

ANNEX C - ANALYSIS OF RESPONSES

126 responses were received to the paper by DETR with a further 28 received through the Welsh Office. In general, the responses received from Welsh authorities and other organisations were on the same lines as those received by DETR and summarised below.

Fitness rating

1 That work be carried out to develop and test a fitness rating approach as a replacement for the current housing fitness standard.

An overwhelming majority support the proposal (101 out of 119). Advantages of a fitness rating over the current standard are generally seen as : it would be more objective, better able to target resources and enforcement action, give a more accurate picture of stock condition, and recognise the varying degrees of unfitness. However, a number of respondents - including those who support the proposals - have concerns about the apparent complexity of the proposed system, and stress that it must be easy to operate by practitioners, and comprehensible to owners/occupants. Full testing in the field and further consultation are considered vital (a number of authorities offered to take part in piloting) as also training for EHOs. A further concern voiced by a number of respondents is that the fitness level or action level should not be determined by available resources. There is general agreement to the inclusion of energy efficiency, internal arrangement, fire safety and radon in the fitness rating. Noise/sound insulation, gas safety, and asbestos are the other hazards which come up most often for inclusion. A few respondents also suggested that a more simplified version of the fitness rating schedule might be used by local authorities to obtain information from property owners about stock condition in the area. 4 respondents (all local authorities) were against the idea of a fitness rating - mainly because of fears that it would lead to an increase in number of unfits, appeals, and the need for resources, or because it would lead to more inconsistencies or borderline cases - and a further 14 responses were non-committal or ambiguous.

Duty v. power to enforce

Views are invited on:

2 whether there is a case for replacing the duty to enforce with a power to enforce, considering the role and purpose of the fitness standard (or fitness rating) in a discretionary grant regime and, if the duty to enforce were replaced with a power, whether the deferred action notice enforcement option should also be removed.

The majority (74 out of 89) favour retention of the duty to enforce (including BPF and NFRL); a small minority (9) consider that the duty should be replaced with a power. For those who want to retain the duty to enforce, a power is seen as an incentive to do nothing/a diversion of resources from tackling unfitness, or as likely to lead to (greater) inconsistency/lack of comparability. For those supporting a power, they see the benefits as greater flexibility, the ability to take action in line with local strategy/policy, or simply that it would formally recognise what happens in practice now. Some consider that the duty should be restricted to only housing in worst condition, or to the private rented sector (see answer to next question). A number of local authorities make the point that severing the link between unfitness and grant aid has no bearing on the duty v. power issue.

Most respondents (51 out of 78) consider that the DAN should be retained, reflecting the fact that the majority of respondents favour a duty over a power to enforce.

3 Views are invited on whether the duty or power to enforce should be uniform across all tenures.

The responses are evenly spread between those who believe that the duty should be uniform across all tenures (45 out of 101; including the LGA and BPF) and those who consider that there should be a power - or at the least more discretion - to tackle unfitnes in the owner occupied sector (41 including the CIEH). The rationale for the latter being generally that action should be targeted at the rented sector (particularly the private rented sector where unfitnes is proportionately highest) as tenants have less control over the condition of the dwelling; but that a power should be retained in the case of owner occupiers to protect the inadequate.

4 Views are invited on whether, if a fitness rating approach were adopted:

- a. there should be a duty (as opposed to a power) to enforce against a property which falls below the fitness level;
- b. there is a case for introducing a power to enforce against a property above it.

62 respondents accepted there should be a duty to take action below the fitness level; 67 considered that there is a case for introducing a power to enforce above it. 55 respondents agreed specifically with both propositions. A number of respondents noted that this would be in line with the current s.190 provision. A power above the fitness level is considered desirable for implementing local strategies and for preventative maintenance. Other suggestions are that there should be a longer time frame for carrying out works where properties are above fitness level; and that intervention should be set at a higher level for the private rented sector.

Harmonising the enforcement procedures

5 Views are invited on whether there is a case for greater harmonisation of the various fitness enforcement procedures and, if so, in which specific areas.

The vast majority believe that there is a case for greater harmonisation (88 out of 99). The period for commencing works is cited most often, with respondents considering either that it should be reduced in all cases (to 21 days) or that there should be no minimum period. Many would support bringing the provisions in the HA for penalties and criminal intent in line with the EPA. There is support for introducing a fast track procedure (including fast track appeals) into the Housing Act where there is imminent risk to health and safety. The appeal mechanisms generally are mentioned by a few as in need of review. There is also support for reducing or standardising enforcement notices (including standardising the provisions for service), some suggesting that there should be a single notice covering repairs, or that the separate provisions for HMOs should be done away with. There is even some support for the introduction of a single housing action, although more respondents recognise the need to retain separate nuisance provisions as they cover a wider range of more hazardous circumstances. The 7 respondents who said no to greater harmonisation did so generally because they thought it was useful to have a choice of tools or because the current arrangements did not cause any

difficulties in practice.

"Minded to" notices

6 Views are invited on whether the "minded to" notice procedure should be repealed, and replaced by the adoption by each local authority of the concordat on good enforcement practice.

97 respondents expressed a view, with the overwhelming majority (83) considering that the "minded to" notice should be repealed. It is considered to be costly, bureaucratic, a potential delaying tactic, unnecessary where informal procedures are already in place, and confusing. The views of those who do not support repeal include: it is too early to tell (BPF); some form of prior notification should be an option; or that the "minded to" procedure should be retained. The last view is held by a number of local authorities who have found that it has reduced the need to resort to formal enforcement - particularly when coupled with the threat of charging for enforcement. This positive experience of a minority of authorities is reflected in the LGA response. Those who expressed an opinion on the concordat were nearly all in favour of it - at least in principle.

Charging for enforcement

7 That the power to charge for enforcement should be retained.

The vast majority (73 out of 79) agree that the power should be retained arguing that it relieves the burden on the taxpayer and acts as incentive to take action without the need for formal enforcement. A few respondents suggest that the charge should be introduced for all forms of enforcement. 4 respondents suggest the charge should be dropped, including BPF and NFRL.

Guidance

8 That, on balance, in the event of a fitness rating approach being adopted the current guidance on the fitness standard should remain unchanged until replaced by the fresh body of guidance that would be drawn up to accompany the introduction of a fitness rating.

62 out of the 75 who responded on this question agreed with the proposition. A small number consider that the guidance needs earlier revision mostly to deal with the 2nd limb.

Assessment on a combination of requirements

9 That, in the event of a fitness rating approach not being adopted, assessment of fitness should be based on any one, or a combination of, the requirements in the standard, rather than on the current basis of each individual item.

82 out of the 91 who responded agreed with the proposition. Those who disagreed generally did so because they preferred a fitness rating approach (including CIOH); although it was also suggested that a combination approach would be impractical or would lead to an increase in

the number of units.

Part enforcement

10 That the fitness standard, or fitness rating, should be applicable to each "unit of accommodation" and that there should be powers to close part of the accommodation where this would provide the most satisfactory course of action.

Most respondents (97 out of 107) support the proposal. Many local authorities say that removal has caused practical difficulties and cite examples where the power would be particularly useful - basements, loft conversions, HMOs. Those who express reservations comment: that useful in case of HMO but not individual dwellings (although others say not in the case of HMOs, or shared houses, where authorities could use s.358 overcrowding provisions instead); or that defining "unit of accommodation" could be difficult or lead to confusion.

Enforcement against local authority property

11 Views are invited on whether the fitness standard, or fitness rating, should be made formally enforceable against local authority housing and, if so, how this could be achieved.

Nearly two-thirds of respondents (69 out of 110) would like to see fitness formally enforceable against local authority housing but there is little consensus about how this might be achieved. Enforcement by the local authority itself is the most popular option, generally by extending the proper officer role, although an extension of the client/contractor split and the role of LGHAct 1989 monitoring officer are also mentioned. Some see a role for the District Auditor or LA Ombudsman as final arbiter. Others suggest that neighbouring authorities should have a role, either enforcing or overseeing enforcement. An external independent body is the next most popular suggestion after local authorities, whether on a national or regional basis. Existing bodies such as the HSE, Housing Corporation and Environment Agency get less support. Finally some suggest that enforcement should be by means of court action (perhaps modelled on s.82 of EPA) or arbitration, with action being taken by the home owner or an independent EHO.

Arguments against extending the proper officer role include conflict of interest, and diversion of resources away from private sector renewal; against an independent agency that it would be expensive; and against the HSE or Housing Corporation the lack of housing or enforcement experience, or in the case of the latter that it might be compromised by any existing partnership with the local authority in question.

A sizeable minority of respondents (34) consider that fitness should not be made formally enforceable against local authorities on the grounds that: it would lead to inconsistency and duplication if carried out by an external body; would impede LA repair strategies; exacerbate lack of resources; and there are already adequate mechanisms in place in the LTA/EPA provisions. Alternative suggestions put forward are: a duty to include in LA strategies how to deal with LA stock; its inclusion within HIP guidance and assessment; or good practice guidance; the extension of Best Value to cover this; and simplification of the Right to Repair.

Assessment of fitness based on occupancy

12 That the assessment of fitness should continue to be tied to the condition of the property but that, where appropriate, any action should take into account the particular nature and needs of the current occupants.

Most respondents (100 out of 110) agree with the proposition. Although many consider that in an ideal world assessment should take account of the needs of occupants, they accept that in reality it would be impractical - because of the need to reassess on change of occupancy (particularly in private rented sector); landlords would be reluctant to rent to the vulnerable; it would become impossible to monitor overall condition of stock locally and nationally. Some suggest that adequate mechanisms are already in place such as DFGs. Those who disagree with the proposition fall into two categories - those who believe that it should be possible to take occupancy into account in certain cases, ie where the accommodation is designed specifically for certain purposes, or categories of occupants; and a small number who believe that occupancy should be part of the assessment of fitness, suggesting that reassessment is not a problem, or that this would be more in line with the Government's "life-time" homes approach.

Opening up enforcement to third parties

13 That the role of fitness enforcement should continue to be carried out by local housing authorities - subject to any decision to provide for enforcement against local authority housing by a third party organisation.

Most respondents support the proposition (75 out of 81). Local authorities are considered to have the requisite skill/experience, impartiality/accountability, and a wider perspective of housing and other local issues. Whereas there is concern that lenders might have a conflict of interest, or that if enforcement was open to more than one organisation it would lead to greater inconsistency. Those saying no thought either that enforcement should be open to those suitably qualified and experienced such as EHOs, chartered surveyors, or rent officers, or else that mortgagees or tenants should be able to take action. A number of those who believe that formal enforcement should rest with local authorities nevertheless believe that lenders should have a wider role in improving and maintaining the condition of the stock - either by making it a condition of a mortgage advance that the property be made and maintained fit, or that assessment of fitness should be part of the valuation/sale details.

Legislative anomalies

14 Views are sought on the key anomalies and overlaps that should be addressed if a suitable legislative slot becomes available. [paras 5.56-5.58].

Less than half of respondents (37) came up with suggestions for anomalies which need addressing. Those areas not already covered under question 5 above include:-

- fire and gas safety legislation;
- Landlord and Tenant Act 1984;
- Defective Premises Act 1972;
- Occupiers Liability Acts 1957 and 1984;
- housing benefit;
- overcrowding provisions;

building regulations (particularly with respect to "ventilation");
distinction in various pieces of legislation between the different; provisions for HMOs,
single dwellings, and shared dwellings;
planning legislation.

Other comments:

(i) Law Commission recommendation

28 respondents gave support either expressly to the Law Commission recommendation or to the proposition that property should be fit when let.

(ii) Other proposals and recommendations

These included the following:

Replace term "fitness for human habitation" with, eg, "housing assessment rating"

Extend fitness standard to include:

- mobile homes, caravans;
- environment surrounding the unit of accommodation.
- space standards* - overcrowding has impact on accidents, indoor air quality, depression, mental health, and health generally.
- overcrowding provisions - based on bedroom numbers

Notice should be registerable charge notwithstanding any appeal - prevent need to recommence proceedings against new owner where property sold before appeal

OR Address problem where transfer property between landlord companies/delays in changing title, by requiring owners to notify land registry of change of address within 28 days

Use fitness rating at point of sale, as condition of licensing in PRS

Where public money involved works should be carried out to a 10 year standard with appropriate warranties

Good Practice Guide on interpreting and enforcing fitness standard

Circular giving list of relevant research, sources and references to promote better practice and consistency (similar to HECA)

Summary offence whereby person who fails to maintain dwelling house fit for human habitation, without reasonable excuse

Allow for part grant funding of repairs - targeting finance at areas and elements of property most appropriate for public investment

Duty to take action could include - notifying of hazards present in dwelling even if no action is taken by local authority, giving advice on repair and maintenance, referring to another agency,

offering to re-house

Overturn Dover case so courts not interfere with LA discretion to take enforcement action when based on reasonable approach

Consider relationship between FS and HB legislation

National Housing Strategy, including targets for eradicating unfitnes

Increase funding directed at unfitnes

Bring back mandatory grant

Require local house condition surveys as part of HIP, with targets for improvement measures

Review minimum space standards

Introduce licensing system for all privately rented accommodation

Re-examine Control Order provisions to make action more attractive and less labour intensive would benefit tenants living in the worst housing conditions

National database of unscrupulous landlords

Training for judiciary as little consistency in housing enforcement field

Logbooks

Rents should reflect condition of dwelling. Rent Assessment Committee should be notified when notice served and required to take into account condition

Simplify and accelerate compulsory purchase orders.

List of respondents

Local authority associations and organisations

1. **Local Government Association**
2. **Association of London Government**