



Subject: The Housing Act 2004-Licensing and Management of Houses in Multiple Occupation (HMO) and other Houses Regulations 2006 (S.I. 373), Protocol between Local Housing Authorities and Fire and Rescue Authorities to improve Fire Safety.

Outline of Agreement: Housing Fire Safety protocols between Cheshire Fire & Rescue Service and Halton Unitary Authority, Warrington Unitary Authority, Cheshire East Unitary Authority and Cheshire West and Chester Unitary Authority.

1. Introduction

- 1.1 This protocol establishes the principles and describes the joint working arrangements between Cheshire Fire & Rescue Service and Halton Unitary Authority, Warrington Unitary Authority, Cheshire East Unitary Authority and Cheshire West and Chester Unitary Authority, (collectively described as the Local Housing Authority, or LHA as appropriate) to deliver the objective of improved fire safety in relevant types of housing stocks where their legislation may apply. It provides a framework for detailed local arrangements between the two parties and their respective Regional and National Bodies. All parties within this protocol will adopt in entirety the guidance contained within the LACORS Housing Fire Safety "Guidance on fire safety provisions for certain types of existing housing" document and subsequent amendments.
- 1.2 The enacting of the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 has brought about similar duties on each Authority to enforce certain fire safety provisions within such housing.
- 1.3 The protocol seeks to promote the efficient use of resources, appropriate review and monitoring arrangements, to identify separate areas of inspection and enforcement and provide for urgent or complex requests for assistance from either party. It seeks to provide all parties, as far as practical, with a measure of confidence that they are discharging their respective duties under their respective legislation.
- 1.4 Lead enforcing roles for each party are outlined in Section 2 of the protocol. The collaborative working arrangements as detailed in this protocol are recognised as supporting the Government expectations regarding partnerships. It is also acknowledged that the protocol will enable both authorities to promote fire and other safety provisions in a wider range and greater number of premises than if they had acted independently or not undertaken joint inspections.
- 1.5 Nothing in this protocol shall be considered as creating a contractual relationship, a contract of employment or a relationship of principal and agent between parties and shall not add in any way to the existing statutory duties of the parties. No party to this agreement shall hold itself 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.

1.6 The signatories to this protocol are shown in Appendix A.

2. General

2.1 The Housing Act 2004 (HA2004) and associated legislation introduces:

- A widening of the types of residential premises typically covered by the Act
- A new definition of HMO
- The mandatory licensing for HMOs of three storeys and above [with 5 or more occupants] with conditions (including fire safety) prescribed
- A new system for assessing housing conditions based upon the Housing Health and Safety Rating System (HHSRS)
- New enforcement powers

2.2 The aims of the Act are to:

- Protect all occupants and their visitors
- Identify and prioritise higher risk HMOs
- Target resources to those properties containing category one hazards as identified by the application of HHSRS
- Ensure only 'fit and proper' landlords with adequate management standards are licensed for HMOs

2.3 It is a requirement of the Act to have due regard to enforcement guidance as produced by the Department of Communities and Local Government (formerly Office of the Deputy Prime Minister)

3. Enforcement Powers

3.1 The table below indicates the lead enforcing authority Cheshire Fire & Rescue Service (CFRS) or the relevant Local Housing Authority for the different property types 1-6.

No.	Description of property type	Enforcing Authority
1.	Single dwellings, including shared housing (fire risk assessment not required)	LHA
2.	All HMOs 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	CFRS or LHA
5.	Hostels/B&B/hotels	CFRS
6.	All multiple-occupied accommodation that is owned or managed by the LHA	CFRS

3.2 The table provides a general guide-**it is not definitive** and certain premises will fall under more than one category. In addition there is a requirement for the Local Housing Authority under Section 10 of the HA2004, wherever practicable, to consult the Fire Authority before:

- Discretionary notification regarding the issue of HMO licences.
- Taking action to deal with fire hazards in common parts of HMOs or buildings containing flats.

3.3 In addition to the powers detailed above, the LHA will authorise, utilising Part 7 section 239 of the Housing Act 2004, Powers of Entry into individual flats within HMOs to specific officers within Cheshire Fire and Rescue Service. The requirements are detailed within section 239 of the Housing Act 2004. The purpose of the delegation of powers will allow CFRS to gather information relating to fire safety within the flats and also collect certain information for the LHA to assist the LHA in their duties under the HA2004. However, unless entry is for the purposes of ascertaining whether an offence has been committed, the service shall give 24 hours notice to the occupier.

4. Integrated Risk Management Plan (IRMP)

4.1 Cheshire Fire and Rescue Service's IRMP recognises that some of the very highest risks to life from fire are included within the HMO sector.

4.2 Subject to requirements of the IRMP (which by its nature is a dynamic and evolving programme) Cheshire Fire and Rescue Service recognises the need for and will adopt a proactive and supporting role with the relevant Local Housing Authority to address and reduce the risk to life as well as maximising community safety in relevant premises.

4.3 For the purpose of this directive, relevant Local Housing Authority departments are accepted as the lead Authority with responsibility for dealing with HMOs.

4.4 Wherever possible this will be in conjunction with Cheshire Fire and Rescue Service where the Regulatory Reform (Fire Safety) Order 2005 (RRFSO) applies (i.e. not for single domestic dwellings, shared housing etc).

5. Houses or Flats in Multiple Occupation (HMOs)

5.1 Definition: **The Local Authority Authorised Officer will ultimately determine whether any premises are an HMO or not.** Under the provisions of the Housing Act 2004, if a person lets a property, which is one of the following types, it is deemed to be an HMO:

- An entire house or flat, which is let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet.
- A house or flats which have been converted entirely into bed-sits or other non-self contained accommodation and which are let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet facilities.
- A converted house, which contains one or more, flats which are not wholly self-contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by three or more tenants who form two or more households occupy.
- A building, which has been converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one third of the flats, are on short-term tenancies.

5.2 In order to be a HMO the property must be used as the tenants only or main residence and it should be used solely or mainly to house tenants. In addition, rent should be payable in at least one of the units.

5.3 Licensing Schemes

Under the Housing Act 2004 Part 2 mandatory licensing scheme an HMO must be licensed if it is in a building of three or more storeys and is occupied by five or more tenants in two or more households who share a kitchen, bathroom or toilet facilities.

5.4 The Local Authority also has discretionary powers under Part 3 to widen the remit of licensing to include smaller HMOs, depending on local conditions.

5.5 Relevant application packs for owners are available from Local Authorities. On receipt of satisfactorily completed application forms the Local Authority will process the application. The applicant will then be assessed against pre-set criteria to determine whether or not they are a sufficiently fit and proper responsible person to own or manage an HMO.

5.6 The Local Authority will also determine whether suitable 'management arrangements' have been made. Matters to be considered include:

- A system for tenants to report defects and emergencies
- Arrangements to respond to such requests
- A process for dealing with anti-social behaviour
- Arrangements for periodic inspections and repairs
- Adequate funding for and competence of the owner/manager

Licence conditions include such matters as:

- Gas Safety Certificates (where necessary)
- The safety of electrical appliances
- The maintenance of the condition of suitable furniture
- The installation and maintenance of smoke alarms and any fire alarm system
- The supply of tenancy agreements to all tenants within 28 days

5.7 Licences may be refused or revoked; in addition interim and final management orders may be made or served by the Local Authority in certain prescribed circumstances. These orders transfer short or long-term management of the premises to the Local Authority.

6 Regulatory Reform (Fire Safety) Order 2005 (RRFSO)

Article 42 of the RRFSO require Local Authorities to ensure that the Fire Authority for the area has the opportunity to make suitable representations before any licence is issued.

7. Consultations

7.1 Cheshire Fire & Rescue Service will be formally consulted regarding plans for HMO premises of 3 storeys or greater in height OR in any HMO where a Category 1 or Category 2 Fire hazard under the Housing Health & Safety Rating System (HHSRS) (see section 11 below) is identified and they intend to carry out enforcement action. Any subsequent notices under Part 1 of the Housing Act will be issued by the Local Authority.

7.2 Section 10 of the Housing Act 2004 requires Local Housing Authorities to consult with the local Fire & Rescue Service before taking enforcement action in respect of a prescribed fire hazard in a HMO or in the common parts of building containing flats. The

form of the consultation is not prescribed. Where emergency measures are to be taken in relation to a fire hazard the Local Housing Authority must consult with the local Fire & Rescue Service before they take those measures as far as is practicable.

7.3 Single Occupancy & Shared Houses

At present there are no nationally agreed guides and standards available for such premises. Pending the availability of such documentation the signatories will assess such premises on a risk based approach. This agreed position will subsequently be reviewed when relevant nationally agreed guidance is subsequently available.

The Local Housing Authority may consult where category one fire hazards are present in these premises.

7.4 Other HMOs

- Three or more storeys
- Complex or hybrid HMOs
- Hostels

7.5 Existing procedures will be largely retained in the cases listed in 7.4. Such formal consultations will commence with an initial assessment of the proposals and plans by a Local Authority Housing Officer with suitable Fire Safety knowledge.

7.6 A report will then be forwarded to Cheshire Fire & Rescue Service with letting details as well as the fire safety measures. Two copies of the relevant building plans will accompany the report. Each plan should consist of a single line drawing, suitably annotated to show the fire safety measures deemed necessary to maintain a suitable means of escape in the event of fire.

7.7 Upon receipt of the report and plans, Cheshire Fire & Rescue Service will respond with their comments within 15 working days. Priority will be given, subject to suitable risk assessments, to higher risk premises. Such responses will indicate the suitability or otherwise of the proposals, together with any further recommendations. Both the Local Housing Authority report and Cheshire Fire & Rescue Services comments will be based upon the joint Local Authority / Fire & Rescue Service Housing Fire Precautions Guide; (LACORS). This guide has been previously accepted as best practice between Cheshire Fire & Rescue Service and each of the four Unitary Authorities within the Cheshire Fire & Rescue Service area (Halton Unitary Authority, Warrington Unitary Authority, Cheshire East Unitary Authority and Cheshire West and Chester Unitary Authority).

7.8 All partners within this protocol recognise the Home Stamp “Guide to Fire Safety and Security Protection in Multi-Occupied Residential Properties” as supplementary best practice guidance to the LACORS document. The Homestamp document enhances the practical advice for landlords on carrying out fire risk assessments. The safety solutions are offered in the form of detailed plans and appendices having regard to typical occupancy, ensuring that vulnerable occupants are better protected.

7.9 Meetings

Formal consultation between all authorities will 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 will be put in place to facilitate the following:

7.9.1 Strategic level consultation

Formal meetings will be held at a strategic management level to review procedural and policy issues. This group will also monitor the outcomes of the protocol and will meet every twelve months.

7.9.2 Tactical Level

7.9.3 Emergency situations

This will result in direct consultation between the Local Housing Officer and the Cheshire Fire and Rescue Service Fire Safety Advisor or Manager, dependant upon the circumstances of the situation. Where possible this should be between an identified and named link officer from each authority.

7.9.4 Non-emergency situations

Meetings between the LHA and the Unitary CFP department will be held at least once every three months. This will ensure effective communication channels and that information sharing is maintained.

8. Joint Inspections

Such inspections will be arranged as far as practicable under each Authority's own enforcement powers under their respective legislation.

8.1 Fire Authority- Regulatory Reform (Fire Safety) Order 2005 Under this legislation, the Fire Authority for the area concerned can inspect any place where the RRFSO applies, under **Article 27** and issue:

- Alterations Notices (**Article 29 paragraphs 1-5**).
- Enforcement Notices under (**Article 30 paragraphs 1-5**)
- Prohibition Notices (**Article 31 paragraphs 6-7**)

8.2 Alterations and Enforcement Notices can only be served on areas covered by the above order. Prohibition notices can potentially cover all areas in the premises.

8.3 Prior to such notices being issued to an HMO, Cheshire Fire & Rescue Service will contact the Local Authority.

8.4 Local Authority-Housing Act 2004, Enforcement Framework: Powers of Local Authority Housing Departments under the above Act:

- Serve an Improvement Notice requiring remedial works
- Make a Prohibition Order, closing the whole or part of a dwelling or restricting numbers
- Suspend these types of notice
- Take emergency action
- Serve a hazard awareness notice
- Make a Demolition Order
- Declare a clearance area
- Apply for an Interim Management Order
- Make a Final Management Order

8.5 Where emergency measures are needed in relation to a prescribed fire hazard in an HMO, the Local Housing Authority should consult Cheshire Fire & Rescue Service as far as is practicable. This procedure is detailed more fully in Section 10 of the Housing Act 2004.

8.6 The Local Housing Authority is **required** to consult with the Fire Authority if:

- A prescribed Category 1 fire hazard exists in a HMO or any other building containing one or more flats; and
- They intend to carry out enforcement action.
- Any such consultations will be initially by the most expedient method and will be confirmed in writing thereafter.

9.0 Cheshire Fire & Rescue Service Audits

Cheshire Fire & Rescue Service's audits are determined by the overall requirements of the Service's Integrated Risk Management Plan (IRMP). To accommodate the needs of the plan, HMO audits will be carried out as part of the Fire Authority's Targeted Risk Based Inspection Programme. Local Housing Authorities will be contacted prior to such themed audits to maximise efficiency and effectiveness of resources.

10.0 Complaints

Complaints - Third Party

Where either Authority has received complaints, or if unacceptable conditions have been reported, then the Local Housing Authority will utilise their inspection and enforcement powers.

10.1 Cheshire Fire & Rescue Service will assist in more complex fire related cases and where possible joint inspections will take place. Where this is not possible in urgent situations (i.e. out of hours) Cheshire Fire & Rescue Service will, if necessary, take steps to implement interim measures pending the Local Housing Authority's resolution.

10.2 All complaints against both third party and Cheshire Fire & Rescue Service personnel will be dealt with using laid down procedures contained within Service Orders.

10.3 Complaints against Local Housing Authority personnel will be dealt with using their own internal procedures.

11. Housing Health & Safety Rating System (HHSRS)

The HA1985 HMO fitness test has been replaced with an evidence-based national risk assessment process (HHSRS).

Local Authorities are obliged to base enforcement decisions for residential premises on these assessments.

Actions of Authorities will be based on three key considerations:

- The hazard rating as determined by HHSRS
- Any identified hazards above or below prescribed thresholds (Category 1 and 2).
- The most appropriate course of action to take to deal with the hazard.

11.1 The purpose of an HHSRS assessment is not to set a standard but to generate objective information in order to determine and make informed enforcement decisions.

Current technical guidance is contained in the Department of Communities and Local Government's February 2006 Housing Health & Safety Rating System Operating Guidance document.

11.2 HHSRS separately assesses twenty-nine categories (Appendix B) of housing health and safety hazards and provides a rating for each (including fire). It does not provide a single rating for any HMO or single/multi-occupied dwelling.

11.3 Hazard ratings are expressed through a numerical score, which will fall within one of ten bands. Bands A-C are Category 1 hazards; bands D-J are Category 2 hazards (Category 1 hazards being the highest). Category 1 hazards represent a mandatory duty to act. Category 2 hazards are discretionary. Bands D-J are not listed within the appendix.

11.4 All ratings are based on the risk to the most vulnerable target group to the hazard being assessed. For example stairs constitute a higher risk to the elderly; therefore they are considered the most vulnerable group with regard to assessing hazards relating to stairs. A dwelling, which is considered safe for the most vulnerable group, is therefore safe for all groups according to the guidance.

11.5 Any subsequent enforcement action is based on both the potential and actual occupancy. Joint inspections **on non-fire** related Hazard Profiles will not be carried out by Cheshire Fire & Rescue Service personnel.

12. Communications

12.1 Mutually agreed suitable communication agreements will be established and maintained between the Local Housing Authority and Cheshire Fire and Rescue Service's Community Fire Prevention Department. These agreements will detail areas including

- Inter-agency contact details
- Including out of hours
- Re-housing arrangements for any occupiers left without a residence during enforcement or prohibition notice procedures
- Data exchange and processes

13. Monitoring and Evaluation

13.1 Any changes to this protocol, other than minor administrative changes, will be subject to approval at strategic level and by the signatories to this protocol. All parties to the protocol will produce a joint annual report. Any changes will be reported and made via the ISO9001:2000 process.

14. Data Exchange

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

14.2 Local Housing Authorities will provide data in an agreed format to Cheshire Fire and Rescue service to enable the population of their databases. Such information will be updated as necessary.

14.3 Cheshire Fire and Rescue service will provide data in an agreed format to Local Housing Authorities to enable the population of their databases. Such information will be updated as necessary.

14.4 All authorities will ensure that the information is marked as “confidential” and will not disclose it to other organisations without consent. The above authorities will not use or disclose information supplied pursuant to this protocol without consulting the original authority. All information, whether held on manual files or computer/digital media, will be treated as confidential. All data shared will be stored, transferred and transmitted in accordance with Data Protection principles and other relevant legislation.

15. Post- Incident Considerations

15.1 In the event of fire in HMOs or self contained flats etc Cheshire Fire & Rescue Service will deal with the initial incident in accordance with the requirements of the Fire and Rescue Services Act 2004, Service Orders and Standard Operating Procedures as deemed necessary by the Officer in Charge of the incident.

15.2 Ongoing security of the premises post incident will usually be passed onto the responsible person or their representative. In their absence the security would be passed over to the Police or Local Authority for further action.

15.3 Further access may be required by Cheshire Fire & Rescue Service to facilitate fire or forensic investigation, including the taking of samples in association with Police Scenes of Crime Officers and/ or appointed forensic science representatives.

APPENDIX A**Signatories to the protocol**

Authority	Name and title	Signature and date
Cheshire Fire and Rescue Service		
Halton Unitary Authority		
Warrington Unitary Authority		
Cheshire East Unitary Authority		
Cheshire West and Chester Unitary Authority		

APPENDIX B

HHSRS Hazard Profiles

A. Physiological Requirements Hygrothermal Conditions

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

Pollutants (non-microbial)

- 4) Asbestos (and MMF)
- 5) Biocides
- 6) Carbon monoxide and fuel combustion products
- 7) Lead
- 8) Radiation
- 9) Uncombusted fuel gas.
- 10) Volatile organic compounds

B. Psychological Requirements Space, Security, Light & Noise

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

C. Protection Against Accidents Falls

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

Electric Shocks, Fires Burns & Scalds

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

Collisions, Cuts and Strains

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