

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE

PROPOSED INTRODUCTION OF A GENERAL HOUSING LAW

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Proposed Introduction of a General Housing Law', dated 28th February 2020, they are of the opinion:-

1. To agree the introduction of primary, enabling legislation to allow for regulation of the Island's housing, other than control of occupation, including provision for the matters set out in Appendix 1 to the policy letter.
2. To approve the introduction of a statutory Housing Health and Safety Rating System (HHSRS) in Guernsey to assess the quality of housing and the introduction of basic housing standards for rented dwellings as set out in sections 4.1 – 4.10 of the policy letter.
3. To approve the introduction of a statutory licensing system for houses in multiple occupation as set out in sections 4.11 – 4.24 of the policy letter.
4. To approve the introduction of a statutory registration system for all private rented dwellings, as set out in sections 4.25 – 4.36 of the policy letter.
5. To approve the introduction of a statutory deposit protection scheme for private rented dwellings, as set out in sections 4.37 – 4.52 of the policy letter.
6. To approve the enforcement measures in relation to housing standards outlined in section 5 of the policy letter.
7. To approve the amendment of other legislation relevant to housing standards to do the following, where consistent with the purposes and scheme of that other legislation –
 - a) harmonise terms used to describe different types of housing with those proposed under the new housing standards legislation;
 - b) provide for consistency with the new housing standards legislation, and
 - c) avoid duplication of inspections and other enforcement procedures included in the new housing standards legislation.

8. To direct the preparation of such legislation that may be necessary so as to give effect to the above decisions.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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ISLAND OF GUERNSEY

COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE

PROPOSED INTRODUCTION OF A GENERAL HOUSING LAW

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

28th February, 2020

Dear Sir

1. Executive Summary

- 1.1 On 19th July 2018 the States resolved¹ to endorse a Programme of Works which included an analysis of the legislative framework and processes governing housing quality standards and how legislation can support the provision of good quality housing.
- 1.2 This review concluded that there are currently insufficient and unsuitable provisions within legislation to regulate standards across the Island's housing stock. It is proposed that new legislation is made (a *Projet de Loi*), creating primary legislation, under which measures to regulate certain parts of Guernsey's housing stock and specific functions will be made by Ordinance and Statutory Instruments (SIs) of the Committee. This Policy Letter also seeks approval for specific provisions, as detailed, which could be implemented at the same time as the Law with powers to make other Ordinances later subject to prior approval of the policy by the States.
- 1.3 The introduction of an Enabling Law will provide a single legislative framework which will supplement, or replace, existing legal provisions relevant to Housing by providing proportionate provisions to regulate conditions across all housing on-Island and provide greater protection to tenants without significant detriment to responsible landlords and property owners.

¹ Article VIII of Billet d'État No. XIX of 2018.

- 1.4 New primary legislation is necessary as some of the existing legislation relevant to housing standards is outdated, most of it is not directed at the specific purpose of regulating housing standards and responsibility for it is spread across multiple States' Committees. New primary legislation will allow flexibility to introduce new provisions progressively and/or consolidate or harmonise existing provisions in those areas although the policy for any additional regulation not outlined in this policy letter would be subject to approval by the States in the normal way.
- 1.5 The initial focus will be on improving the standard of the Island's housing stock, with an emphasis on rented properties, through a number of initiatives designed to provide a robust approach for assessing housing conditions and enforcing improvements. It is intended that the increase in standards will contribute towards providing a sustainable supply of good quality properties to the Island.
- 1.6 The introduction of this Law is, however, also intended to enable there to be an opportunity to ensure that provisions that may be created later under this legislation can be sufficiently broad to enable the regulation of other matters relating to the regulation of housing, introduced in a proportionate and risk-based order. It is proposed that the Law would be drafted to allow for Ordinances and SIs to be made in relation to regulation of housing generally including provision for standard lease agreements, measures to tackle vacant dwellings and to deal with dangerous structures etc.
- 1.7 The priority areas for which policy approval is sought now to make Ordinances under the Enabling Law are to:
- Introduce a system by which authorised officers can assess the standard of accommodation in the Island across all tenures, and have in place robust measures to enforce an improvement in standards where necessary;
 - Introduce a basic standard for human habitation of rented properties;
 - Implement a licensing system for Houses in Multiple Occupation (HMO), making it a legal obligation for landlords/owners of a property/properties meeting the definition of a HMO to be licensed;
 - Make it a requirement for all private rented properties to be registered; and
 - Introduce a requirement for a deposit protection scheme.
- 1.8 The approval of the policy for these priority areas has been split into different propositions so that the merits of each area can be considered separately.

2. Background

- 2.1 The association between housing quality standards and health and wellbeing

are acknowledged globally^{2,3} and locally⁴ with negative outcomes being associated with living in poor quality rented accommodation and/or poor housing condition. Local data illustrate that major health inequalities associated with housing status exist locally, e.g. a much higher proportion of people on lower incomes or in rented housing smoke and report poor mental health and wellbeing^{5,6}.

- 2.2 The costs of poor housing to society have been widely researched^{7,8} with evidence identifying costs to health services as well as costs to employers and society as a whole. No local data exist to quantify the cost to the States but the costs of the NHS treating ill-health as a result of sub-standard housing have been estimated as £2.4 billion a year.
- 2.3 Data demonstrate that there can be significant savings made by addressing poor housing standards. The Building Research Establishment have developed the Housing Health Cost Calculator to quantify cost savings to society and the National Health Service (NHS)⁹. For example, it has been calculated that one property with a hazard of falls associated with baths costs the NHS £201 per year with an average repair cost per dwelling of £521¹⁰. These costs are likely to be higher locally due to the increased relative cost of health care and building works in Guernsey.
- 2.4 In June 2013, a Policy Council report entitled 'Managing the size and make up on the Island's population' included a reference to the proposal to introduce new legislation on housing standards as a piece of work that would be progressed alongside the development of the new population management framework.
- 2.5 Furthermore, in July 2018 the States endorsed a Programme of Works which

² Marmot, M., Atkinson, T., Bell, J., Black, C., Broadfoot, P., Cumberlege, J., Diamond, I., Gilmore, I., Ham, C., Meacher, M., & Mulgan, G. (2010). *The Marmot Review: Fair Society, Healthy Lives. Strategic review of health inequalities in England post-2010*. London.

³ World Health Organization (WHO) (2011). *Environmental burden of disease associated with inadequate housing. A method guide to the quantification of health effects of selected housing risks in the WHO European Region*. Copenhagen: WHO Regional Office for Europe.

⁴ Bridgman, S. (2015). *115th Annual Bailiwick of Guernsey MOH Report for Year 2013/14. Special themes "Public Health Surveillance, and Priority-Setting in Health and Social Care"*. Guernsey: States of Guernsey.

⁵ Hughes, K., Gee, I., Ford, K., McHale, P., Prickett, L., Le Page, Y. & Bridgman, S. (2014). *The Sixth Guernsey Healthy Lifestyle Survey 2013*. Guernsey: States of Guernsey.

⁶ Johnson, S., Cataroche, J., Hinshaw, T. & Bridgman, S. (2010). *Guernsey emotional wellbeing survey 2010: A cross-sectional survey of mental wellbeing and common mental health disorders in Guernsey and Alderney*. Public Health and Strategy Directorate, HSSD, Guernsey.

⁷ Roys, M., Nicol, S., Garrett, H. and Margoles S. (2016). *The full cost of poor housing*. Bracknell: IHS BRE Press.

⁸ Davidson, M., Roys, M., Nicol, S., Ormandy, David and Ambrose, P. (2010) *The real cost of poor housing*. Bracknell: IHS BRE Press.

⁹ <https://www.housinghealthcosts.org/res/hhcc.pdf>

¹⁰ <https://www.bre.co.uk/filelibrary/pdf/87741-Cost-of-Poor-Housing-Briefing-Paper-v3.pdf>

included an analysis of the legislative framework and processes governing housing quality standards and how legislation can support the provision of good quality housing¹¹, in order to assist the development of a holistic Housing Strategy.

2.6 The review highlights where deficiencies and inefficiencies exist and the proposed legislation is intended to assist with the delivery of the provision of safe and secure places to live and a healthy community which underpin the core themes of ‘quality of life’ within the States of Guernsey’s Future Guernsey Plan.

2.7 The proposed legislation contributes towards two of the policies that have been prioritised under the Future Guernsey Plan:

1

- Housing Strategy; and
- The Future Model of Care (which includes Health and wellbeing)

2.8 The ‘Housing Strategy’ priority requires that the provision of housing is of an “appropriate availability, quality and affordability” and further references are made to properties being of “a good standard and an appropriate size”. The proposed legislation would provide a measure of housing quality and a mechanism to ensure that this is delivered across the housing stock in all tenures. This priority also focuses on the supply of an appropriate amount of housing of the required mix to meet the Island’s housing needs in an “affordable and sustainable way”.

2.9 The proposed legislation will also facilitate the delivery of two key tenets of the Committee *for* Health & Social Care’s ‘Partnership of Purpose’ transformation model:

- Prevention: supporting islanders to live healthier lives; and
- Empowered providers and integrated teams: supporting staff to work collaboratively across organisational boundaries, with a focus on outcomes.

3. Current Legislation relevant to Housing Standards

3.1 There is no current legislation directed specifically at housing standards and so there is no system for assessing the quality, wholesomeness and fitness for habitation of housing units across all tenures on Island. As such poor housing standards can be allowed to persist.

3.2 Table 1 provides an overview of the legislation which is currently available to address housing standards. In addition, it is acknowledged that there are other

¹¹ Article VIII of Billet d’État No XIX of 2018.

legislative controls that encompass wider housing related matters but these are not relevant to housing standards. For example, the planning legislation designates use classes for land planning purposes as set out in the Land Planning and Development (Use Classes) Ordinance, 2017 and Boarding permits are issued by the States' Committee *for* Economic Development under the Tourist Law, 1948 in relation to provision of visitor accommodation. In addition, the Population Management (Guernsey) Law, 2016 contains provisions in relation to regulating the occupation of Local and Open Market accommodation.

Table 1 – Existing Legislation Relevant to Housing Standards

Legislation (as amended)	Enforcing body / Officers carrying out enforcement	Main provisions
<p>Loi Relative á la Santé Publique, 1934</p> <p>Ordonnance Relative á la Santé Publique, 1936, as amended</p>	<p>Office of Environmental Health and Pollution Regulation¹²</p>	<p>Abatement notices for:</p> <ul style="list-style-type: none"> • “Any premises or part of premises ... in such a state as to be either a nuisance or prejudicial to health”; • “Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or ashpit so foul or in such a state as to be either a nuisance or prejudicial to health”; • “Any house or part of a house so overcrowded as to be either dangerous, or prejudicial to the health of the inmates, whether or not members of the same family”; • “Any occupied dwelling house for which a supply of water for domestic purposes is not readily available or which is not adequately provided with domestic cooking facilities, or with sanitary installations or appliances”; • “Any cistern used for the

¹² The statutory responsibility rests with the Committee *for* Health and Social Care but enforcement is carried out by officers appointed from the Office for Environmental Health & Pollution Regulation with operational oversight by the Committee *for the* Environment & Infrastructure.

		<p>supply of water for domestic purposes so placed, constructed or kept as to render the water therein liable to contamination, being prejudicial to health”;</p> <ul style="list-style-type: none"> • “Any gutter, drain, shoot, stack-pipe, or down-spout of a building which by reason of its insufficiency or its defective condition shall cause damp in such building or in an adjoining building, so as to be either dangerous, or prejudicial to health” <p>The Medical Officer of Health (MOH) may serve a Closing Order on a premises meaning that it cannot be occupied. Current arrangements are that EHOs must request the MOH to undertake this action.</p> <p>Prescriptive overcrowding standards requiring floor area of room calculations.</p>
The Fire Services (Guernsey) Law, 1989	Fire and Rescue Service (of the Committee for Home Affairs)	<p>Part III – Fire Precautions.</p> <p>Applies to certain premises including where there is the provision of sleeping accommodation for at least 10 persons or any building where there is sleeping accommodation below ground floor or above first floor level except a house occupied as a single private dwelling.</p>
Health and Safety (Gas) (Guernsey) Ordinance, 2006	Health and Safety Executive ¹³	<p>Safety of gas installations in domestic or residential premises. In particular, requiring installation of gas fittings by a person on the Gas Safe Register and relevant duties on landlords to ensure gas fittings are maintained in a safe</p>

¹³ The HSE forms part of the Committee for Home Affairs and functions are conferred on the Committee or health and safety inspectors appointed by it.

		condition (Part VI).
The Health and Safety at Work (General) (Guernsey) Ordinance, 1987	Health and Safety Executive	General health and safety duties of employers of more than 5 people to their employees and to other persons and in relation to their premises. These duties are applicable to landlords running businesses.
The Land Planning and Development (Guernsey) Law, 2005 Land Planning and Development (Enforcement) Ordinance, 2007	Development & Planning Authority	Conditions attached to planning permissions require compliance with building regulation requirements and can impose other conditions relevant to housing standards. Enforcement provisions in relation to failure to obtain planning permission or breach of a condition.
The Building (Guernsey) Regulations, 2012	Development & Planning Authority	Provides for approval of plans for building work and sets out requirements to be met for certain work. Provides for additional requirements of Building Regulations (e.g. in relation to fire safety and means of escape etc.) to be met where the use of buildings or rooms is changed to residential, or additional rooms or dwellings are added. Provides for the issuing of standards providing practical guidance on the meeting of the requirements.
The Clearance of Ruins (Guernsey) Law, 1957	Development & Planning Authority	Can require the demolition of a building in a ruinous condition and clearance of the land.
Loi ayant rapport à la Réparation ou la Démolition de Murs, Fossés, Maisons et Bâtiments qui sont dans un état dangereux of 1919	Constables and Douzaines of parishes	Gives powers to the parish in relation to buildings which are a danger to persons.

- 3.3 Planning and Building Control provisions allow for the regulation of new build housing and certain alterations or changes to the use of existing housing which amount to development or building work. The existing controls are effective in ensuring that new and renovated housing meet modern standards. If development or building work is carried out which does not meet requirements under the planning permission or Building Regulations or which has been carried out without the necessary approvals then enforcement action can be taken.
- 3.4 Building regulations only apply to 'building work' and do not apply to other factors affecting housing standards such as overcrowding, excess cold/heat, (elements of) internal arrangement, risks of falling (such as a result of poor maintenance e.g. loose carpet on stairs). Equally, where works do not amount to development or building work or are exempt or where properties have not been maintained, these issues cannot be addressed through Development & Planning Authority controls.
- 3.5 The main work addressing housing standards in the community (across all types of housing tenure) is carried out from the Office of Environmental Health and Pollution Regulation (OEHPR)¹⁴. The OEHPR predominantly uses public health legislation that was enacted in 1934 (Loi Relative á la Santé Publique, 1934 and the related 1936 Ordinance) to address housing standards. This public health legislation is very outdated and was not designed to address the spectrum of housing and health issues that are prevalent on-Island. The wording in the existing legislation is also not aimed specifically at housing defects (e.g. general housing condition is only covered by the phrase 'any premises in such a condition as to be prejudicial to health or a nuisance'). Whilst an amendment in 2010 to define the level of overcrowding which is prejudicial to health has been effective in addressing this particular issue, the complexity of the calculations necessary has been criticised and the legislation is generally not fit for the specific purpose of addressing housing issues.
- 3.6 The public health legislation provides limited enforcement options requiring the abatement (i.e. reduction or removal) of a nuisance, except in cases of imminent danger, or the closure of a premises. Where a property is owner-occupied the legal responsibility lies with them and if a statutory nuisance exists (possibly even reported by them) then a legal notice places a requirement on them to remedy the matter.
- 3.7 The public health legislation is not specific, or exhaustive, about what may render a 'premises' to be prejudicial to health or a nuisance as it is older legislation and was designed to cover a wide range of circumstances. There is

¹⁴ References to the OEHPR refer to Environmental Health officers at that office.

also no legal mechanism in the legislation to quantify the risk posed by the problem nor a range of enforcement provisions to allow a proportionate response. Due to the acknowledged shortcomings of the public health legislation, in February 2013, the Health and Social Services and Housing Department Boards agreed the introduction, on a non-statutory basis, of the Housing Health and Safety Rating System used in the UK (HHSRS) locally. HHSRS is evidence-based and it is supported by extensive reviews of the literature and by detailed analyses of statistical data on the impact of housing conditions on health¹⁵. This system has subsequently been used by the OEHPR as a means for assessing and managing risks within residential accommodation.

- 3.8 It is acknowledged that a wider review of local public health legislation is being led by the Director of Public Health / Medical Officer of Health and the Director of Environmental Health and Pollution Regulation is a consultee in this process. The proposed changes would provide modern alternatives to the existing provisions and would not conflict with this review. Adopting legislative means to define, assess and enforce good housing conditions would not prohibit or limit this review and the wider public health legislation review is welcomed and supported.
- 3.9 The OEHPR has noted a relatively consistent number of housing complaints from 2012 to date. In 2012, 47 complaints were received, 64 were received in 2017, 55 in 2018 and in 2019 63 complaints were received by the OEHPR regarding housing conditions. The complaints resulted in a variety of interventions from informal advice through to the service of 4 Closing Orders in 2017. In 2018 42% of enquiries related to the private rented sector, 17% related to houses in multiple occupation, 32% related to owner occupied properties and 9% related to social housing.
- 3.10 The OEHPR believe that this still does not reflect the poor conditions that exist in the Island’s housing stock and the OEHPR is actively engaging with groups that interact with tenants and home owners (including Citizen’s Advice Bureau, Tenancy Management Officers, Guernsey Housing Association, Guernsey Private Residential Landlords Association, Health Visitors, Social Workers etc.) regarding the services the Office offers.
- 3.11 Table 2 shows the main legislative controls on housing quality standards within England, as a comparator and to demonstrate where differences and gaps exist between Guernsey’s legislation and controls within English legislation.

Table 2 – English Housing Standards Legislation

Legislation	Main relevant provisions
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¹⁵ Office of the Deputy Prime Minister (2006). *Housing Health and Safety Rating System: Operating Guidance*. London: ODPM Publications.

<p>Housing Act 2004</p>	<p>Housing health and safety rating system (HHSRS) for assessing housing conditions (all tenures) and mechanisms for enforcing housing standards</p> <p>Licensing of houses in multiple occupation</p> <p>Legal framework for tenancy deposit schemes</p> <p>Demolition orders and slum clearance declarations</p>
<p>The Management of Houses in Multiple Occupation (England) Regulations 2006</p> <p>The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007</p> <p>The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006</p> <p>The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018</p>	<p>Places duties on both those managing HMOs and tenants of HMOs</p> <p>Imposes duties on managers of HMOs to supply and maintain electrical and gas supplies, to supply water and drainage, to maintain the physical condition of properties and to take fire safety measures</p> <p>Places responsibility on tenant to allow reasonable access to the HMO to carry out maintenance etc., to take reasonable care to avoid damaging the property, store and dispose of litter properly and comply with reasonable fire safety instructions</p> <p>Provides for similar provisions to the Management of Houses in Multiple Occupation (England) Regulations 2006 but in relation to self-contained flats</p> <p>Specifies various matters including the standards to be applied when determining the suitability of a HMO for licensing</p> <p>Provides for a description of a house in multiple occupation to which the licensing requirements of the Housing Act 2004 apply</p>
<p>Landlord and Tenant Act 1985</p>	<p>Sets out the landlord's obligations including in relation to repair and service charges and fitness of accommodation for human habitation</p>
<p>Homes (Fitness for Human</p>	<p>Amends the Landlord and Tenant Act 1985 to</p>

Habitation) Act 2018	require that residential rented accommodation is provided and maintained in a state of fitness for human habitation
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- 3.12 Whilst Planning and Building Control legislation is effective in ensuring that housing quality standards in new builds and renovated properties are met, there is currently no Guernsey legislation in place the specific purpose of which is to require certain housing standards to be met by existing accommodation, as illustrated by the differences between tables 1 and 2. Existing legislation relevant to housing standards is currently enforced in an uncoordinated manner in Guernsey across a variety of Committees and services reflecting the different purposes of that legislation (e.g. teams within the Committees *for* Health & Social Care, Employment & Social Security, Home Affairs and *the* Environment & Infrastructure etc.) with multiple pieces of legislation being used and a variety of standards/requirements being applied.
- 3.13 It can be concluded that, the current Public Health legislation and that applying to properties in a dangerous/ruinous condition are outdated and unsuitable in relation to housing standards. Also, the application of the other legislation relevant to housing standards, can lead to a fractured and at times inconsistent approach to the same problems. There is an unnecessary and avoidable burden on landlords and property owners from visits and interventions from multiple States' services. The proposed legislation presents an opportunity to introduce legislation to streamline and simplify the controls for property owners, landlords, tenants and States' services.
- 3.14 The main areas where Guernsey's housing standards legislation are not comparable with modern legislation in other jurisdictions are:
- A legally defined mechanism to assess housing standards (across all tenures);
 - A variety of enforcement options to remedy unsafe housing conditions (across all tenures);
 - A set, baseline standard of fitness for human habitation of rented properties;
 - Licensing of houses in multiple occupation;
 - A legal framework for tenancy deposit/deposit protection schemes; and
 - Minimum standards in tenants' rights against their landlords and obligations of landlords.
- 3.15 The existing legislation is too disparate, focussed on other purposes and, in some cases, outdated to be able to be amended to incorporate the areas highlighted in section 3.14 and the drafting of new primary legislation allows an

unencumbered opportunity to provide for a Law with a wide enough scope to deal with all areas of concern and to introduce new housing provisions progressively and/or to amend or consolidate existing legislation relevant to housing standards in particular to ensure terms used to refer to different types of housing are consistent and that enforcement action addressing the same problems is not inconsistent. This also provides the option for the States of Deliberation to prioritise and phase in implementation of the proposed housing regulation dealing with the most serious issues first.

4. Legislation to Support the Provision of Good Quality Housing

A Mechanism to Assess Housing Standards

- 4.1 The functions within the legislation would be conferred on the Committee *for the Environment & Infrastructure*, as the principal Committee with policy remit in this area, as previously detailed. The Committee would, however, have the ability to authorise officers to exercise its functions under the Law. Due to the qualifications, competencies and current remit of the officers in the Office of Environmental Health and Pollution Regulation, it is proposed that enforcement officers for housing standards would be appointed from this team. This would use existing expertise developed under the public health legislation and landlords and tenants would have continuity of contact with existing officers.
- 4.2 The Committee wishes to ensure that safe and healthy environments are provided at all local dwellings but also that a pragmatic, proportionate and consistent approach is taken to securing compliance. In order to determine the fitness of a property for human habitation, a legally recognised mechanism is needed to address the nature and impact of the standard of housing. It is proposed that the Housing Health and Safety Rating System (HHSRS) used in England is adopted in local legislation to provide a risk-based tool against which to assess the quality of housing across all tenures with any necessary adjustments based on experience in England and local circumstances.
- 4.3 HHSRS is a risk-based assessment tool which is used by environmental health officers in the United Kingdom (UK) to assess the risk (the likelihood and severity) of a hazard in residential housing to the health and safety of occupants or visitors¹⁶. HHSRS applies to all tenures and will be able to be applied to consider standards in owner-occupied dwellings as well as ensuring that the basic standards are met in rented properties.

¹⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf

- 4.4 Guidance will be provided to inform landlords, owners and tenants how to comply with the provisions of HHSRS but it will allow greater flexibility than a prescriptive standard which may not take into account the diversity of properties that would fall within the proposed regime and the scope of different types of occupants.
- 4.5 The use of the HHSRS will ensure that the highest risks to health and wellbeing are managed without landlords being forced to comply with rigid standards, as the aim is to remove/reduce the risk rather than providing a singular compliance option. It helps to ensure that investments made by landlords into their properties have the most beneficial effect for tenants and it provides continuity of risk management across the private rented sector.
- 4.6 Whilst HHSRS is an established and evidence-based assessment tool, it was subject to a UK Government review in 2018. HHSRS is currently being revised in relation to the outcome of the review to provide a simpler assessment that is more-readily understood by the public. It is intended that if this assessment tool is adopted in Guernsey, that flexibility is incorporated within the legislation to make amendments to it if needed, including to simplify it whilst retaining an equally robust, approach to assessing standards within properties.

A Defined Fitness for Human Habitation in Rented Accommodation

- 4.7 In addition, it is proposed that basic housing standards are introduced for rented dwellings to ensure that all rented properties meet a basic requirement (fitness for human habitation). In determining whether rented accommodation is unfit for human habitation, regard shall be had to its condition in respect of the following matters with guidance issued on assessment to ensure uniform application of standards:

- Repair;
- Stability;
- Freedom from damp;
- Internal arrangement;
- Natural lighting;
- Ventilation;
- Water supply;
- Drainage and sanitary conveniences;
- Facilities for preparation and cooking of food and for the disposal of waste water;
- The presence of any other hazard prescribed by SI under the Law;
-

and the property shall be regarded as unfit for human habitation if, and only if, it is so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition.

- 4.8 The minimum standards are proposed for rented properties as this acknowledges that people that are unwilling or unable to purchase a property are afforded basic housing standards that do not put their physical and mental health at risk. Minimum standards would be clearly defined and would only be intended to provide a basic level, below which a property's condition would be considered to be detrimental to the health and wellbeing of an occupant.
- 4.9 Following the recommendations of a report commissioned from the University of Warwick¹⁷, the States of Jersey have implemented the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 and the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018. These pieces of legislation specify basic housing standards for rented accommodation, define hazards (using the HHSRS framework) and provide enforcement provisions.
- 4.10 Discussions have commenced with colleagues at the States of Jersey and there are clear opportunities for adopting similar standards, capitalising on sharing the progress made by Jersey, and having comparable standards across both islands although the proposed scope of the Guernsey legislation is wider.

Licensing of Houses in Multiple Occupation (HMOs)

- 4.11 Across States' services and in various pieces of legislation there is a variety of terms that refer to properties in multiple occupation including, but not limited to, lodging houses, Part D Open Market properties, HMOs, staff accommodation, etc. The diversity of terminology can be confusing for property owners and new legislation can harmonise terminology for certain categories of property linked to clear guidance regarding the housing standards required within that sector of accommodation.
- 4.12 The term "house in multiple occupation" or HMO is generally used to describe a property which is occupied by multiple tenants who form separate 'households' but share communal facilities (e.g. toilets, bathrooms, kitchens etc.). A property which is divided into a number of self-contained units (i.e. with a bedroom, kitchen facilities, bathroom and toilet) does not generally fulfil the criteria of a HMO. The term HMO would need to be legally defined and this is an established definition within UK legislation. The Guernsey legislation would reflect the UK definition within any necessary adjustment for local circumstances.
- 4.13 The HMO sector of the private rental sector houses some of Guernsey's most vulnerable groups of people. HMO tenants can be more vulnerable than the general population because they are likely to have one or more of the following characteristics which make it more likely that their accommodation will be of

¹⁷ <https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=964>

poor quality and that they will be unable to improve their situation^{18,19,20,21};

- Have a low socio-economic status;
- Be in employer-tied accommodation;
- Be temporarily based in Guernsey;
- Not speak English as a first language;
- Have chronic physical and/or mental health problems;
- Have substance misuse problems;
- Be problem tenants that some landlords will not want to house;
- Be unaware of who to complain to about accommodation issues; and
- Be concerned that complaining about their poor accommodation could lose them their home and/or job.

4.14 It is proposed to make it a legal requirement for landlords in the private rental sector who operate properties that meet the definition of a HMO to be licensed by the Committee. A licensing system would provide additional safeguards for the highest risk properties housing the most vulnerable tenants.

4.15 In order to license a HMO, applicants would be required to complete and submit an application form along with the relevant fee and requisite documents including a current gas and electrical safety certificate, a plan of the fire safety precautions as agreed by a Fire Officer and copies of current insurance documents.

4.16 Licences will specify conditions which the landlord must ensure are complied with. These conditions will be specific to the property in question and will provide protection to the health and wellbeing of tenants. A licensing system allows specific conditions to be applied to premises (e.g. the number of occupants that the building may house) and allows mechanisms to regulate (e.g. to suspend or revoke a licence) if conditions are not met. Whilst premises-specific conditions could be imposed, these are likely to be limited as the basic requirements would be set out in legislation.

4.17 A licence application will trigger an inspection by an authorised officer where a risk assessment against the prescribed requirements would be carried out and action taken by the landlord, if necessary, to address any deficiencies. Landlords would be required to pay a licence fee covering a three-year period,

¹⁸ Barratt, C., Green, G. & Speed, E. (2015) Mental health and houses in multiple occupation. *Journal of Public Mental Health*, 14 (2), 107 – 117

¹⁹ Communities and Local Government (2010). *Evaluation of the Impact of HMO Licensing and Selective Licensing*. London: Communities and Local Government Publications.

²⁰ Office of the Deputy Prime Minister (2004). *The Impact of Overcrowding on Health and Education: A Review of the Evidence and Literature*. London: ODPM Publications.

²¹ Shaw, M., Dorling, D. and Brimblecombe, N. (1998). Health problems in houses in multiple occupation. *Environmental Health Journal*, 106 (10), 280-281.

with properties being inspected on a risk-based frequency.

- 4.18 The three-year licence period is proposed as it is unlikely that substantive structural deterioration would occur over this period and it would reduce the burden on landlords. This would also align with the three-year registration period proposed for private rented properties. It is proposed that if a licence fee is payable for a HMO that this would be deemed to cover the registration of that property. This would prevent landlords paying twice for very similar purposes.
- 4.19 It is intended that the fee would be charged to cover the administration (including the registration and inspection of premises and enforcement action) of the scheme but that this fee would be set so as not to be detrimental to landlords or to make it unviable to let a room or unit of accommodation, thus not impacting on the level of rent charged or the availability of properties.
- 4.20 Fees would be set by the Committee and would be subject to review. It is proposed that fees could be introduced through SIs so that they can be reviewed and amended by the Committee. An indicative fee for a HMO has been calculated using the States' fee calculator and the anticipated amount of officer time to administer and regulate the system and it equated to circa £280 per property for a three year period. This equates to around £93 per year or £8 per month. HMOs are, by definition, let to multiple parties, therefore this is likely to equate to less than one pound per tenant per month, even if this fee was directly applied to rents. It is, therefore, not considered that this should be detrimental to landlords or tenants or unsettle the rental market.
- 4.21 Comparison has been made to fees in other jurisdictions and these have been relatively consistent e.g. Aberdeen City Council charge a registration fee of £865 (for a HMO with 6 – 10 tenants) and a renewal fee of £200 per year (charged as £600 for a three year period) and Cornwall Council charging £230 per year (charged as £1150 for a 5 year period). The proposed fees are therefore notably cheaper than other jurisdictions and without a separate registration fee, therefore making administration less burdensome for the landlord and the regulator.
- 4.22 Concern was raised during the consultation process (as detailed further in section 7 and Appendix 2) that requiring improvements to properties could lead to increases in rents and/or destabilisation of the lower cost rental market. The proposed standards for human habitation are clearly basic and not providing these would be detrimental to the health and wellbeing of tenants with associated wider costs to support systems (as detailed in section 2). Any responsible landlord should already be achieving these standards and should not be concerned that this system will detrimentally affect them financially or disrupt the rental market.

- 4.23 If HMO licensing is not introduced it is likely that poor standards will continue to exist. It is also highly likely that continuing only with inspections under the current legislation would miss properties which are not on the Fire and Rescue Service's register of controlled premises and/or which are unknown to inspecting services but that are likely to present the greatest risk to tenants and users of the properties.
- 4.24 It has not been deemed feasible to introduce a voluntary, informal licensing scheme as it carries too great a risk that only the most responsible landlords would voluntarily participate, that the highest risk properties would not be included and there would be no means of enforcing a voluntary scheme in the event of a breach. As it is not clear how many, and which, properties would be classified as HMOs it is imperative that there is a legal duty to declare and be licensed accordingly. This will ensure consistency across the HMO rental market and will prevent inequalities in property standards.

Registration of the Private Rented Sector

- 4.25 The 2018 Guernsey Annual Housing Stock Bulletin details that there are 27,232 domestic property units in Guernsey. 28.4% (i.e. 7,734) of these are offered as rental accommodation. A further 2.8% (i.e. 762 units) include other tenure types which includes staff accommodation.
- 4.26 Private rented properties are often found in the Island's older housing stock and there are many examples of properties falling out of the HMO sector (albeit sometimes temporarily) because they need to be fully redeveloped or refurbished. Furthermore, many properties being used as HMOs were not designed for this purpose and, in some cases, their historic conversion may fail to reach standards required under current Building Control regulations and/or standards required under HHSRS.
- 4.27 It is proposed that all private rented properties are required to be registered with the Committee but that licensed HMOs would automatically be included on the register. The application process would require that details are provided to substantiate that the dwelling meets the basic requirements that have previously been detailed. A simple online form is proposed that would allow multiple properties to be registered to a single landlord, with an online payment option. This could be supplemented by paper copies with other payment options for anyone unable, or unwilling, to use the online option.
- 4.28 The aim of registering private rented dwellings is to ensure that there is a record of which properties are being offered for habitation and that they can be evidenced to reach basic standards for human habitation. This benefits tenants and facilitates the sustainability of the property market as properties

would be less likely to deteriorate to such a condition that they could not be inhabited.

- 4.29 The registration process is intended to ‘tease out’ landlords operating rented properties which may not already be known to the States, to ensure that basic standards are achieved for all tenants across all rental sectors.
- 4.30 Registration would cover a three-year period as it is unlikely that substantive structural deterioration would occur over this period and it would reduce the burden on landlords. It is intended that a fee would be charged to cover the administration (including the registration and, as necessary, inspection and regulation of premises) of the scheme but that this fee would be set so inspection as not to be detrimental to landlords or to make it unviable to let a room or unit of accommodation, thus not impacting on the level of rent charged or the availability of properties.
- 4.31 It is proposed that fees would be introduced through SI so that they can be reviewed and amended by the Committee. The SI powers would also allow the Committee to provide for exemptions from and waiver of fees (e.g. for social housing and licensed HMOs). The cost of a three-year registration will be set by the Committee but, as an example, if a fee of £36 per property was charged (i.e. £1 per property per month over the three-year period/£12 per year) then this should provide sufficient money to administer and regulate the system and sector. The financial impact on landlords and tenants and the rental sector as a whole should be negligible but this small investment would make rogue landlords more visible (as they would not be on the public register as required and/or if they wrongly advertise the fitness of their letting properties) and it would provide an opportunity to address the shortcomings of the properties through enforcement action. Whilst this may require non-compliant landlords to invest in substandard accommodation it would prevent them placing tenants at risk and stop them undermining responsible landlords.
- 4.32 A public register would be kept of all private rental premises which are registered under the scheme to allow property owners, landlords, agents and tenants to confirm that properties are being legally let. Being listed on the public register would also convey that the property has been reported (or inspected and found) to meet the basic requirement of fitness for human habitation.
- 4.33 It is not proposed that all registered properties would be inspected during each registration period. The information provided to support the application would be self-certification from the landlord that their property meets the basic standard for human habitation. Their answers would allow a risk assessment to be carried out and properties would be visited according to the potential risks that may exist.

- 4.34 Investigations would also be carried out based on complaints received from tenants and the public, as simple guidance would be issued to detail the basic living conditions that should be achieved in order for a property to be rented and all parties should understand the basic requirements that are expected in all rental properties. The enforcement provisions of the new legislation could then be used to ensure that the necessary standards are achieved.
- 4.35 The States of Jersey currently run a voluntary licensing scheme for landlords, (Rent Safe²²) and they are in the process of introducing mandatory licensing of rented dwellings. Similar to the position regarding housing standards legislation, this provides an opportunity to benefit from the progress and experiences of the States of Jersey and officer-level discussions have shown willingness to share information to assist the States of Guernsey in progressing these proposals.
- 4.36 In November 2019 the Chartered Institute of Environmental Health (CIEH) published a 'Manifesto for Environmental Health – General Election 2019' laying out key areas that it felt were most pertinent to improving public health, reducing health inequalities and protecting the environment. Seven key areas were highlighted, three of which related to housing, with a statement that "The next Government should commit to introducing a mandatory national registration scheme for all landlords and agents in England to enable better regulation and oversight of the private rented sector by regulating authorities". This further highlights that this is an emerging area of importance which is being progressed by other neighbouring jurisdictions, in recognition of the public health improvements that it could stimulate.

Deposit Protection Scheme

- 4.37 At the end of September 2017, 13,608 people lived in private rented accommodation (22% of the total population). In 2017 there were 7,734 private residential rental properties on the Island²³.
- 4.38 In Guernsey, the private rented sector operates relatively free of a legal framework. Tenants and landlords negotiate terms between themselves on a contractual basis, and courts generally rely on these contracts, rather than on legislation, to adjudicate tenancy disputes.
- 4.39 It is common practice for landlords to require a deposit before a tenancy commences. This is generally equivalent to one month's rent, however landlords of more valuable properties often ask for up to three months' rent. Some or all of this deposit may be used by the landlord to return the property

²² <https://www.gov.je/home/rentingbuying/otherrentaloptions/pages/rentsafe.aspx>

²³ This figure excludes residential and nursing homes and "Affordable" rented housing

to a reasonable state at the end of a tenancy, with any excess being returned to the tenant. Most landlords behave responsibly and hold deposits fairly, and most tenants discharge their obligations under the lease. Data provided by the Policy & Resources Statistics Unit show the annual average monthly rent for different type and size of property in the table below.

Table 3 – 2017 Annual average monthly rental price by type and number of bedrooms

1 Bed Flat	2 Bed Flat	2 Bed Bungalow	3 Bed Bungalow	2 Bed House	3 Bed House	4 Bed Bungalow /House
£929	£1,183	£1,392	£1,800	£1,453	£1,813	£2,242

- 4.40 Using these data and the distribution of properties in these bands, it is estimated that the total amount of deposits held by private landlords at any time is around £12m. Due to the magnitude of deposits and the number of people it affects it is not surprising that there is scope for disputes to arise between landlords and tenants regarding deposits.
- 4.41 Disputes relating to deposits in the private sector are occasionally brought to the attention of Housing staff through casework by Deputies or through the media. In the absence of an appropriate legislative framework²⁴ officers signpost tenants to the Citizens Advice Bureau. In 2015, 750 private tenancy issues were reported to the Guernsey Citizens Advice Bureau with 92 relating to deposits and 52 directly relating to the lack of a tenancy deposit scheme²⁵.
- 4.42 A contract-based system has advantages for both landlord and tenant – without the constraints of legal obligations in legislation the two contracting parties can theoretically devise a lease which meets both their needs as fully as possible. Notice periods can be flexible and the standards of accommodation are set by free market principles, so in theory, tenants can access the kind of accommodation they wish to pay for. The States provides social housing for the most vulnerable or financially disadvantaged, and therefore tenants on the private market ought to be only those individuals who can afford to make choices about where they rent.
- 4.43 In reality, however, there are limits to the benefits brought about by a largely unregulated private rented sector. The current model can cause harms, and these are felt by both landlords and tenants. Landlords can be adversely affected by tenants who breach their agreement, cause damage, and move on.

²⁴ The only legislative tool available for private rented properties is Rent Control which does not apply to most rental properties which are not in HMOs and so has a very limited practical application. Also, it only applies to fair rents and not to deposits.

²⁵ Figures from the 2015 CAB query report with further statistical breakdown provided during the consultation process.

If the landlord is forced to use a deposit to cover a final period of tenancy where rent was unpaid, the cost of repairing damage to the property must be met from the landlord's own pocket. On the other side of the relationship, Citizens Advice Bureau report that they deal with a significant number of queries from tenants who feel that their deposit has been unfairly held by a landlord at the end of a tenancy. With no formal guidelines or dispute resolution process, neither party's rights are clear; unscrupulous landlords and tenants can freely exploit the system to the disadvantage of the other party.

- 4.44 The social rented sector provides housing for most of the Island's most disadvantaged households, but while a waiting list exists there will always be some households who cannot be housed even if they meet the eligibility criteria and some people do not meet those criteria. Those households have no choice but the private rented sector, even though they belong to the group that the States has acknowledged as needing subsidised housing. The concept of freedom of choice, an advantage of an unregulated market, simply does not exist for those tenants. Their choice of accommodation is limited by their income. Stigmatisation and discrimination against low-income households means some landlords refuse to let properties to households in receipt of benefit, and thus their pool of potential rental properties shrinks even further. With limited disposable income these households tend not to be in a position to afford to have savings, and so finding a deposit in the first place may be a struggle. They simply cannot afford to have their financial deposits unjustly withheld, especially if they have to pay another deposit on their next property.
- 4.45 The Committee notes that other jurisdictions have experienced similar problems in the regulation of the private rented sector, and third-party deposit protection schemes are commonplace. Throughout the United Kingdom and in Jersey, external agencies are engaged by local governments to administer deposit protection schemes.
- 4.46 The introduction of a deposit protection scheme would:
- Contribute towards the ongoing programme of work aimed at modernising and improving the statutory oversight of, and support for, the residential rental sector in Guernsey. At the same time it supports the delivery of area of focus 18 of the Future Guernsey Plan – "housing strategy" which focuses on improving affordable housing provision;
 - Provide protection for both landlords and a large proportion of the public as around 20% of the population rent privately²⁶; and
 - Enhance Guernsey's reputation by complying with international best practice and addressing the existing gap in the protection of the rights of landlords and tenants in the private rental property market.

²⁶ <https://gov.gg/CHttpHandler.ashx?id=93781&p=0>

- 4.47 Deposit protection schemes introduced elsewhere tend to fall into one of two categories; insurance schemes and custodial schemes and these are outlined below.
- 4.48 With an insurance scheme, the landlord keeps the deposit but pays an insurance fee to an independent agency. If a tenancy ends in dispute, the agency recalls the full amount of the deposit and pays it to the tenant if it finds in the tenant's favour. Insurance schemes do not provide the same incentive for landlords to adhere to best practice, as they hold the money (and keep any interest earned) themselves. In the event of a dispute, the third party has to wait for the landlord to transfer the deposit to them while a resolution is sought and adds unnecessary delay to proceedings.
- 4.49 Under a custodial scheme, the third party would hold the deposit for the lifetime of the tenancy. Landlords can be compelled by legislation to pay the deposit to the agency or face a fine (e.g. in Jersey, landlords who fail to pay into the scheme within 21 days are fined £2,000). Tenants are also liable to pay a one-off holding fee to the agency. The cost of this depends on the agency, but as a guide "mydeposits" (used in Jersey) charge £21 per tenancy, TDS in England charge fees starting from £13.20, and in Northern Ireland the charge for administering the scheme is paid for through interest earned on the deposit held.
- 4.50 If the tenancy is ended without dispute, the deposit is returned to the tenant. The scheme also ensures tenants are protected if a landlord goes bankrupt or loses their assets for any other reason. In the event of a dispute, the agency can work with both parties to find a resolution. Some agencies include this service as part of the fee, others ask for an additional charge. Dispute resolution requires both parties to provide evidence, and if one agency is contracted for the Island, it will ensure consistency of approach across all private tenancies without recourse to the Courts.
- 4.51 The size of the Island means that running both kinds of schemes would not be viable. The Committee notes that Jersey has a larger market and has only introduced a custodial scheme. The Committee believes that there are considerable benefits in working in partnership with Jersey:
- Ease of implementation;
 - Reduced cost; and
 - Experience to date in Jersey.
- 4.52 The Committee considers a custodial scheme to be a preferable option, as monies will be held by an independent third party and dispute resolution is more straightforward.

5. Proportionate Regulation and Enforcement

- 5.1 The proposals are intended to provide a transparent system that will ensure stability and certainty for tenants, landlords, businesses etc regarding their respective responsibilities. The intention is to protect the health and wellbeing of Islanders through the meeting of duties in relation to basic housing standards and not to place unnecessary burden on providers or users of the housing sector.
- 5.2 Officers at the OEHPR apply good practice in Enforcement Policy with the core constructs being consistency and proportionality. Existing and proposed legislation enforced by OEHPR officers have mechanisms for appealing key decisions made or actions taken by the relevant Committee or officers appointed under the legislation and it is proposed that standard rights of appeal through the Court would be provided for in the legislation to ensure that the those regulating remain accountable and questionable for their actions.
- 5.3 The current enforcement options under public health legislation relevant to housing standards are generally limited to the service of an abatement notice or a closing order. Abatement notices can only address matters which amount to or are deemed to be 'a nuisance or prejudicial to health'. If the Court agrees with the officer's interpretation that only a Category 1 hazard (as defined by HHSRS) amounts to or is deemed to be a nuisance or prejudicial to health, then abatement notices cannot address less critical (Category 2) hazards.
- 5.4 The enforcement options within the UK's Housing Act 2004 include:
- Improvement notices (for category 1 and 2 hazards);
 - Prohibition orders (for category 1 and 2 hazards);
 - Hazard awareness notices (for category 1 and 2 hazards);
 - Emergency remedial action or emergency prohibition orders (for category 1 hazards only);
 - Demolition orders (for category 1 hazards only); and
 - Slum Clearance area declarations (for category 1 hazards only).
- 5.5 The UK Housing Act also has provisions to enable authorities to take the action required by an improvement notice itself, with or without the agreement of the person on whom the notice was served. The need to act without agreement may arise where a category 1 hazard exists and remedial action is required without undue delay, but the owner is not in a position to carry out the works or arrange for the work to be done, perhaps for financial reasons. Authorities may have to carry out works without agreement where a notice has not been complied with. Where the authority takes action with the agreement of the person served with the improvement notice the works are to be taken at his or her expense. Where the authority takes action without agreement, it may

recover expenses reasonably incurred. Such expenses may be made a charge on the property. An appeals process also exists in relation to the recovery of expenses. It is proposed that similar provisions are implemented locally.

- 5.6 Demolition and clearance provisions relating to structures are considered to be beyond the necessary scope of addressing housing standards locally which is beyond the priority purpose of this policy letter. This has a wider application than housing and would also have other impacts which would require further consideration before being proposed. A power to introduce legislation covering these provisions has been proposed to be included within the Enabling Law (Appendix 1), however this is intended to provide future options and detailed policy proposals (following consultation with other Committees) would have to be brought to the States before this is would be implemented. Similar enforcement provisions to the other notices/orders are, however, proposed as they provide proportionate enforcement options.
- 5.7 The other enforcement options would allow a much greater ability to address a wider range of factors, with the enforcement action being proportionate to the risk which the defect presents. The ability to carry out works in default, where a person has failed to comply with a notice, has benefits for occupants, owners and the wider public (including neighbours) and it is an established and proven enforcement option in the UK and other jurisdictions, albeit used equitably and likely infrequently. As set out above, there would be a right of appeal against an enforcement notice.
- 5.8 Additional enforcement options would provide greater scope to be able to ensure appropriate changes are made to provide basic conditions within properties but the Committee is not looking to vary the general approach or standards from what is currently required. The new legislation would, however, provide a sound, legal foundation for these to be applied and will provide proportionate options on how improvements could be secured whilst providing robust rights of appeal.
- 5.9 In addition to the main civil notices and orders outlined above, it is also proposed that the legislation has similar offence provisions and other sanctions to those in the equivalent legislation in the UK but adapted for the Guernsey context so that there will, for example, be offences in relation to breach of a civil notice or order, for failing to be licensed or registered as required or for not complying with a term or condition of a licence.
- 5.10 It would be possible to introduce legislation simply covering these issues but this would not deal with the wider need to address inconsistencies and differences of terminology used in other legislation affecting housing standards across the States. If these issues are not tackled the opportunity would be lost to consider streamlining inspection requirements and harmonise terminology

across legislation. The proposed approach has been agreed, through the consultation process, with other States' Committees services that regulate issues relating to the housing stock as it would allow for more consistency in inspection requirements and terminology used in the future, where consistent with the purposes of the other legislation.

- 5.11 It is proposed that a comprehensive approach is taken to include legislation relevant to housing standards within the new legislation rather than remain across several pieces of legislation insofar as this is consistent with the purposes of the current legislation. This is intended to ensure that there is a consistent approach across all States' services and to improve service delivery.
- 5.12 To allow a wide enough scope to address all issues relevant to Housing Standards under one piece of legislation, it is proposed that primary legislation is drafted. The Law would provide for action to be taken and enforced as necessary against measured risks to improve the health and wellbeing of all residents, in all sectors of housing in the Island.
- 5.13 Having comprehensive primary legislation, including powers to provide for Ordinances and SIs, will provide flexibility for future housing policy proposals to be adopted under this 'umbrella' legislation. This would provide one Law under which any measures relevant to housing standards could be addressed including but not limited to, measures to tackle vacant dwellings, standard lease agreements, etc. subject to further debate and approval by the States.
- 5.14 It is, therefore, proposed that new legislation is enacted to redress the current shortcomings in locally applicable housing standards and enforcement provisions, allow the registration of rented properties and licensing of HMOs, introduce a deposit protection system and to provide a framework within which subsequent housing-related issues can be implemented. Appendix 1 sets out the provisions that the Committee believes should be included in the Enabling Law and details the provisions that could be provided for by SIs and not by Ordinance.

6. Resources and Implementation

- 6.1 As mentioned in this report, the States of Jersey already have an established rent deposit scheme and have commenced legislation relating to housing standards for rental properties, an equivalent to HHSRS and licensing of rented dwellings. It is likely that significant resources could be saved through collaborative working and sharing of drafted legislative material on areas where equivalent legislation is already in place in Jersey. The States of Jersey have been consulted on these proposals and have raised no objections to the principles of collaborative working.
- 6.2 HHSRS is already being used as the measure to determine the suitability of the Island's housing stock for human habitation therefore the formal introduction of this system would not impact on the routine operations of the OEHPR.

OEHPR staff already receive training regarding the use of this tool therefore there would also no additional training cost implications.

- 6.3 Administration of the registration and licensing schemes would be covered by the proposed fees although these would not be a means to generate revenue. The schemes would be reviewed after 12 months to assess the impact on the housing stock and the implications on the OEHPR's resources. It is probable that the fees would be utilised to employ additional human resource to carry out duties associated with the administration and enforcement of the legislative provisions.

7. Consultation, Joint Working and Policy Content

- 7.1 A targeted consultation was issued in March 2019 to ascertain the views on the existing legislation and of an early draft of the Committee's proposals. The consultation was aimed at key stakeholders including States' Committees, enforcement officers, housing providers, landlords and estate agents, representatives of the construction industry, charities and services who may be affected by the proposals. Initially 28 consultees (some of which were bodies with wider membership) were contacted but this attracted wider interest following being raised in the local media. A total of 37 responses were received and a summary of the consultation findings is provided in Appendix 2.
- 7.2 The content of this Policy Letter has been amended to reflect the comments that were received, both positive and negative, and additional details and reassurances have been provided to address queries regarding the extent and application of the proposals.
- 7.3 It has previously been highlighted that the States of Jersey have in place existing legislation on housing standards for rented dwellings and are in the process of adopting additional legislation in that area which delivers similar provisions to certain of those proposed within this Policy Letter. There are obvious advantages for the States of Guernsey to benefit from the work that has been carried out in Jersey and it has been indicated that there is a willingness to engage in collaborative working.
- 7.4 The Law Officers of the Crown have been consulted regarding the legal implications and legislative drafting requirements resulting from the propositions and this policy letter.

8. Compliance with Rule 4 of the Rules of Procedure

- 8.1 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee except Deputy M Dorey who recused himself due to a declared interest.
- 8.2 In accordance with Rule 4(5), it is confirmed that the propositions relate to the

purpose and policy responsibilities of Committee *for the* Environment & Infrastructure, as the Committee with the policy mandate for general housing policy.

Yours faithfully

B L Brehaut
President, Committee *for the* Environment & Infrastructure

S L Langlois
H L de Sausmarez
S T Hansmann Rouxel
Members, Committee *for the* Environment & Infrastructure

PROVISIONS TO BE INCLUDED IN THE ENABLING LAW AND PROVISIONS TO BE PROVIDED BY ORDINANCE AND STATUTORY INSTRUMENT

The Enabling Law would allow for broad provisions in relation to regulation of the Island's housing stock on areas relevant to housing standards including:

1. General powers to make Ordinances to regulate the Island's housing, other than control of occupation.
2. Specific powers to make Ordinances in relation to:
 - a) A system to assess the quality of housing
 - b) A basic housing standard for rented dwellings
 - c) A licensing regime for houses in multiple occupation
 - d) A registration system for private rented dwellings
 - e) A deposit protection scheme for private rented dwellings
 - f) Minimum obligations of landlords and rights of tenants
 - g) Demolition and clearance provisions
 - h) Standard enforcement provisions:
 - i. Powers of entry, warrant to enter dwellings, statutory powers to make requirements, take samples etc., obtain information by written notice, issue civil notices and orders (including improvement notices, prohibition orders and hazard awareness notices) and powers to take emergency remedial action;
 - ii. Provision for the Committee to carry out works in default where notice/order provisions are not met and related powers to impose a charge and to recover costs associated with the administration and enforcement of the Ordinance; and
 - iii. Provision for offences and other appropriate sanctions
3. Ordinance powers to amend other legislation relevant to housing as proposed in Proposition 7.
4. Ordinance powers would also provide powers for other standard provisions including, provision for fees and charges, the issuing of guidance or codes of practice, appointment of authorised officers and delegation of Committee functions and exclusion of liability where acting in good faith.

Proposed provisions to be provided by statutory instruments would include:

- I. Powers to introduce and amend fees for licensing and registration systems.

The General Housing Law

Summary of Consultation Findings

Executive Summary

On 19 July 2018, the States directed the Committee *for the Environment & Infrastructure* to undertake a Programme of Works to investigate the efficacy of the existing legislative framework and processes governing housing quality standards, and to determine how legislation could support the provision of good quality housing, following concerns that the current provisions within legislation to regulate standards across the Island's housing stock were inadequate.

A number of useful points for consideration were raised in the consultation, such as suggestions regarding how measures aimed at enforcing the law and incentivising good practice could be improved by collaborative working amongst key stakeholders and support from Government.

It was recognised that a consolidation of the current legislation would be beneficial as it would help to unify language and create a better shared understanding of processes and specifications amongst service providers and users. It was anticipated that streamlining the existing structure and giving greater powers to the Office of Environmental Health and Pollution Regulation (OEHPR) to assess all standards and enforce improvements would remove duplication of services.

A number of respondents felt that introducing minimum standards would have a positive impact by improving the quality of the Island's housing stock and would reduce the health and safety risks associated with dwellings left in poor condition.

The Committee intends to address some of these points whilst considering the unintended consequences that might occur if the proposals

were introduced, such as the effect on the affordability and availability of private renting housing.

It was noted that more technical detail, including a detail of the proposed fees, would need to be developed.

The Committee will consider the consultation responses as part of the development of a set of draft proposals for the General Housing Law, which it aims to bring to the States of Deliberation in spring 2020.

The Consultation

The Committee *for the Environment & Infrastructure* is developing proposals for housing legislation that will provide a singular legislative framework to strengthen existing legal powers by providing proportionate provisions to regulate conditions across all housing on-Island and provide greater protection to tenants, landlords and property owners.

A targeted consultation was issued in March 2019 to ascertain views on the existing legislation and an early draft of the Committee's proposals.

The consultation was aimed at key stakeholders, such as housing providers, landlords, and estate agents, representatives of the construction industry, charities, relevant States Committees and services who might have new rights, obligations and / or duties under the new general housing law. A total of 37 responses were received.

Summary of the Key Findings

The key findings are summarised into six themes which were identified during the review of the consultation responses: introducing a singular legislative framework; minimum housing standards; registration of the private rented sector; licensing of houses in Multi-Occupation (HMOs); deposit protection scheme; and other comments received.

1 Introducing a singular legislative framework

It was questioned whether the proposals would have the effect of supplementing or consolidating the existing legislation. Most respondents were broadly in favour of standardising practices and creating a shared understanding in order to streamline the current system, but were opposed to the idea of supplementing existing legislation as they were concerned that this would over-complicate the law and add unnecessary bureaucracy.

“Ensuring that a Law exists that clearly sets out definitive roles, responsibilities and expectations, with no contradictions, is essential to address issues raised in [the] report”.

“Regulatory burden will be increased, not reduced”.

People’s level of satisfaction with the current law was high. A large percentage of people felt that the legislation did not require amendment as there was a perceived lack of evidence to suggest that a change in legislation would improve housing standards and eradicate bad practice, but that a better application of the current law via policy changes could create a positive impact. This application should be clear and consistent.

2 Minimum housing standards

More detail regarding the standards criteria and information on how the system (assessments and enforcement of improvements) would operate in practice was requested.

A number of respondents supported the idea of introducing minimum housing standards as a measure to ensure the Island’s housing stock was of good quality. However, it was noted that the Housing Health and Safety Rating System (HHSRS) is now outdated and a more contemporary model bespoke to Guernsey should be adopted that is both clear and transparent.

Agencies concerned primarily with the health and safety of inhabitants, such as the Police and the Fire and Rescue Service in particular, were firmly supportive of introducing minimum standards to ensure people are protected against potential hazards caused by dangerous structural elements of the dwellings as well as installations inside the dwellings.

“Agree that the current controls are outdated, unsuitable, fractured and at times conflicted.”

However, others were of the view that powers to enforce an acceptable standard compliant with health and safety requirements already existed and that no further measures were needed.

Some comments mentioned concerns regarding the unintended consequences that might emerge if minimum standards were introduced. For example, if landlords were obliged to make costly upgrades to their properties, it might be expected that the costs of rent would increase to off-set the additional expense. Landlords and property owners suggested that the States of

Guernsey should offer some kind of financial relief to incentivise landlords to make the necessary improvements.

“There is a dilemma in wanting to put up living standard to a minimum acceptable level but not increase the rents for low income people”.

3 Registration of the private rented sector

Views on the mandatory registration of the private rented sector were divided.

Some respondents were of the opinion that the registration of the private rented sector would be advantageous to landlords because certification would show prospective tenants that the property was well maintained and in good condition, which would encourage good practice.

“...a kite mark type certification so that landlords can show prospective tenants as a positive endorsement of their accommodation.”

Others did not see any benefits associated with the registration of the private rented sector. They were concerned that the enforcement of registration would not prevent miscreant landlords from providing poor quality housing, as they would simply avoid the system and remain undetected.

“Bad landlords will remain below the radar and can only be identified by complaints about the state of their property as would be the case now if current laws were enforced.”

Some comments expressed a concern that if a registration fee was charged, landlords would be inclined to raise the costs of their rent in order to compensate for the additional expense and that this would have an undesirable effect on the market and would have an especially negative

impact on tenants that are on a low income. It was noted that the registration would need to be compliant with GDPR.

Some respondents suggested that, if the proposal to introduce registration were approved, the renewal of registration fees and licence fees should be aligned so that they fall on the same date to help ease the process and avoid duplication for landlords.

4 Licensing of houses in multi-occupation (HMOs)

Further detail regarding the timeline of implementation was requested.

Landlords thought that HMOs should be subject to the same level of regulation as standard rental properties, which does not include licensing. Respondents requested a workable definition of an HMO and the use of a single framework. It was suggested that Guernsey import the UK definition of an HMO – “a property rented out by at least three people who are not from one “household” (for example a family) but share facilities like the bathroom and kitchen”.

The Fire and Rescue Service were strongly in favour of the licensing of HMOs, but thought that further consideration would need to be given to implementation procedures in order to manage the allocation of time and resources required to respond to a surge in HMO inspection requests when initially introduced.

5 Deposit protection scheme

Views on the deposit protection scheme were mixed. A diverse group of respondents, including some landlords, fully endorsed the scheme for the reassurance it would give them that their assets were secure.

If a deposit protection scheme were to be introduced, a custodial system, similar to the model used in Jersey, was preferred by the majority.

“A custodial scheme has the greatest chance of succeeding, avoiding disputes and offering protection to the tenant and landlord. It is also up and running in Jersey.”

However, a significant number of landlords were opposed to the deposit protection scheme because it was felt that the proposals were unbalanced and did not afford landlords and property owners as much protection as tenants. Furthermore, the point was made that the proposals were unfairly discriminatory against landlords, as mandatory deposit protection schemes do not exist in other market places. They were of the opinion that if a mandatory deposit protection scheme were introduced, it should be extended to include all forms of deposits.

“We suggest that to provide balance, landlords should be given more protection in various ways such as strengthening the debt recovery process, rather than being charged fees to register their rental property and licence fees if it’s a HMO.”

“If a scheme is to be set up, any deposit of any nature should be covered by the scheme and, by law, businesses should be forced to use it. It should not form part of a housing standards law”.

Some respondents considered there to be enough protection available through non-judicial or judicial redress mechanisms in the existing system. It was noted that the Guernsey Private Residential Landlords Association (GPRLA) already offer a free and open mediation service to both landlords and tenants, or arbitration could be used to settle disputes. Petty Debt claims could also be made in the Magistrate’s Court.

More technical detail concerning the deposit scheme, in particular, the policy regarding the investigation of disputes and oversight of the appeals system, was requested.

Some members of the Royal Institute of Chartered Surveyors (RICS) commented that they already have to demonstrate a separation of funds and accounts and that, where this was already being done, a deposit scheme would be unnecessary. It was suggested that a legal requirement for self-managing landlords to open a separate tenant bank account in escrow could be introduced, but that this did not need to be through a new government scheme.

6 Other comments

More detail regarding the cost/ resource implications was requested.

Landlords and property owners were concerned that the proposals were antithetical to the free market.

“Landlords and owners will be restricted in how they operate their businesses to maximise their profit margins.”

Some people took issue with the title of the proposed new legislation, ‘Regulation of Housing (Enabling Provisions) (Guernsey) Law’, and suggested it should be changed to ‘Regulation of Housing Standards (Enabling Provisions) (Guernsey) Law’ to better reflect what the law is about.

Landlords felt that it was unfair that the proposals implied they were responsible for the poor health of the tenant, as whilst poor quality accommodation can be a contributor, it is not usually the main reason.



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28 February 2020

Dear Deputy St Pier

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for the* Environment & Infrastructure requests that the propositions relating to the proposed introduction of a general housing law be considered at the States' meeting to be held on 22nd April 2020.

This date is requested as the States of Deliberation directed a Programme of Works to be undertaken, including an 'analysis of the legislative framework and processes governing housing quality legislation and how legislation can support the provision of good quality housing'. The estimated timescale was for a Policy Letter to be presented in quarter 4 2018. Due to the scale of this undertaking and the necessity to consult with a variety of stakeholders, it has not been possible to achieve this target. This work stream, however, remains very important to inform the Housing Strategy, which is a priority policy area within the Future Guernsey Plan and this is fundamental to the Committee's policy mandate for general housing policy.

Yours sincerely

Deputy B L Brehaut
President
Committee *for the* Environment & Infrastructure