This note briefly explains the old Housing Fitness Standard and the reasons for its replacement with the Housing, Health and Safety Rating System before giving an overview of how the new HHSRS works.

Guidance on the HHSRS for non-specialists, particularly aimed at private landlords, can be found online here.

With effect from 6 April 2006 the Housing Fitness Standard was replaced by the new Housing Health and Safety Rating System (HHSRS). Measures to enable the introduction of this system were included in the Housing Act 2004. The HHSRS was brought into effect by Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No 3208). The HHSRS also operates in Wales (Housing Health and Safety Rating System (Wales) Regulations 2006 (SI 2006 No 1702)) but does not apply in Scotland.

The Communities and Local Government Select Committee conducted an inquiry into the private rented sector the results of which were published in July 2013 (The Private Rented Sector). Evidence submitted to the Committee indicated a low level of awareness of the HHSRS amongst landlords; respondents were also critical of the system’s complexity. In response, the Government said it would issue a consultation paper “shortly” inviting views on the operation of the HHSRS. The Review of Property Conditions in the Private Rented Sector was published in February 2014 with a closing date for responses of 28 March 2014. The Government response was published in March 2015. At the same time, a layperson’s guide to the HHSRS was published: Renting a safe home: a guide for tenants.

Guidance on tenants’ rights and responsibilities in relation to repairs and maintenance work can be found on the GOV.UK website.

The Government department responsible for housing matters has changed four times since 1997. Prior to 1997 it was covered by the Department of the Environment (DOE). After the 1997 General Election housing became the responsibility of the Department for the Environment, Transport and the Regions (DETR). This department was disbanded after the 2001 General Election and housing matters moved to the new Department for Transport, Local Government and the Regions (DTLR). In 2002, housing became the responsibility of the Office of the Deputy Prime Minister (ODPM). This was disbanded in May 2006 – since this time housing matters have been the responsibility of the Department for Communities and Local Government (DCLG).
1 The old Housing Fitness Standard

1.1 Background

The Housing Fitness Standard was contained in section 604 of the 1985 Housing Act (as amended by the schedule 9 to the 1989 Local Government and Housing Act). The standard had been in place since April 1990. It replaced a standard that had been in use for over 35 years. The standard had been in place since April 1990.

A dwelling was unfit if, in the opinion of the authority, it failed to meet one of the requirements set out in paragraphs (a) to (i) of s.604(1) and, by reason of that failure, was not reasonably suitable for occupation. The requirements constituted the minimum standards deemed necessary for a dwelling house (including a house in multiple occupation, HMO) to be fit for human habitation. The Fitness Standard was described as a ‘bricks and mortar approach’; it took account of structural stability, disrepair, dampness, lighting, heating and ventilation, the drinking and hot and cold water supply, food preparation facilities, internal WC, bath/ shower and drainage. The additional risks in HMOs were acknowledged through an extended standard for these properties which included fire safety and extra amenities.

If a local authority identified a property as unfit it was under a duty to take action. It was for the authority to decide the most satisfactory course of action with reference to Department of the Environment (DOE) Circular 17/96, Private Sector Renewal: a Strategic Approach.

1.2 Problems with the Fitness Standard

On the introduction of the Housing Fitness Standard various aspects of the standard and the associated enforcement regime were criticised almost immediately. Subsequent research by

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1 It replaced a standard that had been in use for over 35 years.
the DOE confirmed these criticisms. In 1993, *Monitoring the New Housing Fitness Standard*,
the Legal Research Institute (LRI) at the University of Warwick (on behalf of the DOE) found:

> New requirements were needed to allow assessments of internal arrangement, thermal
efficiency, the local environment, fire safety and radon. The report also identified
legislative anomalies in definitions, enforcement procedures and the various standards,
which could apply to dwellings. It also showed that local authorities were not coping
with the existing number of dwellings failing to meet the Fitness Standard.  

In 1995 two reports from the Building Research Establishment (BRE) showed that some of
the most serious health and safety hazards in the housing stock were outside the scope of
the Fitness Standard, e.g. hazards associated with excessive indoor temperatures, fall
hazards and hazards from fire. There was also general concern that the Fitness Standard
did not include energy efficiency considerations, that it was difficult to interpret and
inconsistent in application. The Standard did not distinguish between defective dwellings and
those which presented a genuine health and safety risk to the occupants: this pass/fail
aspect of the Standard resulted in it being described as something of a ‘blunt instrument’.

### 1.3 The review of the Fitness Standard

As a result of these concerns the then Government began a review of the Fitness Standard
in 1996. This review was initiated by a discussion paper in December 1996 which identified
what the Department considered to be the fundamental issues and suggested a range of
possible options for consideration. Research was commissioned in order to inform the review
from the LRI at the University of Warwick and the BRE.

The LRI recommended a new system of housing assessment to identify dwellings that pose
the greatest threat to occupants’ health. It was thought that the new system should evaluate
a dwelling’s fitness by reference to an assessment of the health risks posed ‘informed by
recent scientific studies of the relationship between housing conditions and health.’ The LRI
thought that this Housing Fitness Rating System ‘would allow for a cumulative assessment of
all hazards present in a dwelling, ranking both dwellings and housing conditions according to
the seriousness of the health threat posed’.

### 1.4 The 1998 Consultation Paper

In February 1998 the DETR issued a consultation paper, *The Housing Fitness Standard*, in
which it sought views on proposals and options for changes to the Standard. These
proposals were drawn up taking into account responses to the 1996 discussion paper, the
results of the LRI research and discussions with practitioner bodies and housing
professionals.  

The paper proposed that work be carried out to develop and test a fitness rating approach as a replacement for the Housing Fitness Standard. Views were invited on
several aspects of how such a ‘fitness rating system’ might operate.

Overall the proposals in the paper received a ‘broadly favourable response’; the proposal to
develop a housing fitness rating system attracted ‘overwhelming support’. In July 1998 the
Government announced that such a system *would* be developed. The LRI at the University of

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2 Para 1.04  
3 *Building Regulation and Health & Building Regulation and Fire Safety*  
4 *Controlling Minimum Standards in Existing Housing*, para 16 of the summary  
Warwick was commissioned to undertake the development work with additional technical support provided by the BRE.

2 The Housing Health and Safety Rating System (HHSRS)

Between announcing in 1998 that the Housing Fitness Standard would be replaced and the inclusion of measures to introduce the HHSRS in Part 1 of the 2004 Housing Act, the Department, together with the University of Warwick, carried out extensive consultation and published guidance on the new HHSRS. Local authorities were encouraged to adopt the principles of the system informally alongside their existing enforcement work and as part of their local stock condition surveys. Detailed comment on the development of the HHSRS can be found in Library Research Paper 04/02, The Housing Bill – Bill 11 of 2003-04.

Part 1 of the 2004 Act does not actually refer to the HHSRS; the detail of the new scheme is contained in the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No 3208) which came into force on 6 April 2006. Unlike the Housing Fitness Standard the HHSRS is not a pass or fail test, it is concerned with avoiding or, at the very least, minimising potential hazards.

2.1 An overview of the HHSRS

When environmental health officers inspect a dwelling they now 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. 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 officers 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.

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. If the 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. 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.

2.2 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:

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6 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.

7 Now archived.

8 See section 2 below

• 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 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. 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.  

Once complied with an Improvement Notice must be revoked.

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10 *ibid* para 5.13
Prohibition Order

This is a possible response to a Category 1 or 2 hazard. These orders replaced Closing Orders 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. Deferred Action Notices, served under section 81 of the Housing Grants, Construction and Regeneration Act 1996 have been replaced by Suspended Notices.

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 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

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11 Section 264 of the 1985 Act
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 1985 Act (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 1985 Housing Act 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.

2.3 **Houses in multiple occupation (HMOs) and the HHSRS**

With effect from 6 April 2006 persons managing or controlling certain prescribed HMOs have had to have a licence in order to continue to rent out these properties. Prescribed HMOs are those buildings consisting of 3 storeys or more which are occupied by 5 or more tenants in two or more households. 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 5 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. Information on applying the HHSRS to HMOs can be found in chapter 5 of the operating guidance and chapter 6 of the Enforcement Guidance.

3 **Communities and Local Government Select Committee Report on the private rented sector (2013)**

Chapter 2 of the Committee’s report on The Private Rented Sector considers the operation of the HHSRS. A survey of private landlords carried out by CLG in 2010 found that 85% of

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12 Defined in section 263 of the Act - this will usually be the landlord but could also be a managing agent.
13 Unless the HMO is subject to either a temporary exemption notice under section 62 of the Act or an interim for final management order under Chapter 1 of Part 4 to the Act.
14 The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) England Order 2006 (SI 2006/371)
15 For more information see Library Standard Note SN/SP/708, Houses in multiple occupation
landlords had not heard of the HHSRS: 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.

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.” The Review of Property Conditions in the Private Rented Sector was published in February 2014 with a closing date for responses of 28 March 2014. The purpose of the review was to:

- determine whether the current system can be readily understood by landlords and tenants;
- ensure that tenants are able to raise any concerns with their local authority they may have about health and safety issues in their home and what they should expect in response;
- how councils inspect properties, how they can demand landlords carry out maintenance, and how they can take action against landlords who continue to rent out dangerous and unacceptably dirty properties;
- determine how to ensure that tenants do not face the threat of eviction because they have asked the landlord to rectify a fault or have asked the council to investigate;
- the scope for requiring landlords to repay rent or Housing Benefit through a Rent Repayment Order where a property is found to have serious risks to health and safety. Rent Repayment Orders are currently used where a landlord has rented out a property that is required to be licensed without one being in place.

In regard to the HHSRS the consultation paper asked:

17 CLG, Private Landlords Survey 2010: Tables Annex 7.2
18 HC 50, First Report of Session 2013-14, 18 July 2013, para 18
19 This is often referred to as “retaliatory eviction”. Assured shorthold tenants with little security of tenure frequently find that their landlord will take action to terminate the tenancy if they seek to enforce their repairing obligations.
20 Cm 8730, October 2013
**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?\(^{21}\)

The methodology which underpins the Housing Health and Safety Rating System is now several years old and we are considering whether it needs to be updated. The operational guidance was published in 2006 and may also need to be revised.

**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?\(^{22}\)

The Government response, *Review of property conditions in the private rented sector: government response*, was published on 13 March 2015. In regard to question 4, the paper noted:

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.\(^{23}\)

The 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.\(^{24}\)

The Government also decided not to amend the HHSRS methodology:

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.\(^{25}\)

The layperson’s guide referred to can be accessed online: *Renting a safe home: a guide for tenants.*

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\(^{22}\) ibid p20

\(^{23}\) DCLG, *Review of property conditions in the private rented sector: government response*, March 2015, p3

\(^{24}\) ibid, p4

\(^{25}\) ibid, p15