

Incorporation of the Housing Health  
and Safety Rating System into the  
Housing Law of the States of  
Jersey:

A Report by the Safe and Healthy  
Housing Research Unit, School of  
Law

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# Incorporation of the Housing Health and Safety Rating System (HHSRS) into the Housing Law of the States of Jersey.

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# Incorporating the Housing Health and Safety Rating System into Jersey Housing Law

<b>INTRODUCTION</b>	<b>1</b>
<b>PART 1 - RISK ASSESSMENT, THE HHSRS AND THE SITUATION IN ENGLAND AND WALES</b>	<b>2</b>
HHSRS Formula	3
<b>The HHSRS in legislation</b>	<b>3</b>
<b>PART 2 - COMMENTS ON THE DRAFTING INSTRUCTIONS</b>	<b>7</b>
General statement	7
Purpose of the proposed law	7
Detailed instructions	8
Content of the primary legislation	8
Interpretation/definitional section	8
Power to extend /alter the categories of hazards	8
Functions of the Committee	8
Enforcement Action	8
Time and Place Notice	9
Improvement Notices	10
Prohibition Notices	10
Demolition Notices	11
Power to require information	11
Power to make subordinate legislation	11
Requirement to comply with a code of practice	12
<b>Concluding comments</b>	<b>12</b>
<b>PART 3 - HOW THE HHSRS COULD BE INCORPORATED INTO THE DRAFT HEALTH AND SAFETY (DWELLINGS)(JERSEY) LAW 200-</b>	<b>13</b>
The draft law and incorporation of the HHSRS and suggested possible amendments	13
Concluding comments on the draft law	16
Order provisions and possible content	16
HHSRS Hazards	18
<b>PART 4 -CONCLUSIONS</b>	<b>21</b>
<b>APPENDIX 1 - EXAMPLES OF THE CLASSES OF HARM</b>	<b>22</b>
<b>APPENDIX 2 - REPRESENTATIVE SCALE POINTS</b>	<b>23</b>

## **INTRODUCTION**

This is a report to the Health and Social Services Department of the States of Jersey on the incorporation of the Housing Health and Safety Rating System (HHSRS) into the housing law of the States of Jersey. This report has been compiled following:

- a) a review of the original drafting brief and the draft Health and Safety (Dwellings) (Jersey) Law 200-
- b) attendance at a workshop on 11 January 2007

The brief of the consultancy is:

"To consider whether, and if so how, the Housing Health and Safety Rating System can be transposed into Jersey law, to provide advice and prepare a report including options for achieving this with suggested amendments and recommendations, to be submitted by 2 March 2007"

This report is divided into three main sections.

1. A review of the HHSRS and the legislation in England and Wales
2. Comments on the drafting instructions for the Jersey law
3. Suggestions as to the possibilities for incorporation of the HHSRS into Jersey law taking account of the existing draft law

## PART 1 - RISK ASSESSMENT, THE HHSRS AND THE SITUATION IN ENGLAND AND WALES

- 1.01 The HHSRS is a risk-assessment methodology and is a system intended to address the health and safety aspects of housing, starting from the policy standpoint that state intervention in housing conditions is primarily justified to safeguard and promote public health. Thus the HHSRS is concerned with the effects of deficiencies in dwellings, rather than the deficiencies or defects themselves. The statutory Operating Guidance<sup>1</sup> defines 'deficiency' as

*the failure of an element (of the dwelling) to meet the Ideal. The failure could be inherent, such as the result of the original design, construction or manufacture, or it could be the result of deterioration, disrepair or a lack of repair or maintenance.*

The principle is that "any residential premises should provide a safe and healthy environment for any potential occupier or visitor" and to satisfy this principle, a dwelling should be designed, constructed and maintained with non-hazardous materials and should be free from both unnecessary and avoidable hazards. Some hazards are necessary or unavoidable such as electricity for lighting or stairs to access upper floors; for such hazards, the design, construction and maintenance should be such as to reduce to a minimum both the probability of an occurrence which could result in harm and the potential harm that could result. In this context health includes mental health such as stress.

- 1.02 Any risk assessment methodology takes account of both the likelihood of an occurrence and possible harm. Thus an event that might be unlikely but cause great harm can be compared with a more common or likely event but with less severe outcomes. A typical approach used in occupational health and safety risk assessments is set out in the following table.

	Increasing severity of harm →		
Likelihood	<i>Minor</i>	<i>Moderate</i>	<i>Severe</i>
<i>Very Likely</i>	Medium	High	High
<i>Moderately likely</i>	Low	Medium	High
<i>Unlikely</i>	Low	Low	Medium

- 1.03 This would be used to produce a risk rating and establish priorities for action to reduce those risks. Such an approach, while suitable for management when addressing risks in a workplace, is not sufficiently sensitive to address all the possible risks from the potential hazards in existing dwellings. For example falling down stairs of poor design may be quite common but the outcomes can be anything from a sprained ankle to death with the outcomes

<sup>1</sup> *Housing Health and Safety Rating System: Operating Guidance, Housing Act 2004 Guidance about inspections and assessment of hazards under Section 9, (2006) ODPM, London*

almost immediate, whereas exposure to damp and mould may be even more common, but the effects are not likely to cause death and are more insidious. Conversely the chance of an explosion in the home is extremely rare, although the outcome could be catastrophic. That is, in part, why the HHSRS was developed.

- 1.04 As in any risk assessment approach consideration in the HHSRS is given to the likelihood of an occurrence and the possible harmful outcomes. The likelihood (or probability) of an occurrence (that is an event or period of time exposing an individual of the vulnerable age group to a hazard) over the next 12 months is expressed as a ratio. For the HHSRS there are four classes of harm, and all would cover injuries or health outcomes that would require medical attention. Each class of harm is given a weighting to reflect the degree of incapacity, thus for example Class 1 has a weighting of 10,000 and would include such outcomes as death, 80% burns and permanent paralysis below the neck. Examples of the classes of harm taken from the Operating Guidance are given in Appendix 1, but it is not part of the system for the surveyors to predict what harms would occur.
- 1.05 There is a formula to produce a hazard score. This is set out in the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No 3208) (the HHSRS Regulations) and can be represented as: -

### HHSRS Formula

Class of Harm		Likelihood		Spread of Harm		Products	
	Weighting		1 in L		Harm (%)		
I	10,000	x	1/L	x	O <sub>1</sub>	=	S <sub>1</sub>
II	1,000	x	1/L	x	O <sub>2</sub>	=	S <sub>2</sub>
III	300	x	1/L	x	O <sub>3</sub>	=	S <sub>2</sub>
IV	10	x	1/L	x	O <sub>4</sub>	=	S <sub>3</sub>
Hazard Score						=	(S <sub>1</sub> + S <sub>2</sub> + S <sub>3</sub> + S <sub>4</sub> )

### The HHSRS in legislation

- 1.07 The HHSRS has been utilised in the Housing Act 2004 as the basis for interventions by local authorities, it was developed in advance of any draft legislation and version 1 was rolled out to local authorities in 2000 and the report of development was also published<sup>2</sup>. As the result of further research and evaluation studies, draft version 2 was published in December 2003 to coincide with the introduction of the Housing Bill. The finalised version 2 Guidance was published (along with a project report on the development of version 2<sup>3</sup>) at the time the Bill received the Royal Assent, in November 2004.

<sup>2</sup> *Housing Health and Safety Rating System: The Guidance (Version 1) (2000) DETR, London; & Housing Health and Safety Rating System: Report on Development (2000) DETR, London.*

<sup>3</sup> *Project Report: Preparation of the Health and Safety Rating System Guidance (Version 2), (2004) ODPM, London, see:*

This, with a few minor changes, became the Operating Guidance, issued when the relevant provisions of the Act and secondary legislation came into force in April 2006.

- 1.08 The Act itself does not make reference to the HHSRS, merely Category 1 and Category 2 hazards. These are defined by reference to the HHSRS in the secondary legislation, the HHSRS Regulations, in which the HHSRS is defined as the prescribed method for assessing hazards.

The Act defines "category 1 hazard" as  
*a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under the prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;*

"category 2 hazard" is defined similarly except referring to *"a numerical score below the minimum amount prescribed for a category 1 hazard of that description"*.

- 1.09 The term "hazard" is further defined as "any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)". The HHSRS Regulations list the hazards (see Part 3).

The Act defines "residential premises" as -

- (a) a dwelling;
  - (b) an HMO;
  - (c) unoccupied HMO accommodation;
  - (d) any common parts of a building containing one or more flats,
- and that "dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling,

- 1.10 It should be emphasised that the HHSRS is a qualitative system not a quantitative system, and in itself does not set a standard. In order that too much significance is not placed on the hazard scores the HHSRS Regulations actually band the scores as follows:

<b>Band</b>	<b>Hazard Score Range</b>
A	5,000 or more
B	2,000 to 4,999
C	1,000 to 1,999
D	500 to 999
E	200 to 499
F	100 to 199
G	50 to 99
H	20 to 49
I	10 to 19
J	9 or less

- 1.11 The HHSRS Regulations then specify that hazards falling within Bands A, B and C are Category 1 hazards and those falling within in any other band are

Category 2. It should also be noted that the scores are generated using "representative scale points" (RSPs) (included in Appendix 2 to this report) prescribed in the HHSRS Regulations for both "likelihood" and "spread of harms". The Operating Guidance gives national averages for both which are derived from national statistics, but there is no reason why local data cannot be used to inform decisions. In the context of the HHSRS, Risk is the combination of the likelihood of an occurrence and the spread of harms resulting during the following twelve-month period. For the purposes of the HHSRS this is expressed as the Hazard Score or Hazard Rating.

- 1.12 Surveyors are not expected to make precise judgements as to likelihoods and harm as the RSPs represent ranges. Furthermore it will be seen from Appendix 2 that there are only 16 possible choices on the likelihood scale, and advice in the Operating Guidance is that for the most part only hazards thought to be worse than average should be scored. The notable exception would be the hazard of excess cold where the national average has already been assessed as a Category 1 hazard for some ages of properties.
- 1.13 The rating of a hazard is made on the basis of any age group that has been identified from analysis of health and other data as particularly vulnerable and the actual occupier is ignored for the initial assessment and rating purposes. This is on the principle that if a dwelling is safe for the vulnerable age group it will be healthy and safe for all. It also allows for empty properties to be rated. The current occupiers (if any) only become a consideration when deciding on the best course of action.
- 1.14 If a local housing authority considers that a category 1 hazard exists on any "residential premises", it must take the appropriate enforcement action in relation to the hazard.

"the appropriate enforcement action" means one of the following courses of action

- a) serving an improvement notice
  - b) making a prohibition order;
  - c) serving a hazard awareness notice;
  - d) taking emergency remedial action;
  - e) making an emergency prohibition order;
  - f) making a demolition order
  - g) declaring a clearance area.
- 1.15 If two or more courses of action are "available" to the authority in relation to the hazard, they must take the course of action considered to be the most appropriate of those available to them. So although there is a duty to take some action, which course is a matter for the local authority taking account of all the circumstances and the enforcement guidance<sup>4</sup>.
- 1.16 Although the HHSRS appears to be limited in application to buildings in the Housing Act 2004 it does not have to be so restricted in application. It was devised so that it could be used for assessing the health and safety risks in any form of accommodation including mobile homes or other non-traditional forms of accommodation. It should also be noted that although numbers are

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<sup>4</sup> *Housing Health and Safety Rating System: Enforcement Guidance - Housing Act 2004 Part 1: Housing Conditions*, (2006) ODPM, London

used, these only reflect the surveyor's assessment of the risks to health and safety.

## **PART 2 - COMMENTS ON THE DRAFTING INSTRUCTIONS**

### ***General statement***

- 2.01 These comments are made recognising that the original drafting instructions were last revised in June 2002, some 18 months before either the Housing Bill or the draft version<sup>2</sup> of the HHSRS guidance were published.
- 2.02 As in England and Wales statutory nuisance provisions can only be complementary. Case law e.g. *R v Bristol City Council ex p Everett*<sup>5</sup> indicates the limitations of those provisions for dealing with housing conditions.
- 2.03 The aim of the HHSRS is to assess risks to health and safety in homes, and thereby justify action to secure remedies, but it will also enable priorities to be set. Unlike the standard of fitness, which it has replaced, the HHSRS does not indicate what is "fit" or "unfit". It is a means of making an overall assessment of conditions rather than set a "pass" or "fail" approach. If necessary that is something that can be done within the local legislation, as has been done in England and Wales by defining Category 1 and Category 2 hazards within secondary legislation. That is, any "standard" or "action level" can be drawn or specified by reference to an HHSRS score or band.
- 2.04 The second paragraph in the General Statement refers to standards, but the HHSRS does not set a standard. "Crowding and space" is one of the hazards and needs no specific mention in the legislation for the problem to be addressed. It is the one hazard where the existing occupiers are taken into account when making the final rating. The procedure is set out in the Operating Guidance for England and Wales.
- 2.05 The Decent Homes Standard has incorporated the HHSRS by stipulating that in order to be "Decent" a dwelling must be free of all Category 1 hazards<sup>6</sup>. In England and Wales local authorities cannot take action against themselves under the Housing Act 2004 to deal with serious hazards. However the HHSRS has been incorporated into the Decent Homes Standard and so does apply to local authorities' own housing.
- 2.06 There is reference to a fitness rating, and this has been overtaken by events. The general statement refers to the "detail of the quantification of risk on a mathematical basis" (page 2); the first Part of this report has hopefully made clear that the HHSRS is not a quantitative system, rather numbers are used to represent the surveyor's assessment of the risks. The system as now established in England and Wales provides the flexibility required and as articulated in the final paragraph of the general statement.

### ***Purpose of the proposed law***

- 2.07 At first indent 2 there is reference to "specifying the standards for fitness of occupation of dwellings". To incorporate the HHSRS it might be better to draft the law to say "to make regulations prescribing how dwellings should be assessed and what are considered unacceptable risks to health and safety in dwellings".

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<sup>5</sup> *R v Bristol City Council, ex parte Everett* QBD [1998] 3 All ER 603, [1999] 1 WLR 92, [1998] 42 EG 166, 77 P & CR 216

<sup>6</sup> *A Decent Home: Definition and guidance for implementation (2006)* DCLG, London

2.08 In second indent 1 there is again the notion of requiring "compliance with approved standards". The HHSRS approach is not about standards, but assessing hazards, and so, given the principles of the HHSRS, references in this indent and elsewhere in this paragraph would be better construed as "reduction in unacceptable or avoidable hazards arising from deficiencies in dwellings" or where appropriate in this section to "reduce unacceptable or avoidable hazards in dwellings".

### ***Detailed instructions***

#### **Content of the primary legislation**

2.08 The list of hazards should now reflect those in the HHSRS as used in England and Wales and set out in Part 3. The definition of the hazard of Excess Cold in the operating guidance and the factors to be taken into account, would seem to indicate that there is no need to address the issue of energy efficiency as a separate matter within the Jersey law. As is set out in Part 3, there also seems no need to include the list of hazards within the primary legislation.

#### **Interpretation/definitional section**

2.09 The Housing Act 2004 has a limited definition of the term "residential accommodation" (see above); however the HHSRS was developed so that it could be used to assess any form of accommodation. There is therefore no reason why the definition included in version 1 of the HHSRS and in the instruction cannot be retained. This would enable the law to apply to caravans, mobile homes and other temporary structures used for accommodation.

#### **Power to extend /alter the categories of hazards**

2.10 If the list of hazards is included in secondary legislation (see Part 3) there will also be no need to have in the law a power to modify the list. It is believed that the 29 hazards within the HHSRS is a comprehensive list given the current state of knowledge; it is highly unlikely that any changes will be required in the foreseeable future.

#### **Functions of the Committee**

2.11 There is no comment on this provision, save that it is important that the Committee has powers to be able to investigate and assess housing conditions using the HHSRS without the need for complaint. It is often the case that the occupiers of the worst housing conditions are the most insecure and least likely to complain.

#### **Enforcement Action**

2.12 Instructions refer to the provisions in the Housing Act 1985. These are not as flexible as those included in the Housing Act 2004 and available to local housing authorities in England and Wales. It is suggested that the Housing Act 2004 might now be a better model.

- 2.13 Reference is made to the notion of "significant" or "substantial" risks and those that are less serious. The HHSRS allows that distinction to be made, and in the England and Wales legislation there are the Category 1 and Category 2 hazards. The same enforcement provisions are available for both categories of hazard, the difference is that local authorities have a duty to take one of the courses of action with regard to Category 1 hazards, but there is only a power with regard to Category 2 hazards. However, it would fetter a local authority's discretion to have a policy of not acting on any Category 2 hazards. The HHSRS and the Hazard Rating Bands could be used to define what are "significant" "substantial" or "unacceptable" or "less serious" risks. It is a matter of policy which bands are chosen and whether this should be included in the primary legislation. Such matters might be better left to the secondary legislation.
- 2.14 Reference is made to the assessment being made on a qualitative not quantitative judgement. As made clear earlier the HHSRS is not a quantitative system, but uses number to reflect the surveyor's professional judgement as to the severity of risks, and so the HHSRS meets that requirement.

### **Time and place notice**

- 2.15 This was a requirement in the legislation until changes introduced in the Local Government and Housing Act 1989 and has not been a requirement since then. After the 1989 Act, when a local authority decided that a dwelling was unfit for human habitation they had to determine the "most satisfactory course of action". The methodology used was based on the Neighbourhood Renewal Assessment (NRA) methodology. This is a method for comparing options for dealing with housing whether individually or on an area basis. Local authorities were required by the legislation to have regard to the code of guidance setting out the NRA methodology when deciding on the course of action to deal with an unfit dwelling or dwellings. As part of this methodology, consultation with the owner (and occupier) of property would be expected and wider social, environmental and economic considerations would also be taken into account where alternative courses of action were possible. The "minded to procedure", introduced in 1996, additional to determination of the most satisfactory course of action has been removed from housing legislation by the Housing Act 2004. It was seen as unnecessary given other provisions such as the Enforcement Guidance. There is however no reference to such a procedure in the draft Law seen and there is no necessity for it.
- 2.16 Under the 2004 Act the term used is "best course of action" and in deciding the course of action local authorities have to have regard to the "Enforcement Guidance" made under s.9 of the 2004 Act. This guidance also includes reference to the NRA methodology, as a means of comparing options, as well as the Enforcement Concordat<sup>7</sup> (which may be replaced in time as the result of government initiatives on "Better Regulation"). In addition the 2004 Act requires that local authorities serve a statement of reasons for whatever course of action they take. This should explain why one course has been taken and not others (and is also served on occupiers). It should be noted that the HHSRS and the hazard rating does not dictate the course of action. It is possible to take different courses of action on different dwellings that have

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<sup>7</sup> see [http://www.cabinetoffice.gov.uk/regulation/reform/enforcement\\_concordat/](http://www.cabinetoffice.gov.uk/regulation/reform/enforcement_concordat/)

similar hazard ratings, for example where a member of the vulnerable age group is occupying one property but not the other. Different courses of action may also be taken after considering the views of the different owners and occupiers.

- 2.16 The system being implemented in England and Wales allows flexibility to address the many different situations that occur. So for example different courses of action can be taken with regard to different Category 1 hazards in the same dwelling. The actual rating is only the start of the process. In the circumstances it might that a formal Time and Place meeting approach, which is more limited than current arrangements under the Housing Act 2004, should not be included.

### **Improvement Notices**

- 2.17 Provisions on Improvement Notices exist in the Housing Act 2004 and provide that the Notice shall include:
- whether the Notice is served as a consequence of the duty or power to act
  - details of the nature of the hazard(s) and premises where it (they) exist
  - details of deficiencies giving rise to the hazard(s)
  - details of premises where the remedial action is required and the nature of that action
  - date when remedial action should be started (not sooner than 28 days from service)
  - the period when remedial action is to be completed (or periods if different for the different hazards)
  - information on appeals including how and where and time for appeals (21 days - appeal is to the Residential Property Tribunal not the County Court)
- 2.17 Failure to comply with such a notice is an offence and there is power to undertake the work in default (or by agreement).
- 2.18 In the Housing Act 2004, because the concerns are with health and safety, there is the possibility that immediate or imminent unacceptable risks may be encountered. There is therefore a provision for emergency remedial action to be taken. Consideration might therefore be given to whether the Committee should be able to take such action as is necessary to remove the imminent risk and then serve a notice. Equally there may be situations where the risks to the current occupiers might not be considered as serious, and then the Improvement Notice could be suspended until for example either a change of tenancy or some other change in circumstances.

### **Prohibition Notices**

- 2.18 In the Housing Act 2004 these are referred to as Prohibition Orders. As for Improvement Notices and imminent risks to health and safety it is possible to make an emergency Prohibition Order. Alternatively it is possible to suspend the Prohibition Order where this is considered the best course of action. Copies of Prohibition Orders must be served within seven days of being made and there is a 28-day appeal period. Prohibitions not only relate to the

dwelling as a whole but also can relate to part of the dwelling (equivalent to the former part Closing Orders) and can also relate to who occupies, as can be seen from the RPT decision in the appeal concerning Western Land plc and West Berkshire DC<sup>8</sup>.

## **Demolition Notices**

2.19 This is similar to the Demolition Order provisions, which remain in England and Wales. However they are only an option where the dwelling contains a Category 1 hazard. Clearance areas also can only contain dwellings that have Category 1 hazards.

## **Power to require information**

2.20 The Housing Act 2004 (Schedules 1 and 2) set out the provisions as to service of Improvement Notices and Prohibition Orders. In addition to service on licence holders, or persons having control or the owner (depending upon the circumstances), copies of notices and orders must be served on "any person who, to their knowledge" has a relevant interest including occupiers, mortgagees and lessees. There is no provision on the face of the draft Act for information to be obtained. Local authorities will use the provisions in s.16 of the Local Government (Miscellaneous Provisions) Act 1976 (Power of local authorities to obtain particulars of persons interested in land) to obtain the necessary information. If such a power is not available elsewhere in the Jersey legislation, the new law will need to include something similar as suggested in the drafting instructions. The 2004 Act also allows the use of other information held by local authority in exercise of its functions under Part 1 of the Act, such as Council Tax and Housing Benefit records (section 237). Section 235 also provides for an authorised local authority officer to require a "relevant person" to produce such documentation as may be required by notice.

## **Power to make subordinate legislation**

2.21 As will be seen in Part 3 this will be an important provision as a means of incorporating the HHSRS into Jersey law. Again however there is reference to standards (for standard amenities and in houses in multiple occupation (HMOs)) and overcrowding. The incorporation and use of the HHSRS obviates the need for these. Within an HMO, each unit (letting) can be rated as for any self-contained flat. The inspection and risk assessment will consider all the common parts and shared amenities associated with that unit of accommodation. As an aside it should be noted that under the Housing Act 2004, there are prescribed standards for licensing HMOs. Already problems have arisen with this approach, which is in conflict with risk-based regulation. This has arisen not least because of the inflexibility of the standards. In practice it has been found for example, despite a "prescribed standard" on the provision of wash hand basins, different local authorities are placing different interpretations on the requirement (including ignoring it) and implementing the requirement differently.

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<sup>8</sup> see <http://www.rpts.gov.uk/Files/2006/October/00000M02.pdf>

## **Requirement to comply with a code of practice**

2.22 While the principal law may require a provision with regard to a code of practice, it is suggested that this is not specifically necessary for incorporation of the HHSRS although this may be an alternative to providing statutory guidance such as the Operating Guidance. However it may be appropriate for issues of management (which are outside the scope of the HHSRS), and this is particularly relevant for HMOs and multi-occupied buildings. The DCLG has also produced guidance on the HHSRS for landlords and property related professionals<sup>9</sup> and it might be that something similar could be developed in Jersey. However this does not have any statutory backing in England and Wales. It may be, however, that if Law Commission recommendations are acted upon, the HHSRS will be incorporated into Landlord and Tenant Law and it would be a term in every occupation agreement that, from the outset, the accommodation is free from a Category 1 hazard<sup>10</sup>.

## **Concluding comments**

- 2.23 The HHSR approach allows for "smart regulation" so that action and enforcement is taken on the basis of risk and evidence (including that obtained from inspection) rather than by some fixed and sometimes arbitrary standards that are not related to impacts on health and safety.
- 2.24 The drafting instructions were developed before all the provisions now in force in England and Wales had been fully developed. There were some misconceptions that it is hoped this commentary has been able to correct. It is nevertheless concluded that the HHSRS can be incorporated into Jersey law and meet the local requirements, and indeed avoid some of the problems encountered in England and Wales.

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<sup>9</sup> *Housing Health and Safety Rating System: Guidance for Landlords and Property Related Professionals*, (2006) DCLG, London

<sup>10</sup> *Renting Homes: the final report: Volume 1 Report (2006) Law Commission (Law Com No 297)*, Cm 6781 -London

## **PART 3 - HOW THE HHSRS COULD BE INCORPORATED INTO THE DRAFT HEALTH AND SAFETY (DWELLINGS)(JERSEY) LAW 200-**

- 3.01 This section sets out some possible changes to the existing draft law and also possible contents of secondary legislation that would enable the HHSRS to be incorporated into Jersey law.

### ***The draft law and incorporation of the HHSRS and suggested possible amendments***

- 3.02 The long title includes reference to "conservation of energy and water supplied to, dwellings...". This is not necessary for the incorporation of the HHSRS into Jersey Law. The main concerns are the health safety and welfare of persons, and these additional factors are different considerations from those related to health, and the main concerns on energy conservation can be addressed under the hazards of Excess Cold and Excess Heat.

#### **3.03 Clause 1**

The definition of dwelling limits the application of the law to buildings although the drafting instructions indicate that there is a need to be able to apply the provisions to a wider range of accommodation such as mobile homes. Comments in the workshop also indicated this to be the case. As previously indicated the HHSRS was devised so that any form of accommodation could be assessed. The limitation is a consequence of the drafting of the Housing Act 2004.

#### **3.03 Part 2 & Clause 2**

It is advised that in the heading for this Part the words "standards" are omitted.

The comments at 3.01 refer and given the principles behind underpinning the HHSRS and the hazards that can be assessed there seems to be no need for the inclusion of 2(b). The conservation of energy and water supplied to dwellings is a different purpose than that of the promotion or protection of health and safety in dwellings or accommodation.

#### **3.04 Clause 3(1)**

Sub-clauses 3(1)(b) and (c) are unnecessary for incorporating the HHSRS into the law. However it is suggested that the "Orders prescribing standards.....etc" be amended so that the Minister may make Orders for prescribing the descriptions of hazards to be assessed in residential accommodation and the method for assessing the seriousness of the risks arising from those hazards identified in residential accommodation.

#### **3.05 Clause 3(2)**

If the hazards to be assessed are included in Orders there is no need for Clause 3(2). The Order can also include all 29 hazards from the HHSRS if that is required. Should that not be considered necessary at this time, those hazards that are priorities could be listed in the Order and it will be easier to add hazards at a later date.

**3.06 Clause 4**

Comment has been made in Part 2 about Codes of Practice. This may be a useful provision for the future but is not necessary at this stage for incorporating the HHSRS into the legislation. However it may be relevant if the Minister wishes to publish the equivalent of the Operating Guidance or even the Enforcement Guidance.

**3.07 Part 3 Enforcement**

In Clause 6 the notion of Hazard Awareness Advice is introduced. There is a Hazard Awareness Notice in the provisions of the Housing Act 2004. The drafting here will need some slight changes as under the HHSRS there would be no "contravention of a relevant provision". It may be that Jersey will want to limit the use of "hazard awareness" procedures to where there is a "low risk" and so the drafting could allow for that by referring to "low risk as defined by Order". The States could then restrict this course of action to certain Hazard Bands in the first Order (see below at paragraph 3.21). There is no such limitation in the Housing Act 2004, although the Enforcement Guidance does suggest where such an approach might be inappropriate. It might therefore be more flexible to consider using phrasing such as "where the inspector has assessed a hazard in a dwelling using the prescribed method and in all the circumstances including the seriousness of the hazard, thinks it appropriate for protecting the health and safety of the occupiers of the dwelling, the inspector may provide the person having control of the dwelling such information and advice as is necessary to secure remedial action to reduce that hazard".

3.08 What should be considered is whether there should be a provision as in the Housing Act 2004 that restricts the local authority to one course of action in respect of any hazard at one time. That does not prevent different courses of action for different hazards in the same dwelling at the same time. Thus for less serious hazards the Hazard Awareness Notice could be appropriate, but for other more serious hazards an Improvement Notice or even Prohibition could be appropriate.

3.09 There is no offence committed for failing to comply with a Hazard Awareness Notice. However if in due course the hazard still exists, the local authority can take another course of action to secure remedy.

**3.10 Clause 7**

On Improvement Notices again there is reference to a "contravention". The notion of contraventions does not fit with integration of the HHSRS into Jersey law. It would be better to refer to the existence of a hazard (and if necessary hazard(s) of a prescribed description or seriousness as assessed using the prescribed method. It is suggested that consideration could be given to making Improvement Notices an option for action: -

- where the inspector has identified a hazard or hazards and
- having assessed the seriousness of the same using the prescribed method, and
- in all the circumstances including the seriousness of the hazard and the cost of the remedial action it is seen as the best course of action.

The service of an Improvement Notice would then be just one way of securing a reduction in the risks to health and safety by requiring remedial action to mitigate a hazard or hazards. It could thus be a discretionary power to serve such a notice.

- 3.11 It may be that the States of Jersey will not want that degree of flexibility. The amount of discretion can be limited by inserting a new clause that requires one of the courses of action that are available to be taken when the risk is serious. This would be the equivalent to the Category 1 and Category 2 hazards in the Housing Act 2004. Where the distinction is drawn is a matter for the States of Jersey. It could be a higher or lower threshold than in England and Wales. Any duty to act would then be a general duty related to unacceptable risks as defined by reference to the HHSRS.
- 3.12 It is a matter of policy whether there should be a duty on the Inspector to take action for certain hazard bands or ratings. However in the draft law the Improvement Notice is only available where the dwelling could be made compliant at reasonable expense. This notion does not fit with the HHSRS. A serious (Category 1) hazard could be very cheap to remedy whereas a less serious hazard could be very expensive to remedy. Also there may be a number of hazards in the dwelling none of which are serious but the overall impression is of a rundown property. It might be expensive to remedy all the hazards together, but a Prohibition Notice would not be in the best interests of the owner, occupier or the States of Jersey.
- 3.13 Clause 7(1)(c) refers to "reasonable expense"; given the degree of flexibility that is required and that the intention is to protect health and safety it may be that this sub-clause could be deleted. This would be covered by the suggested changes above.
- 3.14 Paragraph 2.17 above sets out some of the information to be included in Improvement Notices under the Housing Act 2004. Clause 7(2)(c) requires that the notice should include reasons for the opinion. In the Housing Act 2004 this is covered by the Statement of Reasons, which has to be served with any notice or order. As drafted currently it is a requirement to give reasons for the opinion in both Improvement Notices and Prohibition Notices; it may be that this provision should also be included in the Hazard Awareness provision. Again, given that there will not be a "contravention", Clause 7(2) and Clause 9 could be amended to require the inspector to include in a notice:-
- the deficiencies giving rise to the hazard or hazards
  - the hazard rating for each hazard using the prescribed method
  - the works or measures necessary to remedy the hazard or hazards identified
  - the reasons why this course of action has been taken
  - the period within which the steps should be taken to remedy the hazard or hazards and when these should be completed

### 3.15 **Clause 8**

The comments made in respect of Improvement Notices apply to Prohibition Notices. Again rather than "contraventions" it might be better to refer to hazards or unacceptable risks and the Prohibition could be one action available to protect occupiers from that risk.

- 3.16 Prohibition Notices are, as drafted, available where not only is there a contravention (comment has already been made on the use of that term) that will continue or be repeated but also an "imminent risk of serious harm". This phrasing might be too restrictive as the prohibition of part of a dwelling could be the best option, not because of the imminent risk, but because of the cost of remedying the hazard. It is the case that imminent risk of serious harm could be remedied by immediate action to repair or replace an element in the dwelling such as a gas fire (such as under the emergency remedial action in the Housing Act 2004). Again, Prohibition Notices should perhaps be just one option for dealing with a hazard. A category 1 hazard does not necessarily mean there is an imminent and serious threat to health and safety. Removing the imminent threat could also still leave a Category 1 hazard. It should be noted that in England and Wales, there is an exception to the "one course of action for one hazard" rule. This is where an Improvement Notice can follow Emergency Remedial Action and a Prohibition Order can follow an Emergency Prohibition, and together they count as a single course of action.
- 3.17 It is a matter of policy whether the States of Jersey will wish to restrict the use of Prohibitions to certain hazard rating bands.
- 3.18 **Clause 9**
- Some comment has been made at paragraph 3.14 about the contents of Improvement Notices; the same information could apply to Prohibition Notices and Demolition Notices. Again the term hazard should replace "contravention" (Clause 9 (1)). It may also be that as well as an approved code of practice at Clause (2)(a) reference could be made to any other guidance that is issued.

### **Concluding comments on the draft law**

- 3.19 As the HHSRS is concerned with the impact of deficiencies in dwellings on health and safety, some consideration may need to be given as to whether there should be emergency powers to deal with an imminent risks.
- 3.20 As drafted, the courses of action are not alternatives. Consideration should be given to whether the model in the Housing Act 2004 is a more appropriate approach rather than basing the provisions on previous housing legislation. Removing the notion of contraventions and reasonable expense from the draft law will facilitate incorporation of the HHSRS into the draft Housing Law. Any limitations on discretion or flexibility might be better based on the hazard rating. Any notion of costs is better as only one of the considerations in deciding on the best course of action for dealing with a hazard or hazards in the dwelling or accommodation.

### ***Order provisions and possible content***

- 3.21 It is suggested that two Orders could be considered as a possible route for incorporating the HHSRS into Jersey law. The first would set out the HHSRS as the methodology and could also list the hazards, reflecting the HHSRS Regulations in England and Wales. Alternatively the list of hazards could be included only in a second order. Discussions have indicated that there is a need for more than the hazard titles to be incorporated within the legal framework so that there is a general awareness of what is entailed. This second order could therefore list (but not exhaustively) the matters to be considered when assessing risk from or seriousness of each hazard identified

in the dwelling and could set out the vulnerable age group (if any) taken into account when making the assessment of the seriousness of the hazard.

- 3.22 On the basis of discussions and consideration of the HHSRS, the first order would include the methodology for assessing the seriousness of hazards identified on inspection. This order would include the following provisions:
- Definitions - including "likelihood", "occurrence", "harm" and "classes of harm" (examples for each class of harm are included in the HHSRS Regulations - see Appendix 1) and "hazard" (risk of harm to the health and safety of an actual or potential occupier arising from a deficiency or deficiencies in a dwelling or accommodation).
  - Reference to the list of prescribed hazards and matters to be taken into account when assessing the seriousness of those hazards as included in the second order (and referring to the vulnerable age group).
  - Details of how inspections should be carried out (whole dwellings) including any reference to a code of practice and the need for making and keeping an accurate record of the inspection and deficiencies identified, and the hazards arising from those deficiencies.
  - The circumstances when a hazard should be assessed for its seriousness.

The HHSRS Regulations refer to statutory guidance on when it is appropriate to assess the seriousness of a hazard. The Operating Guidance says that "the inspector should at least score each hazard which is obviously worse than the average for that age and type of dwelling....Hazards from cold however should be scored where they are average or below average." The Operating Guidance includes the averages for different ages and types of properties in the hazard profiles derived from various health and housing data sources. These averages do help inform surveyors' judgements. The States of Jersey could utilise this information in guidance to inspectors or develop its own criteria for when hazards should be assessed. Local health statistics could be used to develop local average likelihoods at least for some hazards. Although the decision on when to score a hazard could be left to the inspector's discretion, the existence of such averages does help both inform surveyors' judgement (provide perspective) and provide a criterion for when hazards should be assessed, as the focus should be on the most unhealthy and unsafe housing, not the 'average'. There should not be a requirement to rate every hazard.

- Setting out the procedure for calculating the hazard rating as follows:
  - Assess the likelihood of an occurrence over the next 12 months bearing in mind the vulnerable age group (if any) and select the appropriate RSP (see paragraph 1.11);
  - Assess and select the appropriate RSP for each class of harm taking account of the vulnerable age group (if any); and
  - Inserting the appropriate RSP into the formula (given at paragraph 1.05) which should be included in the Order
- A list of Hazard Bands and the scoring range that these represent as included at paragraph 1.10.

- Any provisions where there should be a duty on the inspector to take action and any related provision related to the Hazard Bands.
- 3.23 The full list of HHSRS hazards is set out below. Below this, at paragraph 3.24, are examples of how the hazards and relevant matters (including the vulnerable age group) could be included in the second order.

## **HHSRS Hazards**

### **A PHYSIOLOGICAL REQUIREMENTS**

#### **Hygrothermal Conditions**

- 1 Damp and mould growth
- 2 Excess cold
- 3 Excess heat

#### **Pollutants (non-microbial)**

- 4 Asbestos (and MMF)
- 5 Biocides
- 6 Carbon Monoxide and fuel combustion products
- 7 Lead
- 8 Radiation
- 9 Uncombusted fuel gas
- 10 Volatile Organic Compounds

### **B PSYCHOLOGICAL REQUIREMENTS**

#### **Space, Security, Light and Noise**

- 11 Crowding and space
- 12 Entry by intruders
- 13 Lighting
- 14 Noise

### **C PROTECTION AGAINST INFECTION**

#### **Hygiene, Sanitation and Water Supply**

- 15 Domestic hygiene, Pests and Refuse
- 16 Food safety
- 17 Personal hygiene, Sanitation and Drainage
- 18 Water supply

### **D PROTECTION AGAINST ACCIDENTS**

#### **Falls**

- 19 Falls associated with baths etc
- 20 Falling on level surfaces etc
- 21 Falling on stairs etc
- 22 Falling between levels

#### **Electric Shocks, Fires, Burns and Scalds**

- 23 Electrical hazards
- 24 Fire
- 25 Flames, hot surfaces etc

#### **Collisions, Cuts and Strains**

- 26 Collision and entrapment
- 27 Explosions
- 28 Position and operability of amenities etc
- 29 Structural collapse and falling elements

- 3.24 Below are three examples of what could be included in the second Order by way of a description of the hazards and matters to which regard should be had when assessing the likelihood of an occurrence that could cause harm and the spread of harms. This will ensure that all parties are aware of the factors that will be taken into account in the hazard rating process. The list of matters to be taken into account cannot be exhaustive as it is impossible to cover every possibility and officers are required to exercise some professional judgement.

*Example 1*

**Hazard of Excess Cold:**

This hazard covers the threats to health from sub-optimal indoor temperatures and the vulnerable age group is all persons 65 years and over.

Matters relevant to the likelihood of an occurrence and the severity of the outcomes include:

- a) Thermal insulation (presence and adequacy) to structure
- b) Presence of dampness
- c) Settling of insulation
- d) Type of heating provision
- e) Size/capacity of heating system
- f) Installation and maintenance of or disrepair to heating system
- g) Heating system controls
- h) Amount of ventilation
- i) Control of ventilation controls
- j) Disrepair to ventilation or controls
- k) Draughts.

*Example 2*

**Electrical hazards**

This covers hazards from shock and burns resulting from exposure to electricity, including lightning strikes (it does not include risks associated with fire caused by deficiencies to electrical installations, such as ignition of material by a short circuit). The vulnerable age group is all persons under 5 years of age.

Matters relevant to the likelihood of an occurrence and the severity of outcome include:

- a) Out of date electrical installation that does not comply with current requirements
- b) Number and siting of outlets inadequate
- c) Fuses and meters inappropriately sited
- d) Earthing inadequate or lacking
- e) Disrepair of installation - including supply, meters, fuses, wiring, sockets light fittings or switches
- f) Presence of water, or installation in close proximity to water or dampness
- g) Lack of lightning protection or defective protection to building at risk of lightning.

*Example 3*

**Hazard of Noise**

This category covers threats to physical and mental health resulting from exposure to noise inside the dwelling or within its curtilage. There is no one age group more vulnerable than others

Matters relevant to the likelihood of an occurrence and the severity of the outcomes include:

- a) Site of dwelling (and whether located in a particularly noisy environment)
- b) Internal sound insulation and sound attenuation within the dwelling or between the dwelling/accommodation and other premises
- c) Sound insulation to external structure
- d) Disrepair
- e) Siting of plumbing
- f) Equipment or fittings
- g) Door closers.

## **PART 4 - CONCLUSIONS**

- 4.01 The Housing Health and Safety Rating System is a means of assessing risks arising from hazards in residential accommodation. The Hazard Score and Rating Band is a means of representing an inspector's professional judgement as to those risks. It is emphasised that the HHSRS is not a quantitative but qualitative methodology that is capable of contributing to improved public health by helping prioritise housing interventions. It is concluded that it is possible to incorporate the HHSRS into Jersey Law. This report has set out suggestions and pointers as to how this could be achieved.
- 4.02 It would be possible to incorporate the HHSRS into the Law with some changes to the draft Law (including some omissions from the current draft). Some key changes have been highlighted.
- 4.03 The States of Jersey may wish to consider whether the Law should include a wider range of powers (such as in the Housing Act 2004) and whether there should be specific duties relating to certain hazard bands. The Law itself will contain the intervention provisions available to inspectors to address the identified risks to health and safety, but the main elements of the HHSRS would be included in secondary legislation.
- 4.04 The detailed provisions relating to the HHSRS (which should not in itself dictate the course of action) would be best included in two Orders. One would set out the procedure for assessing the seriousness of the hazards and the second would list the hazards and matters to be taken into account when assessing the seriousness of that hazard (including the vulnerable age group). The possible contents of the two orders have been set out in the report.
- 4.05 As part of the preparations for implementation in England and Wales the Law School at Warwick University provided training courses to officers from every local authority on the HHSRS and also the enforcement provisions in the 2004 Act. Other training on the HHSRS has been provided for housing providers. If the HHSRS is incorporated into Jersey Law, the Law School will be happy to provide similar training courses on Jersey.

## APPENDIX 1 - EXAMPLES OF THE CLASSES OF HARM

### Class I

This Class covers the most *extreme* harm outcomes including:

Death from any cause; Lung cancer; Mesothelioma and other malignant lung tumours; Permanent paralysis below the neck; Regular severe pneumonia; Permanent loss of consciousness; 80% burn injuries.

### Class II

This Class covers *severe* harm outcomes, including:

Cardio-respiratory disease; Asthma; Non-malignant respiratory diseases; Lead poisoning; Anaphylactic shock; Cryptosporidiosis; Legionnaires disease; Myocardial infarction; Mild stroke; Chronic confusion; Regular severe fever; Loss of a hand or foot; Serious fractures; Serious burns; Loss of consciousness for days.

### Class III

This Class covers *serious* harm outcomes, including:

Eye disorders; Rhinitis; Hypertension; Sleep disturbance; Neuro-psychological impairment; Sick building syndrome; Regular and persistent dermatitis, including contact dermatitis; Allergy; Gastro-enteritis; Diarrhoea; Vomiting; Chronic severe stress; Mild heart attack; Malignant but treatable skin cancer; Loss of a finger; Fractured skull and severe concussion; Serious puncture wounds to head or body; Severe burns to hands; Serious strain or sprain injuries; Regular and severe migraine.

### Class IV

This Class includes *moderate* harm outcomes, which are still significant enough to warrant medical attention. Examples are:

Pleural plaques; Occasional severe discomfort; Benign tumours; Occasional mild pneumonia; Broken finger; Slight concussion; Moderate cuts to face or body; Severe bruising to body; Regular serious coughs or colds.

## APPENDIX 2 - REPRESENTATIVE SCALE POINTS

These are given in the HHSRS Regulations and used for calculating the hazard score

### *For likelihood of an occurrence*

<b>Range of likelihood</b>	<b>Representative scale point</b>
Less likely than 1 in 4200	5600
1 in 4200 to 1 in 2400	3200
1 in 2400 to 1 in 1300	1800
1 in 1300 to 1 in 750	1000
1 in 750 to 1 in 420	560
1 in 420 to 1 in 240	320
1 in 240 to 1 in 130	180
1 in 130 to 1 in 75	100
1 in 75 to 1 in 42	56
1 in 42 to 1 in 24	32
1 in 24 to 1 in 13	18
1 in 13 to 1 in 7.5	10
1 in 7.5 to 1 in 4	6
1 in 4 to 1 in 2.5	3
1 in 2.5 to 1 in 1.5	2
More likely than 1 in 1.5	1

### *For harm outcomes*

<b>Range of possibilities for Classes of Harm</b>	<b>Representative scale point</b>
Below 0.05%	0%
0.05 to 0.15%	0.1%
0.15% to 0.3%	0.2%
0.3% to 0.7%	0.5%
0.7% to 1.5%	1%
1.5% to 3%	2.2%
3% to 7%	4.6%
7% to 15%	10%
15% to 26%	21.5%
26% to 38 %	31.6%
Above 38%	46.4%