

## Review of the Role and Regulation of the Private Rented Sector

### Role of the Private Rented Sector

We want to make the Private Rented Sector a more attractive housing sector where people choose to live. We are asking for your views on issues impacting the private rented sector. Your views will help shape future policy proposals. Thank you for taking the time to complete these questions

1. Please select from the list below the title that best represents you

- |                         |                                     |                       |                          |                      |                          |
|-------------------------|-------------------------------------|-----------------------|--------------------------|----------------------|--------------------------|
| Landlord                | <input type="checkbox"/>            | Tenant                | <input type="checkbox"/> | Letting Agent        | <input type="checkbox"/> |
| Landlord Representative | <input type="checkbox"/>            | Tenant Representative | <input type="checkbox"/> | Estate Agent         | <input type="checkbox"/> |
| Council Representative  | <input checked="" type="checkbox"/> | Housing Professional  | <input type="checkbox"/> | Other Government     | <input type="checkbox"/> |
| MLA                     | <input type="checkbox"/>            | NIHE                  | <input type="checkbox"/> | Department           | <input type="checkbox"/> |
| Voluntary Organisation  | <input type="checkbox"/>            |                       |                          | Member of the Public | <input type="checkbox"/> |

2. Do you agree that further support should be available to tenants living in the private rented sector?

Yes

No

Please provide your reasons

The Council notes that the private rented sector has become the second biggest tenure in Northern Ireland, the highest proportion being in Belfast. Given the existing waiting lists for Social Housing, affordability issues for first time buyers and our own plans for the Regeneration of the City Centre the Council acknowledges that this sector will continue to play an important and valuable role in the City's Housing Market.

We know that owning a home or renting from a social landlord are the preferred choices but these are becoming increasingly harder to secure. It is important therefore that the PRS is fit for purpose and provides tenancies for people who need them.

This sector houses some of the more vulnerable in society. Recent Data confirmed that 19% (4.4 million) of English Households were privately rented. Almost a third (30%) failed to meet the decent homes standard and many fell short on grounds of safety, poor thermal comfort and disrepair.

At present 57% of all private rented sector tenants are in receipt of Housing Benefit. The possibility of rising rents, welfare reform and concerns as to whether properties meet the required standards in terms of safety are and will remain a key concern of tenants.

Future regulation of the sector needs to be proportionate and achieve the right balance between protecting tenants and supporting landlords to provide affordable fit for purpose accommodation. More comments on the legislative changes the Council would like the Department explored are outlined later in the document.

Longer tenure for tenancies would provide security and improve stability for tenants and increase confidence in wanting to reside in this sector. It is the Council's experience that citizens want to remain in the communities in which their families reside but at the same time are apprehensive about living in the Private Rented Sector. Longer term tenancies can provide greater security for those wishing to put down roots close to their family support network.

The Council notes the assistance the Private Rented Access scheme provides to both tenants and Landlords. The expansion of this scheme and along with other measures like the Discretionary Housing payment can only help to sustain tenancies and enable tenants to better manage private tenancies more independently.

Rent levels in Belfast are the highest in Northern Ireland. As the economic recovery continues a concern for tenants is the prospect of rent levels increasing. Longer term some form of independent rent regulation may be required to arbitrate on rent levels and possible increases throughout the life of a tenancy.

The Council agrees that further support should be available to vulnerable people/households in the Private Rented Sector. The existing networks which exist in the social housing sector which identify and support vulnerable people does not exist in the private rented sector. Similar support mechanisms should be available and supported as the private rented sector grows and more vulnerable people live in it. This would require improved partnership working between all the statutory agencies involved with private sector tenants.

For example the Supporting People service delivered by the NIHE ensures that vulnerable tenants receive the support and advice to maintain independence in their own home. It also offers floating support services such as:

- Someone to support people to manage their money and pay their bills
- warden or scheme manager who is there in case people need help
- someone who helps people to live independently
- someone who helps people learn how to follow the rules in their tenancy agreement
- someone who provides advice or assistance on a range of housing related matters.

This type of service is necessary to ensure vulnerable tenants in the private rented sector are supported and their tenancies are sustainable.

3. Do you agree that further support should be available to landlords operating in the private rented sector?

Yes

No

Please provide your reasons

The Council acknowledges that most landlords are good landlords who abide by the law and provide much needed, good quality and well managed accommodation. The Chartered Institute of Housing report on a high satisfaction rate in this sector with most private tenants on good terms with their landlord or agent and satisfied with the service provided for them.

Most private landlords are individuals with only one or two properties. Very few are full time professional landlords which can lead to inconsistent standards of housing management. Given this and the link between a landlords investment levels and property standards there is a need to ensure the new regime is sustainable and does not result in financial burdens for both the landlord and tenant.

In England the Chartered Institute of Housing has called for extra tax incentives for landlords who sign up for a national accreditation scheme and commit to better standards. The Council would see merit in this approach but would request that tax incentives are linked to landlord licensing as opposed to landlord accreditation on its' own.

The introduction in Northern Ireland of the Tenancy Deposit scheme and the Landlord registration scheme represent a good start to improving standards. The Council feels that the introduction of Licensing of private landlords is now required to ensure standards are improved even further.

Landlords would benefit from the introduction of long term tenancies as they prevent loss of income due to periods of voids and the payment of fees to letting agents each time a property becomes available. Also long term tenancies may be more attractive if there was an option of a probation period within the landlord could regain possession.

Increased training and support for landlords for example the CIH training course could be subsidised to increase participation or linked to future licensing/accreditation schemes.

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### Supply and Investment

4. Do you agree that the private rented sector should play a role in bridging the identified shortage in housing supply?

Yes

No

Please provide your reasons

Emphasis also needs to be placed in increasing the supply of social and affordable Housing and financial incentives to support people wishing to own their own home.

As mentioned previously future regulation of the sector needs to be proportionate and achieve the right balance between protecting tenants and supporting landlords to provide affordable fit for purpose accommodation. More comments on the legislative changes the Council would like the Department explored are outlined later in the document.

5. Would it be appropriate for Government to incentivise growth and investment in the private rented sector?

Yes

No

Please provide your reasons

The Department will be aware of the Council's City Centre Regeneration and Investment Strategy (BCCRIS), adopted in September 2015, which has as one of its core principles an aspiration to grow the residential population of the city centre. Belfast, as the economic driver for the Region, is currently experiencing an uplift in terms of investments and emerging large-scale regeneration projects, particularly in the city centre, such as the proposed Transport Hub, the University of Ulster city centre Campus, and some large scale Grade A Office proposals in various locations across the city core.

Central to our policy of growing the city centre population is our desire to develop a city centre housing market and to ensure that future city centre residential developments are appropriately located and contribute to the creation of balanced communities. We believe that such a strategy could initially focus on quality market housing to ensure that a market can be firmly established and address the imbalance that currently exists in the city centre's residential provision. The aim is to stimulate the private sector in order to encourage the development of a self-sustaining quality residential market environment that provides a mixture of tenures and meets the range of needs of a growing city centre population of which the private rented sector would be an essential component.

In recognition that growing the city's population is inherently linked to the quality of life Council is continuing to develop the city as a compelling, attractive and secure environment, with shopping, open space and other important amenities.

The Council would be keen to explore all opportunities to grow the private rented sector, an area of the market that is perhaps under-served in the city in comparison to other UK and European cities of a similar size. Use of the various options outlined in the consultation document including the Empty homes strategy and the LOTS scheme alongside the potential increased use of institutional investment and other mechanisms for larger-scale delivery should be encouraged.

A reduction in corporation tax could have an important impact on the investment landscape across the Region not solely through encouraging large scale private rented sector developments but via indirect means such as attracting more people to work, and therefore live in the city.

The Council is in the early stages of preparing a Local Development Plan under our planning responsibilities which transferred from Central Government in April of this year. In addition to developing the LDP and Community Plan the Council continues to respond to planning challenges and opportunities across the city such as the increase in applications to develop purpose built managed student accommodation (PBMSA). Should the residential market evolve from the current high levels of proposed PBMSA towards a market reaction to accommodating students in their first steps into the residential market private residential sector could play an important role in this. It would remain for the Council to accommodate any future demand in appropriate locations with the necessary supporting services using its planning powers.

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### Housing and Tenancy Management

6. The Department should consider making changes to the Landlord Registration Scheme. Do you agree?

Yes

No

Please provide your reasons

The introduction in Northern Ireland of the Tenancy Deposit scheme and the Landlord registration scheme represent a good start to improving standards in this sector. The Council feels that the introduction of Licensing of private landlords is now required to ensure standards are improved even further.

Rather than amend the existing registration scheme the council would request the introduction of mandatory licensing across the entire private rented sector. This would compliment HMO licensing, ensure a level playing field for all landlords across the entire private rented sector and offer the same level of protection to all private rented sector tenants.

In the interim the Council would request one immediate change to the existing Landlord registration scheme. Namely that information held by the landlord registrar can be used for all parts of the Private tenancies Order and other Council enforcement activities.

The current HMO Bill includes provision for licence conditions requiring landlords to manage tenant behaviour. The information sharing proposals in the bill will provide a robust method for the identification and regulation of HMO's including conditions in relation to managing behaviour. This could create a loophole down the line and exclude information sharing regarding non HMO's. The Licensing of the entire private rented sector with the inclusion of similar information sharing gateways would remove this loophole.

7. The Department should consider making changes to the Tenancy Deposit Scheme. Do you agree?

Yes

No

Please provide your reasons

The offence of failing to secure a deposit requires a technical amendment to remove the 6 month time barred limit.

In the event of nonpayment of a fixed penalty, the legislation should state that the minimum fine should not be less than the fixed penalty.

8. Is licensing of landlords needed in Northern Ireland?

Yes

No

Please provide your reasons

The City Council would support the introduction of mandatory Licensing of the entire private rented sector.

The HMO Bill proposes the Licensing of Houses in Multiple Occupation and will give Councils the powers to

1. Tackle anti-social behavior effectively,
2. Safeguard tenant's health, safety and welfare,
3. Ensure landlord are 'fit and proper' persons or employ agents who are,
4. Ensure adequate property and tenancy management arrangements are in place,
5. Ensure accommodation is suitable for the numbers occupying it and,
6. Ensure all landlords and managing agents operate at the same level of professional standards

The Council believes that mandatory licensing for the entire private rented sector is necessary. Extending these powers to the entire Private Rented Sector will afford the same protection to all tenants allow councils and other agencies to deal more effectively with problems posed by this sector.

The Council is aware of the problems faced by some of the Councils in England and Wales seeking to introduce private rented sector housing schemes. These problems have been caused by the voluntary nature of the schemes and support their introduction. Licensing introduced by statute would allow Councils to implement the schemes without the problems encountered by a number of the London Authorities.

The Council does not agree that licensing places additional burdens on reputable landlords already compliant with their obligations, and this is generally passed on to tenants in the form of higher rents. The Council is aware that many of the schemes that operate on the mainland offer discounted rates for compliant landlords. The discounted rate offered by the London Borough of Newham equates to a charge of 66p per week over the 5 year period of the licence.

In order to properly inform the debate around Licensing the Department should engage with Councils like Newham that have introduced successful schemes. The City would suffer problems similar to this area (eg High Levels of ASB and deprivation) and see clear advantages in having similar schemes operating here. At present the councils receive none of the revenue received from the Landlord Registration scheme. This has placed a significant administrative and financial burden on Councils. The use of Fixed penalty income to offset these costs is not working in practice and in any case is not sustainable. Future licensing schemes should be administered by Councils and the fees used to fund the administration and enforcement of the sector.

9. Is Landlord Accreditation needed in Northern Ireland?

Yes

No

Please provide your reasons

Possibly but only in support of any licensing regime. There is currently no legislative basis in place in Northern Ireland that would regulate, control or independently approve the accreditation process and/or potential accrediting bodies/organizations.

10. Do you think the private rented sector needs to be further professionalised?

Yes

No

Please provide your reasons

There is need now to further professionalize the Private rented sector and as it grows this need will become even more. Licensing provides the right platform to achieve this. It would ensure consistent standards across the sector and provide the structure within which landlords could be properly trained and supported. A bona fide Accreditation scheme working in support of a Licensing regime would significantly improve the legitimacy of landlords

11. Are there other amendments to the Private Tenancies Order that should be considered?

Yes

No

Please provide your reasons

Please see attached document prepared by the Public Health Regulatory Group.

12. Is further regulation of the private rented sector necessary?

Yes

No

Please provide your reasons

The department is referred to the answers provided to questions 2,3,6,7,8,10,11 and questions 19-23.



13. Do you agree that longer term tenancies are a good thing?

Yes

No

Please provide your reasons

Longer tenure for tenancies would provide security and improve stability for tenants and increase confidence in wanting to reside in this sector. It is the Council's experience that citizens want to remain in the communities in which their families reside but at the same time are apprehensive about living in the Private Rented Sector. Longer term tenancies can provide greater security for those wishing to put down roots close to their family support network.

14. Are the current notice to quit periods appropriate?

Yes

No

Please provide your reasons

Yes, the changes extending the notice to quit period have given long term tenants greater security in their homes.

15. Is the current eviction process fit for purpose?

Yes

No

Please provide your reasons

The current process is viewed by many as imbalanced and needing to be more efficient. It is currently costly and too lengthy for landlords who need legitimate possession of their property. In some circumstances it is leading to illegal evictions rather than preventing them.

The Department should look further at the fast track eviction processes that exist in England and Wales and consider creating one consistent type of standard tenancy agreement for NI.

The introduction of an independent complaints service also has the potential to make the process more fit for purpose and enhance the resolution of the type of issues that can lead to possible evictions.

16. Is overcrowding an issue in the private rented sector in Northern Ireland?

Yes

No

Please provide your reasons

The statistics referred to in the discussion document is the situation across all tenures and do not have regard to some of the risks Council Officers are finding in some parts of the Private Rented Sector. It is our experience that properties occupied by certain ethnic minority groupings are overcrowded. No powers currently exist that allow Councils to properly address the risks these premises pose.

The room and space standards are included in the current Houses in Multiple Occupation Bill. The Council would request that this is applied across the entire Private Rented Sector.

17. Do you agree that the regulation of letting agents needs to be addressed?

Yes

No

Please provide your reasons

The Council would support the regulation of letting agents. Currently there is no qualification required or agreed industry/professional standards that must be attained prior to practising this profession. There is inconsistency in letting fees and the range of services a letting agent provides to both the tenant and the landlord.

Quite often letting agents do not assist or make them aware basic legal requirements such as the need to register properties, secure deposits, obtain energy performance certificates etc.

Letting agents are normally the only point of contact for tenants and need to be more accountable and could do more to provide information new and existing tenants in relation to their role and the law relating to the Private rented sector

Regulation of this sector would remove these inconsistencies and improve standards.

18. Do you agree there should be an alternative means to resolving disputes other than small claims court action?

Yes

No

Please provide your reasons

The Council would welcome the introduction of a specific panel/complaints service set up to sort out disputes between landlords and tenants. At present access to the courts can be a lengthy and expensive process and tenants cannot afford to go to court. The introduction of this type of service would address this and reduce the burden on the court system.

It would also assist Councils in that it would complement the investigating of illegal eviction/harassment complaints.

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### Property Standards

19. Do you agree that it is important to enforce minimum property standards in the private rented sector?

Yes

No

Please provide your reasons

The Council feel that the enforcement of minimum property standards is critical to the sustainability of the Private Rented Sector. However we feel that it would be more appropriate to use the term meets the “statutory minimum standard for housing”. In our opinion this will make any future regulation ‘future proof’ and would not necessitate change should the review result in changing the standard.

The City Council advocate the adoption of the Housing Health and Safety rating system (HHSRS) as the minimum property standard for all tenures. We believe it should be introduced along with the licensing of the private rented sector and compliance with it should be a condition of any licence granted. This system assesses property using a risk based approach and looks at 29 separate risks to health and safety of the occupant. The Council notes that the Department intends to carry out a separate consultation in the fitness standard and looks forward to contributing to this discussion.

A position paper setting out the reasons for the Council’s support for the adoption of this standard is attached as an appendix to this document.

20. In relation to fitness what specific areas warrant further improvement and what means should be used to drive improvement. (i.e. through regulation or some form of non-regulatory route such as guidance)?

I would refer to the answer to the previous question.

21. Should the current system of applying rent control to unfit properties built before 1945 be extended to include other private rented property?

Yes

No

Please provide your reasons

The Council would agree with this. Risks exist in premises regardless of their age. The extension of this across the PRS would encourage landlords to ensure their properties complied with the required standard of repair.

22. Should consideration be given to introducing standards similar to those in place in other parts of the UK around requirements to install additional safety measures, such as smoke alarms and carbon monoxide detectors, and requiring periodic electrical inspections?

Yes

No

Please provide your reasons

Yes but the statutory standard for occupation should be completely reviewed and not just introduce a requirement for certificates for installations and specific risks. Any changes to the statutory fitness standard should be flexible and future proof therefore the Council supports the adoption of the HHSRS.

23. Should consideration be given to requiring a minimum standard of energy efficiency for all private rented properties as in England and Wales?

Yes

No

Please provide your reasons

- Currently the Landlord Registration Regulations request the Landlord to provide an Energy Performance Certificate (EPC) rating in a voluntary capacity. No evidence is required for the EPC energy rating or for EPC to be carried out by an accredited government approved energy assessor (eg including the EPC report reference number). For a minimum energy efficiency standard to be considered, proof of the initial EPC energy rating should be evident and a further EPC to be carried out to demonstrate the improvements should this be required. The EPC is accompanied with a recommendation report which will suggest methods by which an improved energy rating may be achieved.
- The energy rating on an EPC includes a point system, for E this is between 39 and 54 increments. Without an accurate EPC, the energy rating E, could in fact be closer to an F which would be much less energy efficient; ie the tenant will incur costly heating and high electric bills.
- The present system of providing an EPC at the point of advertising the property for rent allows the potential tenant to make much better informed decision on what the utility costs would likely be.
- Some properties may not be able to achieve a minimum standard by virtue of the building type and age eg. NIEA Listed Buildings which may not permit the building structural fabric to be altered.
- Around 50% of the houses in NI are 1930s – 1960s in urban areas where the private rental demand is highest. To upgrade these houses to get an E energy rating may require a spend of £10K which may likely be passed on to the tenant as an increased rent. In a demand led market this will put up rental costs overall so the tenant doesn't really benefit or at best breaks even if the energy savings are significant. More thought is need to target financial assistance to incentivise improvements such as interest free loans repaid by way of energy reduction/cost savings.

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### Contact Details

24. Are there any other comments you would like to make?

Proposals in Annex B ;  
Council is unsure what the proposals for amendment Article 5 are.  
HHSRS and licensing would address art 7 and 9 so no need to amend.  
The Council has no objection to Articles 18 and 19 being amended.  
The Council has no objection to Article 28 being amended.  
The Council has no objection to Article 34 being amended.  
In respect of Article 35, the Council would support keeping this clause allowing the landlord to have the right to make representation to the Council.

25. If you wish to be kept up to date with progress on the review please give your name and contact details

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**“COUNCIL GUIDANCE ON THE PRIVATE RENTED SECTOR – VERSION 1”  
ISSUED BY DSD ON 22<sup>ND</sup> NOVEMBER 2010**

- **Page 100 – Point 12**  
This section makes reference to ‘this statutory guidance’. We would be grateful if DSD would clarify and advise on the status of this guidance document. Is it statutory or advisory?
- **Page 5 – Re 1.1.1**  
This should be qualified with a statement such as “this list is not exhaustive” as our understanding is that the PTO does not cover a tenancy where the landlord is the District Council.
- **Page 6/7 – Re 1.2.2**  
We would believe that a comment should be added either at the start or the end of this section indicating that there is no enforcing authority for Article 6 to 12; that they can only be enforced by civil action.
- **Page 8 – Re 1.3**  
There are a number of issues here that need clarification.
  - A. Starting with ‘A Notice of Refusal’. We would believe that this paragraph should be deleted as it is liable to cause an element of confusion.  
  
Pages 8 to 14 of the Guidance document are in relation to Part 3 of the Order. A Notice of Refusal is only referred to in Part 4 of the PTO. A Notice of Refusal made under Article 36 (5) is only ever issued after a dwelling has been found to be unfit, following an inspection triggered by the receipt of a valid application for a Certificate of Fitness. It is a notice refusing to issue a Certificate of Fitness. It has nothing to do with Notices of Unfitness or Disrepair. A Notice of Refusal is mentioned in the 3<sup>rd</sup> paragraph on page 20. Perhaps that would be the appropriate place to indicate that a Notice of Refusal would have implications in the area of Rent Control.
  - B. 4<sup>th</sup> paragraph – The first sentence in his paragraph gives the impression that only unfit dwellings identified through Certificate of Fitness applications will be subject to Rent Control. Our understanding is that all unfit dwelling should be subject to both statutory enforcement action and rent control no matter how identified.
- **Page 9 – Provision of Alternative Accommodation**  
It should be clarified that this is only a recommendation and it is not enforceable by the local authority.
- **Page 10 – 2<sup>nd</sup> Paragraph**  
This will be expanded on later but more extensive guidance is needed on “reasonable standard”, “substantial disrepair” and “condition such as to interfere materially with the personal comfort of the occupying tenant”.
- **Page 14 – Re 1.3.11**  
It is our belief that a Repairs Grant is still available for a Notice of Disrepair served on a protected tenancy. We would be grateful if this could be clarified.

- **Page 15 – Re 1.4.1**  
The advice that any new tenancy after 1<sup>st</sup> April 2007 which is found to be unfit is also rent controlled would appear to be at variance with the comments on rent control on page 8.
- **Page 16 – Re 1.4.3**  
We would question the wisdom of including a table of figures in this section as they will quickly go out of date. We understand what the Department are trying to illustrate but would wonder if the point could be made in a different way. Secondly it is difficult to prove properties are made fit due to rent control alone. Is enforcement action not also a factor?
- **Page 18 – Re 1.4.6**  
On the question of the inspection being conducted within the 28 days a little extra clarification on what circumstances would allow the inspection to be undertaken earlier would be helpful. Perhaps something like “an inspection can be carried out earlier if the parties are agreeable”?
- **Page 21 – Re 1.4.10**  
Should this section not be entitled “Cessation of Certificate of Fitness”? Also to avoid confusion it should be clarified that the Repairs Notice in this section refers to a Housing Executive Repairs Notice and not a Notice of Disrepair served under PTO.
- **Page 23 – Property Condition**  
This is in the section 1.4.11 regarding Rent Control. With regard to the 6<sup>th</sup> bullet point on this page we would be grateful if the Department could clarify if it is actually now necessary for a local authority to notify DSD of the service of a Notice of Disrepair. It was our understanding that a Notice of Disrepair had no implications for Rent Control.
- **Page 37 & 38 – Re 3.7 Best Practice**  
“Name and Praise” is a better tactic than “Name and shame” but we question whether the document should be personalised in this way. This advice would be just as effective if the section opened with “one District Council has an innovative approach . . .”

Some of these 16 bullet points on pages 37 & 38 are in relation to items previously covered.

2<sup>nd</sup> bullet point – This could be better drafted. It appears to mix up Parts 3 and 4 of the Order. If you receive an application for a Certificate of Fitness and if the premises is unfit and informal action is ineffective then you must serve a Notice of Refusal. You must follow a procedure. It is not as if one notice is better than another. Both notices have their place.

3<sup>rd</sup> Bullet Point – We have difficulty in understanding with this means. If a landlord will not apply for a Certificate of Fitness then he may have committed an offence and you can then prosecute using article 68 of the PTO. Just because he does not apply does not mean that you can go ahead and issue a Notice of Refusal. To issue a Notice of Refusal (or a Certificate of Fitness) you first have to conduct an inspection.

4<sup>th</sup> Bullet Point – This appears to be at variance with the advice given in the 7<sup>th</sup> paragraph in 1.3 on page 8. We agree with the concept that a landlord should be given all the relevant information as early as possible. We would consider that you only list the unfitness items on a Notice of Refusal or Notice of Unfitness and that any additional disrepair items (if present) are notified separately by means, in the first instance, of an informal letter. This course of action often means a Notice of Disrepair is unnecessary.

5<sup>th</sup> Bullet Point – as drafted this 5<sup>th</sup> Bullet Point has similarities to the equally confusing 3<sup>rd</sup> Bullet Point. Do you mean to say something like ‘if after an informal request an application for a Certificate of Fitness does not materialise an EH Department is under an obligation to follow this up’.



6<sup>th</sup> Bullet Point – We can understand what is meant but would think it would be clearer if it stated ‘a’ tenant initiated inspection for a Certificate of Fitness can be free of charge, at the discretion of the Council.

8<sup>th</sup> Bullet Point – please see our earlier comments about provision of alternative accommodation.

- a. Annex A – Page 52. Three words are missing from the end of this subsection. Subsection 3 should read ‘Subsection (1) applies in relation to a house in multiple occupation with the substitution of a reference to the house for any reference to a house in multiple occupation.
- b. Annex B – Page 101.  
Section 13 on appeals could be misunderstood because of the way it is drafted. It could be read that on appeal against a notice of unfitness the only two options possible would be the substitution of a Closing Order or of a Demolition Order. Our misunderstanding would be that ‘any person aggrieved’ could appeal that the dwelling is not unfit etc as well as that there are more satisfactory courses of action than the service of a Notice of Unfitness.
- c. Links with Housing Executive enforcement powers – Page 102. Paragraph 3 – we acknowledge that a local authority has a requirement to consult the Housing Executive if they intend to issue a Notice of Unfitness. But we were unaware of any similar provision in relation to Notices of Disrepair. We always considered there was no need to consult the Housing Executive if we are issuing a Notice of Disrepair.
- d. Page 104 – Pre-formal enforcement action procedures  
Paragraph 9  
In relation to ‘drawing this informally to the attention of the owner’ – could this be done verbally or would it be considered to be ‘good practice’ to do so in an informal letter?
- e. Page 104 – Pre-formal enforcement action procedures  
Paragraph 10  
Would the Department consider it appropriate to include a recommended period for representations to be made. We cannot have a process stalled if a landlord will not get back to us. The consensus of opinion within Environmental Health would be that a 2 week period may be a good balance.
- f. Page 109 – Paragraph 6  
The case referred to was NCB v Thorne (not Thorpe). Also the ‘Thorne’ case involved which of the two limbs of the definition of a statutory nuisance the case should be taken on.
- g. Page 109 – Paragraphs 8&9  
Our comments here would be similar to those stated earlier in relation to paragraphs 9 & 10 on page 104.

## **APPENDIX 1**

### **A New Statutory Housing Standard for the Private Rented Sector**

#### **Background**

There has been significant growth in Private Rented Sector and there are now more people living in the private rented sector than living in the social rented sector.

(NI House Condition Survey 2009)

As a consequence the DSD carried out a consultation process "Building Sound Foundations" (2009) and from the responses received launched the "Strategy for the Private Rented Sector" (2010).

The Strategy identified key areas where work will be focused in order to create the conditions in which the private rented sector contributes more fully to meeting housing needs and to ensure the provision of good quality, well managed accommodation supported by an appropriate regulatory framework. One key area identified is the Standard of Fitness.

As you are all aware, the standard of housing in the Private Rented Sector is the responsibility of Local Authority Environmental Health Departments and is currently the "Fitness Standard". This has been acknowledged as outdated (DSD, 2010) and needs replaced. In England and Wales the Housing Health and Safety Rating System (HHSRS) replaced the Fitness Standard as the statutory housing standard in 2005.

The DSD issued a discussion paper (attached) which was presented to selected groups they thought should be included in stakeholder meetings in order to take forward proposals on changing the housing standard. The Public Health and Regulatory Subgroup (PHARS) were included in this process and were allocated one place only.

In the discussion paper the DSD ruled out the HHSRS commenting that "the costs involved in moving to HHSRS for the private rented sector would be of such magnitude that it is not feasible in the short to medium term". It was therefore not being considered an option for discussion. Members of PHARS queried this comment and, after proactively contacting DSD, were allowed to present a paper advocating the HHSRS and questioning that the costs would be prohibitive. As a result, the DSD have appeared to have reversed their decision and are allowing the HHSRS to be considered an option for discussion.

PHARS wish to update CEHOG on these events, remind members on the strengths and advantages of the HHSRS and ask CEHOG to, again, endorse the HHSRS as the preferred option to replace the current fitness standard (as they did when responding to the "Building Sound Foundation" consultation document in August 2009).

PHARS would also ask if members of this subgroup could be allowed to approach and engage other Departments and bodies that could see benefits from the adoption of the HHSRS and ultimately gather support for the HHSRS that can be taken to the new Minister after the Assembly elections in May 2011.

The standard of any property has a significant impact on the health and wellbeing of the occupants. It is vital therefore that the statutory standard which applies to private rented sector accommodation makes a positive contribution to the health and wellbeing of those who live there.

### **The Fitness Standard**

It has been widely acknowledged that the current statutory fitness standard is out of date and should be replaced by a modern standard.

The current Fitness Standard (Housing (NI) Order 1992) is a pass or fail model and dwellings are either fit or unfit. It is clearly not fit for purpose. It does not give an indication of whether a dwelling has just failed or is grossly unfit and, with fitness levels currently at 2.4 %, (NIHCS, 2009), it doesn't provide useful data to inform Housing strategies.

It is no longer a comprehensive measure of the suitability of a dwelling for occupation. It fails to address the areas of thermal comfort and safety among others. An example of this is that it only requires that the main living room has a fixed heat source and a socket in any other living/bedroom in order to pass the Heating element of the standard.

### **Housing Health and Safety Rating System (HHSRS)**

In England and Wales the Housing Health and Safety Rating system was developed and adopted as the statutory fitness standard in 2005. Before the HHSRS was commissioned, a consultation paper was issued which resulted in overwhelming support for the concept of a Rating Approach.

The principle of the HHSRS is that a dwelling should provide a safe and healthy living environment for both occupants and any visitors. It involves an evidence –based risk assessment of the dwelling. The HHSRS is a flexible standard and the categories of hazards can be used to target grant aid. Using the HHSRS means that conditions can be graded and strategies can be focused. It can also adapt to the latest research and technology. For example, an extremely useful matrix has been developed by the CIEH to assist officers in identifying carbon monoxide hazards.

The risks can be categorised as follows:

1. Physiological Requirements.
  - Damp and Mould Growth.
  - Excess Cold.
  - Excess Heat.
  - Asbestos (and man-made fibres).
  - Biocides.
  - Carbon Monoxide etc.
  - Lead.
  - Radiation.
  - Uncombusted fuel
  - Volatile Organic Compounds.

## 2. Psychological Requirements.

- Crowding and space.
- Entry by Intruders.
- Lighting.
- Noise.

## 3. Protection against Infection.

- Domestic hygiene, pests and refuse.
- Food Safety.
- Personal Hygiene, sanitation & drainage.
- Water supply.

## 4. Protection against Accidents.

- Falls associated with baths.
- Falls on the level.
- Falls associated with stairs and steps.
- Falls between levels.
- Electrical hazards.
- Fire.
- Hot surfaces and materials.
- Collision and Entrapment.
- Explosions.
- Position and Operability of Amenities.
- Structural collapse and failing elements.

The HHSRS provides the assessor with a comprehensive evaluation as to the condition of the property using a risk based scoring system. Enforcement action by the local authority is taken based on the evaluation of the severity of risk to the occupants, not on whether a property has e.g. a carbon monoxide detector.

This risk based approach is in line with all other core work delivered by Environmental Health. Issues such as asbestos, overcrowding or radon may not occur often but if the risk score happened to be calculated at an actionable level then the occupant would be protected from a very serious hazard.

The recent tragedies involving carbon monoxide could also be transferred to a scenario involving asbestos, fire safety or VOCs. The HHSRS looks, not at a defect, but at the severity of the effect of a defect which ensures that the regulator can require the landlord to address those items which pose a severe risk to the health and/or safety of the tenant. What could be a relatively minor defect in terms of remedial costs could be a serious threat to the tenant or occupier. It would also provide a system to prioritise environmental health work.

One of the major changes with the HHSRS is the introduction of the protection against accidents hazards. Accidents in the home account for more than two thirds of admissions into hospital A&E. A person in Northern Ireland is more likely to die from an accident in the home than at work or on the road combined.

It is estimated that the total cost of Home Accidents in Northern Ireland is £1.5billion million every year, through costs to the health service and the economy. Each fatal home accident has an overall average cost of £1.6 million and a serious casualty admission costs £45,600. (Department of Health, 2010)

### **Proposed enhanced standard**

The initial draft Department discussion paper wishes to address the following issues:

- physical fitness,
- thermal comfort
- health and safety.

The problem with using a physical based/buildings standard is that the severity of any failure is judged in relation to the extent and cost of remedial works, as per the guidance to the fitness standard.

The Department has acknowledged that when addressing disrepair, the general risk to health and safety should be considered. If disrepair can be assessed on a risk based approach it should be feasible and common sense that the other key elements should be assessed similarly.

One of the Department's proposals of an enhanced standard is that disrepair would need to have a clear and measurable threshold for action to be taken, and that general (and not specific) risks to the occupants would form part of the determination of fitness. For any fitness standard to address the issues of unhealthy and dangerous housing, all the risks need to be specified to ensure the assessors, tenants and landlords all understand what is expected of them.

Also in respect to health and safety, the Department's draft proposals mention fire and carbon monoxide. While this is welcomed, Environmental Health Practitioners would be concerned that there is a vast area of health and safety hazards which would not be addressed. The HHSRS assesses a wide range of hazards and highlights those which cause a severe risk to the occupant. The historic problem where dangerous/unsafe arrangements, which are not in disrepair cannot be addressed, may still exist under the Department's draft proposals.

## **NI Private Rented Sector Statistics**

Research demonstrates that the most vulnerable people are more likely to live in the private rented sector yet this sector has the highest rate of unfitness.

The Northern Ireland House Condition survey 2009 produced the following statistics:

- The highest levels of unfitness (2.6%) exist in the over 75s population.
- 34.3% of lone parents live in the private rented sector.
- 21.6% of the private rented sector is occupied by unemployed persons.
- 13.2% of the private rented sector is occupied by permanently disabled persons or those with caring responsibilities.
- The private rented sector has the highest percentage (5.2%) of those earning less than £4,999
- The survey indicated an unfitness level of 23.8% for vacant homes. An assumption could be made that most of these would be considered to be in the privately rented sector.
- 60% of privately rented homes and 80% of social housing fail the thermal comfort standard of the decent homes standard. 15.8% and 8.1% of privately rented homes and social housing respectively fail the disrepair items of the decent homes standard. Therefore it can be seen that the thermal comfort aspect of any new enhanced standard will have the biggest impact on the privately rented and social housing sectors.

Research in the UK has shown that those with mental health problems are more likely to live in rented accommodation than to be owner occupiers. Also, housing problems are frequently cited as a reason for a person being admitted, or re-admitted, to inpatient mental health care. Johnson R, Griffiths C, Nottingham T (2006). At home? Mental health issues arising in social housing. London: NIMHE. [www.socialinclusion.org.uk/publications/GNHFullReport.doc](http://www.socialinclusion.org.uk/publications/GNHFullReport.doc)

## **Extra Benefits of the HHSRS**

From the statistics above, the HHSRS can build on work in tackling health inequalities and social deprivation.

The HHSRS has been used in England and Wales as a tool to formulate a new grants strategy targeting vulnerable households and providing the neediest with financial or practical low cost assistance.

The HHSRS has proven benefits in relation to reduced costs to the health service. In England and Wales, local authorities utilize their responsibility for social housing and work in close partnerships with primary healthcare trusts to secure funding using the HHSRS to improve the health of the people in a specific area. <http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=23388>

In Northern Ireland, The Department of Health (DHSSPS), through the Investing for Health Strategy, currently fund a range of initiatives to meet its target of reducing accidents in the home. This funding could be used in conjunction with the HHSRS assessments to target those at risk

from a home accident and provide the necessary modifications. This type of initiative could reduce the potential financial burden on landlords.

Similarly, Community Safety Partnerships fund a range of Community Safety initiatives in partnership with local councils such as the Safer City projects. Projects such as the Good Morning schemes are funded this in way which also has a focus on health and well-being of vulnerable members of the community. This funding could be used to address category 1 hazards for prevention of entry by intruders in areas with high levels of burglary.

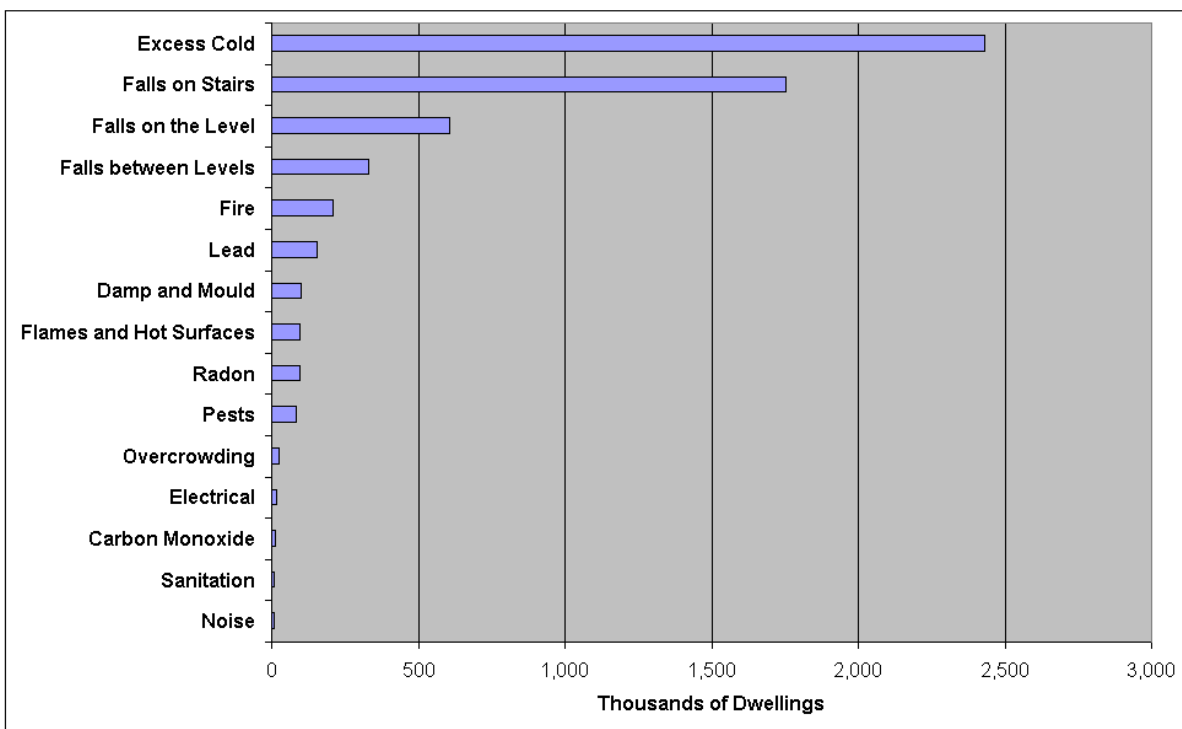
There is an opportunity for joint support for the principle of the HHSRS as the new Housing Standard for NI. It is therefore important to engage stakeholders now, and to keep them on board, in order to maximise influence on changing to the HHSRS so that the benefits are shared.

## HHSRS Statistics and Costs

The HHSRS appears to have a reputation for being a financially onerous standard for landlords to adhere to. It would have to be acknowledged that any change in the fitness standard will incur costs for landlords considering that the current standard, which has been used for the past 30 years, is extremely basic.

The DSD commented that the costs involved in moving to HHSRS for the private rented sector would be of such magnitude that it is not feasible in the short to medium term however there has been a great deal of research into the costs of applying the HHSRS to the privately rented and social housing sector. Some key figures are outlined below:

The frequency of HHSRS Category 1 hazards (EHCS 2006)



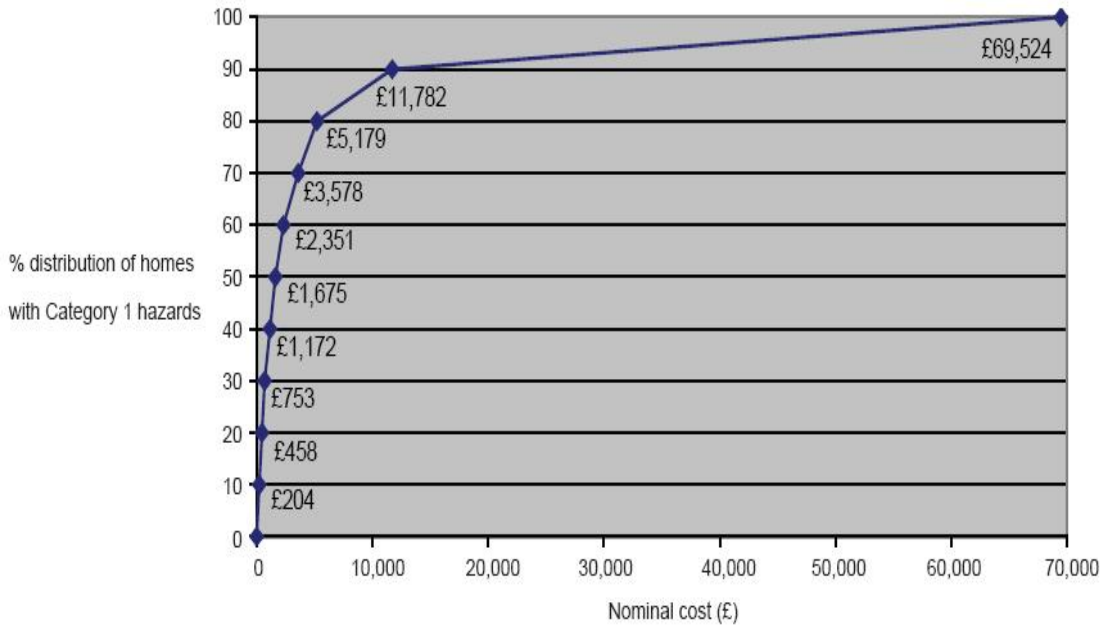
Note: Homes can have more than one HHSRS hazard, so the table above will not add up to the total number of homes with Cat 1 hazards (4.8 million)

(Quantifying the cost of Poor Housing: BRE Information paper IP16/10; M Davidson, M Roys, S Nicol, C Summers, D Ormandy and P Ambrose 2010)

- The graph illustrates that the most common failure/category 1 hazard of the HHSRS is the excess cold. This is also the most expensive to resolve making up 75% of all category 1 hazards. The Department has draft proposals which seek to address the issue of thermal comfort/ efficiency. Any new standard should address this issue.
- The graph also shows that falls are the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> most frequently occurring category 1 hazards. The Environmental Health profession would lend itself to the opinion that any proposed new standard should include assessment of these risks. The DSD proposal would only address safety where there is disrepair and fails to address inherently dangerous conditions which are not occurring due to disrepair e.g. steep and winding staircase. There is reason to suggest that other Departments such as DHSSPS would also see the benefit in addressing safety in the home and NIFRS in relation to fire which is 5<sup>th</sup> most common hazard.



- The graph below indicates that
  - 66% of actions to remedy category one hazards cost less than £250 and
  - only 10% cost more than £3,000.
- The perception that HHSRS is prohibitively costly is not borne out by these figures.



(Quantifying the cost of Poor Housing: BRE Information paper IP16/10; M Davidson, M Roys, S Nicol, C Summers, D Ormandy and P Ambrose 2010)

- The table below illustrates that the highest costs to remedy hazards are those involving damp/mould growth and excess cold which would be dealt with under any proposed enhanced standard. It also shows how falls are relatively low cost to address. This emphasises how the adoption of the HHSRS will tackle the additional issues that EHP's, DHSSPS etc. would wish to address with relative little additional cost.

Hazard	Dwelling with Category 1 hazard*	Estimate number resulting in an improvement order	Estimated cost of mitigating hazard (£)
Damp and mould growth	71,000	2,000	15,600
Excess cold	304,000	8,700	13,570
Carbon monoxide and fuel combustion products	33,000	1,000	720
Lead	114,000	3,300	6,000
Radon (radiation)	85,000	2,400	600
Crowding and space	3,000	80	500
Noise	6,000	170	2,800
Domestic hygiene, pests, and refuse	1,000	40	1,000
Personal hygiene, sanitation and drainage	0	0	700
Falls on the level	297,000	8,500	1,250
Falls associated with stairs and steps	634,000	18,100	2,450
Falls between levels	149,000	4,250	400
Electrical hazards	24,000	700	4,600
Fire	121,000	3,500	6,700
Hot surfaces and materials	100,000	2,900	1,800
Total	1,943,000	55,600	0

(The Real Cost of Poor Housing: M Davidson, M Roys, S Nicol, D Ormandy and P Ambrose 2010)

The Chartered Institute of Environmental Health Officers developed a model to be used to estimate repair costs of rectifying a particular hazard. This table below demonstrates how relatively low the cost of addressing falls is.

Dwellings with 'average' risk of harm from the fully measured hazards

Hazard	Average cost to repair (£)		
	Cheapest 20%	Cheapest 50%	All
Falls between levels	99.19	332.41	1,276.2
Falls on the level	99.06	238.14	1,045.5
Falls associated with stairs and steps	119.54	243.41	1,084.0
Fire	79.28	950.43	3,311.6
Hot surfaces and materials	81	106.66	2,199.5
			0

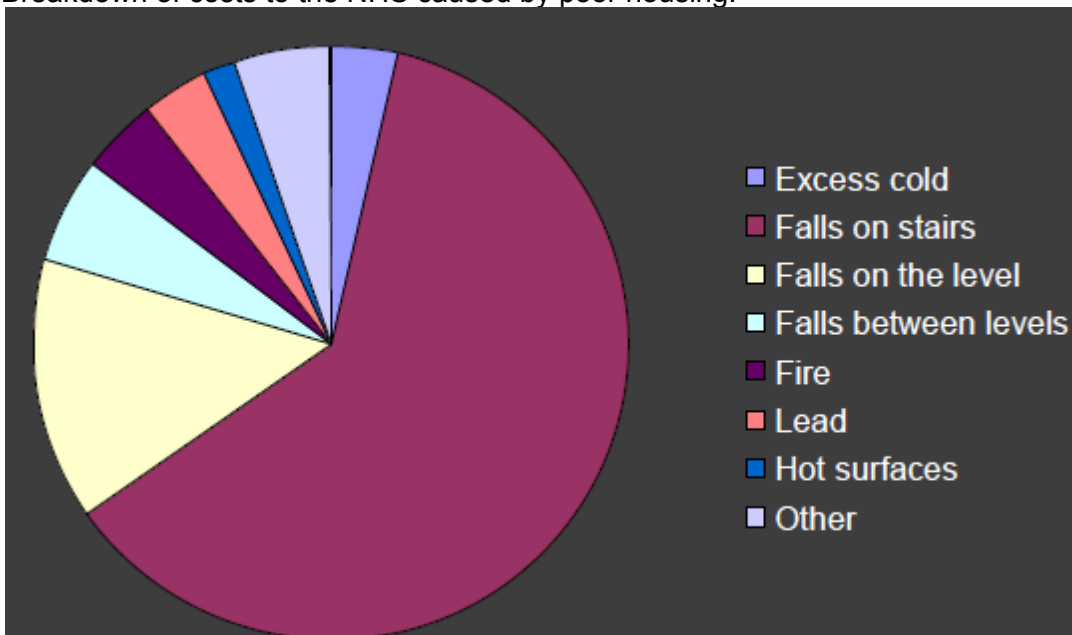
It can be demonstrated that using the HHSRS as the statutory fitness standard would prove a more cost effective option than introducing elements as proposed by the DSD.

Pilot studies where the HHSRS was introduced demonstrated the following :( Linking Housing Conditions and Health, a Report of a Pilot Study into the Health Benefits of Housing Interventions; Warwick Law School 2010)

- Money spent on dealing with poor housing is money invested in health – when local authorities act to improve housing conditions, there is a resulting financial benefit to the health sector.
- The opposite is also true – if money is not spent to improve poor housing, then society will pay, again and again.
- It is also clear that low cost interventions can give value for money.
- Every £1 spent on providing housing support for vulnerable people can save nearly £2 in reduced costs of health services, tenancy failure, crime and residential care. (Audit Commission (2009) Building better lives: Getting the strategic housing. Audit Commission, London.)
- In Bristol the average cost of making a privately rented property fit was £1,020 with costs as low as £10 for rectifying falls on the level.
- In Derby the average cost to make a property fit was £560 with the lowest cost being £20 for entry by intruders.
- In St Helens the highest cost to make a property fit was £11,600 for excess cold which would be the same for any enhanced standard.
- In Blackpool the average cost to make a property fit was £1405. The highest cost was £15,000 for rectifying structural collapse and failing elements which is covered under the present statutory fitness standard. The lowest cost was £500 for rectifying falls on the level.

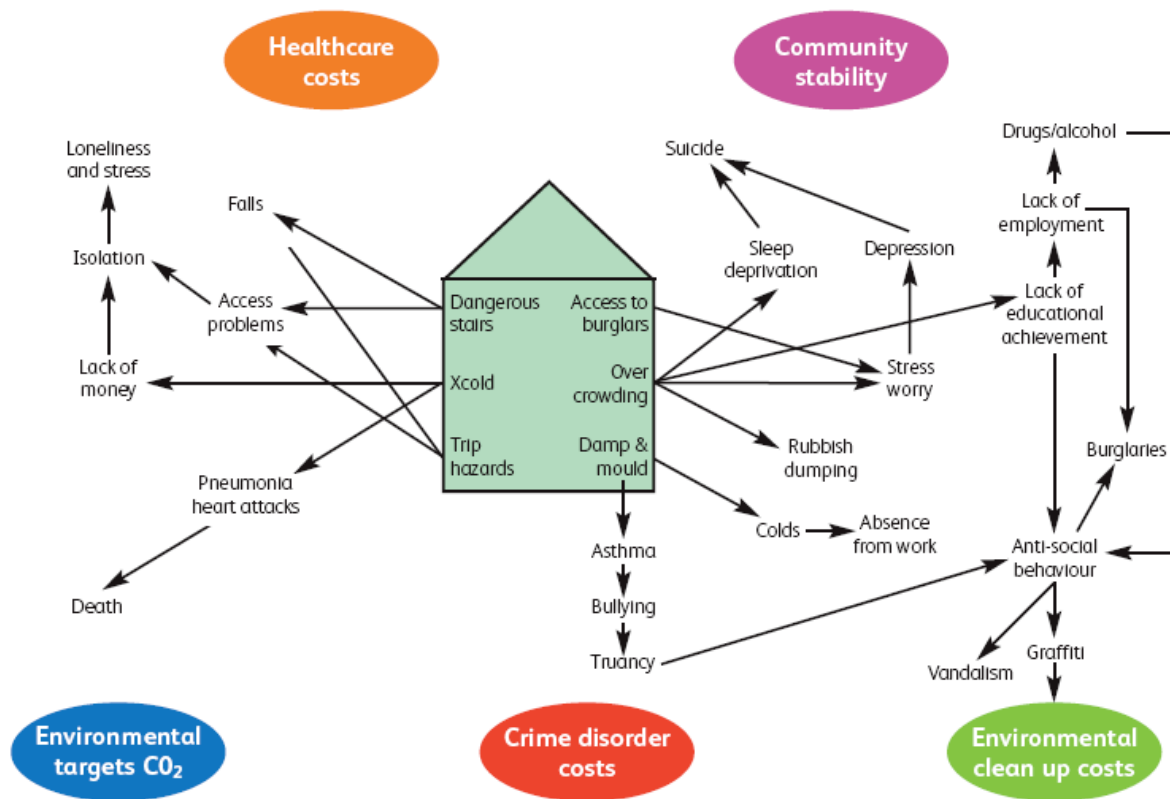
- In Manchester the average cost to make a property fit was £929. The highest cost was £3,600 for rectifying excess cold and the lowest cost was £50 for rectifying falls associated with stairs and steps.
- It has also shown that low cost interventions give particularly good value in terms of health and well-being benefits. For example, minor works carried out through the Home Improvement Agencies and Handyperson Schemes to deal with hazards such as Falling on Level Surfaces, Falling on Stairs, and Entry by Intruders can give a payback period (the time for the cost of the works to balance with the cost saving to the health service) of one or two years. (The Real Cost of Poor Housing: M Davidson, M Roys, S Nicol, D Ormandy and P Ambrose 2010)

Breakdown of costs to the NHS caused by poor housing:



(The Real Cost of Poor Housing: M Davidson, M Roys, S Nicol, D Ormandy and P Ambrose 2010)  
 The above figure demonstrates how falls impact on the NHS despite being reasonably low cost to resolve. Conversely it can be seen that excess cold which can be costly to rectify has a much lower impact on the NHS.

The figure below illustrates the relationship between different aspects of poor housing and the resulting health issues. It demonstrates that poor housing is not only linked to negative health impacts but also has wider negative society, environmental and crime impacts.



The impact of poor housing (Dahlgren, G. and Whitehead, M. Policies and strategies to promote social equity in health.1991. Stockholm, Institute for Future Studies.)

## **Strategic Argument for HHSRS**

The Independent Commission on the Future of Housing in Northern Ireland 2010 recommends that the current fitness standard should be replaced by a new HHSRS system which is comparable to that for England and Wales in order to improve the health, safety and well-being of tenants in the private rented sector.

If we are to change how we approach the assessment of standards in homes, is it sensible to adopt a standard which has been tested for 6 years by local authorities in England and Wales, has comprehensive guidance, has information materials and tools and established case law. This standard was established after years of research by academics from the University of Warwick law school in partnership with the Building Research Establishment (BRE) The HHSRS has been reviewed and guidance amended to reflect practice. This would ensure that assessors in Northern Ireland would be able to make immediate use of these resources both for training and enforcement purposes.

This will be the only opportunity to improve the standards for the private rented sector for many years so a proven, flexible system such as the HHSRS is essential. The DSD comment in the discussion document that “the costs involved in moving to HHSRS for the private rented sector would be of such magnitude that it is not feasible in the short to medium term” does not lend itself to sustainability in the future.

The private rented sector must become sustainable, given its rapid increase. Looking at the potential increased levels of unfitness when the standard changes, it could be questioned if the private rented grants strategy really worked in improving our housing. The Grant Strategy is to be reviewed and the HHSRS could be used in conjunction with any new grant strategy to identify areas of need for grant aid purposes. It provides flexibility and useful data for a justified targeted approach right down to focused areas of deprivation. (For example, the mandatory grant for public health nuisances could be replaced by grant aid assistance for Category one hazards for dampness, excess cold and falls.)

The Investment Strategy for Northern Ireland states that high quality and well-managed housing is a cornerstone for sustainable communities and is essential to creating and maintaining communities that reflect diversity in terms of income and ethnic background and contribute to a peaceful, fair and prosperous society.

The Northern Ireland Sustainable Development Implementation Plan has a target to improve health and life expectancy and reduce health inequalities. This includes reducing home accidents and lists DHSPSS as a key contributor. There is also a target to reduce neighbourhood crime involving a number of agencies including DHSPSS and DSD, with a key action to provide security fittings to reduce burglary. Funding bids could be made to secure grant assistance to deliver these targets through the private rented sector. These items are included in the HHSRS but would be missed under the proposed enhanced standard.

The enhanced standard proposed by the DSD takes elements from current thinking of some within the sector and other existing standards. It could therefore be viewed by some as a compromised and un-tested standard. Those, particularly the most vulnerable in society, who are increasingly turning to the privately rented sector to provide them with a home, deserve a standard which is comparable to those living in other jurisdictions (England and Wales) which has been tested and has been an overwhelming success. The only way of truly comparing the condition of NI's housing stock is to use the same standard.

The role of the DSD is to tackle disadvantage, build communities and encourage social responsibility. The adoption of the HHSRS would deliver on all three aims in partnership with local councils and other government departments.

The HHSRS also compliments many of the identified CEHOG key priority areas. It firmly addresses

- healthy homes and
- safe homes

as well as

- Inclusiveness
- Health Improvement
- Risk Management and
- Sustainable Communities

The HHSRS would also compliment other strategies including

- Community Safety
- Ending Fuel Poverty
- A Healthier Future (DHSSPS)
- Home Accident Prevention Strategy and Action Plan
- Investing for Health
- Sustainable Development
- Lifetime Opportunities (Anti Poverty and Social Inclusion Strategy)

## Conclusion

The HHSRS is the preferred choice for the new statutory housing standard. It is:

- Evidence based
- Tested methodology
- Tested in tribunals
- Guidance already available
- Gives maximum protection to vulnerable people
- Offers flexibility (sliding scale) and continual improvement
- Allows prioritisation of other community based funds
- HHSRS contains cross cutting themes and allows inter-departmental working and joined up strategies
- Allows direct comparison with the condition of our housing stock with that of England.

Any alternative should also be based on sound evidence. It could be questioned if this is readily available in NI.

A strategic effort should be made to gain support for the HHSRS to be the preferred option for NI's new statutory housing standard.

PHARS members should be enabled to engage with stakeholders such as DHSSPS, NIHE, DSD, NIFRS, Community Safety, HSENI, etc. to inform them of the benefits of the HHSRS and gather momentum for support. This support can be taken to the new Minister for the DSD when appointed after the Assembly Elections in May 2011 in order to ensure priority on the Ministers agenda.