

**EXPLANATORY MEMORANDUM TO
THE HOUSING HEALTH AND SAFETY RATING SYSTEM (ENGLAND)
REGULATIONS 2005**

2005 No. 3208

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Regulations prescribe descriptions of hazards for the purposes of the Housing Act 2004 (the Act), and prescribe fire hazards for the purpose of consultation with the fire and rescue authority in the area where enforcement action is to be taken in relation to prescribed fire hazards.

- 2.2 The Regulations prescribe the method for assessing the seriousness of hazards of the prescribed descriptions and calculating the numerical score which is used to determine into which of the bands prescribed in the Regulations the hazard falls.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The Regulations have three main elements: they prescribe descriptions of hazards for the purposes of the Act, they make provision about the manner and extent of inspections and they prescribe the methodology for assessing hazards. An explanation of the way in which the Regulations prescribe descriptions of hazards for the purposes of the Act is given in paragraphs 3.2 to 3.5 in the hope that it will assist the Committee.

- 3.2 The Regulations are intended to be read alongside statutory guidance which is to be given by the Secretary of State under section 9 of the Act. The guidance will be laid in draft before Parliament at the same time as these Regulations and will not be given by the Secretary of State until 40 days have passed and neither House has resolved that the guidance be withdrawn. This guidance will be produced in two parts. Part 1 will cover local housing authorities' functions under Chapter 1 of Part 1 of the Act in relation to the inspection of premises, and the assessment of hazards. This Part will be known as the operating guidance. Part 2 will cover local housing authorities' functions under Chapters 2 and 3 of Part 1 of the Act, and Part 9 of the Housing Act 1985, in relation to demolition orders and slum clearance, and will be known as the enforcement guidance.

- 3.3 Section 2(1) of the Act defines "hazard" as any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity. Whether a local authority is obliged to take action in relation to a hazard, or has discretion to

take action, will depend upon whether the hazard is assessed as category 1 or category 2.

3.4 A category 1 hazard is a hazard of a prescribed description which achieves a numerical score of or above a level set out in the Regulations and a category 2 hazard is a hazard of a prescribed description which achieves a numerical score below the minimum prescribed for a category 1 hazard.

3.5 The Regulations provide that hazards are of a prescribed description for the purposes of Act where they are associated with the occurrence of any of the matters or circumstances listed in Schedule 1. Schedule 1 is intended to be read alongside Annex D of the operating guidance which provides further information about each of the 29 matters listed in Schedule 1.

4. Legislative Background

4.1 Part 1 of the Act introduces a new system for local authorities to use in assessing housing conditions in their area. The new system, which is called the Housing Health and Safety Rating System (HHSRS) will enable local authorities to determine whether a hazard exists at residential premises which may cause harm to the health or safety of a potential vulnerable occupier.

4.2 Where such hazards do exist the local authority is able to take enforcement action, such as serving a hazard awareness notice; serving an improvement notice which requires work to be undertaken to remove or reduce the hazard; making a prohibition order which may restrict the use of all or part of the dwelling; or take action themselves where they consider the hazard needs to be dealt with as a matter of emergency. Whether the local authority must or may take enforcement action will depend on the seriousness of the hazard.

4.3 Section 10 of the Act provides that where a local authority is going to take enforcement action in relation to a prescribed fire hazard before taking that action the authority must consult with the fire and rescue authority for the area. The Regulations prescribe fire hazards for the purposes of section 10 as a category 1 or 2 hazard where the risk of harm is associated with the occurrence of the matters listed in paragraph 24 of Schedule 1.

4.4 The Regulations are made under sections 2, 4 and 250(2)(a) of the Act. Section 250(2)(a) allows different provision to be made for different cases or different descriptions of case.

5. Extent

This instrument applies in relation to residential premises in England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The housing fitness standard, which is set out in section 604 of the Housing Act 1985 (as amended), currently provides the statutory basis for the assessment of housing conditions. That standard comprises nine criteria against which the fitness of housing accommodation is assessed and provides that if, in the opinion of the local housing authority, a dwelling fails to meet one or more of these criteria and, by reason of that failure, it is not reasonably suitable for accommodation, the dwelling is unfit for human habitation. Other provisions of the 1985 Act give local authorities powers to take action against landlords to rectify unfitness or, in default, to take such action themselves. It is estimated, from the English House Condition Survey, that about 880,000 dwellings are unfit under the current legislation.
- 7.2 The housing fitness standard in the 1985 Act is no longer regarded as an adequate basis for assessing housing conditions. The criteria are not comprehensive, and it is not considered to pay sufficient attention to the impact of conditions in a dwelling upon the occupiers. It would have been open to the Government to extend the criteria by Order but it was decided, in 1998, to work towards a replacement for the fitness standard that would not only recognise a much broader range of housing defects and deficiencies in dwellings but would also provide a means for local authorities to prioritise them according to the impact upon the health or safety of occupiers.
- 7.3 Part 1 of the Housing Act 2004 provides for the replacement of the housing fitness standard with a new system which will operate by reference to the presence of hazards to health or safety in a dwelling. The Government first consulted on this proposal in 1998, and has also consulted on the proposed modifications of local authorities' enforcement powers under the new system. These proposals were welcomed in principle, though with some understandable reservations over the detailed implementation.
- 7.4 These Regulations refer to the new system as the Housing Health and Safety Rating System (HHSRS). It has been known by local authorities and practitioners as the HHSRS since a first draft of suggestions for the operation of the proposed system was first published in 2000 for the purposes of familiarisation. It describes the categories of hazard that may be assessed under the new system; it prescribes the method for calculating the seriousness of these hazards, scoring them and placing them in bands so that they can be categorised as category 1 or 2 hazards.
- 7.5 The Regulations provide an evidence-based approach for local authorities to apply when considering the enforcement action it should take under Part 1 of the Act. Where a local authority determines that a deficiency gives rise to a category 1 hazard, it will have a duty to take the most appropriate of the actions available under section 5 of the Act. Where it determines that a deficiency gives rise to a category 2 hazard, it will have discretion to act. (The framework of powers for local authorities, on the face of Part 1 of the Act, to inspect properties and take enforcement action in response to the conditions they find, will be broadly similar to the existing powers in the 1985 Act, but the individual powers have been modernised in the light of consultation and to reflect the different approach required by HHSRS.)

- 7.6 It is estimated that one or more category 1 hazards are present in about 1.6 million dwellings. As the attached Regulatory Impact Assessment indicates, cold hazards are expected to form a large proportion of these. The Government regards HHSRS as a useful contribution to the tackling of hazards such as cold, damp and mould which arise from poor energy efficiency in dwellings.
- 7.7 Under HHSRS the effect of the hazard is assessed in terms of a vulnerable occupier, either actual or potential. It will be noted that, for certain hazards, either the young or the old are identified as the most vulnerable whilst, for others, all age groups are considered equally vulnerable. This reflects the research evidence on which the system is based. The possible harm outcomes are categorised as extreme, severe, serious or moderate.
- 7.8 In determining which course of enforcement action to take local authorities will be expected to take account the potential impact of that action upon the current occupier, and on potential future occupiers. This means that, for instance, in accommodation which a landlord lets only to young able-bodied adults, authorities will be able to take a more tolerant view of hazards which are likely to present significant risks only to the elderly or very young.
- 7.9 In applying the provisions of these Regulations, local authorities are required to have regard to guidance on the inspection of premises and assessment of hazards and guidance on the use of the enforcement powers in Part 1 of the Act, given under section 9 of the Act.
- 7.10 The HHSRS will apply to all housing stock. Although the enforcement powers in Part 1 of the 2004 Act will not be used formally by local authorities to deal with hazards in their own stock, the non-statutory Decent Homes standard will be amended to require the social housing stock to be free of category 1 hazards. Registered social landlords will, however, be subject to enforcement under Part 1 as well as to the amended Decent Home standard and the Government will expect them to work closely with local authorities in ensuring that their stock investment programmes do not leave vulnerable tenants in hazardous conditions pending scheduled improvements.
- 7.11 The replacement of the housing fitness standard with the new statutory framework based upon HHSRS is a significant change. The Government believes that it will play an important role in promoting the recognition of the impact of poor housing conditions on individuals' health and safety. HHSRS has been generally welcomed by local government and by practitioners' organisations including the British Medical Association and the Chartered Institute of Environmental Health.
- 7.12 During the passage of the Housing Act through its parliamentary stages, the proposals did not attract undue controversy. A number of proposals emerged from Parliamentary debates which were aimed at ensuring that local authorities and stakeholders would be fully prepared to implement the new arrangements, that authorities' powers were not unduly wide, and that the human rights of landlords and owners would be properly safeguarded. The Government acknowledged the benefits of some of these proposals and was able to introduce a small number of amendments within Part 1 to deal with them.

7.13 Key stakeholders were consulted on a draft of these Regulations earlier in 2005, in order to ensure that they were satisfied with the proposals for detailed implementation of the overall policy on which there had been wide consultation previously.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument.

8.2 A final Regulatory Impact Assessment, which covers the impact of the introduction of Part 1 of the Housing Act 2004 - Housing Conditions, has been prepared and is attached for information.

9. Contact

David Scott at the Office of the Deputy Prime Minister, Tel: 020 7944 3467/3468 or e-mail: david.scott@odpm.gsi.gov.uk can answer any queries regarding the instrument.



Office of the
Deputy Prime Minister

Creating sustainable communities

*Regulatory Impact Assessment:
Housing Act 2004 – Part 1:
Housing Conditions*



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Regulatory Impact Assessment: Housing Act 2004 – Part 1: Housing Conditions

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Regulatory Impact Assessment: Housing Act 2004 – Part 1: Housing Conditions

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

To replace the current housing fitness standard with a better targeted and more proportional system which reflects the latest understanding of health and safety risks.

Background

Part 1 of the Housing Act 2004, when implemented, will replace the housing fitness standard set out in the Housing Act 1985 by the Housing Health and Safety Rating System (HHSRS) as the basis for local authority intervention to tackle unacceptable housing conditions. The Act received Royal Assent on 18 November 2004.

HHSRS will also replace the fitness standard as an element of the (non-statutory) decent home standard. The Government has set a target that all social housing and at least 70% of private sector housing meets set standards of decency by 2010.

The HHSRS risk assessment methodology is prescribed by The Housing Health and Safety Rating System (England) Regulations 2005. Local Housing Authority officers will also have regard to technical and enforcement guidance under section 9 of the Act.

The principle behind the HHSRS is that a dwelling should provide a safe and healthy environment for the occupants and any potential occupiers. This is to be achieved over time by refocusing the basis for local housing authority (LHA) intervention on the severity of health and safety hazards in the home, assessed under HHSRS. The 29 hazards that can be assessed under HHSRS will replace the current fitness criteria under section 604 of the 1985 Act. It is generally accepted that, in practice, the fitness criteria bears no clear relationship to the hazards in a property.

Rationale for government intervention

A risk assessment of maintaining the current fitness standard is considered by comparing it to the advantages the HHSRS will introduce. The HHSRS:

- Is intended to replace the housing fitness standard as set out in the Housing Act 1985 (as amended by Schedule 9 to the Local Government and Housing Act 1989). There is a general consensus that the fitness standard does not reflect the latest understanding of health and safety risks. There will also be replacement guidance alongside the regulatory regime.
- Provides an inspection tool for surveyors. As well as looking at the defects in a dwelling, it enables their effects on the health and safety of potential vulnerable occupants to be assessed. This point is not addressed under the current fitness standard.
- Generates hazard scores that provide a basis upon which LHAs may determine the most appropriate enforcement action. The current fitness standard adopts a simple pass or fail approach, which does not leave adequate room for discretion and does not enable LHAs to prioritise intervention where the hazards are most severe.

It is difficult to be precise about the number of dwellings that contain serious (category 1) hazards. Analysis of the 2001 English House Condition Survey (EHCS) suggests that around 1.6 million dwellings contain one or more health and safety hazards that would exceed the threshold triggering mandatory intervention by LHAs. This compares with 880,000 estimated to be unfit under the current system. Analysis is continuing of the 2003 survey. Provisional results tend to show a much higher number of hazards in the housing stock, particularly hazards from cold.

Consultation

No major objections were raised to the broad policy framework during consultation and hence no significant policy changes have been made. Some changes were made, however, to the technical guidance following research work in 2003. These were an evaluation of the operation of an earlier version of HHSRS operating guidance, the application of HHSRS in HMOs and updating of the statistical evidence which supports the system. A final draft of the HHSRS operating guidance was made available in November 2004.¹ Draft enforcement guidance was consulted on in December 2003. Draft Regulations and revised draft enforcement guidance were the subject of a limited consultation exercise in July 2005. The revisions to the draft enforcement guidance included clarification and additional guidance on some areas, for example on the possible exclusion of vulnerable people, the service of notices, and HMOs, though the revisions do not change the approach. Both sets of guidance will be given under section 9 of the 2004 Act. They are being laid before Parliament at the same time as the Regulations.

Options

1. Do Nothing – maintaining the current housing fitness standard. This is self explanatory and would fail to alleviate the problems detailed above.

¹ Housing Health and Safety Rating System: The Guidance (Version 2) ODPM 2004. Evaluation of Version 1 of the Housing Health and Safety Rating System; Statistical Evidence to Support the Housing Health and Safety Rating System; The Application of the Housing Health and Safety Rating System in Houses in Multiple occupation, ODPM 2003.

2. Replacing the fitness regime with a regulatory regime based on the HHSRS and providing new guidance

Alternative options considered

Another option was to broaden the housing fitness standard through secondary legislation. This was dismissed as it did not overcome the problem of failing to distinguish between the varying severity of health and safety risks.

Simply adding the four most important health risks, without modifying the way the standard is applied, would result in an increase in the number of potentially unfit dwellings from 1.5 million to 2.8 million (this derives from internal work based on 1996 EHCS data). There would thus be an increase in costs without the benefit afforded under the second option of distinguishing between serious and more marginal problems.

COSTS AND BENEFITS

Sectors and groups affected

The legislation and statutory guidance on enforcement will apply, as now, to all sectors of housing and not discriminate between the owner-occupied and private rented sectors. However, introduction of the HHSRS is likely to impact mostly upon the private rented sector.

Private Rented Sector

The most recent report of the survey of house conditions (EHCS 2003) shows that housing conditions are more of a problem in the private rented sector, where 48% of all tenants live in “non decent” accommodation.² They also have less control over their living accommodation and less able to carry out improvements than owner-occupiers. Tenants are more likely to complain to LHAs about their living conditions than owner-occupiers – though owner-occupied can of course come to the attention of authorities through requests for grant aid, complaints by neighbours or as a result of pro-active strategies to identify poor housing. LHAs are likely to attach a higher priority to dealing with conditions in the private rented sector – though certainly not exclusively.

The likely burden on small private landlords is not considered to be any more onerous, in relation to size, than it would be for larger corporate landlords, although it is recognised that small landlords might not have the same capacity to assimilate the new regime as quickly as corporate and public sector landlords. We intend to issue guidance to help landlords and other users understand the principles of HHSRS and to the process that needs to be followed by a landlord to identify hazards in their property. In addition, LHAs are expected to apply the principles of the Enforcement Concordat, which provides a blueprint for fair, practical and consistent enforcement.

Owner-occupiers

The housing fitness standard, although it does not incorporate any legal discrimination between tenures, in practice is not enforced in the owner-occupied sector with any rigour. However, the 2003 EHCS reported that 63% of all non-decent homes are owner-occupied. This reflects the

² Non decency is currently defined by fitness, thermal comfort, state of repair and modern facilities and services. The fitness element will be replaced by a requirement that a dwelling should not contain any category 1 hazards.

predominance of owner-occupied housing. Unfitness, and poor thermal comfort, are key factors here. Though LHAS may be inclined to work through the decent homes initiative and provide advice and financial assistance for home owners, they may also need to have recourse to formal enforcement action.

Social Rented Sector

The fitness standard is not formally enforced at all against local authority stock since authorities cannot enforce against themselves. This will continue to be the case under HHSRS. However, there are statutory requirements which authorities have to meet for some types of repair. In addition, their strategy for, and performance in, tackling poor conditions and major disrepair in their own housing stock are subject to scrutiny. Best Value places Local Authorities under a statutory duty to secure continuous improvements in the provision of all their services including housing, having regard to a combination of economy, efficiency and effectiveness, to ensure services meet user needs effectively. Best Value is underpinned by an enhanced audit and inspection regime.

The Government has set a target to ensure that all social housing is made decent by 2010. All stock-owning LHAs are caught by this target. One element of the decent home standard is that a dwelling must meet the statutory minimum for housing – currently the housing fitness standard. Where a dwelling fails this criterion a LHA will need to do the necessary work to bring it up to the standard. When HHSRS is implemented, the housing fitness criterion of the decent home standard will be changed. In future, dwellings with a category 1 hazard will fail the standard.

LHAs will be able to take enforcement action against Registered Social Landlords (RSLs). However, RSLs are currently required through the regulatory regime of the Housing Corporation (as set out in their Performance Standards) to maintain their housing stock in reasonable and lettable condition and provide a repairs service which meets their legal obligations and should therefore be able to adapt to HHSRS. The decent home standard also applies to the RSL sector.

Race Equality

Our assessment is that the provisions in Part 1 the Housing Act are unlikely to have a significant impact on different racial groups. Ethnic minority households are more likely than white households to live in accommodation that does not meet the decent homes standard (that is are unfit, in disrepair, in need of modernisation or provide insufficient thermal comfort). Households of Asian origin are the most likely to live in accommodation that does not meet the decent homes standard. By better targeting of health and safety hazards, the provisions in Part 1 are likely to be of particular benefit to these minority ethnic groups. Often people living in the worst condition properties are those who have no choice about where to live, either because they cannot afford to move or because they are unlikely to complain about their situation.

The EHCS and decent homes data will be the main media for monitoring the impact of HHSRS in England.

Health Impact, Rural and Environmental Considerations

Health benefits are discussed below. We do not consider there to be any rural implications. Nor do we foresee any negative environmental impact as a result of the policy. On the contrary, it is expected that over time dwellings will become more energy efficient as a result of either

enforcement action, under the decent homes standard or through voluntary action by owners and landlords.

Breakdown of Costs and Benefits

Benefits

The benefits of the HHSRS are difficult to quantify but could be substantial.³ Poor housing conditions and design contribute to major accidents, particularly in older people, and seemingly minor accidents, which may have grave consequences. Poor quality housing is associated with poor health in childhood, increased risk of asthma and inflammatory lung diseases. Damp homes in particular have been linked to respiratory symptoms. The improvement of housing conditions has been shown to have a number of positive impacts on health, including:

- Lower rates of mortality in those re-housed from socially isolated sub-standard housing;
- Reduced sense of isolation, fear of crime, and increased involvement in community affairs;
- Improved mental health including higher levels of psychological well being, reduced anxiety and depression;
- Lower rates of GP contact.

It remains difficult to offer any precise numerical estimate of benefits. The main benefit from implementation of the HHSRS will be health gains owing to better targeted intervention over a number of years. The HHSRS is focused on dealing directly with those hazards that cause accidents and ill health, whereas the fitness standard is less directly targeted at these hazards. For further analysis see Appendix C. It should be stressed however that it is not possible to put any weight on the possible benefits that are illustrated.

A further benefit is the estimated cost savings as a result of the lower compliance costs under the HHSRS compared with the fitness standard. Full details are provided below.

COSTS: POLICY

The 2001 consultation was of some, albeit limited, help in quantifying costs. Comments had been sought, particularly from LHAs and private landlords, on how the costs they would expect to incur in implementing and complying with the proposals would compare with the costs incurred under existing legislation. Fifty-five percent of respondents, including a majority of LHAs, thought that LHAs would incur extra or even significant extra costs as a result of the proposals, largely as a result of monitoring suspended Improvement or Prohibition notices⁴. Only eight percent thought landlords would incur extra costs, although that figure is affected by the low response rate from landlord representatives.

Consultation on the draft Housing Bill revealed a smaller percentage (20%) who felt that HHSRS would result in increased costs for LHAs, and 8% again considered that landlords would face increased costs. The small number of landlord representatives who responded did not in the main raise costs as an issue.

³ Sir Donald Acheson's Independent Inquiry into Inequalities in Health Report 1998.

⁴ The normal operation of the notice, for example requiring works or prohibiting occupancy, is suspended until triggered by a change of circumstances such as a change of occupancy. LHAs will have discretion over the use of suspended notices.

The average cost of compliance has been estimated for each of the fifteen forms of hazard to be rated under the HHSRS alongside the expected number of dwellings affected. The full details are given in Appendix A, alongside all further information on cost calculations. An indicative worked example is attached at Appendix B as an illustration.

The annual total cost, in England and Wales, of works carried out as a result of the LHA having a duty to act under HHSRS is estimated as approximately £260m, at 2001 prices. This compares with £470m under the fitness standard (see Annex A). This represents an annual cost saving of approximately £210m. This may be explained by two factors. Firstly, both figures represent the minimum cost required to undertake all urgent repair and replacement work and the cost to rectify the problems of unfitness (for the fitness standard), or to remove or reduce the hazard (for the HHSRS). However, under the HHSRS LHAs will have the discretion to act according to local circumstances, or to require work upon hazards that score just under the threshold for mandatory action. Secondly, some quite serious hazards are not that expensive to remove or reduce. Over a thirty-year period, the Net Present Value of complying with the HHSRS is calculated as £4.8bn, as compared to £8.7bn with the fitness standard. This represents a cost saving over thirty years of £3.9bn.

If we drop the assumption that the number of inspections will be the same under HHSRS as it was under fitness standard then there are the following results. In the instance that there were 10% more inspections per year then the annual cost of compliance is approximately £285m, leading to a thirty year saving from introducing the HHSRS of £3.4bn. Given a 10% decrease in the number of inspections annually, then there would be an annual cost of compliance of approximately £235m, leading to a thirty year cost saving of £4.4bn.

The original RIA indicated some start-up costs for authorities, based on soundings with LHAs. For additional equipment required, including hand-held computers, the RIA assumed a cost of approximately £300 per Officer. Initial training was estimated at 5 days per Officer at around £2,000-£2,500 per officer. Since then ODPM has carried out a scoping study to support implementation of the Act that identifies the requirements of local housing authorities for training and other additional resources in order to implement the legislation effectively.⁵ A budget [of £5 million in 2005/06 has been allocated for training and policy seminars. The Improvement and Development Agency for Local Government (IDeA) has agreed to manage the procurement of training and in the provision of other assistance to local authorities to help implement the Act. It is no longer considered a priority within the budget to help fund IT hardware as most authorities are already acquiring IT for other purposes. However, training, particularly on the use of HHSRS, will include some instruction in the use of hand held computers to run the HHSRS software programme.

COSTS: IMPLEMENTATION

The consultation paper invited comments on the costs that individual landlords or larger professional bodies would face as a result of remaining informed about the new system, whether running costs or initial costs. There was no response on this point so it is assumed that the costs to landlords of updating their knowledge will be negligible.

⁵ Housing Act 2004: Implementation Scoping Study Implications for Local Authorities Final Report February 2005 (Mouchel Parkman Local Government Consultancy).

The running costs faced by LHAs are not expected to be any higher than under the existing fitness standard system. However, one LHA estimated that there would be costs of £10,000 in purchasing the relevant software and altering existing databases to accommodate the new information.

In consultation some LHAs raised two concerns:

- Issuing Suspended Improvement Notices (in the incidence that a hazard would only hit the threshold for mandatory action if a member of a vulnerable group were resident) would be costly to them in terms of re-inspection and enforcement. However, the issue of Suspended Improvement Notices will be at LHAs' discretion. Furthermore, LHAs already monitor the condition of dwellings that are borderline under the fitness standard.
- Inspections would take a longer period of time, and therefore fewer of them would take place without extra resources. Though time savings are not expected on site, once inspectors are proficient in the use of the hand-held computers, time spent in the office after the inspection will be less under the HHSRS than with the fitness standard.

Implementation of Part 1 of the Housing Act will require some Government expenditure on the publicity surrounding HHSRS.

COMPETITION ASSESSMENT

Many smaller landlords employ professional agents to manage the property on their behalf. Where agents are employed in this way any responsibility for dealing with health and safety hazards in dwellings also applies to these companies (where they are in control of the dwelling). The 2004 Act will therefore affect landlords and to some extent the management agents employed by them.

We do not anticipate that there will be any significant impact on existing levels of competition in the affected market(s), even though HHSRS is likely to impact mostly upon the private rented sector.

The costs involved in remedying health and safety deficiencies are likely to be proportional to the value of the property, and are thus unlikely to result in any change in the market structure. The need to comply with any statutory notices to mitigate hazards will not result in any additional or ongoing costs for firms seeking to enter the market that will not be faced by existing firms.

The new basis for LHA intervention will not raise barriers to entry; instead it will refocus the efforts of private sector landlords on alternative remedial works. It is also possible that some small landlords/agents who are either not willing, or not able, to maintain their property free of at least serious hazards may exit the market. However, they would already be expected to meet standards under the current fitness regime, and thus we consider that these effects are unlikely to be sufficiently great to result in any significant change to existing levels of competition.

SMALL FIRMS' IMPACT

We consulted the Small Business Service (SBS), who were content with our approach.

The majority of private landlords would be regarded as small businesses. Many own only one or two properties often as a part time business in addition to other business activity or employment. As part of the consultation on HHSRS in 2001 and in 2003 on the Housing Bill we sought comments from small landlord organisations. Those who responded included the National Federation of Residential Landlords (NFRL), the Small Landlords Association (SLA) and the Residential Landlords Association (RLA) in addition to the British Property Federation (BPF). The Residential Landlords Association alone responded to the July 2005 consultation. Although the recent response from landlord groups was not significant this does not mean that landlords do not have concerns. It is clear that there is still some uncertainty over how the new risk based regime will affect them.

The publication of the draft HHSRS operating guidance in November 2004 has given landlords time in which to familiarise themselves with the new regime. Non-statutory good practice guidance on HHSRS will also be made available to landlords to coincide with the implementation of Part 1 of the Act. We will also ensure that landlords are a key target group in our continuing dissemination of HHSRS. A key recommendation in the enforcement guidance is that local authorities should follow the principles of the Enforcement Concordat and where possible deal with problems without recourse to formal action. This is particularly important in the first months following implementation.

Enforcement, Sanctions and Monitoring

The measures in the 2004 Act place duties on LHAS and give them wide discretionary powers. In particular, it requires them to keep housing conditions in their area under review with a view to identifying any enforcement action they may need to take. (See section 3 of the Act). LHAs must also decide when it might be appropriate to follow up complaints and inspect individual dwellings (see section 4).

Following an inspection of an individual dwelling, the LHA will be able to take enforcement action in relation to any hazards found. As now under the fitness regime, LHAs will have powers to serve notices on landlords and other owners to require improvements to their property. It will be an offence to fail to comply with such notices.

Intervention by LHAs will not on its own quickly lead to the benefits and cost savings identified above. Rather, improvements will occur gradually, and dissemination of HHSRS will make landlords more aware of the potential hazards in their property. Improvements in housing conditions are also expected as a result of the decent homes initiative.

Implementation and Delivery Plan

Part 1 of the Act will come into force on 6 April 2006. LHAs will have plenty of opportunity to build the HHSRS and its enforcement procedures into their housing strategies.

Post Implementation Review

It is proposed that the formal monitoring process of the new enforcement regime should be in the form of an evaluation commissioned within three years of implementation.⁶ This is in line with proposed monitoring of the HMO licensing scheme under Part 2 of the Act which will also be commenced on 6 April 2006, and will enable an assessment of the impact and effectiveness of the enforcement regime, particularly through the use of the HHSRS as an intervention tool.

Improvements will also be monitored under the ODPM PSA target to make housing decent. A decent home will be one that, together with other features, is free of category 1 hazards.

Summary and Recommendation

The options of no change and broaden the fitness standard were dismissed before the introduction of the Housing Bill in December 2003. The repeal of the standard and introduction of a new framework based upon the HHSRS risk assessment procedure was adopted as policy following clearance by the relevant cabinet committee.

Declaration.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

CONTACT POINT

Enquiries and comments regarding this final Regulatory Impact Assessment should be addressed to **Peter Wycherley** at:

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⁶ Monitoring of improvements in housing conditions will be carried out in the English House Condition Survey (EHCS).

Annex A: Calculating repair costs associated with implementation of HHSRS

Housing Fitness Standard

The first step in calculating the cost implications of moving to the HHSRS involves producing an estimate of the cost of works associated with the fitness standard. This is achieved by multiplying the number of dwellings declared unfit under the Fitness Standard resulting in Improvement Orders in 1997/98⁷, by the estimated 'average cost to make fit'⁸ for 2001. The number of dwellings declared unfit in 1997/98 was drawn directly from the 1988-98 Housing Construction and Statistics. The 'average cost to make fit', £10,136, is taken from the English House Condition Survey: 2001. The estimate of the cost of works derived is approximately equal to £470m.

Housing Health and Safety Rating System

Estimating the cost of works associated with HHSRS implementation is not straightforward as there is no evidence of costs upon which to draw. Thus some assumptions are made:

The estimate of the cost of works produced for the HHSRS represent the costs associated with local authorities' duty to act upon Category 1 hazards and not the more uncertain costs associated with the power to act.

For the same number of inspections the number of dwellings containing unacceptable hazards under the HHSRS is assumed to be equal to the number of dwellings that are inspected and declared unfit under the fitness standard.

The results of the EHCS 2001 for fifteen hazard types are given in Table 1 below, listing the number of Category 1 hazards in dwellings. These sum to 1,943,000, although only 1,632,000 dwellings contain Category 1 hazards. This implies an average number of Category 1 hazards per dwelling containing a Category 1 hazard is 1.19. This factor is multiplied by the total number of dwellings identified as unfit in a year, 48,000, less the number of demolitions and closures (1,350). This then gives the estimated number of Category 1 hazards that result in an Improvement order, 55,600.

To calculate the costs involved, the level of works needs to be determined. Costs are estimated using the HHSRS worked examples of hazards in the home. The examples are not a statistically

7 The last date for which figures are available, drawn from Housing Construction & Statistics.

8 The costs of undertaking all urgent repair and replacement work, plus any additional costs to rectify the problems of unfitness. These are the required expenditure costs to make just fit and not secure the dwelling in the long term.

valid sample, but are provided to indicate a range of hazards likely to be encountered – one of these is illustrated in Appendix 2. A mean is then calculated for each of the hazard types using the examples where the original rating score indicated a Category 1 hazard. This column is then multiplied by the number of hazards that need Improvement to give the total cost of mitigating hazards. As can be seen in the bottom right-hand cell the total estimated annual cost of works of repair associated with implementing the HHSRS for the fifteen hazards listed is approximately £260m.

Table 1: Estimated cost of mitigating Category 1 hazards resulting from an Improvement order				
Hazard type	No. of dwellings in total housing stock with a given hazard (thousands) (£thousand)	Estimated number of hazards resulting in Improvement order⁹	Estimated unit cost of mitigating hazard	Total costs of mitigating hazards
Falls on stairs	634	18,100	£2,450	44,440
Falls on level	297	8,500	£1,250	10,610
Falls between levels	149	4,250	£400	1,700
Excess cold	304	8,700	£13,570	118,000
Fire	121	3,500	£6,700	23,200
Hot surfaces	100	2,900	£1,800	5,200
Electrical	24	700	£4,600	3,200
Carbon monoxide	33	1,000	£720	680
Lead	114	3,300	£6,000	19,605
Radiation	85	2,400	£600	1,450
Damp	71	2,000	£15,600	31,660
Hygiene / sanitation	0	0	£700	0
Noise	6	170	£2,800	490
Crowding / space	3	80	£500	40
Pests	1	40	£1,000	40
Total	1,943	55,600		260,000

Source: EHCS 2001
 Note: Zero does not imply the eventuality will not occur, but rather a negligible probability.

9 Though not all intervention will lead to an Improvement Notice, Prohibition Orders may be removed once works have been carried out. It is assumed that Demolition Orders continue to be made at the same proportion of dwellings with hazards as was the case with dwellings failing the FITNESS STANDARD. Unlike improvements the cost of demolition under the FITNESS STANDARD is considered to be identical to those made under the HHSRS regime.

Appendix B: Comparative example of compliance costs under fitness standard and HHSRS

1. The five boxes shown below form one of fifty-one worked examples used in estimating the cost of compliance of the HHSRS. The first box provides details of the hazard. This example is excessive cold. It also provides details of the sectors of society that are vulnerable to the hazard.
2. The second box, 'List of Relevant Matters', shows which of the issues that typically lead to the hazard are relevant in this instance. Here there are a combination of defective items – heating and ventilation.
3. The third box, 'Fitness Standard and Internal Arrangement' shows how the dwelling would have fared under the current fitness standard. As the existing system does not lead to the dwelling being declared unfit – merely defective – the cost of compliance is £0. However, the health and safety implications are not considered and there could be negative repercussions were the hazard not to be rectified.
4. The fourth box, 'Health and Safety Rating System Scores', show how the proposed system would evaluate the hazard. Firstly, there is a risk assessment. In this instance the likelihood of suffering from cold is 1 in 10, compared with an overall average for cold buildings of 1 in 18. The decision has to be justified.
5. This is followed by an assessment of outcomes. The classes stated have the following categories of harm, although it must be pointed out that these are merely illustrations and not definitions:
 - Class I: Death or fatal paralysis.
 - Class II: Chronic confusion, regular severe fever, serious fractures.
 - Class III: Loss of a finger, severe concussion, serious strain.
 - Class IV: Skin irritation, benign tumours, moderate cuts, regular colds.

For example the box shows there is a 31.6% chance of a harm outcome in Class III. The total score of 6634, putting the property firmly in Band A, is calculated by multiplying each of the harm outcomes by a weighting; 10,000; 1,000; 300; and 10 respectively, and then multiplying these by the likelihood. The sum is then taken of these four figures. The score in this instance is significantly above the threshold for mandatory action of 1,000.

6. The cost of compliance, as given in the justification in the fifth box, 'Rating Scores after Improvement' is calculated as approximately £8,500, in 1996 prices. This assumes retail prices as would be paid by a small-scale landlord or an owner-occupier.

7. The fifth box also illustrates how, after the above improvements, the risk likelihood has been reduced to 1 in 560, and the class of harm outcomes to 5; 10; 32; and 54% respectively, giving a new HHSRS score of 118, which is Band F.

<h2 style="color: green;">EXCESSIVE COLD</h2>		Risk <table border="1" style="display: inline-table;"> <tr> <td style="background-color: red; color: white;">High</td> <td>Med.</td> <td>Low</td> </tr> </table>		High	Med.	Low
High	Med.	Low				
Vulnerable group	Elderly persons	Multiple locations	Yes No			
Related hazards	None	Secondary hazards	Yes No			

A) Rear windows 	A) Window to kitchen 	A) Window to w.c. 
B) Living room fire 	A) w.c. window - interior 	

DESCRIPTION OF HAZARDS **Dwelling:** Converted flat in 1900's end terraced house

Background: This large three-story Victorian house was converted in the 1950s to provide three self-contained flats, one on each floor. The top floor flat comprises a large living room at the front and a bedroom at the rear of the main part of the house. The bathroom, a separate WC and the kitchen/diner are located in the long back addition. The loft has 100mm of insulation.

A) Windows: All the windows in the back addition, i.e. in the kitchen, bathroom and w.c. compartment, have been replaced with louvered windows. All other windows are single glazed, double hung sashes.

B) Heating: The open fireplaces throughout the flat have been sealed. Radiant bar heaters fitted in the front living/dining room, rear bedroom and in the dining area in the back addition.

LIST OF RELEVANT MATTERS

LIKELIHOOD & OUTCOMES		A	f	Maintenance of heating system	0
A	Thermal insulation	2	g	Controls to heating system	0
B	Dampness	0	h	Ventilation controls	3
C	Settling of insulation	3	i	Amount of ventilation	3
D	Type of heating system	3	j	Disrepair to ventilation	0
E	Size of heating system	2	k	Excess ventilation	3

Key 3: Seriously defective; 2: Defective; 1: Not satisfactory; 0: Satisfactory/NA

ITEM/S Adequate provision for heating

Justification Under this section 604 requirement, the provision for heating appliances - which is generally adequate - and not the energy efficiency of the dwelling is the primary concern when determining unfitness. However, DOE Circular 17/96 advises that heat loss factors may be considered and consequently the dwelling is judged defective.

FITNESS etc	Unfit	Defective	Just adequate	Satisfactory	Borderline	Yes	No
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HEALTH AND SAFETY RATING SYSTEM SCORES

LIKELIHOOD

1 in 10

Model															
10000	5600	3200	1800	1000	560	320	180	100	56	32	18	10	6	3	1
<i>Average</i>															

Justification With regard to its 9 inch solid brick walls, sash windows in the main part of the block and generally low standard of loft insulation, the dwelling is typical of its age. However, due to the presence of only radiant electric fires throughout the flat and the louvered windows throughout the back addition, the likelihood of the dwelling becoming unhealthily cold is significantly higher than for the average Pre-1919 cold dwelling.

OUTCOMES

Low ---> High

%

	Model												
Class I	0	0.1	0.2	0.5	1.0	2.2	4.6	10.0	22	32	46	100	4.6
<i>Average</i>													
Class II	0	0.1	0.2	0.5	1.0	2.2	4.6	10	22	32	46	100	10.0
<i>Average</i>													
Class III	0	0.1	0.2	0.5	1.0	2.2	4.6	10.0	22	32	46	100	31.6
<i>Average</i>													
Class IV	0	0.1	0.2	0.5	1.0	2.2	4.6	10.0	22	32	46	54	53.8
<i>Average</i>													

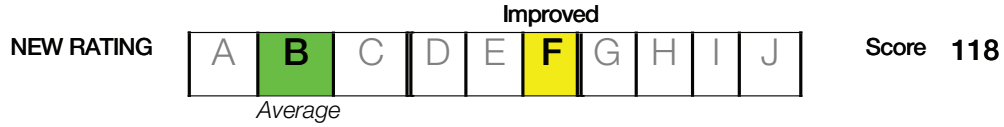
Justification Although the risk of the dwelling falling to unhealthily cold temperatures, that is less than 16, 12 and 9°C, and the consequent risk of serious harm is higher than average, the spread of harms is not increased in terms of its severity.

RATING	Model										Score	6634
	A	B	C	D	E	F	G	H	I	J		
<i>Average</i>												

RATING SCORES AFTER IMPROVEMENT

IMPROVE **Likelihood to** 1 in 560 **Outcomes to** 5 | 10 | 32 | 54 %

Justification Installing an efficient gas fired central heating system and replacing the windows throughout with double glazed units would increase the energy efficiency of the flat substantially and thereby reduce the likelihood of excessive cold to much better than average figures.



Basis of averages: Population living in cold dwellings and those with defective heating and dampness

Appendix C: Economic appraisal of avoided outcomes

Appendix B of this Regulatory Impact Assessment describes four categories of outcomes which might result from hazards in homes which are not compliant with HHSRS. These are:

- Class I (e.g. death, fatal paralysis or other very severe non-death injury).
- Class II (e.g. chronic confusion, regular severe fever, serious fractures).
- Class III (e.g. loss of a finger, severe concussion, serious strain).
- Class IV (e.g. skin irritation, benign tumours, moderate cuts, regular colds).

Figures for the value of preventing Class I outcomes are relatively simple to calculate. Values of lives saved are converted to monetary values using Department for Transport (DfT) figures for the value of preventing a statistical fatality. In 2005 prices, this value is £1.44m.

Figures for the value of preventing Class II, III and IV outcomes are derived from Willingness To Pay research¹⁰. The valuations of preventing such outcomes are made up of three constituent parts:

- The valuation that the individual puts on the outcome.
- The cost to the economy of lost production where the individual is unable to work because of the outcome.
- The cost to the health service of the outcome.

Whilst the figures from this research relate to respiratory illnesses, the valuations are designed to be context-free, so that they can be used for similar events following different outcomes.

The table below summarises these valuations and costs (2005 prices):

	Individual valuation	Cost to economy	Cost to health service
Class II *	£217	£45 per day	£258 per day
Class III **	£174	£45 per day	£74 per visit
Class IV **	£27	£45 per day	£74 per visit
* Assumes hospital stay is required			
** Assumes visit to emergency room is required			

¹⁰ Values taken from: Pearce, D. "Valuing risks to life and health: Towards consistent transfer estimates in the European Union and Accession States". Paper prepared for the European Commission (DGXI), Workshop on Valuing Mortality and Valuing Morbidity, Brussels, 2000. Paper can be obtained at: http://www.cserge.ucl.ac.uk/EU_Valuing_Lives.pdf

The valuation of an outcome is dependent on its duration. We might expect a Class II event to last perhaps a few days. A Class II event which led to a five day hospital stay would have a total valuation of £1,732. A Class III event of the same duration would have a total valuation of £473. A Class IV event of three days' duration would have a valuation of £236.

In order to estimate the total benefits of implementing the HHSRS, the value of each outcome would be multiplied by the number of outcomes avoided. Whilst estimates exist of the number of hazards resulting in an Improvement Order, no estimates exist for the number of outcomes which would be avoided. **Any estimates of the total benefits are therefore purely illustrative.**

The table below shows such an illustration using the values given above. It includes only the top 5 hazard types:

Hazard type	No. hazards resulting in Improvement Order	Illustrative number of avoided events by Class				Total benefit (£)
		I	II	III	IV	
Falls on stairs	18,100	5	200	500	1000	8,018,900
Falls on level	8,500	2	100	250	500	3,289,450
Falls between levels	4,250	1	100	200	400	1,802,200
Excess cold	8,700	4	100	250	500	6,169,450
Fire	3,500	2	100	200	400	3,242,200

We make the following comments on this illustration:

- These figures are based on Willingness To Pay studies, which in general **do not lead to perfect valuations of outcomes.**
- The valuation of each type of event avoided by Class are based on assumptions of duration of stay and averages of costs. Clearly **some events will lead to longer stays than others,** and **some events will cost more to treat than others.**
- Most importantly, the number of events avoided by Class as a result of implementing HHSRS (shown in italics above) are **purely illustrative** and **not based on evidence.**
- There are other hazard types not included in this illustration.

We therefore **do not place any weight on the illustrative benefits** and they **should not be interpreted as benefits that will result from implementing the HHSRS.** They merely show the kinds of calculations that can be done with evidence to estimate the total benefits of implementing the HHSRS.

