yet stable and controllable relationship between the state's internal order and the development of its forces' (id). The technique of the licence is a dividing practice, producing sharp distinctions between the licensed and others, as well as spatial limits (whether that be at the level of the nation state or the locality). But it is also permissive: it provides a 'bandwidth of the acceptable' (Foucault, 2008: 6) and produces the ability of the licensee to trade, as well as disciplining the licensed through the prospect of revocation.

The licence is a responsibilizing device: it 'contains a built-in encouragement for the licensee … to carefully control the operation of the business or other activity in such a way as to avoid trouble with the often highly local orders of the licensing authority' (Valverde, 2011: 298). Conditions can be put on the licence, which can wire it to unrelated rationalities; or, as the Webbs (1903: 4) put it, 'the act of licensing may be the means of imposing special rules upon the occupation, or of more easily enforcing the fulfilment either of these special rules or of the general law of the land'. Alternatively, the licence may have a more limited purpose: 'It may be an instrument for registering all those who are following a particular occupation, in order, for some reason or another, to ensure their being brought under public notice' (id). That is, 'registration' and 'licensing' effectively sit on a continuum: schemes which impose no conditions or requirements can be labelled 'registration' schemes, whereas licensing by definition involves fulfilment of conditions to obtain and/or retain a licence. However, there are schemes that involve meeting some limited conditions to which either label could plausibly be applied. We will use 'licensing' generically.

These characteristics of licensing mean that it is a technology that has appealed to governments of different political complexions, which rationalize its use in different ways and apply it across diverse areas including driving, dogs and televisions.

First, as Valverde (2003: 237) suggests, legal technologies like the licence, 'are seldom hard-wired to particular governmental projects'. Its attraction as a *techne* of government is that it has the potential to make the regulated populations more legible. Second, it enables the state to withdraw. The grant of a licence subject to conditions that the licensee controls entry to premises and manages visitors on site responsibilizes the licensee and permits the state's apparent absence. Third, it manages the market at a distance, without controlling it (Hubbard *et al.*, 2009). It facilitates the market's proper circulation, while giving a regulatory imprimatur. Licence holders' opportunities for private profit are 'intended to serve as a lure to make private operators serve the public' (Reich, 1964: 745). It protects the market by correcting it, as well as by defining and bracketing off the deviant. Accordingly, the licence can provide a bridge between the ability to regulate the future circulation of the market and taken-for-granted assumptions about nuisance and public order.

For the purposes of the following analysis, we draw on the Webbs' (1903: 4) understanding of the function of licensing. In their study of pub licensing, they argued that licensing 'has always included three distinct forms of control: the power of selection, the power of withdrawal, and the power of imposing conditions'. However, this structure does not encompass certain new possibilities. In particular, while it focuses upon controlling membership and disciplining the behaviour of the regulated population, it does not engage with the question of the generative power of licensing – that is, once a licensing scheme is in operation it offers the possibility for gaining functions, or the opportunity to couple licensing with other policy agendas and objectives. Licensing is a flexible device which can work alongside, and be coupled with, other distinct practices, such as planning or landlord and tenant law, without replacing or reforming them. The growth of digital public service delivery has arguably made these features of licensing more relevant and potent. To capture these features, we supplement the Webbs' analytical framework with the power of the platform – once up and running, it creates new problems, possibilities and synergies. These four types of power – selection, withdrawal, condition, and platform – provide the framework with which we analyse licensing below.

Licensing private renting

Registration schemes are long-established in relation to certain housing providers – housing associations were first subject to registration schemes in 1875 – but licensing housing and housing managers in the PRS appears to have emerged from schemes aimed at Houses in Multiple Occupation (HMOs), a subsector deemed particularly risky and in which landlords were regarded as exhibiting poor management (Thomas & Hedges, 1986). These began with local authorities in England and Wales being given a discretion, under the 1985 Housing Act, to create registration schemes. Schemes could include controls over use and management; effectively licensed both landlords and the property itself; and could include controls over occupiers. During this period mandatory licensing for the entire PRS was rejected in England 'because of the inherent danger that it would lead to excessive cost and bureaucracy by forcing every local authority to follow a standard licensing approach' (DoE, 1995: para 2.1). The preference was to rely primarily on accreditation schemes to raise

standards, although the limitation of such voluntary approaches was soon apparent. A licensing scheme was a Labour Party manifesto commitment in 1997 and 2001, as well as a policy proposal (DETR, 2000: 3.7). This seems to have created the conditions of possibility for the broader use of licensing in the PRS. Once the practice had been established for HMOs, advocacy of its wider use continued, in part entangled in a series of unevidenced concerns about anti-social behaviour, a carrier concept which New Labour exploited to justify various sovereign interventions (Garland, 2001: Ch 7).

The first legislation dealing with licensing was passed in Scotland in the 2004 Anti-Social Behaviour Act. This created a national registration scheme managed by local authorities. This was followed in the Westminster government's 2004 Housing Act by the creation of a mandatory HMO licensing scheme and a selective licensing scheme under which local authorities could apply to central government to designate all or part of their area using criteria relating to low housing demand or 'a significant and persistent problem caused by anti-social behaviour'. All landlords operating in the designated area were required to be licensed.

These schemes were followed in 2014 by a national registration scheme in Northern Ireland, again to be managed by local authorities, which required all landlords to provide certain information. And, in the same year, the Welsh Government passed the 2014 Housing Act, introducing a national registration and licensing scheme. The Welsh scheme was distinctive in mandating training as a requirement of registration and licensing. However, implementation in Wales was delayed for two years.

Over the years, the English and Scottish schemes have been amended. In 2010 and 2015, the English criteria for designating a selective licensing scheme were broadened to include poor property conditions, deprivation, crime, and inward migration. The requirement to secure central government consent for designation has varied. Since 2015 the Westminster government has been less willing to give consent to schemes covering an authority's entire jurisdiction, preferring more geographically-constrained schemes. The Scottish scheme was also amended in 2006, 2011, and 2014, adding registration conditions and narrowing the affected types of rented housing.

Schemes use different nomenclature – registration or licensing (or both in the case of Wales). In principle, registration, unlike licensing, is the one-way provision of information by the relevant person (a landlord or letting agent) which is retained by the appropriate authority for its own ends. Generally, this transcription becomes a matter of public record (like registering a death); but, in the case of Northern Ireland's registration scheme, there is provision also for conditions to be imposed on the landlord and for the registration to be withdrawn (Reg 6(f)). Accordingly, this is a registration scheme which has potential to become a licensing scheme. Before the Stormont Assembly was suspended in 2017, this change had been planned. On the other hand, the registration scheme in Scotland is effectively a full-blown licensing scheme, with the Webb powers enshrined in its terms. All schemes require landlords to pay a fee on application, the amount of which is a matter of controversy. National schemes have set fees, whereas local authorities in England set their own fees.

All schemes have statutory enforcement mechanisms, bar Northern Ireland, but these are differently constituted. Wales has a fixed penalty regime with non-monetary penalties – an unregistered landlord cannot use the mandatory possession ground based on a two-month notice. Non-registration in Scotland can result in criminal prosecution and disqualification, as well as the service of a notice disentitling the landlord to operate. An unlicensed landlord in England is subject to criminal prosecution, can be taken to a Tribunal to recover rent paid, and is unable to use the mandatory possession ground based on a two-month notice. In England, after 2016, as an alternative to prosecution a landlord may be subject to a civil penalty of up to £30,000.

Hence, a patchwork of schemes operates across the UK. Both Northern Ireland and Wales referred to the Scottish and English schemes in their underpinning policy documents, which indicates the possibility of learning and policy transfer (Soaita *et al.*, 2023), but with entirely different outcomes. The professional housing community in England can be characterized as broadly positive towards licensing as an effective regulatory tool (CIH/CIEH, 2019). A range of scheme-based evaluations have taken place (there has been no cross-jurisdiction evaluation). While they are all constrained by data availability, particularly data on outcomes, these evaluations have generally been positive about the schemes in operation. The schemes have been found to create an information bank with the potential to be used to inform local housing strategies and planning, as well as raising standards in the sector (see, e.g. Lees & Boyle, 2011: 4.3–4 [Scotland]; Lawrence & Wilson 2019: 5.1–2 [England]; RSM PACEC, 2018: Ch 5 [Wales]). Petersen *et al.* (2022) found that local adoption of area-based licensing in London contributed to reducing anti-social behaviour, as well as to better mental health outcomes.

However, the caveat is that the limits of existing knowledge make the level of compliance uncertain. Concern about the capacity of agencies to enforce against non-compliance has been discussed in Wales and Scotland (RSM PACEC: 4.99; Lees & Boyle: 4.9). The effectiveness of local schemes in England has been described as having 'considerable variation' (Lawrence & Wilson: 5.1). The key variables influencing effectiveness were identified as: whether licensing is implemented in isolation or as part of a coherent, wider initiative with easy enforcement; availability of a simple means of accessing properties of concern; a proactive approach by the authority; and a clear mechanism for landlord engagement. Proposals for substantial reform enhance the robustness and effectiveness of licensing schemes have been advanced (Spencer and Rugg, 2024).

While there is thus valuable evidence to support the effectiveness of licensing in practice, the evidence base is by no means extensive nor unambiguously positive. The absence of compelling evidence of effectiveness leads to a puzzle regarding the popularity of the licence as a technique of government. Our argument is not that licensing is uniquely poorly evidenced. Knowledge of 'what works' in PRS regulation is generally weak (LUHC Select Committee, 2023), although Rugg (2025) observes that ongoing research could fill knowledge gaps. Rather we argue that licensing has been widely embraced as a governance technology, incurring significant running costs, in advance of demonstrable benefits. That is inevitable for genuine policy innovations, but this is a process that has now been underway for two decades. We return to this puzzle in our conclusion.

Research methods

In the following section, we draw on research data obtained between 2019 and 2020 (finishing just before lockdown). The project, which received ethical approval from the University of Bristol, set out to investigate how local authorities across the UK were developing strategies to improve the PRS locally. An explicit aim was to consider how devolution was shaping local practices. In addition, we aimed to consider how regulation and enforcement of laws could be improved.

The project's first phase entailed eight telephone interviews with key stakeholders in the devolved regions, across local government, landlord, and voluntary organizations. These interviews provided data on systems and strategies then in place. The second phase involved 13 local authorities case studies across England ($n = 7$), Scotland ($n = 4$), Northern-Ireland ($n = 1$), and Wales ($n = 1$). We adopted a purposive sampling strategy, seeking authorities which were active in relation to the PRS, to meet our research aims. We were not aiming for generalizable findings, but to provide insight into the activities that can influence compliance and therefore property standards. Existing evidence suggested significant diversity in local authority PRS strategies. We drew on a range of resources to inform our sampling: our key stakeholders' knowledge; an initial review of online information available on local authority websites; as well as available housing and enforcement strategies. It was not easy to identify appropriate data from existing online sources and not all authorities appeared to be active in regulating the sector.

Across the case studies, we conducted 61 in person, recorded interviews ranging from 45 to 90 min, in which we discussed the design and implementation of local PRS strategies. Research participants included those working at managerial or strategic level, as well as on-the-ground enforcement officers in order to capture a range of expertise and knowledge. The spread of activities in the sector, and the diversity of local practices, meant that we spoke with environmental health officers, housing renewal officers, enforcement officers, housing leads and directors, research and development officers, landlord registration officers, licensing officers and managers, local landlord groups, trading standards officers, and local councillors. We reviewed written enforcement strategies and related documentation in advance of our case study visit, although this article does not draw on these documents.

Our interviews were transcribed and analysed using NVivo. During each project phase the data were analysed thematically, employing both deductively and inductively generated codes. We coded our data using the widely recognized five-step approach (Braun & Clarke, 2013). There is a significant literature on regulation and its enforcement (including in the PRS), which informed our initial coding, but themes emerged from our data, including around licensing and difference across the UK. As a qualitative study, we recognize that our own subjectivities and disciplinary expertise will have affected the collection and understanding of our data. In addition to team discussions to surface and address those subjectivities, we also produced individual case study reports which went to case studies for comment, and which we used to develop a better appreciation of common themes.

Licensing schemes: selection, conditions, withdrawal, and platform

We draw on our data to discuss the licensing schemes in operation across the UK, structured around our elaboration of the Webbs' framework. While we develop the argument that licensing is a flexible governance technology which allows novel couplings that open up new modes and channels of governmentality, we note that it is only one tool available to regulate the PRS. Licensing schemes do not simply replace other activities but can work in concert with other tools and take on different shapes as a result (Valverde, 2011). Indeed, contemporary regulatory thinking – operating with reference to concepts, such as responsive, smart or risk-based regulation – views effective regulatory architecture as entailing a well-thought-out approach to the interplay between different regulatory tools (Gunningham & Grabosky, 1998). Current guidance in England indicates that demonstrating how licensing is embedded in broader strategies is a criterion for scheme approval (DLUHC, 2023).

Selection

Three key issues emerged around the power of selection: the policy basis for schemes, including the invocation of the figure of the 'bad' or 'rogue' landlord; the requirement that an applicant be a 'fit and proper person' – a criterion present in all schemes except Northern Ireland; and the identification of non-compliance and how to deal with large-scale non-compliance.

(In-)Expert knowledge: the emergence of licensing in the PRS

The spectre of the bad or rogue landlord has long been embedded in UK discourse on private renting (Kemp, 1992). It has been particularly powerful in asserting the need for licensing schemes (Roberts & Satsangi, 2021). In Westminster's 2000 Green Paper (DETR, 2000) it was set against the backdrop of concerns about over-regulating landlords out of the housing market altogether (Rugg & Rhodes, 2003). There were 'A small minority of private landlords (who) set out to exploit their tenants and the community at large in flagrant disregard of the law' (DETR, 2000, p. 44). They were 'unscrupulous' and can form an 'unholy alliance (with) bad tenants' that is 'destabilising local communities' (p. 49). Beyond these assertions, this 'small minority' was never defined and the lack of centralized data means it is not possible to make any form of estimate of 'bad' practice (Rugg & Rhodes, 2008: 59–60; NAO, 2021; but see DLUHC, 2022b for an attempt).

The debate over the need for intervention in the PRS emerged in the context of the broader 'better regulation' agenda and political concerns about over-regulation, but these concerns did not resonate sufficiently strongly in the PRS to stall the move towards greater regulation: concerns about rogue landlords, though not well-evidenced, were taken as justification for the shift towards licensing. England and Wales (which did not have an independent housing policy at that point) pursued time-limited selective licensing schemes, to signal government's intention that intervention would be problem-focused not a move to sector-wide regulation.

Our English case studies which had implemented selective licensing schemes did so for a variety of reasons, not always related to criteria admissible under the policy – for example, one authority formally rationalized its policy using the anti-social behaviour criterion, whereas its underlying rationale was poor standards of repair and management. A further factor had been a (mistaken) assumption that adopting a scheme would result in a reduction in enforcement action against landlords: 'Licensing was always seen as a, "Well, if we do licensing, we might not need to enforce quite perhaps so much." But, in reality, it generated a lot more …' (CS8/3).

However, concern was expressed in several case studies about demonstrating fulfilment of the criteria justifying scheme creation to the satisfaction of the Secretary of State (see also Spencer & Rugg, 2024). It was a question of lack of knowledge: authorities did not know the size of the sector locally, nor, indeed, how to evidence the issues:

> there isn't a definition of low housing demand. All the guidance says really is that you must have regard to things like vacancy levels, property prices, rental levels, turnover of properties, impact on shop units, even down to things like fly tipping which are all seen as indicators of low housing demand. There isn't a threshold where you become low demand. (CS4/1)

Some used selective licensing as an adjunct to local regeneration schemes or to more general schemes to improve the lives of households. However, the courts proscribed such approaches and required procedural formality before selective licensing could be put in place. The approval process then became more formalized, resource-intensive, and problematic.

By contrast, the concerns about 'bad' landlords in Scotland led to mandatory *national* landlord registration. Roberts and Satsangi (2021: 8) argue that this decision was driven by one member of the legislative Committee, although mandatory licensing was already being actively considered and cross-party opinion was favourable (Scottish Parliament, 2003), again using an anecdotal and common sense evidential basis. The link with the 'bad' landlord and concerns about anti-social behaviour explains the curiosity that the scheme was introduced into a Bill designed to deal with anti-social behaviour. The scheme, in its original form, was meant to be light touch.

The later Welsh and Northern Ireland schemes reflected on the differences between England and Scotland (see, e.g. Northern Ireland Assembly, 2009; Welsh Government, 2010). Nevertheless, despite recognizing the lack of data on Welsh landlords (Welsh Government, 2010: paras 6.9), the Welsh Government drew the same division between good and bad landlords. They adopted a national licensing scheme that was:

> … to obtain useful information about the private rented sector. That obviously, of course, has an enormous impact on having strategic information that then people can utilise. I suppose by people I mean enforcing bodies could potentially utilise to ensure either wider compliance in other legislation or actually much more important strategic aims … (SCH7)

By contrast, the Northern Ireland Assembly adopted a lighter touch national requirement of registration operated by a national organization, to enable

communication and better regulation of the sector (DSD, 2010). Registration contains basic information about the landlord and the rental property. We were told that one of the purposes of the scheme was information gathering but as one local authority officer put it: 'it is limited essentially [as] a database, i[t doesn't] produce reports for us so can't just go in and do a search and it's very limited what we can do and what we can gather out of it'. The following interaction occurred during a case study interview:

> I: What use does the national registration scheme have, then, in your view?
>
> R: For us, I suppose it's just… I really don't know, apart from they have to register. (CS/13.2)

That scheme appeared to have limited, if any, utility.

What emerges is that licensing in housing has followed a similar path to that of pub and sex attraction licensing. Common sense knowledges were deployed, including those developed locally (e.g. by MSPs). However, although similar problematizations were deployed across jurisdictions, these common-sense knowledges led to schemes with different scales – either area-based or nationwide – and, if nationwide, administered locally or by national agency. Licensing appears to have been selected as the policy instrument because it balanced the problem of governing too much and too little. In its emergence, at least, its primary concern was containing and regulating a presumed sub-sector of bad or rogue landlords.

The 'fit and proper person'

One of the gateways for selection to all the schemes, other than Northern Ireland (Landlord Registration Scheme (Northern Ireland) Regulations 2014),[1] is that the applicant must demonstrate that they are a 'fit and proper person' to manage property. This test is testament to the flexibility inherent in the idea of the licence and the ability of the selecting authority to make individual determinations, as well as regulating out deviants. Table 1 presents a summary of the criteria used to determine suitability. It illustrates the uncertain knowledge of the characteristics of the bad landlord.

The lists are of a type commonly found in studies of police powers (Novak, 1996). The lists clearly overlap but do not fully align, and their scope is different. They are also incomplete, in that the list is non-inclusive – other criteria can be used by the regulatory authority. They represent particular understandings of 'fit and proper', but it is not always clear how the criteria align with the business of renting. They may be risk factors for poor performance as a landlord, but, if so, they lack a scientific basis. There are issues with how one might show contravention of housing or landlord and tenant law – for example, a landlord whose claim for possession is thrown out by a court has contravened housing law if they have served an invalid notice, but that may have been a product of administrative error rather than unfitness. Conversely, for diverse reasons, few contraventions of relevant laws result in a successful prosecution. The pattern of exclusion of potential landlords on this criterion could bear no relation to their substantive fitness.

Table 1. The 'fit and proper person' test – Criteria to which local authorities must have regard.

England and Wales	Scotland
(a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);	(a) committed any offence involving— (i) fraud or other dishonesty; (ia) firearms (within the meaning of Section 57(1) of the Firearms Act 1968 (c. 27)); (ii) violence; or (iii) drugs;
(b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; or	(aa) committed a sexual offence (within the meaning of Section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c. 46));
(c) contravened any provision of the law relating to housing or of landlord and tenant law.	(b) practised unlawful discrimination in, or in connection with, the carrying on of any business; or
Included as a selection criterion is any person who is, or has been, associated with the applicant who has done any of the above and that is relevant to the question whether the applicant is a fit and proper person.	(c) contravened any provision of— (zi) any Letting Code issued under Section 92A; (i) the law relating to housing; or (ii) landlord and tenant law.

Sources: Housing Act 2004, s 89; Housing (Wales) Act 2014, s 20; Anti-Social Behaviour (Scotland) Act 2004, s 85.

Problematization of selection: compliance

If selection under licensing is to determine suitability for admittance to the regulated population, then the power requires that all potential landlords submit themselves for judgement. Yet, a recurrent concern across schemes is compliance: well-intentioned and legally aware landlords comply, while those whose behaviour is most problematic ignore licensing requirements. Our data suggests that this concern may be borne out, despite penalties and criminal sanctions for non-compliance. Across all schemes, it was commonly assumed that those who did not apply were the 'bad' or 'rogue' landlords. Yet, statistics on non-compliance varied in quality across the different schemes and represented a 'known unknown'. For example, in Northern Ireland and Scotland, stakeholders said:

> Now we have over 45,000 landlords registered with the scheme and close to 90,000 properties registered. The last house conditions survey that was done had estimated there would be about 135,000, 136,000 tenancies in Northern Ireland, so we still haven't captured them all. (Registration, NI)

> We're 13 years in now and I guess if somebody had said to me back in 2006 when this went live that we'd still be … doing an awful lot of the administrative headaches that universal registration brings I'd be saying that was disappointing. I don't think anybody could claim that it's been a roaring success at this stage. … there's still a significant minority of landlords who are operating outside of the margins of the system. (NGO, Scotland)

This created a new problematization about the government of compliance. There was a search for the non-compliant. The authority might consult local taxation records or the land registry, but other nationally-maintained records (e.g. Universal Credit) were inaccessible due to data sharing constraints. One English selective licensing authority resorted to knocking on doors to identify private rented properties (CS9/2). National schemes tended to adopt different approaches. In Wales the approach was proactive:

> … finding not just the correct people, who are the landlords, but also correct correspondence details is something that is incredibly time consuming, something that's very difficult … and probably is one of the things that takes up the majority … of our time, locating the people that we need to contact. (SH7)

In the Northern Ireland scheme, in contrast, non-registration was not chased at all, but regarded as something to be addressed when it arose. This was partly a resource issue – local authorities had no extra resources for enforcement – and partly the lack of any formal use of the registration system itself.

Outside Northern Ireland, new teams were set up to find non-compliant landlords, and new relationships developed. The rapidly changing nature of the sector meant that keeping the register up-to-date was a key task. Non-compliance affected perceptions of a scheme's success:

> very few local authorities have the capacity … to actually enforce as widely as you would need to do to have a real impact so you're catching those people who come across your radar and get picked up for various reasons. But you have to ask the question, "How many don't get picked up?" and I think that's the real issue …. (CS8/2 - England)

Further, landlords who had registered were reported to feel at a competitive disadvantage, having increased running costs through paying a fee and submitted to the licence conditions, and blamed the authority for that.

The second compliance problem was the sheer volume of applicants caused by an under-estimation of numbers of rented properties. In Wales, it took three or four years to register 100,000 landlords and issue 50,000 licences, before they could begin to address systematically non-compliance. In Scotland, one stakeholder noted:

> When registration was introduced I think there wasn't necessarily an understanding of just how many landlords there were, I think that's obviously become more apparent and would appear to have significant growth which is probably still continuing. So I think a lot of the focus has been in dealing with sheer volume and turnover, the fact that it's about dynamics, it's not as if you get a set of landlords who are then relatively stable. There are people coming in and out of the sector all the time, properties changing hands all the time. (SH7)

The third problem of compliance was specific to selective licensing schemes in England which required property inspection before a licence could be granted. Generally, there were insufficient staff available to conduct inspections, leading to an applications backlog. Authorities developed different ways of dealing with this problem – CS12 and CS8 granted a licence and then conducted a retrospective inspection; CS9 used risk-based inspection based on past experience of the landlord and the property. This meant that landlords essentially self-certified their properties as compliant. As one officer put it: 'I think sometimes licensing can create this false benchmark that we have somehow given some sort of seal of approval when it's a paper exercise. We have given it a licence. We might never have been there' (CS8/4).

Conditions

One benefit of the licence as a technology is that an infinite range of conditions can be imposed on its grant, including those which responsibilize landlords into a

range of management obligations. Accordingly, there is considerable variation in conditions: from the provision of information about the landlord and property (Northern Ireland) through to training (Wales), self-certification (Scotland), or pre-licence inspections (some English authorities). The relevant conditions are rarely set out on the face of the legislation itself, but appear elsewhere in guidance and other documents, which also enable local approaches. In England and Northern Ireland, however, landlords have been successful in narrowing the scope of these conditions. In England, the Court of Appeal held that licence conditions could not regulate the conditions and contents of a house, and in particular the availability and maintenance of facilities and equipment (*Brown v Hyndburn BC* [2018] EWCA Civ 242, [67]). So, for example, requiring an electrical safety certificate could not be a licence condition because this would potentially cause the landlord to have to expend money rewiring the house. This attenuates what some local authorities see as a key benefit of licensing. There is evidence that some local licensing schemes nonetheless continue to operate with conditions of debatable legality (Dawson, 2020).

Anti-social behaviour: a problematic

It is possible that English landlords might be subject to a condition about preventing anti-social behaviour or low demand. Our data suggests that landlords were resistant to such conditions because their obligations *qua* landlord, it was said, did not extend to behaviour management (see also Carr *et al.*, 2007). In one case study, the authority sought to circumvent that issue by employing anti-social behaviour officers in their enforcement team working with landlords to enforce licence conditions:

> A lot of landlords were telling us that … they are a bit toothless to deal with these complaints about antisocial behaviour. We said that we do recognise that, but it is not good enough to shrug your shoulders and say that there is nothing we can do about it. …. By having a resource within the team who is a specialist around antisocial behaviour, they have supported landlords to make sure that they are able to comply with their conditions around dealing with antisocial tenants and complaints about tenants. (CS4/2)

One English authority went further. Each landlord licence holder was interviewed to run through the conditions. One condition was to participate in training sessions on a range of subjects, including anti-social behaviour management. The landlord was responsible for the tenant's behaviour as a way of policing the area: 'In an area like [Place], people will put anybody in, with no consideration of what that person has done in a previous property. So you get the same people, who've caused problems, moving from street to street to street in a small locality' (CS12/1).

The authority supported this condition with a practice of vetting potential tenants, including inquiries to the police and previous housing providers. There were ongoing meetings with individual tenants, with a holistic oversight of their needs, and a focus on behavioural improvement as part of an overall understanding of area improvement: 'The theory is that if they are better and more settled in that area, they're going to stay there and invest in that property …' (CS12/2).

Self-certification: the architecture of government

The national schemes in Scotland and Wales imposed certain conditions regarding, respectively, compliance with housing law and undertaking landlord training. Both involved online self-certification by the landlord. However, in Wales, although the licensing authority provided the training, it was not responsible for enforcing the conditions.

In Scotland, just before our fieldwork, the application process changed. Previously, landlords had been required to self-certify that they had complied with housing law generally. This was changed to self-certification of compliance with each of 16 specific legal requirements. Landlords who had previously self-certified as being compliant were now confessing non-compliance, and in large numbers:

> I was actually really shocked how much that is flagging up people not doing it. They've just been blindly ticking a box and saying historically "yes I do it", but they haven't been doing it. (SH9)

> It's definitely for the better but the way that it has created more work is obviously frustrating, so we have application queues. [The change] showed that landlords were lying before and they clearly don't read the legislation for what they're doing … look, I mean, it's a business, … So that part has been brilliant, not the work side of things, but actually educating people is good. (CS11/1)

This issue exposed the power of the questions asked as part of the application process, but led to unsustainable workloads to deal with the confessions of non-compliance.

Withdrawal

Each of the Statutes provides a power to revoke a licence on grounds relating to the licence holder (that they are no longer considered a fit and proper person or they have committed a serious breach of the licence) or new circumstances in relation to the property. However, if the power of revocation or withdrawal is essential as a deterrent against non-compliance, it rarely emerged as such during our research. National statistics of withdrawals are not publicized, although freedom of information requests in Scotland established that it is negligible: between two and four landlords a year have licences revoked (The Scotsman, 2023).

One reason was that schemes were focusing on ensuring compliance. Compliance-oriented approaches are unlikely to lead to withdrawal – their basis is working with landlords, not as adversaries, but as partners – although the *threat* of withdrawal continues to operate in the background as a disciplinary mechanism. That is the first issue we discuss. The second issue is the way that two English authorities had sought to engage co-regulatory partners (landlord associations) as enforcement agents. These schemes were both unsuccessful.

Enforcement

While there are signs of a shift towards greater use of hardline enforcement approaches in the PRS (Cowan *et al*, 2024), local authority enforcement strategies remain variable. In Scotland, the general approach was compliance-oriented,

particularly where an authority covered a large, remote geographical area. For example, one case study scheme was managed alongside other licensing schemes (e.g. for taxis) which led to a compliance approach. The approach was generally soft-touch:

> It seems to be more of a soft approach here for sure, there's no doubt about that, has been since I started. I think there's even something in the guidance that talks about soft touch, so enforcement isn't massive at all … it's seen more of an education rather than, you know, a slap on the wrists. (CS11/1)

Conversely, in England, adopting selective licensing was commonly accompanied with an increasing focus on enforcement, particularly once the initial period of issuing licences over two or three years (of a five-year scheme) was complete.

However, enforcement practice associated with licensing was by no means uniform across authorities. So, for example, in some English authorities compliance practices predominated in getting landlords to comply with licence conditions:

> one of the stats that really jumped out in terms of compliance was that 70% of licence holders didn't comply on first check. We didn't rush to prosecute all those people and get them in court or anything like that. In the vast majority of cases, we will have worked with those landlords to identify what condition they didn't comply with and to get them into compliance. (CS4/1)

Accordingly, licence withdrawal was an unlikely outcome. Once landlords are compliant, the licence conditions were subsequently easier to enforce when there were infractions, as compared to other housing conditions regulation. Accordingly, authorities had an incentive to keep landlords within the licensing regime rather than withdraw their licence (which could in itself be time intensive).

Co-regulation

Two English authorities in our sample had adopted schemes which they termed co-regulatory, which involved partnerships with local landlord associations. The authorities' rationale for these partnerships had been to give the associations the power of licence withdrawal. That is, if association membership was a condition of the licence or allowed a reduction in licence fee, then withdrawal of membership would affect the licence itself – in principle, a neat form of responsibilization through decentring regulation to a non-state actor. However, an association representative told us that the authority's understanding was based on a misconception about these associations:

> And my belief is that [CS4] expected that there was going to be more. It was going to be more like accreditation, it would involve some aspect of training, certainly I get the impression that they expected more by way of visits and reviews of property and improving the knowledge and understanding of landlords' obligations. Because I can't dispute the fact that [CS4]'s criticism of the co-regulation scheme is such that the standards of landlord within the co-regulation or co-regulated members was probably not as good as it should've been.

Similar issues were reported in the second case study: the incentives for the landlord association to take regulatory action, and potentially lose membership fees, were limited. The authority also reported that, despite its theoretically co-regulatory

nature, the scheme depended almost entirely on the input of local authority resources. Neither partnership had been deemed successful and both had been ended.

Platform

A key aspect of licensing schemes is their actual or potential flexibility as a governance technology, creating new couplings or opportunities and possibilities for institutional change. In this sense, they offer a platform upon which to build a broader regulatory architecture. As noted above, one stakeholder in Wales highlighted the possibility of using the licensing scheme as the basis for addressing a range of broader strategic aims. A key facilitator for licensing to fulfil this platform function is data sharing: an issue which emerged during our study was that data sharing typically appears to be a minimum, because the requirements of data protection were perceived to militate against it.

Regulatory architecture

Studies of licensing draw attention to its employment in tandem with other police powers. Hubbard *et al.* (2009: 201) argue that 'as a technique of governance, there remains much that might be said about licensing as a distinct set of practices that work alongside planning, zoning, and building controls to construct appropriate urban orders ….'. Our project was concerned not just with licensing but this broader institutional architecture of governing the PRS, and our research participants framed their responses accordingly.

We can understand licensing as one technique for governing the sector, alongside other interventions including the regulation of standards, protection from harassment and unlawful eviction, landlord and tenant law (including assisting tenants with obtaining rent repayment orders from landlords), and planning law (zoning out the creation of new HMOs, e.g.). We saw above, for example, how one of our English authorities used the licensing scheme to enforce contractual nuisance requirements, and evictions. However, beyond these housing-based interventions, licensing was also linked to immigration and modern slavery, as well as broader issues around criminality. Relevant local authority housing teams were co-located, for example, with policing and anti-social behaviour teams; inspections were conducted with immigration, police, and fire service officers. Licensing schemes were also being used to engage broader wellbeing initiatives around health care, welfare benefits, dental, and pet services. Joint inspection teams could deliver multidimensional assessments of the situation within a licensed property, and, where appropriate, draw on enforcement powers across diverse domains to address problems. These novel couplings demonstrate a productive use of the licensing scheme beyond narrow housing policy issues.

Where the scheme was currently seen as lacking purpose, as in Scotland, participants could think creatively about its potential:

> So that debate about what is it we're trying to achieve? What would this system deliver for that, and how do we measure whether we've achieved that? That doesn't happen for this and ever since then we've really been saying, "How can we use this system that we've landed ourselves with? How can we shoehorn it into achieving policy objectives?" (SH4)

Data-sharing

The potential for licensing schemes to act as a governance platform would be enhanced if data flowed more freely. However, data-sharing was identified as an issue by nearly all our research participants. The General Data Protection Regulations were invoked as constraining information sharing in terms of obtaining compliance with registration, compliance with conditions, and communicating with landlords more generally. However, how substantial a barrier this represented in practice was queried:

> I was quite surprised when we did some roadshow stuff … just before the summer to find out that a lot of councils are not even doing the basic stuff like regular communication with landlords … Some are citing things like GDPR as a problem, but it's a cultural thing about not seeing that as a part of their core task. (SH4)

If licensing is constructed in this context as a technique of government to obtain knowledge, there were both structural and cultural barriers.

Different branches of government (including within local government) routinely refused to share their data, leading to incomplete knowledge about the sector generally. For example, the shift from local authority administered housing benefit to DWP-administered Universal Credit caused a data protection gulf to open. It was only in Wales that a data sharing protocol was in place which was said to be complete and of assistance both to the registration authority and individual local authorities. This was regarded as part of the enforcement process:

> That's the other part of enforcement, actually. They're our eyes and ears really on the ground, and if they find something on the ground, they would go and check the system to see whether they had a registered licence, etc. (SH8)

However, even here, we were told that non-compliance generally was brought to the registration authority's attention through landlords seeking to bring possession claims which, as a non-licensee, were not open to them. That reactive method of obtaining knowledge of non-compliance was commonly said also to be the case in England and Northern Ireland. The most extreme example of this lack of data sharing occurred in Northern Ireland, a problem which existed before the GDPR came into force. The only purpose of the scheme was to check if a landlord was registered, but 'It's not able to be searched and to generate lists either, you know, of a certain street or anything like that really' (CS13/1).

Hence, while licensing has the potential to act as a platform for a range of interventions in practice policy design and perceived barriers like data protection meant this potential was frequently not being realized.

Discussion

The broader literature on licensing has focused on individual jurisdictions and schemes that are in a comparatively more mature stage of development than those under consideration here. Pub licensing, for example, is centuries old. Nevertheless, the Webbs' concern with the power of selection, conditions, and withdrawal, initially directed at pub licensing, provides a useful analytical device for examining licensing in the PRS.

The experience of licensing across the UK allows us to identify several intriguing governance issues. At their heart, though, there is a puzzle: why have licensing schemes been so readily adopted? In principle, licensing strikes a balance between governing too much and too little, leaving the state in the background and contracting out the performance of the policing of renting through conditions imposed on landlords. It is potentially a neat technique, that can adapt to diverse housing conditions, increase knowledge about the sector, and contribute to greater understandings of responsibilities as well as their enforcement. One cannot drive a car without being licenced; there is arguably no reason why renting a property should be different. One can see the potential as schemes develop over time and, on its face, the technique appears more than a fad or fashionable trend.

However, the first governance issue concerns the technique of the licence itself. The literature recognizes the licence as a core part of the calculation and technique of police science. When we consider the idea of the licence and its implementation across the UK, its common-sense basis and imprecision become palpable. This spatial nuance (McKee *et al.*, 2017) at the level of policy design has a fundamental effect on its effectiveness, on the housing market, and on its broader strategic value. Accordingly, judgements in the abstract about the value of licensing as a response to problems in the PRS need to be treated with caution. Some of the schemes in operation at the time of our data collection, for example, appeared to have limited value, and created new problematizations.

The power of the licence lies in its pragmatism and flexibility, which is neutral in terms of political rationality. This emerges clearly when reflecting on difference in design choices. We can see this in the differences in the construction of the 'fit and proper test' regarding landlords. Even though these interventions were originally based on similar anti-social behaviour concerns, across the UK different political rationalities can be said to operate in relation to housing, but also more broadly in relation to governments' willingness to intervene in markets. This can contribute towards explaining the observed differences in policy design. Different governments in the devolved nations have stronger social democratic traditions and are comfortable with a more interventionist state; consequently, they are willing to adopt more far-reaching national schemes. Westminster governments, operating within a more liberal political culture, have hitherto only adopted local schemes. Yet, in practice, from our evidence national schemes do not appear inherently more effective, perhaps because top-down imposition leads to a lack of local buy-in and scope for contextual adaptation. In contrast, selective and local schemes in England are targeted and licensing is a strategic choice at local level: this conscious commitment and ownership might facilitate achieving its objectives.

Our data suggests, though, that this resort to political culture at the level of the central or local state as explanation does not offer a complete account of recent policy dynamics. Furthermore, the direction of recent policy in market-oriented England, under different governments, has been towards a national, mandatory registration scheme initially termed an online 'portal' (DLUHC, 2022a). The portal is an example of the potential power of the platform: once in place further functions could be added. The new Labour government has indeed added further functions, and renamed it a 'database' (Pt 2, ch 3, 2025 Renters' Rights Act). But, it initially

remains only a registration requirement, which can be used as a channel through which to distribute information to landlords and produce data about the sector. Renters now constitute a significant proportion of the electorate – and the majority in some constituencies. This electoral fact makes possible what was previously unthinkable: a cross-party Westminster consensus in favour of introducing a national system more far-reaching than those rejected by previous governments (Rugg & Rhodes, 2008; DCLG, 2010).

The patchwork of scheme designs across the UK might imply some degree of policy learning. While there is evidence that policymakers have attended to developments elsewhere in the UK, that does not appear to have led to significant policy learning. The earliest schemes had no template. Subsequent schemes noted the existence of earlier schemes, but appeared not to learn any lessons impacting upon scheme design. For example, Northern Ireland adopted the policy later than elsewhere and had the opportunity to do things differently and enhance effectiveness. Yet, the government adopted the lightest touch scheme and practitioners struggled to identify its utility. This approach was framed, as was the case with policymakers elsewhere in the UK, in the light of concerns about negative effects on investment in the sector, albeit in the absence of robust evidence that such effects flow from non-price regulation (Harrington *et al.*, 2023). Accordingly, design differences across schemes cannot be explained primarily through policy learning over time.

We return to the core observation: although scheme type varies across the UK, all devolved governments have adopted licensing schemes, despite the lack of compelling evidence as to their effectiveness. However, the absence of evidence is not evidence of absence. It is possible to hypothesize a range of mechanisms through which licensing can positively affect property standards: for example, increasing the visibility of information on the expected standards or encouraging tenants to pressure landlords for improvements in the knowledge that the costs of not acting are, potentially, greater if it leads to a revocation of a licence to operate. Our point is that these effects were not, and arguably are not yet, well-evidenced and so are not an evidence-based justification for adopting licensing. The evidence of positive effects is, thus far, limited, and localized (e.g. Petersen *et al.*, 2022). The schemes implemented have generated limited knowledge of the sector and data gaps are recognized. The policy emphasis has been on anti-social behaviour, with the policy impetus being to place controls on the 'rogue' element. Yet, the discursive power of the common-sense folk devil of the 'rogue' landlord has made the power of selection largely incoherent because of the differences in the behaviours proscribed. In any event, ultimately, schemes affect all providers, irrespective of their characteristics.

As regards the power of setting licence conditions, if the concern is about neighbourhoods and anti-social behaviour, responsibilizing both landlords and tenants into the policing process, licensing schemes are arguably an inapt technology. There is a fundamental flaw in the analogy with licensing in other domains. While publicans and sex shop licensees can be responsibilized into controlling the behaviours of their consumers, landlords cannot be held responsible for the behaviour of their occupiers in the same way. Tenants have the right, under housing law, to quiet

enjoyment of their property: this precludes landlords engaging in unannounced visits or close surveillance of their tenants. This places legal limits on the extent to which residential landlords can control tenant behaviour. The tension between these rights and obligations means that licensing of properties or landlords cannot – and arguably should not - on its own control the behaviour of occupiers.

While the theoretical benefits of licensing as a technology are well articulated, their realization in UK policy towards the PRS is markedly imperfect. Licensing has not provided comprehensive knowledge, despite its pretentions to do so. The state of knowledge about the sector remains poor. There is doubt about levels of compliance, even where schemes have been running for many years. Even if perfect knowledge were to be obtained, there are questions about sharing such knowledge in ways that allow it to be utilized. Poor information flows substantially impaired authorities' ability to capitalize on data collected. Overall, if the aim was to develop knowledge about the sector to improve the health and welfare of the population, as the police science literature suggests, few schemes appeared to achieve that purpose.

The designs used for operational policies often mean the theoretical potential of licensing is frustrated, although, as we have demonstrated through the idea of the platform, some authorities have created novel and productive couplings with other policy areas. Elements of internal policy learning were evident. In Scotland, for example, redesign of the application process meant new issues emerged about landlord compliance with basic principles of law connected with their business. While differences in political culture and the power of anticipated reaction on the part of landlords can explain some of the differences between schemes, they are not sufficient to account for some of the design weaknesses identified by our interviewees. That schemes are adopted without clear objectives and are not designed to maximize potential effectiveness indicates that while the state may have the will to knowledge, its capacity to achieve this faces limits. Furthermore, there is an unresolved – perhaps unrecognized – dilemma at the heart of licensing: tenants' rights and landlords' licensing obligations can be in fundamental tension. This underlines the puzzle of the licence being adopted as the governance technology of choice for addressing the problems of the PRS.

Note

1. Before the Northern Ireland Assembly was suspended in 2017, there was consultation on extending the scheme to include such a criterion.

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