



Dr Kevin Pelan  
Clerk, Committee for Social Development  
Room 410  
Parliament Buildings  
BELFAST  
BT4 3XX

5<sup>th</sup> October 2015

Dear Dr Pelan

**Re: Committee for Social Development consultation on the Houses in Multiple Occupation (HMO) Bill.**

The Chief Environmental Health Officers Group (CEHOG) welcomes the opportunity to provide a response to the consultation on the Houses in Multiple Occupation (HMO) Bill, which will make provision for and in connection with the licensing of HMO. However the given 4 week consultation period for a piece of primary legislation of this stature, which when enacted will have a significant impact on the evolving role of Councils statutory housing function, was wholly inadequate.

CEHOG also has concerns regarding the lack of information currently available to councils in order to permit sufficient time for planning and preparation in order to deliver the new powers contained within the draft Bill. Councils require as a minimum transfer of HMO data relating to locations and actual number of HMO's, the number actually registered

CEHOG believes that when the owners of HMO's live outside the jurisdiction of NI there still needs to be a mechanism to ensure these landlords are held accountable for their properties which are non-compliant. It is noted management orders have not been introduced within the draft bill. The role of Management Orders with respect to HMO's should sit with the Regional Housing Provider or its Housing Associations.

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The Planning definition of a flat means that it will not be included in areas where there are HMO development limits. This inconsistency needs to be addressed to ensure that areas which already have a high level of HMOs are not saturated with flats/apartments. Within the current HMO definition, there is scope unfortunately for flats in a converted house to be grossly over-occupied by members of the same family. Converted houses need to be defined as a HMO or else adequate overcrowding legislation to cover the entire private rented sector needs to be introduced.

Further within the draft Bill there is ambiguity in terms of fire safety within the provisions. CEHOG would request that any regulations made under the draft Bill will be capable of covering all aspects of fire safety.

CEHOG welcomes the ability to discharge various offences by means of fixed penalties. CEHOG is concerned however that the Courts are imposing fines significantly less than the fixed penalty charge, therefore rendering the fixed penalty worthless. This matter needs to be urgently addressed to assist Councils in their enforcement role.

With the responsibility for the regulation of HMOs moving to Councils further consideration will need to be given to resource and capacity implications due to the enhanced licensing enforcement scheme proposed by the Department.

CEHOG have provided comment on each clause as per the guidelines for written submissions.

CEHOG would thank the committee for the opportunity to respond to the draft Bill and would welcome further discussion on any associated regulations and guidance.

The committee may also wish to note that Belfast City Council also propose to submit a substantive consultation response which will expand upon some of the issues associated with HMO regulation in Belfast, however, this submission shall not be provided to the committee until after a Council committee meeting on 13<sup>th</sup> October 2015.

## PART 1: MEANING OF “HOUSE IN MULTIPLE OCCUPATION”

### **Clause 1: Meaning of “house in multiple occupation”**

A House in Multiple Occupation (HMO) is defined in Clause 1 as a building or part of a building (e.g. a flat) that is classed as living accommodation and is occupied by three or more people, who are members of more than two households. Additionally, accommodation is not an HMO unless rents are payable or other consideration is provided in respect of the accommodation. The clause also introduces Schedule 1 (exceptions) and confers a power to amend the definition of “house in multiple occupation”.

CEHOG welcomes the definition to include ‘any’ building. However concern is raised that common parts may not be covered in the case of a self-contained flat. In addition in the circumstances where commercial buildings have been converted may fall outside the scope of the Bill. This is not clear within the proposed definition. It is requested that

clarity is provided within any regulations. In addition CEHOG is concerned in relation to houses converted into multiple flats and how these flats will be treated if there are over occupied by members of the one family. These need to be covered by the HMO definition or else a standard for overcrowding across the private rented sector should be introduced to prevent gross overcrowding in house conversions.

Exemptions within Schedule 1 currently pertain to buildings occupied by students, including those run by educational establishments; religious communities; registered housing associations would avail of an exemption. However these types of buildings, in which the most vulnerable may live, are not exempted under the current HMO registration scheme. CEHOG would be concerned that this sector could be regulated by a “light touch” form of accreditation which would not provide uniformity and consistency of standards across the sector.

In determining the appropriateness of any exemptions CEHOG would ask how many enforcement notices or other types of enforcement actions have been served / taken in relation to these types of buildings.

In relation to the exemption for ‘Buildings Occupied by Owners’, the inclusion of houses occupied by owners, may be used by some landlords as a loophole to avoid designation. It would also be difficult to disprove whether an owner actually lives in the property. If an owner lives on the premises then they should be included in the 'head count' as they will assist in forming a different family relationship. We also do not believe it would substantially change the risks in many properties.

Guidance and a methodology provided for enforcement officers in the case of houses occupied by religious communities is requested, as this is often difficult to disprove that the community is living as one.

## **Clause 2: Definition of living accommodation**

Clause 2 defines “living accommodation” for the purposes of clause 1. A building, or part of a building, is living accommodation (i) if it is capable of being occupied as a separate dwelling or (ii) if it forms part of any building or group of building in single ownership and its occupants share a toilet, personal washing facilities or facilities for the preparation or provision of cooked food. “Single ownership” is defined in subsections (2) and (3) in a way which prevents avoidance of the legislation by artificially dividing ownership of a property between members of a family or connected companies.

CEHOG welcomes the definition within 2(5) pertaining to living accommodation however it is concerned about the application to common parts of self contained flats which are in mixed tenure. CEHOG would welcome some clarity around this issue.

## **Clause 3: Cases where person is treated as occupying accommodation as only or main residence**

Clause 3 outlines the fact that people count as occupants only if the accommodation is their only or main residence. However, accommodation occupied by a student during term time is regarded as that person's only or main residence. People staying in domestic violence refuges are to be treated as occupying them as their only or main residence.

CEHOG would request that further guidance is provided in relation to seasonal workers or workers brought in for a contract in a factory for example a 3 month period.

CEHOG would welcome further clarity within the regulations, including any specification of a duration of time.

#### **Clause 4: Persons who are members of the same household**

Clause 4 specifies the meaning of "household" for the purposes of HMO licensing. This includes members of the same "family": the definition of family includes married, unmarried and same-sex couples, and step children, as well as blood relatives. Additionally, a person who is a personal or domestic carer in a residential capacity is to be treated as a member of the household for the purposes of this Bill. There is a power for the Department to provide that other persons are treated as being in the same "household".

CEHOG would not like to see those who require carers to be included under the HMO regime, therefore welcome this definition of 'same household'.

#### **Clause 5: Notice regarding evidence of household**

Clause 5 makes provision for a council to serve a notice on the occupants of a house where CEHOG believe there are more than three people residing in the property and these people form more than two separate households. If insufficient evidence is provided that the house is not an HMO, the house is to be regarded as being one.

CEHOG welcomes this provision however it is imperative that guidance is issued by the Department to help clarify as to what they deem as acceptable proof.

#### **Clause 6: Notice regarding continuation of occupation**

Clause 6 makes provision for a council to serve a notice on a property that has ceased to operate as an HMO, because its occupants have reduced below 3, but which CEHOG believe is likely to become an HMO again within 4 months. For example a student house during the summer months can then be treated as an HMO for certain regulatory purposes, even though it may actually have fewer than 3 people residing in it during those months.

CEHOG welcomes this provision however it is imperative that guidance is issued by the Department to help clarify as to what they deem as acceptable proof.

## **PART 2: LICENSING OF HOUSES IN MULTIPLE OCCUPATION**

### **Clause 7: Requirement for HMOs to be licensed**

Clause 7 requires every house in multiple occupation that is not exempted to be licensed. A licence for an HMO authorises its holder and any agent named on the licence to allow the HMO to be occupied in accordance with the licence conditions. The clause also sets out that licences are to be issued by district councils for houses in their area, and the information which must be specified in a licence.

CEHOG is concerned with the use of the word 'every'. Note only would this approach be resource intensive for councils, but would place N.I out of touch with England and Wales where, licensing only applies to the highest risk of HMO's. 'The licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006', have identified highest risk as, those of 3 storeys or more and occupied by 5 or more persons (who together form 2 or more households). The threshold was set at this level because the risks of fire and escaping from fire are greatest in buildings of 3 or more storeys. In 1997 the Entec report 'Fire Risk in HMO's' concluded: 'the number of occupants influences the risk.

CEHOG would suggest that licensing should be a properly targeted measure, used only where it is necessary to improve standards in this sector. Mandatory licensing is needed for certain situations and certain types of HMO to ensure a properly targeted approach, it therefore should be undertaken entirely on a risk based approach.

For those properties that are currently authorised they could then be transferred across to the new scheme.

### **Clause 8: Applications for HMO licence**

Clause 8 outlines that applications must be made by the owner of the HMO. It also sets out the matters that are to be taken into account when a council is considering an application for an HMO licence. The details of the procedural requirements, in relation to an application for an HMO licence, are contained within Schedule 2.

CEHOG welcomes the provisions within this clause, however the set licence fee should be on a cost recovery basis.

In addition to planning approval, Building Control approval should also be achieved prior to an application being made.

Within clause 8(e) the term “Fit for Human habitation” is used. This is a general term unless it is referenced to the Housing Order 1981, as amended by The Housing Order 1992. As a general term it will be open to various interpretations. This should be changed to “the living accommodation should meet the statutory minimum standard for housing”.

The “Fitness Standard” as set out in the Housing Order 1981, as amended by The Housing Order 1992 as the statutory minimum standard of housing is currently being reviewed by the DSD so it would not be appropriate to use the term “fit for human habitation”. Using the term meets the “statutory minimum standard for housing” will make the Bill ‘future proof’ and would not necessitate change should the review result in changing the standard.

CEHOG advocate the adoption of the Housing Health and Safety rating system (HHSRS) as a tool to regulate the entire privately rented sector. This system assesses the property using a risk based approach and looks at 29 separate risks to health and safety of the occupant. (Appendix 1 contains the CEHOG Position paper on A New Statutory Housing Standard for the Private Rented Sector).

All tenures of housing should be required to meet the same statutory minimum standard for housing with additional protection for HMO due to their higher risks.

### **Clause 9: Breach of planning control**

Clause 8(2)(a), as read with the definition in clause 9, provides that an application will be refused if CEHOG feels there has been a breach of planning control. Carrying out development without the planning permission required or failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control. Refusals on this ground are treated slightly differently from refusals on other grounds. In particular, the refusal must be made with 28 days of the application and there is no appeal to the county court. However, if the applicant can show that there is no breach of planning control, they can make a renewed application for no additional fee.

CEHOG welcomes this link to planning control.

### **Clause 10: Fit and proper persons**

Clause 10 specifies matters to which CEHOG shall have regard (in addition to other things it may consider) when deciding whether an applicant or an applicant’s agent is a fit and proper person. The material specified is: whether the person has committed certain types of offence, practiced unlawful discrimination or contravened housing law or landlord and tenant law; actions or failures to act in relation to antisocial behaviour affecting a house

let by the applicant or for which the applicant was an agent; and other material considered by the local authority to be relevant.

CEHOG welcomes the provisions within this clause. However there is concern regarding the language used where some-one has committed an offence rather than having been convicted of committing an offence. Further clarity should be provided around jurisdictions, spent convictions, putting the onus on the applicant to provide any necessary information specified.

Additional guidance is required on the provision under 10(5) relating to 'any associate or former associate' has engaged in any of the conduct mentioned.

### **Clause 11: Satisfactory management arrangements**

Clause 11 outlines the considerations that a council may take into account when deciding whether suitable management arrangements are in place at application stage.

CEHOG would require that guidance to be provided as to the assessment of a 'sufficient level of competence'.

### **Clause 12: Overprovision**

Clause 12 states that, in deciding whether the granting of a licence will result in overprovision, councils must have regard to the number and capacity of licensed HMOs in an area, the need for this type of accommodation in that locality and such other matters as the Department may specify through regulations. Although a first-time application for a licence can be refused on the ground that it would result in overprovision of HMOs, an application to renew a licence cannot (see clause 20).

CEHOG welcomes this provision, however would be concerned that this may become a charter for inconsistency. As such there should be guidance on promoting a consistent approach within councils. CEHOG recognise the need to control the number of HMO's on any given area, and the issues associated with over provision. CEHOG would acknowledge the parallel with Council's new planning and community planning roles.

### **Clause 13: Suitability of living accommodation for multiple occupation:**

Clause 8(2)(e), as read with clause 13, states that councils may only grant a licence if they are satisfied that the accommodation is suitable for use as an HMO for the specified maximum number of persons or could be made so by including conditions in the licence. The criteria that CEHOGs must consider are given. It includes a power for the Department to set out minimum standards in regulations.

CEHOG welcomes this provision, however further guidance should be provided in order to both define and provide clarity around certain terms used throughout this clause, such as 'undue public nuisance', for example would this cover issues around car parking; also terms such as 'type of persons'; 'interior and exterior decoration'

CEHOG would welcome the addition of other risk areas to the minimum standards such as falls, risk of fumes etc in line with the HHSRS. Within clause 13(5) there is a notable absence of fire safety and means of escape. CEHOG would also see that with the introduction of HMO licensing there is an ideal opportunity to have a formal MOU on a regional basis with the NIFRS.

#### **Clause 14: Licence conditions**

Clause 14 deals with the conditions that may be contained in licences. CEHOG may include any conditions it considers appropriate for regulating the management, use and occupation of an HMO. The Department may also specify in regulations conditions which must be included. Conditions can include dates by which they come into effect.

CEHOG welcomes the provisions within this clause, in particular 14(3) which states the provision of regulations pertaining to the specification of HMO licence conditions. Standardised conditions upon issuing the licence will greatly aid consistency across councils

CEHOG would query the rationale and intention in relation to 14(4) and (5) particularly in relation to the class of persons occupying or visiting a HMO.

#### **Clause 15: Temporary exemption notice**

Clause 15 allows a council to issue a temporary exemption notice if the owner of an unlicensed HMO applies for one. The owner must explain the steps to be taken to stop the premises from being an HMO (such as ensuring that the number of occupants reduces below 3, or that sufficient basic amenities for exclusive use are installed so that occupants do not have to share them), and CEHOG must be satisfied that these steps will be successful. The HMO does not need a licence during the term of the notice, which is three months unless extended in exceptional circumstances.

CEHOG envisages there may in certain circumstances be a need to issue a temporary exemption notice in line with any existing tenancy agreement, i.e. where the HMO was in an area of high housing need and where remaining in the property there was no risk to health. Council officers should be allowed to exercise discretion in such exceptional circumstances. However CEHOG would not envisage any such notice should be valid for a period longer than 12 months in totality, i.e. inclusive of any extension as per clause 16.

CEHOG notes the need for protection that the required works will be carried out in full.



### **Clause 16: Extension of temporary exemption notice**

Clause 16 allows for the extension of temporary exemption notice if CEHOG are satisfied that special circumstances exist. A notice may be extended only once, and only for up to 3 months.

As per Clause 15

### **Clause 17: Safety and security requirements**

Clause 17 specifies that the temporary exemption notice may require the owner to carry out work to improve the safety or security of the occupants for the duration of the notice. This could include minor works or the provision of removable equipment where licence conditions would normally require permanent, fixed items.

CEHOG notes the provisions within this clause.

### **Clause 18: Revocation of temporary exemption notice**

Clause 18 specifies that if a council is satisfied that an HMO owner has failed to comply with any requirement included in a temporary exemption notice, CEHOG may revoke that notice.

CEHOG notes the provisions within this clause.

### **Clause 19: Duration of HMO licence**

Clause 19 states that an HMO licence lasts for five years, or a shorter period specified in the licence which cannot be less than six months. It starts on the date when notice of the decision to grant the licence is served on the owner, or another date specified in the licence. In the case of a licence granted because CEHOG did not come to a decision within the period required, the licence will last for one year from the end of that period.

CEHOG would suggest that a standardised duration period is specified. Clarity on the rationale for a non-specified period would be welcomed.

Guidance pertaining to specifics in dealing with the commencement of the 3 months period within which CEHOG must make a determination on an application is required. CEHOG is of the opinion that this 3 month period should only commence once council have received a full application, all required supporting documents and appropriate fee. Formalisation of a process where an application is deemed as being duly made would also be welcomed.

Pertaining to this clause, within Schedule 2, 15(6) clarity is required on the deemed licence, i.e. is another application fee required after the specified one year period

### **Clause 20: Renewal of licence**

Clause 20 provides for the renewal of an existing licence which must be made before the current licence ceases to have effect. As noted above, overprovision (Clause 12) is not a ground for refusing an application to renew.

CEHOG notes the provisions within this clause.

### **Clause 21: Application to renew: effect on existing licence**

Clause 21 specifies that where an application to renew a licence is made the existing licence has effect until: the date of the new licence is granted or (if the renewal application is refused) the date the current licence ceases to have effect. Slightly different rules apply if the refusal is on the ground of breach of planning control.

CEHOG notes the provisions within this clause.

### **Clause 22: Variation of licences**

Clause 22 sets out the procedure for varying a licence, which a council may do for its own reasons or at the request of the licence holder. If CEHOG proposes the variation, it must give its reasons.

CEHOG welcomes the provision that a licence can be varied on either an application or on councils own initiative. CEHOG believe that there should be a fee payable on the application to cover costs incurred by CEHOG. Further that a fit and proper person test should apply in terms of any proposed changes to management agent.

### **Clause 23: Revocation of licences**

Clause 23 allows a council to revoke a licence at any time. There are a number of possible grounds that may lead to the revocation of a licence. The licence holder or agent is no longer a fit and proper person under Clause 10; the accommodation is not fit for human habitation; the HMO management arrangements are not satisfactory; the

accommodation is no longer suitable for use as an HMO and cannot be made suitable; there has been a serious breach of a condition of the licence; there has been more than one breach of a condition (not necessarily a serious one). This Clause also specifies that it does not matter if CEHOG has taken any other action or criminal proceedings have been commenced, the licence can still be revoked.

CEHOG welcomes the power to revoke a licence, however there is a need for guidance in this matter. There should also be a mechanism for bringing to CEHOG any matters, including anti-social behaviour, change in conditions etc that may necessitate any revocation.

#### **Clause 24: Variation and revocation: procedure**

Clause 24 introduces Schedule 4, which makes provision about the procedure for varying or revoking a licence.

CEHOG welcomes the provision, however guidance should be provided in order to provide clarity, thus inform any documented procedure to deal with the variation and revocation of a licence in line with Schedule 4.

#### **Clause 25: Restriction on applications**

Clause 25 prevents CEHOG from considering certain applications. If an application was refused on the ground that a person was not a fit and proper person, CEHOG may not consider an application from that person (for any accommodation) within a year of the refusal. If an application was refused on a ground relating to the accommodation (where the granting of the licence would create a situation of overprovision or where the accommodation is not habitable or suitable for use as an HMO), CEHOG may not consider an application (from anyone) in relation to that accommodation, with the same period. This restriction does not apply if the local authority is satisfied that there has been a material change of circumstances, for example if a physical feature which made the property unsuitable for licensing has been altered.

CEHOG notes the provisions within this clause.

#### **Clause 26: Joint licence holders**

Clause 26 deals with the situation where an HMO is owned jointly by more than one person. The application for a licence may be made by one owner or jointly by more than one. Any joint licence holders can request to be removed from the licence at any time provided one owner continues to hold the licence.

CEHOG notes the provisions within this clause.

**Clause 27: Surrender of HMO licence**

Clause 27 specifies that the holder of an HMO licence may surrender the licence by giving notice to CEHOG, in the specified form, to that effect.

CEHOG notes the provisions within this clause, however is of the opinion there must be a mechanism to prohibit a management company walking away from their obligations.

**Clause 28: Change of ownership: effect on licence**

Clause 28 states that an HMO licence may not be transferred to a new owner. So when a property changes hands, any HMO licence for the property ceases to have effect.

CEHOG notes the provisions within this clause, in particular that a new application must be made which would be subjected to the appropriate application fee.

**Clause 29: Death of sole licence holder: effect on licence**

Clause 29 transfers the licence of a deceased sole licence-holder to that person's executor. The licence expires three months after the date of death, unless CEHOG is satisfied that it is reasonable to extend it in order to wind up the holder's estate.

CEHOG notes the provisions within this clause, in particular the flexibility to extend the licence as council deem reasonable.

**PART 3: ENFORCEMENT OF LICENSING REQUIREMENTS**

**Clause 30: Unlicensed HMO**

This clause creates a number of criminal offences relating to HMO licensing. An owner of a licensable HMO without a licence is committing an offence (unless the owner has a reasonable excuse). A person who acts as an agent for an HMO which is not licensed also commits an offence. And where the owner of an unlicensed HMO instructs an agent to act in relation to that house, the owner commits an offence.

CEHOG notes the provisions within this clause and welcome the inclusion of agent responsibility. Council need for guidance on terms within the clause to include 'reasonable excuse' subject to clause 34 and the information required as proof.

**Clause 31: Exceeding licensed occupancy or breach of licence conditions**

This clause creates the offence of allowing an HMO to be occupied in excess of the number of persons authorised on the licence. It also creates offences related to breaching conditions in a licence. An owner, agent or other person named in the licence commits an offence if they breach a condition included in a licence. And an owner or agent commits an offence if any other licence condition is breached and they do not take reasonable measures to prevent it.

CEHOG notes the provisions within this clause. Council need for guidance on terms within the clause to include 'reasonable excuse' subject to clause 34 and the information required as proof.

**Clause 32: Untrue claim that HMO is licensed**

This clause makes it an offence to claim that a HMO is licensed when it is not.

CEHOG notes the provisions within this clause.

**Clause 33: Agents not named in licence**

This clause makes it an offence for an owner to authorise an agent to act in relation to house if the agent is not named in the licence. It also makes it an offence for a person to act as an agent in those circumstances.

CEHOG notes the provisions within this clause.

**Clause 34: Reasonable excuse**

This clause sets out some circumstances in which the owner of an HMO has a reasonable excuse for the purposes of clauses 30(1) and 31(2) and (3).

CEHOG notes the provisions within this clause. There is a need for guidance on terms within the clause to include level of information required to satisfy reasonable excuse.

### **Clause 35: Power to require rectification of breach**

Clause 35 specifies that a council can serve a notice on a licence holder requiring action to be taken to rectify or prevent a breach of a condition in an HMO licence. A notice can be served irrespective of whether CEHOG has taken any other action or whether criminal proceedings have been commenced. The action required may include the carrying out of work in or to the HMO.

CEHOG notes the provisions within this clause.

### **Clause 36: Revocation of rectification notice**

This clause outlines the circumstances in, and process by which, a council may revoke a rectification notice under clause 35. In particular, a notice must be revoked if all the requirements set out in it have been complied with.

CEHOG notes the provisions within this clause.

### **Clause 37: Failure to comply with rectification notice**

If the owner of an HMO fails to take any action specified in the rectification notice, by the date given in the notice, they will have committed an offence under clause 37. In determining the seriousness of that offence (for example, for the purposes of setting a fine), regard is to be had to the original breach which led to the issuing of the rectification notice.

CEHOG notes the provisions within this clause.

### **Clause 38: Revocation orders and disqualification orders**

This clause gives a court powers to revoke an HMO licence and disqualify an owner from holding a licence, or an agent from being named on a licence, for a period not exceeding five years. These powers can be used on conviction of an offence under various provisions of the Bill.

CEHOG notes the provisions within this clause. Further consideration is required for specified template for disqualification orders and revocation orders and whether there is

a need to prescribe these. If not, then there need to be a mechanism for liaison with the courts service upon the detail required within such orders.

**Clause 39: Revocations and disqualifications: appeals**

This clause specifies that a person may appeal against a revocation order or disqualification order.

CEHOG notes the provisions within this clause but would ask that clarity be provided on whether temporary exemption matters apply while any appeal is on-going.

**Clause 40: Discharge of disqualification orders**

This clause specifies that the court which made the disqualification order may discharge the order with effect from such date as the court may specify, if the court is satisfied that there has been a change in circumstances which justifies doing so.

CEHOG notes the provisions within this clause.

**PART 4: STANDARDS OF HOUSING**

**CHAPTER 1: OVERCROWDING**

**Clause 41: Definition of overcrowding**

This clause defines an HMO as being overcrowded when the number of persons sleeping in it contravenes either the room standard or the space standard.

CEHOG notes the provisions within this clause.

**Clause 42: The room standard**

This clause outlines the circumstances which are designated as a contravention of the room standard. These are circumstances in which persons aged 13 or over must share with another person of that age or with a couple.

CEHOG would question the rationale behind the increase in age from 12 (as per the Housing Act Room Standard) to 13 years of age

There are differences in various standards for overcrowding

- The original statutory definition of overcrowding in England referring to room and space standards can be found in Part X of the Housing Act 1985 but has an age threshold for children over 10 both room and space standards.
- The Bedroom Standard has been used from the 1960's to measure overcrowding in the UK also uses 10 as a threshold.
- The NIHE Housing Selection Scheme Rules use age 7 as a threshold age.
- The European Commission Eurostat Housing Statistics for overcrowding uses 12 as the threshold age.

These differences are not helpful. With HMO tenants at a higher risk than most other tenants in the private rented sector, should they not be offered better protection from overcrowding?

### **Clause 43: The space standard**

This clause outlines the circumstances which may be designated as a contravention of the space standard. These relate to the amount of floor space there is in the property for each person resident of it.

CEHOG welcomes the formalisation of the current space standards used for HMOs.

### **Clauses 44 and 45: Overcrowding notices**

Clauses 44 and 45 give CEHOG the power to issue a notice where they believe an HMO is, or likely to become overcrowded. An overcrowding notice must, for each room, either stipulate the maximum number of persons who may occupy the room or specify that the room is unsuitable for occupation. This makes clear the maximum possible sleeping arrangement in the house.

CEHOG notes the provisions within these clauses.

### **Clause 46: Requirement as to overcrowding generally**

The requirement under clause 46 requires that the terms of the notice must not be breached by allowing an unsuitable room to be occupied as sleeping accommodation and that the room standard must not be contravened. A notice including this requirement can have the effect of requiring the owner to reduce the occupancy of the house immediately – for example, by terminating a tenancy.

CEHOG notes the provisions within this clause.

### **Clause 47: Requirement not to permit new residents**



Clause 47 is very similar in its effect to Clause 46, except that it covers occupation by new residents i.e. anyone not resident when the notice was served. This allows the existing situation to continue, even if the house is “overcrowded”.

CEHOG notes the provisions within this clause.

#### **Clause 48: Notice requiring further information**

Clause 48 allows CEHOG to serve a notice requiring further information in relation to overcrowding. The information requested may be, among other things, the number of people sleeping within the HMO, the names of those individuals, the number of households to which they belong and the rooms used by the individuals and households respectively. This information may be used to determine whether an overcrowding notice has been breached, but may not be used in criminal proceedings against the person providing the information.

CEHOG notes the provisions within this clause.

#### **Clause 49: Information notice: supplementary provisions**

Clause 49 provides that a person commits an offence if they fail to provide information requested by an information notice or if they provide false or misleading information.

CEHOG would welcome guidance on the term misleading.

### **CHAPTER 2: SUITABILITY FOR NUMBERS IN OCCUPATION**

#### **Clause 50: Suitability notice**

This clause makes arrangements about HMO suitability notices. Such a notice can be served in relation to any HMO which the local authority considers is not reasonably fit for occupation by the number of persons occupying it.

CEHOG would ask for guidance required for 50 (3) (b) where falls short of building regulations. Guidance under what circumstances one would evoke such a notice, for example under circumstances where been changes to a property after the licence was issued.

### **Clause 51: Contents of suitability notice**

Clause 51 directs that a suitability notice must specify what CEHOG considers to be the maximum number of persons by whom the HMO is suitable to be occupied. A suitability notice must contain either the general occupancy requirement or the new residents' occupancy requirement. It may also contain a statement of remedial work.

CEHOG would ask for guidance in relation to this clause.

### **Clause 52: Occupancy requirements**

Clause 52 sets out that the general occupancy requirement is that the person on whom the notice is served must refrain from permitting more than the maximum number of persons to occupy the HMO. As with the similar requirement in an overcrowding notice, this can have the effect of requiring the owner to reduce the occupancy of the house immediately – for example, by terminating a tenancy. The new residents' occupancy requirement is that the person on whom the notice is served must refrain from permitting any new resident to occupy the HMO if that person's occupation results in the HMO being occupied by more than the maximum number of persons. This can be used where CEHOG considers that, although the accommodation is unsuitable for its current number of occupants, the balance lies in favour of letting the current situation remain (rather than requiring the immediate departure of one or more residents).

CEHOG notes the provisions within this clause.

### **Clause 53: Statement of remedial work**

Clause 53 sets out that a statement of remedial work is a statement of work which the owner of the HMO may undertake and which, if done, will lead to the lifting of the suitability notice. Although the owner is not required to carry out the work, they can choose to do so as an alternative to having the restriction on occupancy imposed by the suitability notice.

CEHOG would welcome clarity as to the rationale as to why a notice may not state any fire safety measures.

## **CHAPTER 3: HAZARDS**

### **Clause 54: Definition of a hazard**

Clause 54 defines that a hazard in an HMO is something that constitutes a risk of harm to the health or safety of an actual or potential occupier. The risk may arise from a

deficiency in the accommodation forming the HMO, any building or land the accommodation forms part of, or any building or land in the vicinity of that accommodation.

CEHOG welcomes the inclusion of common parts within this definition.

#### **Clause 55: Hazard notice**

This clause makes arrangements about hazard notices. Such a notice can be served where a council is satisfied that a hazard exists in relation to an HMO. There is also provision for this notice to be treated as an “emergency hazard notice” that can come into operation immediately where there is an imminent risk to any of the occupiers of the HMO.

CEHOG welcomes the inclusion of common parts within this definition.

#### **Clause 56: Contents of hazard notice: prohibitions**

A hazard notice may impose prohibitions on the use of any premises as CEHOG considers appropriate in view of the hazard(s) to which the notice relates. Where the hazard affects a flat, the prohibition may cover the use of any part of the building containing the flat or any external common parts. A prohibition may include a requirement to obtain the approval of CEHOG for the use of the property in particular ways.

CEHOG would request guidance on use and content.

#### **Clause 57: Contents of hazard notice: other matters**

A hazard notice must specify in relation to each hazard: the nature of the hazard; the HMO in which it exists; the deficiency giving rise to the hazard; and the date on which the notice is made.

CEHOG would think that there is a need the same level of detail in clause 57 as per 56. It is the view of CEHOG that it is most likely that repairs are required in the common parts rather than prohibitions, thus covering owner occupiers also, however the same level of detail is absent from clause 57.

#### **Clause 58: Works requirement**

A hazard notice may also contain a works requirement. Clause 58 sets out that a works requirement is that an owner carry out work in order to remove the hazard. The work

must be specified in the notice and can be anything which CEHOG regards as appropriate for removing the hazard. If the work is done, the hazard notice must be lifted.

CEHOG would welcome clarity as to the absence of fire safety measures again,

CEHOG welcomes the option of carrying out works in default as stated in Schedule 3 but Management Orders would be a better solution to situations where the landlord is not in a position to carry out urgent works to a HMO. These orders could be delivered by the NIHE or Housing Associations.

#### **Clause 59: Approvals as to the use of premises**

This clause states that any approval of CEHOG with regards to a prohibition placed on a property must not be unreasonably withheld and that the owner may appeal to a magistrates' court against a refusal to give approval.

CEHOG notes the provisions within this clause.

### **CHAPTER 4: FURTHER PROVISIONS ABOUT NOTICES UNDER THIS PART**

#### **Clause 60: Offences**

This clause sets out the key criminal offences regarding notices under Part 4 of the Bill. These relate to failure to comply with requirements set out in a notice.

CEHOG welcomes the use of FPN in respect of these offences however it is concerned that fines are currently being issued at levels significantly lower than the fixed penalty level. This matter must be addressed in order to assist Council in discharging their enforcement duties.

#### **Clause 61: Further provisions**

Clause 61 introduces Schedule 5, which makes further provisions about notices under this Part.

CEHOG notes the provisions within this clause.

### **PART 5: SUPPLEMENTARY**

### **Clause 62: HMO register**

Clause 62 requires each council to keep an HMO register containing details of each application for an HMO licence, the decision made on the application and subsequent progress of the licence. The register is to be publicly available, but CEHOG must exclude any information that it considers could put any person or premises at risk.

CEHOG has a view that having 2 registers in the private rented sector is confusing for both the public and landlords. One single register should cover both sectors and would reduce bureaucracy and administrative costs. CEHOG would also prefer a nominated office instead of Head Office.

### **Clause 63: Code of practice**

This clause creates a power for the Department to make regulations approving a code of practice laying down standards of conduct and practice to be followed with regard to the management of houses in multiple occupation.

CEHOG welcomes the provision of a code of practice.

### **Clause 64: Fixed penalty: service of notice**

Clauses 64 to 66 provide for fixed penalty notices to be issued, instead of criminal proceedings. Clause 64 allows an authorised officer of CEHOG, who has reason to believe that an offence has been committed, to serve a fixed penalty notice. The notice must set out the offence which is alleged to have been committed, and state the amount of the fixed penalty.

CEHOG welcomes the provision to issue a FPN, however where non-payment of FPN and courts issue a lower fine than FPN, particularly where FPN sum can be high. Note there is an ability to provide discounted period and clarification should be provided. Experience shows discounted increases likelihood of payment.

### **Clause 65: Fixed penalty: effect of notice**

Where a fixed penalty notice is served on a person in respect of an offence, no criminal proceedings may be commenced against the person for the offence before the time specified in the notice has elapsed. The person may not be convicted of the offence if the person pays the fixed penalty notice.

CEHOG welcomes the ring fencing of FPN income.

**Clause 66: Fixed penalty: power to alter amounts**

Clause 66 allows for the Department for Social Development to alter the amounts of fixed penalty notices.

CEHOG notes the provision in this clause.

**Clause 67: Appeals**

Clause 67 lists the decisions against which an appeal may be made. Any person on whom CEHOG is required to serve notice of a decision has the right to appeal against the decision to the county court. They must do so within 28 days (or within 7 days of receiving notice of the decision, if later), although the county court may decide to hear a late appeal if there are special circumstances.

CEHOG notes the provision in this clause.

**Clause 68: Council's statement of reasons for decisions which may be appealed**

This Clause specifies that when any decision to which Clause 67 applies is made, then CEHOG must include a statement informing the person (a) that they may request an explanation of CEHOG's reason for the decision and (b) of the right to the appeal of this decision under Clause 67. Where a statement of reasons is requested, CEHOG must supply that statement within time for the person to be able to appeal the decision. This right to a separate statement of reasons does not apply where the reasons for the decision are included in the original notice of the decision.

CEHOG would welcome guidance particularly in relation to template responses.

**Clause 69: Powers of court on appeal**

An appeal under Clause 67 is to be by way of re-hearing, but may be determined taking into account matters of which CEHOG were not originally aware. The county court may confirm, vary or quash the decision of CEHOG, or may remit it back to CEHOG for reconsideration.

CEHOG notes the provisions in this clause.

**Clause 70: Powers to require information and documentation: introductory**

The powers conferred on CEHOG by Clause 71, 72 and 73 are for the purpose of enabling CEHOG to exercise any function on it conferred by this Bill and/or investigating whether any offence has been committed under this Bill.

CEHOG notes the provisions in this clause.

**Clause 71: Power to obtain information from persons connected to the premises**

This clause allows a council to serve notice on certain persons (defined as “relevant persons”) to provide them in writing with details such as: the nature of the person’s estate in the premises, the name and address of any other person known to them to have an estate in the premises, any other information which CEHOG may reasonably require and may be known to the person. The notice may also require the person to disclose the relationship between themselves and any other occupiers for the purpose of establishing households and whether the premises are, or contain, an HMO. “Relevant persons” include licence holders, owners, occupiers and agents in relation to premises.

CEHOG welcomes this provision however in certain circumstances CEHOG may require information before specified 21 days and would welcome this additional provision.

**Clause 72: Power to require persons connected with the premises to produce documents**

This clause allows CEHOG to serve a notice on a “relevant person” (which has the same meaning as in clause 71) requiring the person to produce documents which CEHOG requires and believes are in the person’s custody or control.

CEHOG notes the provisions in this clause.

**Clause 73: Power to obtain information from other persons**

This clause outlines that CEHOG may require a “relevant person” to provide CEHOG, in writing, any “relevant information” under that person’s custody or control. The clause then goes on to list those considered as “relevant persons” for this purpose (which are different from those for purposes of clauses 71 and 72) e.g. NIHE, educational institutions, estate agents, etc. The clause also sets out what is considered “relevant information” e.g. information which indicates a building or part of a building may be an HMO.

CEHOG would request the inclusion of PSNI, NIFRS, Health and Social Care Trusts as a relevant person.

**Clause 74: Failure to comply with notice under Clause 71, 72 or 73**

A person commits an offence if they refuse or fail to provide information or a document requested under Clauses 71, 72 or 73 and does not have a reasonable excuse for that failure, or if they supply false information or falsify a document.

CEHOG notes the provisions in this clause.

**Clause 75: Unauthorised disclosure of information obtained under Clause 73**

An employee of CEHOG commits an offence if they disclose, without lawful authority, any information which CEHOG has obtained under clause 73 and the employee has acquired through their employment and which relates to accommodation that is, or is believed to be, an HMO. This helps to protect the confidentiality of information obtained from other public authorities under that clause, which may have originally been obtained under statutory powers and for other purposes.

CEHOG notes the provisions in this clause.

**Clause 76: Court to inform council of convictions**

This clause applies where a court convicts a person of any offence under this Bill, with the exception of an offence under Clause 75. It requires the clerk of the court to send to CEHOG details of the conviction and sentence and a note of any revocation or disqualification order made by the court in consequence of the conviction.

CEHOG notes the provisions in this clause.

**Clause 77: Powers of entry: without warrant**

This clause applies where a council considers that an examination of any living accommodation is required to allow them to establish: whether it is an HMO; whether to grant, vary or revoke a licence or whether any other function under this Bill should be exercised. A person, authorised in writing by CEHOG, may carry out the examination at a reasonable time and must give at least 24 hours notice to the owner and occupiers of the



accommodation if practicable. The person may not use force in the exercise of the power conferred by this Clause.

CEHOG would highlight that under 77(3) specified 24 hours' notice at the initial application, it is not practical to give 24 hours notice where there is reasonable grounds to suspect non-compliance ;there should be power of entry at reasonable times.

#### **Clause 78: Powers of entry: with warrant**

A lay magistrate may issue a warrant under this clause authorising a person named in the warrant to enter and search the premises specified in the warrant. The warrant may only be issued if two conditions are satisfied:

- 1) A person acting on behalf of CEHOG, reasonably requires to enter or search the premises to establish whether an offence has been committed, a requirement imposed by a notice has been or is being complied with or any of the matters mention in Clause 77(1) (a), (b) & (c) (that is, whether living accommodation is an HMO, whether to grant, vary or revoke a licence, or whether to exercise any function under the Bill).
- 2) The premises are unoccupied or temporarily vacant, or applying to the owners or occupiers for entry would defeat the purpose of the entry or the search, or entry has already been sought under Clause 77 but has been refused.

The clause sets out a number of safeguards governing the issue and execution of warrants.

CEHOG would highlight that in: 78 (1) lay magistrate and 78 (2) magistrate are mentioned. Is this an intentional difference and if so clarity would be required?

Also CEHOG would like to highlight that a warrant under these provisions has only 1 month validation, whereas it is 3 months in other Council functions.

#### **Clause 79: Powers of entry: supplementary provisions**

This clause outlines the additional provisions associated with entering premises under Clause 77 or 78, including an offence of obstructing the execution of a warrant. CEHOG notes the provisions within this clause.

#### **Clause 80: Application by owner where consent withheld**

This clause makes provision for a court of summary jurisdiction to grant the necessary consent to take action where that consent has been unreasonably withheld by a person involved with the property.

CEHOG notes the provisions within this clause.

### **Clause 81: Obstructions**

This clause makes provision for where any person required, authorised or entitled to carry out work for, required by, or on behalf of CEHOG is obstructed in carrying out that work. A court of summary jurisdiction may, upon application, order an individual to allow the authorised person to carry out the action in question. Any person failing to comply with this order is guilty of an offence.

CEHOG notes the provisions within this clause.

### **Clause 82: Effect of moving from accommodation for works to be carried out**

This clause outlines that where a person vacates a premises for the purposes of allowing works to be carried out as required by any notice under the Bill, or a statement of remedial work, their tenancy or other occupancy arrangement is unaffected and is taken to not have been terminated, altered or varied. When the person regains lawful occupation they do so under the same terms.

CEHOG welcomes and notes the protection afforded to the tenant.

### **Clause 83: HMOs occupied in breach of Act**

This clause confirms that notwithstanding any common law rule that unlawful contracts are not enforceable, a tenancy or licence in respect of an HMO remains enforceable, even if the landlord is required to obtain a licence under Part 2 of the Act but fails to do so.

CEHOG would seek clarification on the intention of this clause in relation to the payment of rents.

### **Clause 84: Fees**

This clause confers power to make regulations concerning fees, including the maximum amounts to be charged, how fees are to be calculated, and circumstances in which no fee is to be payable or in which fees are to be refunded.

CEHOG notes the making of regulations. It is councils view fee must be on a cost recovery basis as stipulated in 84 (3).

### **Clause 85: Guidance**

A council must have regard to guidance issued by the Department about the exercise of its HMO licensing functions.

CEHOG would welcome the provision of comprehensive guidance.

**Clause 86: Regulations and orders**

This clause confers a power to make consequential and supplementary provision by regulations. It lists the regulations contained within the Bill that are subject to draft affirmative resolution. Regulations which are not listed in the clause are subject to negative resolution. The clause also lists the bodies the Department must consult with when making certain regulations.

CEHOG notes the provisions within this clause.

**Clause 87: General notices**

This clause directs that any “general notices” issued by a council under the Bill must be given in writing and published in such manner as CEHOG considers appropriate.

CEHOG notes the provisions within this clause.

**Clause 88: Interpretation**

This clause defines a number of terms used throughout the Bill.

CEHOG notes the provisions within this clause.

**Clause 89: Consequential amendments and repeals**

This clause gives effect to the consequential amendments and repeals set out in Schedules 7 and 8 to the Bill.

CEHOG notes the provisions within this clause.

**Clause 90: Commencement**

Clause 90 enables the Department to make provision by order as to the day or days when the provisions of this Bill, excluding Clause 84 to 86, 90 and 91, come into operation. The listed clauses will come into operation upon receiving Royal Assent.

CEHOG notes the provisions within this clause.

**Clause 91: Short title**

Clause 91 provides that the Act shall be known as the Houses in Multiple Occupation Act (Northern Ireland) 2015.

CEHOG notes the provisions within this clause.

#### **SCHEDULES:**

##### **Schedule 1: Buildings or parts of buildings which are not houses in multiple occupation**

**Schedule 1 contains the detail about the buildings, or parts of buildings that are not classed as HMOs for the purposes of this Bill.**

CEHOG would re-state its comments regarding its concerns over the exemption of religious communities, Housing Associations, educational establishments and, building occupied by owners.

**Schedule 2: Applications for HMO licences: requirements and procedure Schedule 2 contains the detail about the procedure for the consideration of an application for an HMO licence.**

CEHOG notes the provisions within this clause.

**Schedule 3: Further provision about notices that require works to be carried Schedule 3 contains the detail about the provisions relating to notices requiring works to be carried out.**

**Part 1: Provision applying to all notices that specify works**

**Part 2: Failure to carry out works required by rectification notice or hazard notice**

CEHOG notes the provisions within this clause.

**Schedule 4: Variation and revocation of HMO licences: procedure Schedule 4 contains the detail about how and why a council may go about varying or revoking an HMO licence.**

CEHOG notes the provisions within this clause.

**Schedule 5: Part 4 notices: further provisions Schedule 5 contains the detail about the serving and operation of Part 4 notices.**

**Part 1: Service and date of effect of notices**

**Part 2: Suspension of effect of notices**

**Part 3: Variation and revocation**

CEHOG notes the provisions within this clause.

**Schedule 6: Definitions for the purpose of Clause 73** Schedule 6 contains definitions of terms used in Clause 73 of the Bill.

CEHOG notes the provisions within this clause.

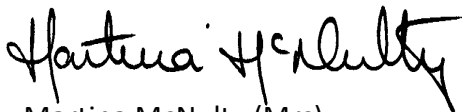
**Schedule 7: Consequential amendments** This Schedule contains the detail of the consequential amendments resulting from the introduction of this Bill.

CEHOG notes the provisions within this clause.

**Schedule 8: Repeals** This Schedule contains the detail of the repeals resulting from the introduction of this Bill.

CEHOG notes the provisions within this clause.

Yours sincerely



Martina McNulty (Mrs)  
Chief Environmental Health Officer  
Armagh City, Banbridge and Craigavon Borough Council

## 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.

## **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

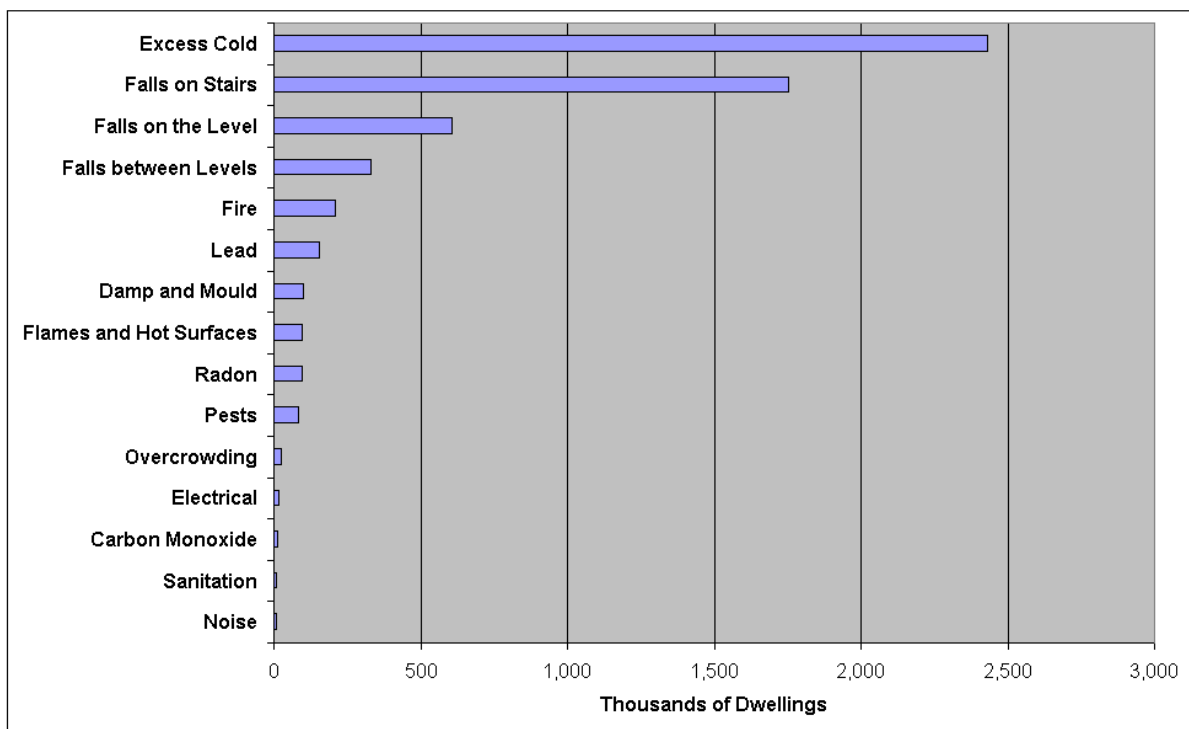
to keep them on board, in order to maximise influence on changing to the HHSRS so that the benefits are shared.

## 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)

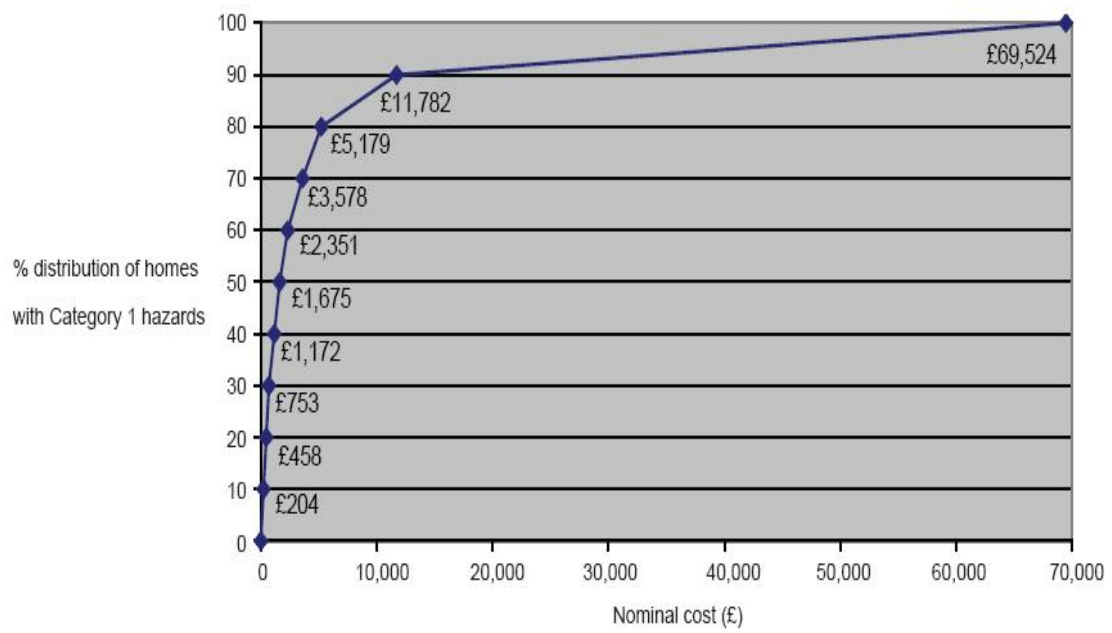


Note: Homes can have more than one HHSRS hazard, so the table above will not add up to the total number of homes with Cat 1 hazards (4.8 million)

(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	634,000	18,100	2,450

stairs and steps

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	1,276.25
Falls on the level	99.06	238.14	1,045.59
Falls associated with stairs and steps	119.54	243.41	1,084.00
Fire	79.28	950.43	3,311.63

			2,199.
Hot surfaces and materials	81	106.66	50

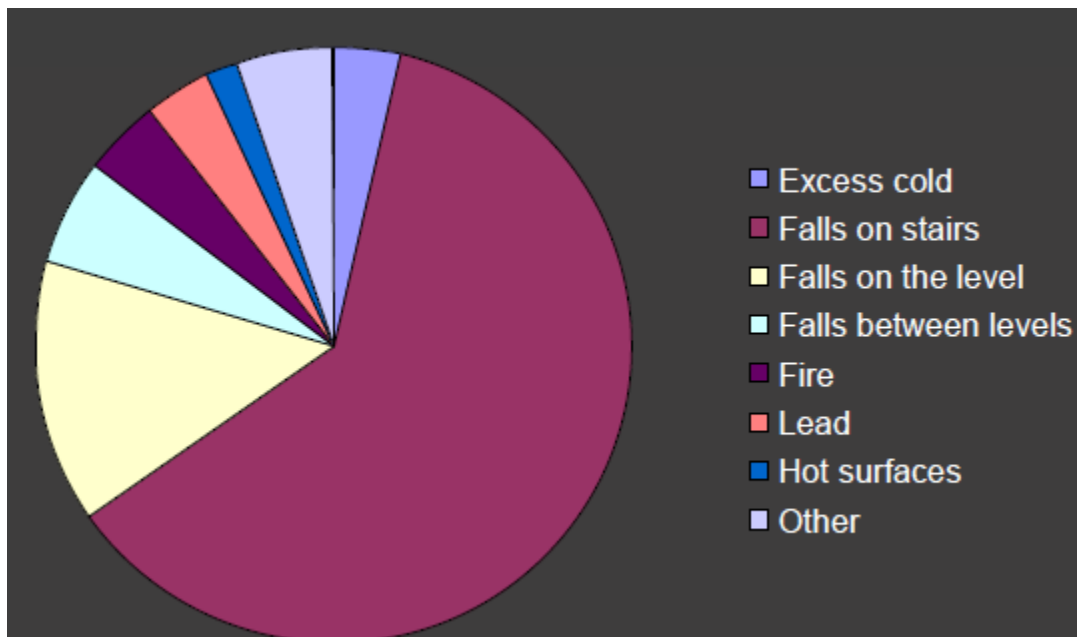
It can be demonstrated that using the HHSRS as the statutory fitness standard would prove a more cost effective option than introducing elements as proposed by the DSD.

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)

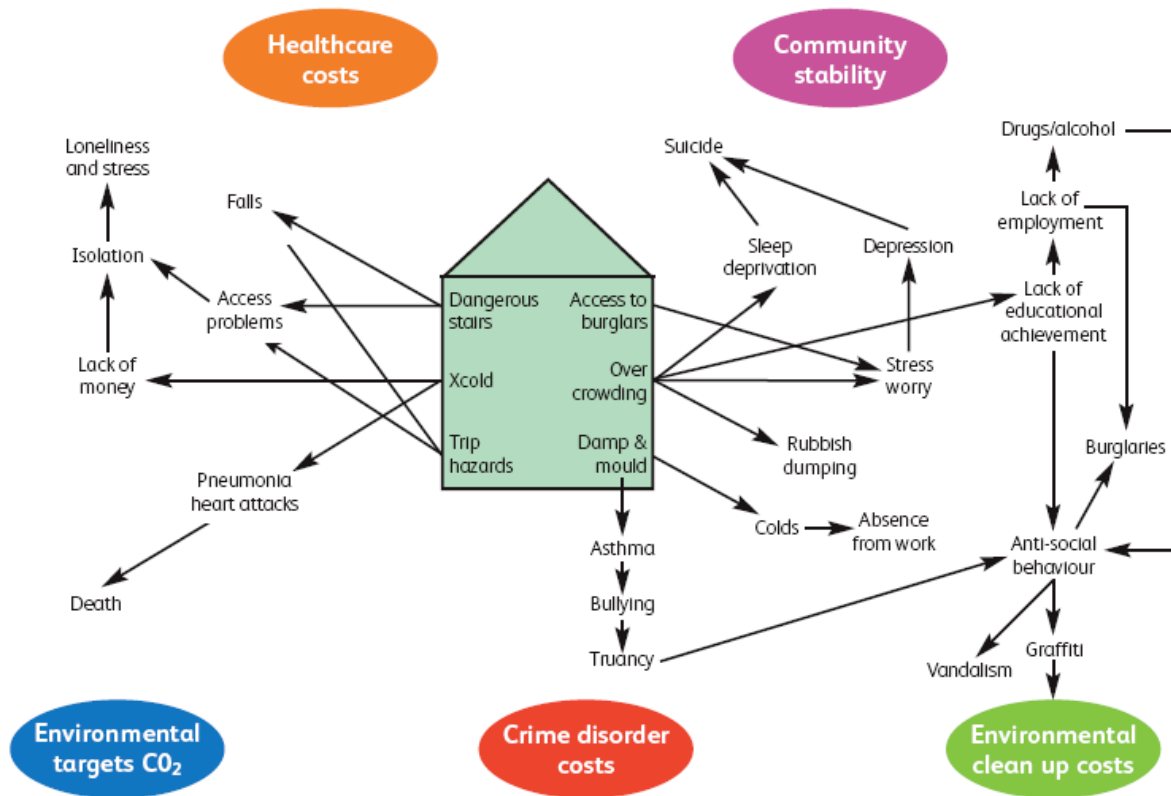
Breakdown of costs to the NHS caused by poor housing:



(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 HHRSR 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.