Consultation response

Response to Housing Health and Safety Rating System: Consultation on Enforcement Guidance

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Shelter

Background

Shelter is a national campaigning charity that last year helped over 100,000 homeless or badly housed people. We prevent and alleviate homelessness by providing information, expert advice and advocacy for people with housing problems through our national network of housing aid centres and through Shelterline, a free, national, 24-hour advice line. We campaign for lasting improvements to housing-related legislation, policy and practice.

In 2003, we helped over 4,000 people resolve problems with poor physical conditions their home, such as damp and disrepair. Over two thousand were renting from a private landlord. We provide advice to clients and advocacy with their landlord or the local authority. The most complex and protracted cases for Shelter's housing advice staff are often those involving the remedy of unfitness or disrepair, because the duties and responsibilities of various parties are often unclear and private tenants typically have little security of tenure.

Shelter's Campaign for Bedsit Rights (CBR) concentrates on policy and practice in the private rented sector. Through CBR, we network with organisations directly involved in the repair and improvement of private sector housing, including local authority environmental health departments, statutory and voluntary advice centres, tenants groups, welfare sections of students unions and private landlords and their associations.

Summary of our response

Shelter broadly supports the replacement of the existing Housing Fitness Standard by the Housing Health and Safety Rating System (HHSRS), backed by a new enforcement regime. We welcome the inclusion of a wider range of hazards and the introduction of a duty for local authorities to take enforcement action in respect of serious hazards. Our four main concerns are that the new system and its enforcement should:

1) tackle unhealthy and hazardous housing in a strategic way that promotes homelessness prevention and housing choice in the local area

2) be responsive to views and complaints from residents about disrepair or other hazards in their homes. At present, authorities have powers to take action on conditions that affect an occupants' material comfort under section 190 of the 1985 Act, which would be repealed under Housing Bill

3) not increase eviction or reduce access of vulnerable people from rented housing through over-zealous or narrow enforcement approaches, but provide appropriate responses in each case

4) be clearly linked to and reinforce HMO licensing. Specific physical standards and enforcement powers in relation to HMOs under Part XI of the 1985 Housing Act will be repealed and not adequately replaced

1. A strategic approach to improving housing

We strongly welcome the duty place on authorities to consider housing conditions in their district at least once a year with a view to determining what action to take (clause 3 of the Housing Bill). We believe it is important that authorities are encouraged to take a strategic and corporate approach to tackling bad housing and homelessness in their local area.

The most complex and protracted cases for Shelter's housing advice staff can be those involving the remedy of unfitness or disrepair. Private landlords have legal obligations towards the repair and maintenance of the dwellings they let, and tenants have legal rights to enforce these obligations. However, over half of all private tenants rent their homes on assured shorthold tenancy agreements[1], which enable their landlord to terminate their tenancy at the end of a fixed term or with two months' notice in the case of a periodic tenancy. For tenants whose landlords may be unwilling to carry out repairs or remedy hazards, this can place them in the dilemma of putting up with unhealthy, dangerous conditions or losing their home.

Many tenants in this situation are unaware that their local authority can intervene and require action by their landlord. Even if they become aware through appropriate advice, their dilemma can be even more acute. The intervention of the local authority can, and does in our experience, lead to some landlords evicting their tenants either to avoid doing works or because they had complained to the local authority. In our view, this dilemma will remain so long as the present tenancy framework is in force. It highlights the imbalance between landlords' and tenants' rights and responsibilities in the assured tenancy regime, which makes it very difficult for tenants to exercise their rights.

It is therefore essential that local authorities have pro-active strategies and programmes of action for their areas. We work with authorities in many areas that implement active strategies, based on partnership with, and advice and support for, responsible landlords and owners and targeted enforcement action aimed at less cooperative landlords. However, the priority given to this work varies widely across the country. The main statutory duty under which authorities identify poor quality housing and develop methods of tackling repair and improvement is contained in section 605 of the 1985 Housing Act, which is replaced by Clause 3 of the Act. In our experience many authorities perceive the current duty as weak.

In drawing up their homelessness strategy, Colchester Borough Council clearly recognised the vital role of the private rented sector in meeting housing need locally. A central element in their strategy to tackle homelessness has been to build positive relationships with private landlords hand in hand with improving living conditions, management, amenities and fire safety within the sector.

Colchester has a number of initiatives, schemes and services aimed at improving relationships with landlords, improving standards, increasing access to the private rented sector and promoting tenancy sustainment. They provide advice and information through housing advisory services provided by the council, CAB and Shelter, a comprehensive landlord's guide and dedicated landlord liaison officer. This is combined with fast-tracking housing benefit, registration and accreditation schemes, financial assistance and active involvement in private sector lettings, as well as traditional inspection and enforcement approaches.

[1] Survey of English Housing (2001) Table A5.2

Additional initiatives include rent and deposit guarantee scheme, an empty homes initiative, a landlord's forum, a family home bond and home finder scheme and a tenancy support service for private sector tenants.

Through these initiatives, a 'spend to save' approach and excellent relationships between private sector housing, housing advice and housing needs departments, Colchester council has achieved Beacon status in its homelessness provision and marked improvements in local housing conditions.

Recommendation 1

The General Guidance (paragraph 1.10) should recommend that authorities formulate a 'healthy housing' strategy for their local area. Authorities should conduct regular district-wide surveys of all sectors of housing to inform this strategy.

The strategy should reflect and support priorities in local housing and homelessness strategies to prevent homelessness and improve housing choice and diversity alongside measures to improve standards.

2. Responsiveness to residents

We support the intention to rationalise the legal framework, to make the process of repair and improvement more transparent for owners, landlords and tenants. We welcome the removal of unnecessarily bureaucratic procedures from the enforcement process, in particular the proposed repeal of the 'minded to' procedure (paragraph 1.11).

We believe it is essential that local authority action to tackle poor housing conditions is responsive to the views and concerns of residents themselves about the condition of their housing. We believe the new system should aim not just to eliminate the most serious hazards, but also to improve the quality of life in homes from the point of view of residents themselves. A system that is responsive in this way is better able to improve housing in a broad and strategic way, for example reducing abandonment and high turnover linked to poor housing conditions.

At present, authorities can take action on substantial disrepair and conditions relating to the material comfort of occupants under Section 190 of the Housing Act 1985. Under the new system, authorities can take enforcement action on the basis of the HHSRS score, which takes into account conditions that affect the physical or mental health of residents, including damp, poorly fitting windows or bad lighting. However, our concerns are that it is hard to assess or prove the link between physical conditions and mental health, which may prevent discomfort being taken properly into account. Paragraph 4.22 of this guidance suggests that minor disrepair and conditions giving rise to discomfort may *not* be a priority given spread of more serious hazards. In contrast, section 190 provides a clear power to act on conditions that tenants raise as a problem. We believe a better balance needs to be struck between those conditions that tenants feel cause them most problems on a day to day basis and those which pose the greatest threat to health and safety.

In response to the Government's original consultation on the HHSRS, 56 per cent (including some key stakeholders) supported retaining a power to deal with defects causing discomfort. 10 per cent disagreed and 8 per cent gave other responses. Seventy per cent of local authorities supported retention of this power.

We also believe it is important that authorities consult tenants on their views about the impact of an identified hazard on their living conditions when deciding a course of action. For example, factors leading to the suspension of an improvement notice or prohibition order where there are serious hazards should be exceptional. One of the few exceptions we can envisage is where the occupant of the dwelling which contains a Category 1 hazard is elderly and frail, and where major works would cause them greater stress than continuing to live in their home with the hazard not remedied. In such circumstances, authorities could be advised to serve a Suspended Notice.

Recommendation 2

We recommend that paragraph 2.6 be amended as follows. We consider that the most appropriate action should be based on a *four*-stage consideration:

(a) the hazard rating determined under the HHSRS;
(b) whether the authority has a duty or discretion to act;
(c) the authority's judgment as the whether any hazard interferes materially with the personal comfort of the occupants; and
(d) the authority's judgment as to the most appropriate means of dealing with the hazard;

Recommendation 3

We recommend Part 3 of the guidance include other relevant considerations, which the authority should consider in exercising their professional judgment:

- **the views of the occupants on their experience of the impact of the hazard or hazards identified on their living conditions**
- **whether the dwelling is singly occupied and therefore has one household in effective control of their environment (link to Part 5 of the guidance)**
- **if the dwelling is located in a block of flats or in an HMO, what factors external to the dwelling may add to the hazards identified (link to Part 5)**
- **if the dwelling is not owner-occupied, how it is managed and whether the owner or manager has an effective management record (see R5)**

3. Vulnerability

The guidance raises the impact of enforcement action on the availability of accommodation to vulnerable people as a factor in the authority's decision on a particular course of action (paragraph 3.12). We welcome this, as it would clearly be at odds with the wider aims of improving housing conditions for everyone if the result of enforcement action is the eviction or exclusion of people from their housing. This addition also reflects concerns of authorities. Nearly a quarter of local authorities who responded to the Government consultation on the HHSRS disagreed that local authorities should take account of the current occupants of a dwelling in determining the most appropriate action.

Nearly half of these gave their reason for this by saying there was an unacceptable risk of exclusion.

Environmental health and private sector housing staff are not trained to identify vulnerability. Where they have concerns about potential vulnerability, such as mental health or substance misuse, they should consult with social services, tenancy support workers or housing officers to discover whether they have contact with particular residents and their opinion on the most appropriate response to hazards in the resident's home.

In addition to weighing the benefits and consequences of the use of notices or enforcement tools, authorities should consult with residents themselves and also with colleagues in housing advice and housing needs departments and with the landlord (for rented property) on the suitability of the accommodation, on other housing options for tenants in insecure housing and on the attitude of the landlord to management and improvement of the property. An overall strategy linking enforcement to licensing, housing and homelessness strategies is likely to be the best way to achieve effective working relationships to provide the most appropriate response in each case.

Responses other than the use of enforcement action under Part 1 of the Bill may be appropriate in some cases. Our experience in advising owner-occupiers over hazards in their homes tends to concentrate on the needs of older people, those with disabilities and people with special needs. We find that, all too often, there is a lack of effective coordination at the local authority level between housing and social services departments about the use of their powers to assist households appropriately. Social services often tend to use their powers under the Chronically Sick and Disabled Persons Act 1970 without considering with housing authorities whether the provision of a Disabled Facilities Grant may form an appropriate package or part of a solution.

Finally, we are concerned that the guidance on taking a decision to suspend an improvement notice or prohibition order (paragraph 4.11) could have negative outcomes. If a suspended notice is triggered by a change of occupancy, where an occupier considered less vulnerable to a particular hazard replaces a former resident, landlords may deliberately evict or exclude vulnerable people. To overcome this problem, we suggest that authorities also consider the type of letting and turnover in the property. For example, in bedsits let on assured shorthold tenancies or informal insecure arrangements, the potential vulnerability of future occupiers should override the non-vulnerability of the current occupant.

Recommendation 4

Where environmental health officers have concerns about the vulnerability of residents, they should contact social services, tenancy support, housing needs and housing management staff to discover whether those services are in contact with that resident and to agree an appropriate response to hazards in the property.

Recommendation 5

In deciding a course of action, environmental health staff should consider the security of tenure enjoyed by the tenant and the risk of exclusion of vulnerable groups from private rented accommodation. The test of current occupancy should have less force when applied to private rented accommodation likely to have a high

turnover or to HMOs. They should consult tenants themselves, colleagues in housing advice and housing needs teams and, where appropriate, the landlord, to determine the most appropriate response (paragraph 3.12).

Recommendation 6

We recommend that housing authorities work closely with social services to ensure that occupants who need adaptations or improvements to their home access financial or other support which is most appropriate to their need, for example through the provision of a Disabled Facilities Grant under Part I of the Housing Grants, Construction and Regeneration Act 1996.

Recommendation 7

A decision to suspend an improvement notice or a prohibition order (paragraph 4.11) should be informed by the type of letting and turnover in the property. A change in occupancy, where an occupier considered less vulnerable to a particular hazard replaces another occupier, should not trigger a suspension where there is high turnover. In such cases, both the risk of immediate eviction or exclusion of vulnerable tenants and the potential vulnerability of future occupiers, particularly in the HMO sector, should be taken into consideration.

4. Links between the HHSRS and HMO licensing

One of our biggest concerns is that the link between the HHSRS and HMO licensing needs to be improved if the system is to deliver real benefits to tenants. Three particular areas of the guidance need to be strengthened and clarified:

- the identification and inspection of HMOs for Category 1 and 2 hazards
- the application of the HHSRS to HMOs and the abolition of separate minimum physical standards for HMOs
- the repeal of specific enforcement powers linked to HMO standards

Inspection

Our first concern is that one of the key functions of licensing to enable local authorities to identify HMOs in their local area for the purposes of inspection and enforcement of physical standards should be tightened up. At present, the Housing Bill (clause 44) and guidance (paragraph 5.2) state that local authorities should consider whether they have a duty or power to act under Part 1 in respect of licensable HMOs 'as soon as reasonably practicable and not later than 5 years after the application for a licence has been received'. Apart from practical difficulties of determining whether licence requirements are met, such as the level of occupancy, without inspecting the property, it seems impossible to determine whether Category 1 or 2 hazards exist without inspection. The guidance (paragraph 5.2) states that *'It is not intended that authorities should always carry out an inspection under HHSRS in respect of every potential hazard. But the licensing process should bring to light properties which the authority want to prioritise in order to mitigate possible hazards in the property.'* In practice, we do not see how authorities could assess risk without inspection and expect that most authorities will inspect all licensed HMOs within the first year of licensing.

Recommendation 8

It is expected that authorities should carry out an inspection of all HMOs subject to licensing as soon as practicable and 12 months after the application for a licence has been received.

Application of the HHSRS to HMOs

We are equally concerned that the proposals do not adequately address issues around physical standards in HMOs. We see a need for additional guidance on specific physical characteristics of HMOs, focusing on fire prevention and means of escape, the provision of amenities and the prevention of overcrowding. At present, as well as the general requirements for fitness under Section 604 of the Local Government and Housing Act 1989, HMOs are subject to specific additional standards under Section 352 (physical fitness for the number of occupants) and Section 372 (management code) of the Housing Act 1985, as amended by Schedule 9 of the 1989 Act.

HMOs are considered unfit for the number of occupants (s.352) if they fail to meet one or more of a number of requirements concerning the adequacy of facilities for the preparation of food and essential amenities for multiple occupation alongside adequate means of escape and other fire precautions. The interpretation of section 352 is a matter for individual local authorities, however there is detailed Government guidance.[2]

The Bill repeals Sections 345 to 400 of the Housing Act 1985. This means that all specific standards relating to HMOs will no longer apply. Version 2 of the Guidance on the HHSRS states that the new rating system can be used to assess any type of dwelling, whether it is self-contained or not.[3] It advises that for all rooms or areas shared with others, the rating assessment should take into account any increase in the likelihood and/or outcomes which could result from the sharing or from the degree of that sharing (i.e. the number of other dwellings sharing the rooms and areas).

Hazard ratings are to be informed the potential effect of sharing in the individual Hazard Profiles provided in Version 2 of the HHSRS guidance (such as fire) and the statistical averages given in the Hazard Profiles for multi-occupied buildings. When assessing the potential for harm, the most vulnerable age group is people over 60 years. The Hazard Profile for fire states that:

'for any form of multi-occupied buildings, there should be adequate fire protection to the means of escape and between each unit of accommodation, appropriate fire detection and alarm system(s), and, as appropriate, emergency lighting, sprinkler systems or other fire fighting equipment'.

While Shelter supports the 'risk assessment' approach that underpins the HHSRS, we are concerned about the repeal of the legislation that currently provides for absolute minimum standards for physical conditions in HMOs. Given the significantly higher fire risks in HMOs, we are particularly concerned about the loss of the 1997 Fire Safety in HMOs

[2] DoE Circular 12/92, Houses in Multiple Occupation: Guidance to local housing authorities on standards of fitness under section 352 of the Housing Act 1985; DETR: Letter to local authorities, dated 28 April 1999, Houses in Multiple Occupation: Guidance on Standards.

[3] Office of the Deputy Prime Minister (December 2003): Housing Health and Safety Rating System: Guidance (Version 2), Unfinalised Draft, Chapter 5, paragraph 5.02

regulations. The importance of these regulations is not adequately reflected in the space devoted to this in Version 2 of the HHSRS.

Research undertaken for ODPM into Version 1 of the HHSRS revealed that practitioners and other interested parties had a number of further concerns about the applicability of the HHSRS to HMOs:

- There was confusion over what the HHSRS is being applied to – the whole building or each individual HMO unit within it
- The scoring process relies on statistics on the likelihood of an event leading to a major harm occurring for a member of the most vulnerable group for the particular harm. The vulnerable groups are based on age groups. There was widespread concern over how the hazard scoring process would take into account non-age based vulnerable groups
- There was also confusion as to how users should take account of the presence of more than one household in a building and what bearing this should have on hazard scoring
- Practitioners were also concerned that the system was too subjective and that this would lead to variability.
- A series of objections were made about the practicality of the system mostly relating to difficulties encountered when using the Palm computer and survey programme. This introduction of a paper based system is welcome
- There was concern that the system would lead to a reduction in standards
- There was also concern that the statistics on which the system was based were not helpful in determining hazard scores
- Some practitioners also felt that it was difficult to separate issues that the HHSRS should cover and items best covered by a separate review of approach to the management of HMOs.

ODPM believes that the perception among practitioners that the new system would lead to a reduction in standards in HMOs is a misconception. It has argued that there are no fundamental reasons why the HHSRS cannot be applied to HMOs successfully and Version 2 of the guidance includes additional worked examples to assist users of the new system. However, the researchers also recommended that further research is undertaken in the area of fire safety in HMOs and that this information should be incorporated into the guidance.

Recommendation 9

We consider that there is a need for minimum physical standards for all HMOs, particularly a standard for means of escape and fire precautions in HMOs. Where these standards are breached, this should counts as a Category 1 hazard.

We also see a need for management regulations for all HMOs linked to clause 172 (Part 7) of the Housing Bill. These should inform decisions on enforcement action (see R3).

Enforcement powers

Section 352 gives local authorities the *power* to enforce HMO standards. In the case of HMO fire safety standards, Section 365 and the Housing (Fire Safety in Houses in Multiple Occupation) Order 1997, place local authorities under a *duty* to secure improvements to sub-standard fire safety precautions in all three storey HMOs.

- Of the total of 1.17 million HMOs, 118,000 (10.1 per cent) are unfit under Sections 604 or 352 of the Housing Act 1985.[4]

- The most common reason for unfitness under Section 352 is inadequate means of escape from fire or other fire precautions. Other causes include poor shared facilities for storage, preparation and cooking of food and poor baths/toilets are also causes of unfitness.

- In 1997/98, the enforcement power under Section 352 was used to address unfitness in over 2,000 cases.[5]

These enforcement powers will be repealed by the Housing Bill. The enforcement guidance states that the same enforcement tools will be appropriate to HMOs as to other sorts of housing. We accept that the same tools should be used, but believe that their application should be different (see recommendations 3,5,7 and 9).

Annex: Examples of Shelter clients' experiences

An elderly woman approached Shelter because her house was in a state of disrepair. She was 78 years old and lived alone in privately rented property in Accrington. She had lived in the property for 17 years. The property originally belonged to a brewery and was later bought by a private investor. Several of the windows were rotting and the plaster was porous and bubbling because of damp. The window in the bathroom had been boarded up for months. The house was damp and draughty and so cold the client had to sleep downstairs. There was no gas safety certificate for the property and no hot water. The client did not want to move because her son lived just a few doors away. She was not interested in seeking compensation and did not want to take her case to court, although she was advised by Shelter of her right to do this.

Shelter liaised with the local environmental health officer regarding the case. The EHO originally tried to resolve the matter informally, but felt that the landlord was not taking the matter seriously. The EHO served a "minded to" notice to the landlord then gave satisfactory proposals to carry out the repairs. It took some time for the work to be completed satisfactorily (the landlord at one point had a faulty boiler installed) but eventually all repairs where completed.

The Shelter Caseworker who dealt with the case was sure that the landlord would not have completed the repairs had it not been for the fact that the environmental health

[4] ODPM (2003) English House Condition Survey (EHCS) 2001, Table A6.14

[5] ODPM (2003) Housing Statistics, Table 303 Housing renewal: action taken on houses with multiple occupancy identified as unfit

department had promptly served notice, with the possibility of prosecution if this was not complied with.

East Lancashire Shelter Housing Aid Centre

A woman contacted shelter after receiving a written notice from her landlord. She had lived in the property for 9 years and had suffered disrepair for all of this time that the landlord had not resolved. She had severe damp and had leaking roofs and rotting floor boards. There were electrical and heating problems that made the property dangerous. The woman had tried for a number of years to get work done but the landlord had not responded to her letters. We advised her of her rights and contacted the landlord and council to resolve these problems.

Essex and Suffolk Shelter Housing Aid Centre

A thirty-seven year old single man living in an HMO on a periodic tenancy. The HMO is almost empty - only two out of 6 rooms occupied. The landlord received a grant from the council to do works, which he had been carrying out for last year. This has meant house is a building site with parts of walls missing, cooking facilities disconnected, piles of debris, dust everywhere, holes in the roof. Advised client of rights but warned that lack of security of tenure may mean that his landlord brings tenancy to an end rather than re-house him temporarily. We also advised of rights as regards points on housing register for disrepair so priority could be raised. Client did make approaches to the environmental health department but did not follow these through with anything official. The landlord did improve things slightly. The client was eventually re-housed by the local authority.

Norfolk Shelter Housing Aid Centre

Client lives in an HMO, as defined by s345 HA 1985. There are 6 other people living in the property, which has one shower, one fridge and inadequate means of escape from fire.Landlord has a responsibility to provide adequate washing facilities, storage of food facilities and adequate means of escape from fire. Client has asked landlord to provide these on a number of occasions for 2 months and he hasn't yet provided them.

Shelter referred client to Manchester City Council's HMO team, who agreed to inspect client's home and take enforcement action against landlord, under s352 (1) HA 1985, if he continues to refuse to provide the necessary facilities.

Shelter Manchester Housing Aid Centre