



## BRIEFING PAPER

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# The Housing Health and Safety Rating System (HHSRS)

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## Summary

The Housing Health and Safety Rating System (HHSRS) was introduced by the *Housing Act 2004* and has been in force since April 2006. It is the main system for assessing and enforcing housing standards in England and Wales. It replaced a pass or fail Housing Fitness Standard which had been in place since April 1990 and which had been identified as having some significant failings. For example, it was felt not to distinguish between defective dwellings and genuine health and safety hazards.

The HHSRS is a risk-based assessment tool which is used by environmental health officers to assess the risk (the likelihood and severity) of a hazard in residential housing to the health and safety of occupants or visitors. The HHSRS is tenure neutral; it can be used to assess hazards in private and social rented housing and also in owner occupied housing.

Most HHSRS work is carried out in relation to private rented housing as this is the sector with the poorest housing standards. The HHSRS has attracted criticism on the basis that knowledge of its existence, and understanding of how it works, is limited amongst landlords and tenants. There have been calls for the introduction of a simpler and more straightforward set of quality standards, particularly with reference to the private rented sector.

The Coalition Government conducted a review of the HHSRS the outcome of which was published in March 2015: [Review of property conditions in the private rented sector: Government Response](#). Changes to the HHSRS were rejected, instead the Government opted to produce a layperson's guide to health and safety hazards in the home: [Renting a safe home: a guide for tenants](#) (now archived). This has been replaced by [How to rent a safe home](#) (June 2018).

Further reviews of the HHSRS by the Chartered Institute of Environmental Health (2017) and the Housing, Communities and Local Government Select Committee as part of its wider inquiry into the private rented sector over 2017-18, concluded that there were grounds for updating the guidance. At the time (June 2018), the Government said they would consider updating the guidance but rejected the introduction of quality standards. However, on 26 October 2018 the Minister, Heather Wheeler, [announced](#) that the HHSRS *would* be reviewed.

The Ministry of Housing, Communities and Local Government (MHCLG) commissioned RHE Global to identify the extent to which the HHSRS needs to be updated and revised, including exploring the scope for setting minimum standards as part of the HHSRS framework. Responses to an online questionnaire had to be submitted by 24 February 2019. The Government said the outputs from the questionnaire "will be used to develop a specification for any actual review of the HHSRS." On 11 July 2019, the MHCLG [announced](#) the outcome of the scoping exercise. There is an intention to carry out further work to "make the system easier to understand for landlords and tenants, correct the disconnect between the HHSRS and other legislative standards, and facilitate the effective enforcement of housing standards by local authorities."

This briefing gives an overview of the HHSRS and looks at some of the reviews and reports into its operation.

# 1. The Housing Health and Safety Rating System (HHSRS): an overview

The HHSRS was introduced by Part 1 of the *Housing Act 2004* and the *Housing Health and Safety Rating System (England) Regulations 2005* (SI 2005 No 3208) which came into force on 6 April 2006. It applies in England and Wales (*Housing Health and Safety Rating System (Wales) Regulations 2006* (SI 2006 No 1702))<sup>1</sup> but does not apply in Scotland.

When environmental health officers (EHOs) inspect a dwelling using the HHSRS they look for any risk of *harm* to an actual or potential occupier of a dwelling, which results from any *deficiency* that can give rise to a hazard.<sup>2</sup> They judge the severity of the risk by thinking about the *likelihood* of an occurrence that could cause harm over the next twelve months, and the range of harms that could result. The EHOs make these judgements by reference to those who, mostly based on age, would be most vulnerable to the hazard, even if people in these age groups are not actually living in the property at the time.

As the original operating guidance states, the system assesses safety rather than comfort:

The HHSRS concentrates on threats to health and safety. It is generally not concerned with matters of quality, comfort and convenience. However, in some cases, such matters could also have an impact on a person's physical or mental health or safety and so can be considered.<sup>3</sup>

The HHSRS is not a pass/fail test; it is a risk-based assessment of residential housing conditions.

## 1.1 How risks are assessed

An HHSRS score is calculated following an inspection. Officers use the formal scoring system within HHSRS to demonstrate the seriousness of hazards that can cause harm in dwellings. The scoring system for hazards is prescribed by the *Housing Health and Safety Rating System (England) Regulations 2005* (SI 2005 No 3208). The Department issued *Operating Guidance* for carrying out inspections and assessing hazards which can be accessed online.

If there are risks to the health or safety of occupants that the officer thinks should be dealt with they have various powers at their disposal to ensure that owners and landlords take corrective measures.<sup>4</sup> If the

<sup>1</sup> Note that section 91 of the Renting Homes (Wales) Act 2016 will, when in force, require all landlords to ensure that properties are fit for human habitation at the commencement of, and throughout, the tenancy.

<sup>2</sup> An example of the cause of a hazard could be a badly maintained ceiling – the hazards that this deficiency could result in include excess cold, increased risk of the spread of fire and noise.

<sup>3</sup> [Housing Health and Safety Rating System Operating Guidance](#), ODPM, February 2006, p7

<sup>4</sup> See section 1.2 below

officer finds a serious hazard (i.e. one in the higher scoring bands A – C, referred to as Category 1 hazards) the local authority is **required** to take one of the courses of action outlined in the [Enforcement Guidance](#).<sup>5</sup> Category 2 hazards (i.e. those in scoring bands D - J) are those that are judged to be less serious. Authorities can still take action to tackle these hazards where it is believed necessary.

## 1.2 Enforcement action

As noted above, if an inspection reveals the presence of one or more Category 1 hazards the local authority must take the most appropriate of the following courses of action:

- serve an Improvement Notice in accordance with section 11;
- make a Prohibition Order in accordance with section 20;
- serve a Hazard Awareness Notice in accordance with section 28;
- take emergency remedial action under section 40 or make an Emergency Prohibition Order under section 43;
- make a Demolition Order under section 265 of the *Housing Act 1985* (as amended); or
- declare a Clearance Area by virtue of section 289 of the 1985 Act (as amended).

Authorities cannot simultaneously take more than one of these actions, but it is possible to take a different course of action, or the same course again, if the action already taken has not proved satisfactory.

Emergency measures are the exception. Emergency remedial action followed by an Improvement Notice or a Prohibition Order is a single course of action.

Section 8 of the 2004 Act places a duty on local authorities to give a statement of reasons for their decision to take a particular course of enforcement action. In deciding on the appropriate action to take an authority must take account of the current occupant(s) of the dwelling.

Authorities have similar powers to deal with Category 2 hazards but they are prevented from using emergency measures. In addition, authorities cannot make a Demolition Order, or declare a clearance area in response to a Category 2 hazard unless the circumstances have been prescribed in regulations.

The following sections explain each of the enforcement measures in turn:

### Improvement Notice

An Improvement Notice can be served in respect of a Category 1 or 2 hazard. As a minimum it must remove the Category 1 hazard but may extend beyond this, e.g. to ensure that the hazard will not reoccur within the next 12 months. Where there are multiple hazards an Improvement Notice can cover both Category 1 and 2 hazards.

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<sup>5</sup> ODPM, [HHSRS Enforcement Guidance – Housing Act 2004 Part 1: Housing Conditions](#), February 2006

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Section 13 of the 2004 Act sets out the information that the notice must contain, such as the nature of the hazard, the timescale for completing the necessary work and the right of appeal.

Section 31 and Schedule 3 to the 2004 Act enable authorities to take the action required by an Improvement Notice itself, with or without the agreement of the person on whom the notice is served. The [Enforcement Guidance](#) describes the circumstances in which the need to act with (or without) agreement might arise:

...where a category 1 hazard exists and remedial action is required without undue delay, but the owner is not in a position to carry out the works or arrange for the work to be done, perhaps for financial reasons. Authorities may have to carry out works without agreement where a notice has not been complied with.<sup>6</sup>

Once complied with, an Improvement Notice must be revoked.

### Prohibition Order

This is a possible response to a Category 1 or 2 hazard. These orders replaced Closing Orders<sup>7</sup> and Overcrowding Directions. They can prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

The circumstances in which a Prohibition Order might be served include where conditions in a property present a serious threat to health and safety but the cost of remedial action is considered unreasonable or impractical. A Prohibition Order might also be used where a dwelling is too small for the size of the household in occupation. Service of a Prohibition Order does not affect current occupation but prohibits future occupation in excess of a specified number. A Prohibition Order can be served in combination with an Improvement Notice, e.g. where the facilities are inadequate for the numbers in occupation.

Section 22 of the 2004 Act specifies the information that a Prohibition Order must contain. It is possible to appeal against a Prohibition Order.

### ***Suspended Improvement Notices and Prohibition Orders***

All or part of the action required by an Improvement Notice or Prohibition Order may be suspended where, for example, a hazard exists but the current occupant is not identified as vulnerable to the particular hazard. Authorities are required to reconsider the most appropriate course of action on the expiry of a suspension period or on the occurrence of an event (specified in regulations). Suspended Orders/Notices must be reviewed at least 12 months after the date of service or making of the Order.

### Hazard Awareness Notice

A Hazard Awareness Notice under section 29 of the 2004 Act may be a reasonable response to a less serious hazard where the authority wishes to draw attention to the desirability of remedial action. A Hazard Awareness Notice served under section 28 is also a possible response to

<sup>6</sup> Ibid., para 5.13

<sup>7</sup> Section 264 of the *Housing Act 1985*

a Category 1 hazard as long as a Management Order under Part 4 of the Act has not been served. The [Guidance](#) advises that there may be circumstances where works of improvement, or prohibition of the use of the whole or part of the premises, are not practicable or reasonable responses in which case a Hazard Awareness Notice might be appropriate.

The Notice must specify the hazard, any appropriate remedial action and any other courses of action available to tackle the hazard. There is no appeal against this sort of notice and no further action is required by a person served with this sort of notice, although the Guidance advises that authorities should monitor any Hazard Awareness Notices that they serve. The procedure is 'advisory' in nature.

### **Emergency remedial action**

Local authorities have discretion to take emergency enforcement action against hazards which present an imminent risk of serious harm to occupiers. In such circumstances, authorities themselves take the remedial action to remove a hazard and recover reasonable expenses, or can prohibit the use of all or part of a property (Emergency Prohibition Order). The owner of a property can appeal but an appeal does not prevent the action from being taken or the prohibition being put into effect. These provisions may only be used where there is a Category 1 hazard; the hazard involves an imminent risk of harm to any of the occupiers of those or other residential premises; and no Management Order is in force under Part 4 of the 2004 Act.

### **Demolition Order**

These Orders remain available under Part 9 of the *Housing Act 1985* (as amended). They are a possible response to a Category 1 hazard where this is the appropriate course of action, unless the premises are a listed building.

### **Clearance areas**

The provisions of Part 9 of the *Housing Act 1985* have been retained in respect of Clearance Areas with changes to align them with the provisions of the HHSRS. An authority can declare an area a clearance area if it is satisfied that each of the residential buildings in the area contains one or more Category 1 hazards (*or* that these buildings are dangerous or harmful to the health or safety of the inhabitants as a result of their bad arrangement or the narrowness or bad arrangement of the streets); and any other buildings in the area are dangerous or harmful to the health of the inhabitants. In a building containing flats, two or more of those flats must contain a Category 1 hazard before a clearance area can be declared.

## **1.3 Failure to comply with enforcement action**

If a landlord fails to comply with enforcement action under the HHSRS, they could face prosecution by local authority EHOs. Measures introduced by the *Housing and Planning Act 2016* mean that English

authorities now have additional options at their disposal as an alternative to prosecution:

- An authority can issue a civil penalty of up to £30,000 for failure to comply with an Improvement Notice.<sup>8</sup>
- Failure to comply with an Improvement Notice and/or a Prohibition Order is a banning order offence. A local authority can apply to a First-Tier Tribunal for a banning order. If granted, this prevents a person from managing or leasing property for a specified period.<sup>9</sup>
- Failure to comply with an Improvement Notice and/or a Prohibition Order enables a local authority to apply for a Rent Repayment Order to force a landlord to repay rent to either the tenant or the local authority, depending on whether the tenant received Housing Benefit/the housing element of Universal Credit.<sup>10</sup>

### 1.4 Houses in multiple occupation (HMOs) and the HHSRS

The HHSRS can be used to assess conditions in any residential dwelling whether or not it is self-contained or part of a larger building. The EHO only has to examine the dwelling and the parts and areas, shared or not, which form part of that dwelling.<sup>11</sup>

Since 1 October 2018, all HMOs in England with five or more people from two or more separate households must be licensed by their local housing authority. Converted blocks of flats are not subject to mandatory licensing. An assessment under the HHSRS is *not* part of the licensing process but section 55 of the 2004 Act requires authorities to satisfy themselves as soon as practicable, and not later than five years after an application for a licence has been received, that there are no Part 1 functions that ought to be exercised by them in relation to premises in respect of which the licensing application is made.

The HHSRS *is* applicable to all non-licensable HMOs.<sup>12</sup>

Information on applying the HHSRS to HMOs can be found in chapter 5 of the [Operating Guidance](#) and chapter 6 of the [Enforcement Guidance](#).

### 1.5 The HHSRS and high-flats

In the wake of the Grenfell Tower fire, it became apparent that the HHSRS [Operating Guidance](#) did not specifically cover assessment of cladding, and predominantly focused on assessing the risk of hazards within *individual dwellings*, rather than assessing the common parts of the building, including the exterior of building.

<sup>8</sup> MHCLG, [Civil penalties under the Housing and Planning Act 2016](#), April 2018

<sup>9</sup> MHCLG, [Banning Order Guidance](#), April 2018

<sup>10</sup> MHCLG, [Rent repayment orders under the Housing and Planning Act 2016](#), April 2017

<sup>11</sup> [HHSRS Guidance for Landlords and Property Related Professionals](#), p13

<sup>12</sup> For more information see [Library Briefing Paper 0708, Houses in multiple occupation \(HMOs\) in England and Wales](#)

In November 2018, MHCLG published an [addendum](#) to the Operating Guidance to provide guidance on the assessment of high-rise residential buildings with unsafe cladding:

It supplements the Hazard Profile for Fire as given in the HHSRS Operating Guidance (see Profile 24, pages 150 to 155) and should be read and used in conjunction with that Operating Guidance. While the addendum deals specifically with high-rise residential buildings (those 18 metres high and over) with such cladding, some aspects will be relevant for other issues relating to the exterior of a building, or to other residential buildings containing flats or apartments.<sup>13</sup>

## 1.6 The HHSRS and retaliatory eviction

Retaliatory eviction, also sometimes referred to as revenge eviction, is used to describe the situation where a private landlord serves notice on a tenant asking them to leave in response to the tenant's request for repairs, or where they have sought assistance from a local authority's environmental health department.

In response to concerns that retaliatory eviction was enabling landlords to avoid improving/repairing their properties and preventing tenants from lodging complaints, the Government introduced some limited protection via the *Deregulation Act 2015*.

Section 33 of the *Deregulation Act 2015* prohibits the service of a section 21 notice of intention to seek possession in England within six months of the service of a 'relevant notice' or, where the operation of the 'relevant notice' has been suspended, within six months starting from the date on which the suspension ends. A relevant notice is defined as an Improvement Notice for a category 1 or category 2 hazard, or an Emergency Remedial Action Notice. Tenants must have written to the landlord beforehand, giving them 14 days to respond.

Government guidance on the 2015 Act was published in October 2015: [Guidance note: Retaliatory Eviction and the Deregulation Act 2015](#).

## 1.7 Homes (Fitness for Human Habitation) Act 2018

Karen Buck's Private Member's Bill gained cross-Party support - the *Homes (Fitness for Human Habitation) Act 2018* came into force on 20 March 2019 (England only). The Welsh Government is bringing forward similar legislation.

The 2018 Act places a duty on landlords/agents to ensure homes are fit for human habitation at the beginning and throughout the tenancy. Where a landlord fails to let/maintain a property that is fit for human habitation, the tenant has the right to take legal action for breach of contract (covenant) on grounds that the property is unfit. There are some limited exceptions to these responsibilities.

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<sup>13</sup> HC 1744, [HHSRS Operating Guidance Addendum](#), November 2018

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The definition of 'fitness' in this context is set out in section 10 of the *Landlord and tenant Act 1985* (as amended). In addition to the existing list of factors such as freedom from damp, water supply and ventilation, a property is unfit if there is "any prescribed hazard" as defined by regulations made under section 2 of *Housing Act 2004*: i.e. the HHSRS.

This means that since 20 March 2019, in any **new** tenancy (including renewed or statutory periodic tenancies arising after 20 March), tenants can take their landlord to court if there is a failure to take sufficient measures to remove hazards in their home.

The Act's coverage will be extended 12 months after its commencement (20 March 2020) to apply to all existing statutory periodic tenancies, secure tenancies, assured tenancies and protected tenancies.

More information can be found in the Library paper: [Homes \(Fitness for Human Habitation\) Bill 2017-19](#).

## 2. Reviews of the HHSRS

### Coalition Government 2010-15

Chapter 2 of the 2013 Communities and Local Government Select Committee report on [The Private Rented Sector](#) considered the operation of the HHSRS.<sup>14</sup> A survey of private landlords carried out by DCLG in 2010 found that 85% of landlords had not heard of the HHSRS;<sup>15</sup> the Committee concluded that there was also likely to be a low level of awareness amongst tenants. Some evidence submitted to the Committee raised concerns around the complexity of the HHSRS and the fact that there is limited understanding of its operation outside of professionals in the field. There was a call from some respondents for a new approach to assessing the quality of privately rented housing but no general agreement on what alternative approach to adopt.

The Committee thought that if landlords are expected to provide housing of a decent standard there should be a straightforward way of assessing whether this standard has been met. In turn, this would benefit tenants by giving them clear grounds on which to complain where standards are not met. The Committee said that the HHSRS does not meet this purpose and recommended:

...that the Government consult on the future of the housing health and safety rating system and the introduction of a simpler, more straightforward set of quality standards for housing in the sector. The Government should also ensure that planning and building regulations are consistent with standards for the quality and safety of private rented housing.<sup>16</sup>

The Government published its response on 16 October 2013 in which a commitment was made to "undertake a review of the current system to ensure there is a robust framework in place to check that tenants' homes are safe".<sup>17</sup>

The DCLG published a discussion paper, [Review of Property Conditions in the Private Rented Sector](#) in February 2014. In regard to the HHSRS, the consultation paper asked:

**Question 4:** Should the guidance for landlords be updated and widened to include information for tenants, to help them understand whether a property contains hazards?<sup>18</sup>

**Question 23:** Do you think the methodology that underpins the Housing Health and Safety Rating System and/or the accompanying operational guidance need to be updated?<sup>19</sup>

<sup>14</sup> HC 50, First Report of Session 2013-14, [The Private Rented Sector](#), 18 July 2013

<sup>15</sup> DCLG, *Private Landlords Survey 2010*. Tables Annex 7.2

<sup>16</sup> [HC 50, First Report of Session 2013-14](#), 18 July 2013, para. 18

<sup>17</sup> [Government Response to the Communities and Local Government Select Committee Report: The Private Rented Sector](#), Cm 8730, October 2013

<sup>18</sup> DCLG, [Review of Property Conditions in the Private Rented Sector](#), February 2014, p.8

<sup>19</sup> *Ibid.*, p20

## 12 The Housing Health and Safety Rating System (HHSRS)

The Government response, [Review of property conditions in the private rented sector: Government Response](#), was published on 13 March 2015:

Of those that responded to the question, 148 respondents thought that the existing guidance for landlords needed to be updated and/or widened to include information for tenants. In particular it was thought that the guidance needed to be simplified.

5 respondents did not think any changes were necessary.<sup>20</sup>

The Coalition Government did not commit to updating existing guidance and instead referred to a range of documents already published including:

A short non-technical guide to help tenants recognise potentially harmful hazards in the home, such as damp, mould and excess cold and what to do about them. This will help tenants avoid properties with potential health hazards.<sup>21</sup>

The Coalition Government also decided not to amend the HHSRS methodology (question 23):

There was support for an update of the Housing Health and Safety Rating System guidance. However many respondents saw the methodology and guidance as being fundamentally sound as they are.

7 respondents did not think that any updating was required.

### **Government Response:**

We note that many respondents believe that the current guidance is fundamentally sound. At this stage, therefore, we do not propose to update the methodology or produce a revised version of the operational guidance. However, it has been decided to produce a layperson's guide to health and safety hazards in the home and what to do if something goes wrong. A guidance document is being published at the same time as this document.<sup>22</sup>

This 'laypersons' guide was published in 2015: [Renting a safe home: a guide for tenants](#) (now archived). It has been replaced by [How to rent a safe home](#), published in June 2018.

### **Conservative Government 2015 onwards**

The 2015 Conservative Government also resisted calls to amend the HHSRS and/or introduce a new housing fitness standard but acted to strengthen the remedies available to tackle landlords who do not comply with statutory notices – see section 1.3 of this paper for measures introduced by the *Housing and Planning Act 2016*.

In the wake of the Grenfell Tower fire, **Shelter commissioned research from the universities of Bristol and Kent** to look at perceived gaps in legislation and enforcement of health and safety in

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<sup>20</sup> DCLG, [Review of property conditions in the private rented sector: Government Response](#), March 2015, p3

<sup>21</sup> Ibid., p4

<sup>22</sup> Ibid., p15

residential premises. The resulting report, [Closing the gaps: Health and Safety at Home](#), was published in November 2017.<sup>23</sup>

The authors argued that housing standards are regulated by a complicated and 'incoherent' picture of statute and case law. This is a particular problem when regulation is reliant on assessing 'risk', a key feature of the HHSRS. The authors believed this to be a 'problematic' concept, as a low risks can still lead to catastrophic consequences. Politicians have not, the authors believed, paid sufficient attention to the overall 'coherence' of the legislation.<sup>24</sup>

The report also raised issues about under-resourcing of enforcement activity by local authorities and a lack of trained EHOs. EHOs themselves noted that the information requirements for taking appeal cases to a Tribunal acted as a deterrent to taking action.<sup>25</sup>

Carr et al. highlighted the following specific issues with the HHSRS:

- current understanding of case law suggests that a local authority cannot serve a notice on itself. This means tenants of a local authority lack the ability to use the HHSRS legislation to the same extent as private sector tenants;
- the Government has never published guidance under section 3(3) of the *Housing Act 2004*. This relates to local authorities' more proactive duties to keep housing conditions in their areas under review;
- tenants believe local authorities do not make full use of their powers under the HHSRS;
- EHOs and other survey respondents were concerned about the subjective nature of housing inspections. Some survey answers suggested that the standards were not clear enough and that a return to the older fitness standard might improve the objectiveness of assessments. Others preferred an update to the HHSRS operational guidance, including more borderline case studies to assist them. Some respondents were concerned that Category 2 hazards are not subject to mandatory enforcement action.

On this last point, Carr et al. thought that improvements could be achieved through better training for EHOs and members of the First-Tier Tribunal, as well as revised guidance. The authors dismissed a return to the 'fitness standard' model.

There was support for the *Homes (Fitness for Human Habitation) Bill* but the authors called for a more comprehensive "Housing (Health and Safety in the Home) Act" which would consolidate legislation in several areas such as fire safety, statutory nuisance, and building regulations.

### **The Chartered Institute of Environmental Health (CIEH) carried out a survey of 170 Environmental Health professionals in April**

<sup>23</sup> Helen Carr, David Cowan, Edward Kirton-Darling and Edward Burtonshaw-Gunn, [Closing the gaps: Health and Safety at Home](#), University of Bristol and University of Kent, 2017

<sup>24</sup> Ibid., p7

<sup>25</sup> Ibid., p10

**2017.** The findings were published in [HHSRS - 11 years on](#) (December 2017).

A majority of respondents to the survey expressed a preference for a risk-based approach to assessing housing standards but **97% supported an update of the HHSRS.** Unprompted comments from 71 separate individuals called for updates to the evidence or statistics behind the HHSRS. 9 out of 10 respondents wanted more up to date worked examples of enforcement guidance.<sup>26</sup>

The authors highlighted that much of the evidence used in the guidance for the HHSRS was based on examples from the 1990s, when the housing stock was generally poorer. More risks are identifiable now, thanks to recent research into housing conditions and health, than before; 53% of respondents had seen hazards that were “not adequately addressed.”<sup>27</sup>

The EHOs singled out the following hazards as in need of an update in the HHSRS guidance:

- **Excess heat/cold.** The CIEH argued that powers to deal with excess cold should be made clearer in future HHSRS guidance. They noted that excess heat is becoming more of an issue than at the time the guidance was written.
- **Crowding standards.** The CIEH noted that there are multiple standards in existence and that local authorities have some discretion in this regard. Respondents to the survey wanted a more consistent approach.
- **Damp and mould.** The CIEH called for the incorporation of evidence showing a link between damp/mould and health issues in the HHSRS guidance.
- **Vulnerable groups.** Currently, the HHSRS system is focused on the risk to current tenants, so if a risk to a hypothetical vulnerable person is identified, EHOs may feel less able to act. Furthermore, the HHSRS system does not contain measures to assess tenants’ vulnerability, apart from age. Long-term conditions should be incorporated into the HHSRS, according to the CIEH.
- **Outdoor spaces.** Some respondents remarked that the HHSRS guidance does not include adequate assessments of outdoor features that might present a risk, such as risks of drowning in bodies of water.

Overcrowding standards are outlined in the Library paper, [Overcrowded housing \(England\)](#)

In terms of enforcement guidance, respondents wanted greater clarity on:

- when it is appropriate to take ‘informal’ action against a landlord;
- contradictory decisions made by Tribunals;
- how HMOs and empty properties fit in the picture;

<sup>26</sup> [HHSRS - 11 years on](#), Chartered Institute of Environmental Health, December 2017, p2

<sup>27</sup> Ibid., p2

- how new smoke and carbon monoxide regulations should work alongside the HHSRS.<sup>28</sup>

The authors recommended that the Government should:

- [...] put in place a system of regular review and update of all the hazard profiles in the HHSRS operating guidance, including any new evidence published and any shifts in housing conditions.
- [...] review published worked examples to see whether these can be improved and updated.
- [...] review any significant [tribunal] decisions, by working in consultation with EHPs and other stakeholders, to identify and update areas of the HHSRS enforcement guidance where further clarification would be useful. New powers from the Housing and Planning Act 2016 should also be included in this update.
- [...] clarify in the HHSRS enforcement guidance, how to apply the definition of vulnerable occupiers and in which cases it is appropriate to apply the risk rating for vulnerable groups if the actual occupiers are of working age. This includes to what extent people living with long term conditions should be considered as vulnerable.
- [...] work with stakeholders to set a clear national minimum space standard to ensure that building regulations are aligned with housing enforcement legislation.<sup>29</sup>

**April 2018 saw publication of the Housing, Communities and Local Government Committee's report of their inquiry into the Private rented sector.**<sup>30</sup> As with the earlier 2013 inquiry, the Committee received evidence on the complexity of the HHSRS, inconsistent enforcement, and the need to update the 'baseline assumptions' in the guidance.<sup>31</sup>

The Committee recommended:

The Government must immediately update the baseline assumptions within the operating guidance for the HHSRS, which are now twelve years out-of-date. We have already called on the Law Commission to review private rented sector legislation, including the Housing Act 2004, and believe that this should include a review of the HHSRS itself. Ultimately, it is our strongly held view that the Government should introduce a more straightforward set of quality standards for the sector, so that it is clear to everyone—not just to highly qualified professionals—whether a property meets minimum standards. These standards should be higher than those in the HHSRS, reflecting an improvement in housing quality since the system was introduced.<sup>32</sup>

The Committee also called for stronger enforcement measures:

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<sup>28</sup> Ibid., pp8-9

<sup>29</sup> Ibid., pp10-11

<sup>30</sup> House of Commons Housing, Communities and Local Government Committee, [Private rented sector: Fourth Report of Session 2017-19](#), HC 440, 19 April 2018

<sup>31</sup> Ibid., paras 65-68

<sup>32</sup> Ibid., para 70

We believe local authorities should have the power to levy more substantial fines, which might stand a chance of breaking the business models of the worst offenders. Further, local authorities should have the power to confiscate properties from those landlords committing the most egregious offences and whose business model relies on the exploitation of vulnerable tenants. Coupled with the banning orders which came into force in April, this would act as a more powerful deterrent than the existing provisions.

We believe that courts should require offenders to pay costs that reflect the actual costs to local authorities of enforcement action. There should be no financial disincentive for local authorities to fulfil their statutory duties and pursue prosecutions against criminal landlords.

Additional funding should also be made available by the Government through a new fund to support local authorities that primarily undertake informal enforcement activities and are unable to benefit from funding through civil penalties.<sup>33</sup>

**The Government's response was published in June 2018.**<sup>34</sup> The Government accepted in part the need to update the guidance for the HHSRS, stating that it would "carefully consider whether it needs to be updated." The idea of introducing quality standards was rejected on the basis that the "overall approach is fundamentally sound."<sup>35</sup> An extension of enforcement measures was rejected - the Government said it was too soon to see the impact of measures introduced by the *Housing and Planning Act 2016*.<sup>36</sup>

In [\*\*The Evolving Private Rented Sector: Its Contribution and Potential\*\*](#) (September 2018) Julie Rugg and David Rhodes recommended the introduction of an MoT style licensing system:

It is here suggested that all property let for residential purposes be required to provide a 'MoT'-style licence or certificate, indicating that independent inspection has passed the property as being fit to let. Securing the fitness certificate would be a tax-deductible business expense. It should not be legal to let a property without this document, which would integrate the existing range of requirements with regard to electrical and gas safety and energy efficiency, but also include assessment according to a basic minimum standard for habitation check.<sup>37</sup>

<sup>33</sup> Ibid., paras 92-94

<sup>34</sup> [Government response to the Housing, Communities and Local Government Select Committee Report: Private rented sector](#), Ministry of Housing, Communities and Local Government, July 2018, Cm 9639

<sup>35</sup> Ibid., paras. 12-3

<sup>36</sup> Ibid., paras. 58-60

<sup>37</sup> Julie Rugg and David Rhodes, [The Evolving Private Rented Sector: Its Contribution and Potential](#), University of York, 2018, p144

### 3. Government review of HHSRS October 2018

On 26 October 2018, the Government announced that the HHSRS would be reviewed:

Under current rules, councils are required to ensure rental properties in their area meet important safety standards using the Housing Health and Safety Rating System and are able to force criminal landlords to take action where tenants are languishing in unsafe accommodation.

Yet the system hasn't been updated in over 12 years, and a new review of the system will consider whether it should be updated and if so, to what extent. The review will also look at whether to introduce minimum standards for common health and safety problems in rental accommodation in order to keep renters safe.<sup>38</sup>

MHCLG commissioned RHE Global to identify the extent to which the HHSRS needs to be updated and revised, including exploring the scope for setting minimum standards as part of the HHSRS framework. The specification for the work was as follows:

1. identify which parts of the HHSRS are out of date and need to be revised
2. demonstrate whether there would be scope for introducing a sampling and cloning approach (rather than having to inspect each individual dwelling)
3. indicate whether the current penalties for non-compliance are appropriate and proportionate
4. show whether there is a need for additional worked examples in the guidance
5. help establish the feasibility of using digital technology to develop an app for the HHSRS, and
6. consider whether minimum standards should be included in the framework.

An email questionnaire was sent out with responses requested by 24 February 2019. The Government said the outputs from the questionnaire would be used to develop a specification for any actual review of the HHSRS.<sup>39</sup>

#### 3.1 The outcome of the review

On 11 July 2019, the MHCLG [announced](#) the outcome of the scoping exercise. The consultation showed "strong support" for the link between housing and health provided by the HHSRS, but stakeholders would welcome "simplification of the assessment process".<sup>40</sup>

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<sup>38</sup> [MHCLG Press Release](#), 26 October 2018

<sup>39</sup> [Nearly Legal: Housing Law and Comment website, HHSRS review](#), 15 February 2019

<sup>40</sup> MHCLG, [Outcomes of report on Housing Health and Safety Rating System \(HHSRS\) scoping review](#), 11 July 2019

Of the three options suggested by RHE Global for future action, the Government has decided to take forward option 2, which incorporates option 1 and involves the following specific work:

- Review and update the current HHSRS Operating Guidance.
- Develop a comprehensive set of Worked Examples which encompass the range of hazards, illustrate the utilisation of standards and provide a spectrum of risks.
- Review the current HHSRS assessor training, the training needs of assessors and other stakeholders and establish a HHSRS competency framework.
- Identify a simpler means of banding the results of HHSRS assessments so that they are clearer to understand and better engage landlords and tenants.
- Extend current and develop new standards that could be incorporated into the HHSRS assessment process.
- Amalgamation and/or remove of some of the existing hazard profiles.
- Investigate the use of digital technology to support HHSRS assessments and improve understanding and consistency for all stakeholders.
- Review existing guidance for landlords and property-related professionals and consider the introduction of a separate guide for tenants.
- Review and update the current HHSRS Enforcement Guidance: Housing Conditions and Part 1 of the Housing Act 2004.<sup>41</sup>

Option 3 would have taken forward a comprehensive review of the HHSRS assessment process by building on options 1 and 2. The Government gave the following reason for settling on option 2:

Government will proceed with Option 2 as this will make the system easier to understand for landlords and tenants, correct the disconnect between the HHSRS and other legislative standards, and facilitate the effective enforcement of housing standards by local authorities. It is also the most cost-effective option.<sup>42</sup>

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

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