Chartered Institute of Environmental Health

Protocol between Local Housing Authorities and Fire and Rescue Authorities to improve fire safety

National HMO Network

LACORS promoting quality regulation

NLA National Landlords Association

Foreword by Communities and Local Government Ministers

It is always a priority to ensure safety from the risk of fire in the home, especially in mixed use premises, or where the occupiers share vital parts of the building with persons who are not members of the same family.

I welcome this protocol which clearly sets out the interrelationship between the two most important pieces of legislation relating to fire safety in homes, the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005. The collaborative working arrangements it promotes between Local Housing Authorities and Fire and Rescue Authorities will ensure proper partnerships at the local level. This will be of great benefit to the community, in ensuring that risk of fire in homes is reduced and helps protect against injury or loss.

When it comes to fire safety both the Local Housing Authority and the Fire and Rescue Authority have a range of responsibilities and it is important these are exercised with a common purpose and in a consistent way. There are a range of activities that statutory authorities can take to achieve this goal, from promoting awareness and good practice to enforcement action.

I would encourage you to adopt the principles set out in this protocol and ensure clear local arrangements are agreed and operational.

Baroness Andrews OBE
Under Secretary of State with responsibility for Housing

Angela Smith MP
Under Secretary of State with responsibility for Fire Safety

Introduction

This protocol establishes the principles and describes the joint working arrangements between Local Housing Authorities and Fire and Rescue Authorities to deliver the objective of improved fire safety. It is a framework which provides the basis for detailed local arrangements whilst encouraging collaboration at a regional level.

The introduction of the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 (Fire Safety Order) has imposed an analogous duty on two statutory authorities to enforce certain fire safety provisions within such housing.[1]

To promote the efficient use of resources, this protocol will identify discrete areas of inspection and enforcement, appropriate review and monitoring arrangements and provide for urgent or complex requests for assistance from either party. It seeks to provide all parties, as far as is reasonably practical, with a measure of confidence that they are discharging their respective duties under legislation.

Fire and Rescue Authorities have a legal duty to enforce the Fire Safety Order in the common areas of all residential accommodation not forming a single private dwelling.[2] They acknowledge that the fire safety standards required by Local Housing Authorities under the Housing Act 2004 will, in other than exceptional cases, achieve a similar level of fire safety for relevant persons as required under the Fire Safety Order.

Conversely, Local Housing Authorities are responsible for implementing the various licensing requirements of the Housing Act 2004 and utilising the Housing Health and Safety Rating System to identify and if necessary act upon, significant hazards found within all housing. They acknowledge that Fire and Rescue Authorities will monitor and enforce fire safety standards in areas where they have legislative control, to a similar standard, in premises identified in Section 3 of this protocol. Fire and Rescue Authorities undertake to inform Local Housing Authorities of any serious non-fire matters that they encounter and identify.

Both authorities utilise a risk based enforcement approach and it is recognised that some housing providers, such as owners, landlords or managing agents may not have sufficient competencies to undertake such risk assessments. In general, Local Housing Authorities undertake a risk assessment utilising the Housing Health and Safety Rating System while Fire and Rescue Authorities expect the responsible person, usually the housing provider, to undertake a risk assessment.

These collaborative working arrangements, which support the Government's broader agenda for partnership working, will enable both authorities to promote fire and certain other safety provisions within a broader range of premises than would have been possible if they had acted independently or undertaken joint inspections.

Nothing in this agreement shall be considered as creating a contractual relationship, a contract of employment or a relationship of principal and agent between the parties and shall not add to in any way the existing statutory duties of the parties. No party to this agreement shall hold itself out as being authorised to enter any contract on behalf of any other party or in any way bind any other party to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly or implicitly permitted by this agreement.

The signatories to this protocol are shown in Appendix B.

[1] A summary of the respective legislation is available as Appendix A
[2] The Fire Safety Order applies to all parts of an HMO when prohibition action under Article 31 is taken.

1. **The underlying principles of this protocol are as follows:**

- To ensure appropriate standards of fire and other safety provisions are provided and maintained in residential premises
- To develop data sharing arrangements through established paths and in accordance with Section 8 of this protocol
- To assist landlords and other providers to understand the legal framework which they operate under
- To encourage opportunities for offering joint training and awareness sessions
- To recognise the needs and limitations of Fire and Rescue Authorities and Local Housing Authorities and to acknowledge that both authorities will always seek to act in good faith

2. **Which authority should take the lead enforcing role for fire safety?**

The table below lists the authority that will normally take the lead in inspection and enforcement action in different types of property.

1 Single dwellings, including shared housing, (Fire risk assessment not required)	LHA
2 All House in Multiple Occupation (HMO) whether or not subject to mandatory, selective or additional licensing	LHA
3 All self contained flats, whether purpose built or converted	LHA
4 Premises with mixed commercial and associated residential accommodation and sheltered housing	FRA
5 Hostels[3]/B&B/hotels	FRA
6 All multiple-occupied accommodation that is owned or managed by the LHA	FRA

[3] Hostels generally have a requirement for the residents to have a particular need or dependency and do not provide permanent accommodation

This table provides a general guide – it cannot cover every possible situation and certain premises will fall under more than one category. Negotiations to take account of local residential stock may be necessary.

Enforcing authorities may wish to consider the opportunities afforded by The Local Government Act 1972 Section 101 in appropriate cases.

Nevertheless, Fire and Rescue Authorities are under an obligation to reduce fire deaths in line with their risk based enforcement policies and will undertake planned proactive inspections in any identified type of premises or in a particular locality as they deem necessary. Prior to starting any such series of inspection programmes, consultation should take place to ensure that duplication of inspection and enforcement does not occur. Any such programmes may, subject to local agreement take place individually, collaboratively or jointly and should complement the inspection programme of the Local Housing Authority.

Where necessary emergency action will be taken by either authority to reduce any immediate risk but further remedial enforcement will only be undertaken following consultation with the designated lead authority. Nothing in this protocol will prevent either authority undertaking specific individual monitoring or enforcement action if appropriate.

The legislative position and the provision and management of supported housing is complex and outside the scope of this protocol.

3. **What will Local Housing Authorities do?**
Local Housing Authorities will undertake, in line with their statutory requirements, monitoring and inspection of premises identified in Section 2 of this protocol.

They will enforce fire safety standards in accordance with the provisions of the Housing Act 2004, having regard to

relevant documents published by the Government including the statutory operating and enforcement guidance on the Housing Health and Safety Rating System and in accordance with any guidance jointly agreed with the Fire and Rescue Authority.

Local Housing Authorities will, when taking enforcement action under the Housing Act 2004, have regard to the principles and requirements of the Fire Safety Order.

Although Local Housing Authorities may offer a suitable means of complying with fire safety requirements, they will also:

- Ensure that guidance for landlords of relevant multi occupied properties on undertaking their own risk assessments in accordance with the Fire Safety Order accompanies all statutory notices
- Ensure that the owner/landlord is afforded in writing the opportunity to bring forward alternative means of complying with the fire safety requirements in accordance with their own fire risk assessment. In most cases it is expected that this will be discussed with the owner/landlord prior to the service of any statutory notice
- Where such alternatives are brought forward by the owner/landlord, the Local Housing Authority will consult with the Fire and Rescue Authority

They will undertake consultation with Fire and Rescue Authorities in line with the criteria detailed in Section 5 of this protocol.

They will provide Fire and Rescue Authorities with relevant, timely and comprehensive data in an agreed format to enable those authorities to maintain adequate property and risk based data sets.

Local Housing Authorities will consider the use of the full range of powers under the Housing Act 2004, including Emergency Prohibition Orders, where appropriate.

Local Housing Authorities will provide Fire and Rescue Authorities with suitable out of hours contact details for their homelessness unit so that where appropriate consideration is given to ensure vulnerable persons are not left homeless as a result of emergency enforcement action.

4. What will Fire and Rescue Authorities do?

Fire and Rescue Authorities will undertake, in line with their risk-based policies, monitoring and inspection of premises identified in Section 2 of this protocol which fall under the scope of the Fire Safety Order.

They will enforce fire safety standards in accordance with the Fire Safety Order, having regard to relevant documents published by the Government including, *Fire Safety Risk Assessment: Sleeping Accommodation* (ISBN 1851128174) and in accordance with any guidance jointly agreed with the Local Housing Authority.

They will undertake consultation with Local Housing Authorities in line with the criteria detailed in Section 5 of this protocol.

They will provide Local Housing Authorities with relevant, timely and comprehensive data to enable those authorities to maintain adequate property and risk-based data sets.

They will provide Local Housing Authorities with information, within their scope of competency, of serious matters that may need to be addressed by those authorities. (This may include such information as apparent overcrowding, poor management or unsafe practises by tenants).

Fire and Rescue Authorities will undertake to inform Local Housing authorities of any significant fire incident within premises covered by this protocol.

Fire and Rescue Authorities are emergency organisations which provide twenty-four hour cover. Information about dangerous fire safety conditions may come via complaints or post incident and may occur outside normal working hours. Fire and

Rescue Authorities are under an obligation to take action in such situations. Where possible, and especially outside of normal office hours, efforts will be made to mitigate the dangerous conditions and Local Housing Authorities will be informed as soon as practicably possible.

Fire and Rescue Services would, in principle, be willing to support Local Housing Authorities at Residential Property Tribunal hearings by offering professional opinion on fire safety matters.

5. Consultation

Formal consultation between authorities should take place in accordance with the requirements of the Housing Act 2004 Section 10 and the Regulatory Reform (Fire Safety) Order 2005 Article 46.

Arrangements should be put in place to facilitate the following:

Strategic level consultation

Formal meetings at strategic management level to review procedural and policy issues. This group should also monitor the outcomes of the protocol and should meet at least every six months.

Tactical level consultation

Emergency situations – Consultation between Local Housing Officer and Local Fire Officer. (Where possible this should be between an identified and named link officer from each authority).

Non-emergency (such as proposals for inspection programs) – Discussions between named link officers, and where appropriate referred to strategic meetings.

Individual consultation

If a scheme of works for an individual property is in compliance with legislative requirements and any jointly agreed guidance then consultation can be deemed to have taken place. Depending on circumstances and the complexity of the requirements, written consultation may not always be necessary. Where alternatives to schemes are offered or problematic/non-standard premises are involved, full consultation should take place.

Where necessary, in complex premises, joint inspections may be undertaken to agree a suitable standard prior to the taking of enforcement action by the most appropriate authority.

6. Communication

Local communication channels will be established between each Fire and Rescue Authority and the respective Local Housing Authority.

Each authority undertakes, so far as they are able, to provide the other with assistance and information about their respective legislation to promote mutual understanding and efficient working.

7. Monitoring and evaluation

Any changes to this protocol, other than minor administrative changes, will be subject to approval at strategic level and the signatories to the protocol.

An annual report will be produced jointly by parties to the protocol.

8. Data Exchange

Each Local Housing Authority and Fire and Rescue Authority will establish local communication channels to exchange data.

Local Housing Authorities will provide data in an agreed format to Fire and Rescue Authorities about residential premises. This will enable Fire and Rescue Authorities to populate their premises databases.

Subsequently, Local Housing Authorities and Fire and Rescue Authorities will provide six monthly updates of this data.

Both authorities will ensure that the information is marked as confidential and will not disclose it to other organisations without consent. Authorities will not use or disclose information supplied pursuant to

this protocol without consulting the originating authority. All information whether held on manual files or computer/digital media will be disposed of as confidential waste.

Suggestions as to the scope and detail of this data are given in Appendix C.

9. Approval

The protocol will be approved and endorsed at a suitable strategic management level by both the Local Housing Authority and the relevant Fire and Rescue Authority.

Consultation should take place on a sub-regional basis with appropriate Private Sector Housing Groups.

Appendix A

Regulatory Reform (Fire Safety) Order 2005
The Regulatory Reform (Fire Safety) Order 2005 (Fire Safety Order) requires responsible persons to undertake a fire risk assessment to identify the general fire precautions they need to take to ensure, as far as is reasonably practicable, the safety of relevant persons from fire.

Having identified the general fire precautions necessary, the responsible person must implement them. Where five or more persons are employed or any form of license or certification applies to the use of the premises, the significant findings of the fire risk assessment must be recorded.

The responsible person is identified as, the employer, the occupier or the owner as far as their control extends. In premises covered by this protocol which are not workplaces, the landlord or managing agent is likely to be the responsible person. Tenants must cooperate with the responsible person.

In most cases the local fire and rescue authority is charged with a duty to enforce the Fire Safety Order and have a range of enforcement options, from education and advice, through agreed action plans to formal enforcement notices and prohibition notices. Failure to comply with the Fire Safety Order may constitute a criminal offence.

In general, the Fire Safety Order applies to all areas of premises except those areas occupied as private domestic dwellings. Where there are areas used in common by the occupants of more than one such dwelling, the Fire Safety Order applies.

The Housing Act 2004
The Housing Act 2004 includes the requirement for local authorities to review housing conditions within their area with a view to identifying any action that may need to be taken about those conditions under the provisions contained within the Act.

In relation to this, Part 1 of the Housing Act 2004 replaces the existing housing fitness standard with an evidence based risk assessment procedure called the Housing Health and Safety Rating System.

The Housing Health and Rating System is used to assess twenty nine categories of housing hazard and to provide a rating for each hazard. A hazard rating is indicated by a numerical score which is placed within one of 10 bands from A to J. A numerical score within bands A to C are Category 1 hazards and scores in bands D to J are Category 2 hazards.

The rating and category of hazard are used to inform decisions about what type of enforcement action a local authority may need to take in relation to the hazard. The types of enforcement action which are available to local authorities are outlined in the Act and include improvement notices, prohibition orders, hazard awareness notices, emergency remedial action, emergency prohibition orders and demolition orders, and slum clearance declarations.

'Fire' is one of the categories of hazard which is assessed under the system. It includes threats from exposure to uncontrolled fire and associated smoke at a dwelling.

Where a local authority has identified a prescribed fire hazard in a House in Multiple Occupation or in any common parts of a building containing one or more flats and intend to take enforcement action, the Act requires the local authority to consult the Fire and Rescue Authority for the area in which the House in Multiple Occupation or building is situated.

In the event of the authority proposing to carry out emergency measures the duty to consult the Fire and Rescue Authority is a duty so far as it is practicable before carrying out those emergency measures.

Part 2 of the Housing Act 2004 introduces a licensing scheme for Houses in Multiple Occupation. The Act introduces three types of licensing scheme which local authorities can use. These are mandatory HMO licensing, additional HMO licensing of properties not covered by the mandatory scheme and, under certain circumstances, selective licensing of all private rented property within a neighbourhood.

The Act outlines the conditions for the granting or refusal of licenses by a local authority and this includes the suitability of a property for multiple occupation.

With regard to fire safety, this is further elaborated in the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006, schedule 3 which states that 'appropriate fire precaution facilities and equipment must be provided of such type number and location as is considered necessary'.

Appendix B

Signatories to protocol

Authority	Name	Signature and date

Appendix C

Data exchange details
Database details will vary considerably but the following data fields are likely to be necessary.

LA URN (unique identifier if available)

Eastings

Northings

Property number

Property name

Address Line 1

Address Line 2

Locality

Town

Postcode

Number of floors

Risk level

Compliance level

Number of units

Licensed

Category/Type

Landlord/Responsible person/Contact

Property number

Address Line 1

Address Line 2

Locality

Town

Postcode

Telephone number

Chartered
Institute of
Environmental
Health

Chartered Institute of Environmental Health
Chadwick Court 15 Hatfields London SE1 8DJ
Telephone 020 7928 6006 **Fax** 020 7827 5831
Email info@cieh.org **Web** www.cieh.org
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