

# Housing Enforcement Activity by Local Authorities in England and Wales

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## Summary

This paper reports on a survey of local housing authorities in England to assess the level of enforcement activity in the years 2005-06 and 2006-07 under housing legislation concerned with housing conditions. These two years represent the last year when interventions were based on the fitness standard (Housing Act 1985), and the first year when interventions were based on the Housing Health and Safety Rating System (HHSRS) under the Housing Act 2004. Despite concerns that the level of regulatory activity had reduced under the new regime, the survey indicates that this is not the case although there are some concerns about the manner in which the new regime is being implemented, and whether best use is being made of the new powers available for addressing housing conditions that pose a risk to health and safety..

**Keywords** – Housing Act 2004; HHSRS, Enforcement; Local authorities.

## Introduction

There has been some debate since the Housing Act 2004 came into force in April 2006 whether the level of enforcement activity by local authorities had reduced as a result of the changes brought in. The “Rogers Review – national enforcement priorities for local authority regulatory services” established by the Cabinet Office (Rogers 2007) did not place regulation of housing standards as one of the priority areas for local authority enforcement. Rogers has asserted that there is no evidence for housing to be in the top five priorities and it is reported that he has described the system for intervention as “clunky” (Spear 2007). The Housing Health and Safety Rating System (HHSRS) is the method for determining Category 1 hazards and Category 2 hazards in Part 1 of the Act and local authorities have a duty to act in respect of the former, although the powers (other than emergency action) are the same for both Categories.

Although it was reported at the time that the Department for Communities and Local Government (DCLG) would not release HHSRS data from the English House Condition Survey (EHCS) to the Rogers, there was published data from the EHCS 2005 (DCLG 2007) to demonstrate the substantial number of non-decent private sector housing. The Decent Homes standard now includes a requirement that there should be no Category 1 hazards where previously the first criterion was that the dwelling had to meet the standard of fitness. The EHCS 2005 which did not use the former definition of “decent” reported that some 41% of the private rented housing stock was considered non-decent (more than a million dwellings). Of the 3.2 million vulnerable households living in the private sector in 2005, 66% (2.1 million) lived in decent homes, but 48% of vulnerable households in the private rented sector live in non-decent homes. The more recently published initial results of the EHCS 2006 which takes account of the replacement of the Fitness Standard by the HHSRS as the statutory component of Decent Homes has led to an increase in the number of dwellings defined to be non-decent on this criterion (DCLG 2008). Around 900 thousand homes (4%) failed the statutory component of “Decency” under the previous Fitness Standard, compared to now 4.8 million homes (22%) with Category 1 hazards as the reason that they are non-decent. The majority of these homes with serious hazards are in the private sector (4.2 million homes). It is reported by DCLG (2007) that 797,000 privately rented homes in England fail to meet the Decent Homes standard because of the presence of Category 1 hazards as

defined using the HHSRS (the new statutory element of the standard). Overall some 1.298 million (49.7%) of private rented homes are non-decent using the current definition.

The aim of this study was to assess the level of activity by local authorities in England and Wales. As the basis of intervention now is the risks to health and safety in the dwellings, if the tools within the 2004 Act are not being used then potentially, this will be a lost opportunity to reduce the negative health impacts of housing conditions. This when in 2002 there were 2,122,980 accidents in the home (477,500 involved children under five) and there are over 100,000 people treated for scalds alone (26,000 under 5s are burnt or scalded in the home every year) (ROSPA 2008). If not tackled, unsatisfactory housing conditions will increase the likelihood of unintentional injuries, and the likelihood of deaths of older people due to cold homes.

The aims of the study were to:

- investigate the level of enforcement and regulatory activity leading to improvement in housing condition in 2005-06 and 2006-07
- identify what factors local authority private sector teams believe have limited or continue to constrain action under the Housing Act 2004
- identify at an initial level how private sector housing activity will change in the short and medium terms

## **Methods**

The survey was by way of a web-based questionnaire (although some respondents did submit responses on hard copy rather than on the web). The survey questionnaire was drafted in consultation with representatives of the Chartered Institute of Environmental Health (CIEH) and Local Authority Coordinators on Regulatory Services (LACORS). The web-based survey was administered by QUAD research, based at the University of Warwick. Links to the website were provided by the CIEH (on the CIEH website, in publications such as EHN and via e-mails to local authority officers on EHcNet). The CIEH liaised with the Chartered Institute of Housing (CIH) and LACORS to give the project additional publicity and in an effort maximise the response rate.

The questionnaire was drafted so as to assess the levels of activity (both outputs (notices served) and outcomes) in the years 2005/06 and 2006/07; the years before the changes and the first year of the implementation of the 2004 Act. Questions also sought to identify the influences on the level of activity, and whether it was likely to increase in 2007/08. That part of the questionnaire dealing with influences on activity asked respondents to select the factors in ranking order 1 – 5 operated by way of a drop down list for each rank. The draft of the questionnaire was also tested by two local authority based environmental health practitioners prior to it being placed on the web and amended in light of comments on the ease with which it could be completed. The response rate was slow and a telephone chase-up was required to increase the response rate.

With a few exceptions it was not possible to validate responses in the time available, so that the results provided in this report are as provided by the respondents and should be treated with caution.

## **Main results**

The total number of responses was 130 which represented an overall 35% response rate from the 376 local housing authorities in England and Wales. Numerically there was an even geographical spread of respondents, although the response rate varied by type of local authority with the lowest response rate from the shire districts where it might be expected that would fewer privately rented houses, although this is not always the case.

**Table 1 Responses by region and type of local authority**

Region	Frequency (numbers)	Type of Local authority	Frequency (numbers)	%
North East	10	Wales	10	45
Yorkshire and Humberside	11	London Borough	12	36
North West	13	Districts	67	28
East Midlands	12	Metropolitan Boroughs	17	47
West Midlands	12	English Unitary	24	51
East of England	18			
South West	14			
South East	18			
London	12			
Wales	10			
<b>Total</b>	<b>130</b>			

The results provide a snapshot and cannot provide any information as to trends. The results are also as submitted by the respondents and it is assumed that any errors in the completion of the form will be balanced in the global figures.

Table 2 provides the results of the activity reported by the responding local authorities (n=130) for the year 2005-06. This was the last year of the previous system based on the fitness standard and disrepair (under ss189 and 190 of the 1985 Housing Act), and fitness of HMO (s.352 Housing Act 1985). The first column lists the various activities and the second column provides the total numbers of such actions taken by the responding authorities. As there were a substantial number of 0 responses (no action) the numbers of these responses are included in column three where relevant. For completeness the numbers of "not available" are included in column four. The few missing responses were as a result of completion of the questionnaire on paper rather than on the web and it was not possible to follow these up with the respondents. The mean level of activity (excluding the N/A (indicating the information not readily available) or missing responses) is included in column seven, and the spread of responses the maximum and minimum number is included in columns five and six. The mean has been included to allow some comparison of overall levels of activity in future years, as this is a study to establish the baseline position. Table 3 shows the level of activity in the year 2006-07 (the first year of the implementation of Part 1 of the Housing Act 2004) by the responding local authorities. The totals indicate that overall the level of enforcement activity has not shown any significant reduction and may have actually increased for some local authorities responding to the survey.

Tables 4 and 5 set out the numbers of the various courses of actions in the two years under consideration by type of local housing authority. The picture that emerges is that Wales and London apart, again there was no obvious reduction in activity.

**Table 2 Regulatory activity in year 2005 - 06**

Activity	Total (number of activity)	No. of 0 responses	N/A / Missing responses	Spread		Mean
				Lowest Response	Highest response	
Notices served under the Housing Act 1985 s.189 (all sub sections)	605	47	7	0	57	4.92
<ul style="list-style-type: none"> <li>• Notices complied with under the Housing Act 1985 s.189</li> </ul>	442		22	0	50	4.09
Notices served under the Housing Act 1985 s.190 (all sub sections)	934	52	7	0	123	7.59
<ul style="list-style-type: none"> <li>• Notices complied with under the Housing Act s.190</li> </ul>	679		23	0	123	6.35
Total appeals made (and not withdrawn) under ss. 189 and 190 within the year	4		11	0	1	0.03
Prosecutions brought for failure to comply with ss. 189 and 190 within the year	20	104	13	0	4	0.17
Notices served under the Housing Act 1985 s.352	678	59	7	0	81	5.51
<ul style="list-style-type: none"> <li>• Notices complied with under the Housing Act 1985 s.352</li> </ul>	391		28	0	44	3.83
<ul style="list-style-type: none"> <li>• Number of improved household accommodation as a result</li> </ul>	740		39	0	200	8.13
Deferred Action Notices (Housing Grants Construction and Regeneration Act 1996 s.81) served	28	111	4	0	5	0.22
Dwellings that were subject to work in default of compliance with ss. 189 and 190 Notices (with or without Owner's consent)	67	99	10	0	18	0.56
Dwellings improved as a result of informal 'regulatory action' under the Housing Act 1985	8,376	14	23	0	639	78.28
Closing Orders made (s.264 Housing Act 1985)	44	104	3	0	5	0.35
Demolition Orders made (s.265 Housing Act 1985)	4	123	3	0	1	0.03

**Table 3 Regulatory Activity in the year 2006-07**

Activity	Total (number of activity)	No. of 0 responses	N / A / Missing response	Spread		Mean
				Lowest response	Highest response	
Improvement Notices (ss.11 and 12 Housing Act 2004) served	1,501	33	2	0	116	11.73
<ul style="list-style-type: none"> <li>Residential premises that were subject to Improvement Notices</li> </ul>	1,066		9	0	96	8.81
<ul style="list-style-type: none"> <li>Suspended Improvement Notices (s.14)</li> </ul>	77		5	0	45	0.62
<ul style="list-style-type: none"> <li>Improvement Notices complied with</li> </ul>	679		8	0	76	5.57
Residential premises that were the subject of Emergency Remedial Action (s.40)	76	102	1	0	37	0.59
Prohibition Orders (ss. 20 and 21) served	172	68	1	0	11	1.33
<ul style="list-style-type: none"> <li>Total number of residential premises subject to Prohibition Orders</li> </ul>	169		6	0	17	1.36
<ul style="list-style-type: none"> <li>Suspended Prohibition Orders</li> </ul>	24		8	0	6	0.20
<ul style="list-style-type: none"> <li>Emergency Prohibition Orders</li> </ul>	38		8	0	4	0.31
Hazard Awareness Notices served	497	73	2	0	162	3.88
<ul style="list-style-type: none"> <li>No. residential premises subjected to Hazard Awareness Notices</li> </ul>	458		4	0	162	3.63
No. of Housing Act 2004 Part 1 regulatory actions above relating to HMOs	609	67	8	0	116	4.99
<ul style="list-style-type: none"> <li>Households in HMOs have had accommodation improved as a result of this action</li> </ul>	756	72	18	0	135	6.75
Total number of appeals (not withdrawn) made against action this year under Part 1 of the 2004 Act	13	117	2	0	3	0.10
Prosecutions brought as a result of failure to comply with action taken this year under Part 1 of the 2004 Act	25	115	1	0	8	0.19
Residential premises subject to work in default of compliance with Improvement Notices (with or without Owner's consent)	133	102	2	0	37	1.04
Total dwellings improved or repaired as a result of informal action under Part 1 of the Housing Act 2004	7,766	19	17	0	642	68.73
Demolition Orders made (s.265 Housing Act 1985)	6	124	1	0	2	0.05

**Table 4 Action in 2005-06 under the Housing Act 1985 etc by Local Authority Type**

<b>Action</b>	<b>District Councils (n=67)</b>	<b>Wales (n=10)</b>	<b>London Boroughs (n=12)</b>	<b>Metropolitan Boroughs (n=17)</b>	<b>Unitary authorities (n=24)</b>
<b>s.189 (notices to make fit)</b>	114	97	116	154	124
<b>s.190 (notices re substantial disrepair)</b>	124	55	280	232	243
<b>s.352 (fitness of HMOs)</b>	108	92	190	43	245
<b>Informal action</b>	2344	705	1360	2339	1628
<b>Deferred Action notices</b>	10	10	6	2	9
<b>Work in default</b>	18	4	13	7	25
<b>Closing Orders</b>	14	8	7	11	4
<b>Demolition Orders</b>	0	10	0	3	0

**Table 5 Action in 2005-06 under the Housing Act 2004 etc by Local Authority Type**

<b>Action</b>	<b>District Councils (n=67)</b>	<b>Wales (n=10)</b>	<b>London Boroughs (n=12)</b>	<b>Metropolitan Boroughs (n=17)</b>	<b>Unitary authorities (n=24)</b>
<b>Improvement Notices</b>	486	143	230	250	392
<b>Emergency Remedial Action</b>	44	0	1	5	26
<b>Prohibition Orders</b>	74	14	15	18	51
<b>Hazard Awareness Notices</b>	90	58	11	237	101
<b>Work in default</b>	80	1	2	26	24
<b>Informal action</b>	2891	636	1113	1786	1340
<b>Demolition Orders</b>	1	0	1	3	1

In response to the question as to whether the action in 2006-07 related only to the most serious (Category 1 hazards) 83% of respondents said no, and 84% of respondents said that both

Category 1 and Category 2 hazards have been dealt with in the same property – indeed two thirds of respondents indicated that they dealt with Category 2 hazards even if there were no Category 1 hazards present.

In responding to the question as to whether they see regulatory activity to increase, two third thought it would increase, 2% though t it would decrease and just under a third thought it would stay the same.

Despite the power to charge for the service of notices and associated work over 55% said they did not use this power to charge. Of those who charged 56% said they had increased their charges under the 2004 Act by comparison with the 1985 Act.

Almost a quarter (23.8%) of respondents said they did not have a published enforcement policy and less than half (46%) of those responding said that their published enforcement policy indicated how discretion will be used when dealing with Category 2 hazards.

Respondents were asked to indicate their top five factors that influence the level of enforcement activity. Table 6 sets out the main results of this question. There were some regional variations on this in that for London the “HHSRS and Regulations” was seen as the most important factor, but for many other local authorities it was of much lesser importance and was the fourth most important factor nationally.

## **Discussion**

The overall responses to this study appear indicate a slight increase in enforcement activity between the two years. It is not possible to give a reason for this at this time and further investigation may be required. Nor does this take account of the fact that in many authorities unsatisfactory conditions in houses in multiple occupation may have been dealt with by way of the licensing regime that came into force at the same time as Part 1 and that activity is not accounted for in this study. This would appear to be borne out to some extent by an examination of decisions in appeals to the Residential Property Tribunal on HMO licence conditions. Also fewer local authorities recorded a zero response to questions on level of action for the new regime than the last year of the “unfitness regime” with 47 authorities not serving s.189 notices but 33 reporting that they had not served any Improvement Notices. For the 130 authorities responding there were also many more Prohibition Orders used than Closing Orders (172 of the former in 2006-07 compared with 44 Closing Orders in 2005-06). The view that the HHSRS is “clunky and cumbersome” and will be rarely used until it beds in, as reportedly suggested by Peter Rogers (in Spears 2007) is not borne out by the findings of study.

However a general concern is the still high number of local authorities that take no formal action. Although it may be possible to achieve compliance by contacting the landlords informally, it is highly unlikely that all, particularly the most irresponsible landlords, will respond to informal action.

The view that fewer appeals to the RPT than anticipated may have reflected a lower level of enforcement under Part 1 of the 2004 Act may also not be correct. One possible explanation is that the new provisions have been designed so that landlords better understand the reasons for interventions and what is required of them. For example the statement of reasons required under s.8 should provide a justification for the action taken, should include information on the assessed hazards, and explain why the particular action was considered most appropriate and why other options were not used. Another possible explanation is that the government funded training on the HHSRS and enforcement given to local authority officers avoided delays, mistakes and confusion in utilising the provisions.

**Table 6 Top five factors influencing activity rated by order of importance**

Factors	Order of Importance (number)					Total no. responses	Scores in descending order*
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>		
Number of complaints from or on behalf of residents	36	14	26	6	3	85	329
Number of staff available to deal with private sector housing conditions	27	22	15	7	11	82	293
Addressing risks to health and safety in housing	20	10	9	13	6	58	199
The HHSRS and the regulations	11	12	21	12	7	63	197
Priority given to HMO licensing in the year	10	12	6	10	3	41	139
The nature of legal provisions in Part 1	3	9	5	11	10	38	98
Size of private rented sector in the district	2	11	1	13	13	40	96
Numbers of dwellings in the district that have Category 1 hazards	5	5	4	14	9	37	84
Number of staff trained on the use of HHSRS	3	6	10	5	5	29	84
The number of licensable HMOs in the district	3	8	4	3	6	24	71
Risk of retaliatory eviction of private sector tenants	2	2	5	5	15	29	58
The Council's Housing Renewal Policy	0	4	4	9	9	26	55
Available staff resources concentrated on HMO licensing	1	7	4	3	3	18	54
Conditions within the private housing stock as identified in a House Condition Survey	3	1	4	4	3	15	42

\*Scores in column produced by giving ranking points for preference (1<sup>st</sup> preference received 5, 2<sup>nd</sup> 4 and so on with - 5<sup>th</sup> receiving 1)

In view of the moves on 'better regulation' it is interesting that most action is "informal" rather than by use of the formal procedures under both under the 1985 Act regime and the newer 2004 Act regime. It may be surprising that, although reduced in 2006-07, there is still such widespread use of "informal action" given the new Hazard Awareness Notices. One possible explanation is that for those local authorities seeking to work and establish effective partnerships with their responsible landlords, the less formal approach may be preferred.

Nevertheless use is being made of Hazard Awareness Notices (although to a lesser extent in London), and as they carry no sanctions, these could be seen as a less confrontational approach. However, there appears to be continued use of the "minded-to notice" and letters before action, as well as more informal approaches to landlords. Even where there is initial contact with a landlord such as by telephone or site-meeting, it would seem to be good practice to confirm such a conversation in writing. Issuing a Hazard Awareness Notice may seem a formal or legalistic approach, but, as there is no prescribed form, it can be drafted similar to a letter to confirm such



conversations (providing it contains the information required by s28 of the Act). Such an approach would not seem to be inconsistent with better regulation principles or as advised by the Enforcement Guidance which refers to the Enforcement Concordat (ODPM 2006).

It had been thought that if the level of action was low then this might be reflection of the priority given to implementing the licensing regime for houses in multiple of occupation that came in at the same time. This does not appear to be the case as the "priority given to HMO licensing" factor is only fifth in the rankings of influences on the level of activity and indeed many local authorities have relatively few licensable HMOs (LACORS 2007). The level of complaints and the availability of resources generally are clearly the most influential factors nationally. To base action on the level of complaints is a problematic approach, first it leaves tenants that complain vulnerable to retaliatory eviction (Crew 2007) as landlords will know that the action by the authority is the result of complaint. The most vulnerable tenants, who need the protection of the local housing authority, are also less likely to complain. Reliance on complaint is no way of ensuring that the worst housing conditions are dealt with as a priority. According to the English House Condition Survey (DCLG 2007) some 780,000 (25% of) vulnerable households in the private sector live in homes that fail to provide adequate thermal comfort (600 thousand of these fail on thermal comfort alone). The figures for 2006 (DCLG 2008) show that there were 1.298 million homes classed as non-decent in the private rented sector, and that 797,000 of these had a Category 1 hazard and 749,000 failed the thermal comfort criterion (only 374,000 failed to meet the criterion on repair). At the same time there were 25,700 excess winter deaths in England and Wales in 2005/6 (Department of Health 2007). Vulnerable households who are private tenants tend to be living in worse housing conditions compared to their counterparts in the owner occupied sector; just 42% of vulnerable private tenants live in decent homes (DCLG 2008). These factors do not appear to have influenced local authorities' approach to implementation of Part1 of the 2004 Act.

Given the scarcity of resources it might be expected that the focus of interventions would be on Category 1 hazards where there is a duty to take action. Only 17% of the responding authorities reported that intervention was only made in respect of Category 1 hazards, while two-thirds of local authorities reported that action had been taken in respect of premises where there were Category 2 hazards only. It would be useful in any further study to explore the nature of these Category 2 hazards

The results also show that a Council's Housing Renewal Policy; a requirement since the Housing Assistance Regulatory Reform (Stationery Office 2002 and ODPM 2003) is a relatively unimportant factor in influencing regulatory activity. Indeed it seems that frequently where there is such a policy it does not address the approach to enforcement or regulation. It is also difficult to see how local authorities can be taking a strategic approach to unhealthy and unsafe housing in such circumstances. Burrige and Ormandy (2007) have argued that the strengths of the new approach include a health-informed intervention and a responsibility on local authorities to inspect their areas, identify serious hazards - and deal with them. This latter, it is suggested may provide some support for tenants frightened of complaining, although the system "can accommodate complaints" it "is focussed upon analysis, inspection and official rather than individual action" (assertion of contractual rights). Practice does not yet appear to support their contention.

## **Conclusions**

Given the newness of the provisions in the Housing Act 2004 and the change in approach it entailed, plus the implementation of HMO licensing, coupled with the familiarity with the previous regime a reduction in regulatory activity might have been expected. However from this study, overall there is no evidence that the level of regulatory activity has fallen as the result of the 2004 Act. Rather the indications are that there has been an increase in activity and that there will be a further increase and few think it will decrease.

The results from this study seem to indicate that, apart from London, the introduction of the HHSRS has not proved to be a noticeable issue in influencing interventions.

Overall HMO licensing does not appear to have been as significant influencing factor on the level activity under Part 1 as might have been anticipated as a substantial majority of LHAs have fewer than 100 licensable HMOs (LACORS 2007).

Informal action remains the most frequently used method of securing improvements in housing conditions and the nature of these actions needs further investigation and why this approach is taken without the use of Hazard Awareness Notices.

The HHSRS is supposed to provide a means to set priorities and strategies to target those properties which pose the greatest threat to health and safety. In the circumstances it must therefore be a matter of some concern that thus far interventions do not seem to be focussed on the greatest risks to health and safety in the housing stock, and it may be that local authorities are not yet using the HHSRS strategically. This contention is supported by the relatively low importance given to “conditions within the private housing stock as identified in a house condition survey” as a factor influencing activity. If local authorities rely primarily on the level of complaint or representations, then, despite the apparent increase in enforcement action, there can be no certainty that they will be addressing the greatest health and safety risks in poor quality housing.

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