

# Avon Fire and Rescue Service and West of England Local Authorities

Enforcement Protocol for Fire Safety duties under:

Regulatory Reform (Fire Safety) Order 2005

and

Housing Act 2004



History of Protocol changes:

Origin	Paragraph	Change
Protocol review 08 December 2011	10	Added that FRA is lead authority for the common parts of purpose-built blocks of flats; LAs retain responsibility for flats themselves.
Protocol review 14 February 2010	11	One day response time for LAs to emergency situations added before FRA will progress.
Protocol review 14 February 2010	12	Procedure for emergencies clarified.
Protocol review 08 December 2011	17	Reference to The Local Government Group's 'Fire safety in purpose-built blocks of flats' guidance added for that type of premises.
Protocol review 08 December 2011	20 (new)	Clarification provided to approach to be adopted for purpose-built blocks of flats where flat entrance doors are the responsibility of leaseholders rather than the freeholder.
Protocol review 14 February 2010	32	Protocol liaison meetings to be annual with ad hoc interim meetings if particular issues arise.
Protocol review 14 February 2010	33	Clarification added about liaison arrangements regarding licensed HMOs, hostels and rented properties where FRA have installed free battery detectors in an HMO at the request of a landlord.
Protocol review 14 February 2010	Appendix A	Clarification provided about rehousing arrangements following service of a prohibition notice by FRA.
Protocol review 14 February 2010	Appendix B	Telephone nos provided and clarification provided that LA officers are not available out of hours.

## **Agreement between Avon Fire and Rescue Service and West of England Local Authorities :**

Bath and North East Somerset Council  
Bristol City Council  
North Somerset District Council  
South Gloucestershire Council

### **Purpose of the Protocol**

To clarify how the parties will carry out their duties in relation to enforcement of Fire Safety provisions under:

### **Regulatory Reform (Fire Safety) Order 2005 (FSO) Housing Act 2004 (2004 Act)**

- Part 1 : Enforcement Of Housing Standards : General
- Part 2 : Licensing of Houses in Multiple Occupation
- Part 3 : Selective Licensing
- Part 4 : Additional Control Provisions in relation to Residential Accommodation

This agreement adopts key issues raised in the “National Protocol” published in June 2007 by Chief Fire Officers Association (CFOA), Chartered Institute of Environmental Health (CIEH) and LACoRS

### **Main objectives of this protocol:**

- 1.To acknowledge that there are two different Enforcing Authorities on Fire Safety matters under two different pieces of legislation and to clarify legal responsibility.
- 2.To provide as clear and simple practical arrangements for landlords and officers on how to comply with the legislation as far as is possible in the situation with the purpose of working towards a common goal in relation to fire precautions required in buildings whilst recognising that there may be alternative fire safety

solutions to achieve the same end.

3.To confirm the arrangements for meeting the requirements for authorities to consult under the 2004 Act and the FSO.

4.To confirm communication strategies and commitment to joint training and support on Fire Safety issues.

## Objective 1

***To acknowledge that there are two different Enforcing Authorities on Fire Safety matters under two different pieces of legislation and to clarify legal responsibility.***

5.The FSO and the 2004 Act place duties on Avon Fire and Rescue Service and West of England Local Authorities to enforce fire safety provisions in the same parts of some properties.

6.Avon Fire and Rescue Service have responsibility for enforcing fire safety provisions under the FSO in the following:

- the common areas of houses in multiple occupation (HMO). (LACoRS guidance has clarified that this does not include HMOs let as shared houses where the tenants have exclusive possession of a whole dwelling)
- the common areas of flats and maisonettes
- guest houses and bed and breakfast accommodation
- hostels
- refuges (unless a shared house as above)
- residential conference, seminar and training centres
- student halls of residence and other areas of sleeping accommodation in other training institutions
- seminaries and other religious colleges
- the common areas of sheltered accommodation (where care is not provided)
- areas in work places where staff sleep in as a condition of employment or a business requirement, but doesn't include tied accommodation such as separate flats, houses or apartments

- hotels and motels
- residential health and beauty spa centres
- sleeping accommodation in boarding schools
- holiday chalets, holiday flat complexes camping and caravan parks (other than privately owned individual units)

7.Avon Fire and Rescue Service are under a duty to ensure that where a property covered by the FSO has a licence the landlord or other responsible person has in place a written suitable and sufficient Fire Safety Risk Assessment.

8.The West of England Local Authorities have a duty to licence HMOs of 3 or more stories, containing 5 or more people. LAs will require fire safety measures to meet the adopted fire safety standard as part of the licence procedure. Local Authorities may also have Additional and Selective Licensing Schemes which also have Fire Safety related licence conditions.

9.The West of England Local Authorities also have powers and duties to make requirements in any residential property were there is an actionable Fire Safety Hazard under the HHSRS.

## Objective 2

***To provide as clear and simple practical arrangements for landlords and officers on how to comply with the legislation as far as is possible in the situation with the purpose of working towards a common goal in relation to fire precautions required in buildings whilst recognising that there may be alternative fire safety solutions to achieve the same end.***

10.The table below sets out which authority will take the lead in relation to Fire Safety matters in a property. The table adopts the key principles suggested in the National Protocol.

1	Single dwellings – (Fire risk assessment not required)	LA
2	All Houses in Multiple Occupation (HMO). Whether or not subject to mandatory, selective or additional licensing	LA
3	Common parts of purpose-built blocks of flats	FRA
4	All self contained flats whether purpose built or converted	LA
5	Premises with mixed commercial and associated* residential accommodation and sheltered housing	FRA
6	Hostels**/B&B/hotels	FRA
7	All multiple-occupied accommodation that is owned or managed by the LHA	FRA

\*Associated means there isn't independent access which is adequately fire separated, so where residential accommodation such as an HMO is completely separated from commercial accommodation then the LHA will take the lead in the HMO and the FRA in the commercial accommodation.

\*\*Where a kitchen is used to provide board. If food only is provided, the property will be treated as an HMO.

11. In an emergency either authority can take action to deal with the immediate risks where they have enforcement powers to do so. FRA will request LA attendance to emergency situations, this should be provided within one working day otherwise FRA will proceed with enforcement action.

LAs will consider on a case by case basis if the Housing Act 2004 provides a suitable legal remedy within a suitable time scale. Otherwise the following action will be taken:

- Seek to resolve on an informal basis if possible, otherwise contact FRA.
- FRA will visit to assess if prohibition notice is appropriate (NB action cannot be taken on a single private dwelling, this includes a shared house on a single tenancy). Where a notice is to be served FRA will liaise with LAs and specify those emergency measures that cannot be required under Pt 1 Housing Act 2004.
- If there is a remaining actionable fire safety hazard, LAs will enforce in the normal way and liaise with FRA for the prohibition notice to be withdrawn when they think appropriate.
- If FRA are called to a residential property out of hours they will proceed with a prohibition notice as appropriate and would specify measures needed to remove

imminent risk. FRA would then liaise with LA to consider if any further action is needed under Pt 1 Housing Act 2004.

12.The West of England Local Authorities will continue to make fire safety requirements in the schedules to any HMO licences and will have regard to the LACoRS 'Housing – Fire Safety, Guidance on fire safety provisions for certain types of existing housing' .

13.The West of England Local Authorities will follow up outstanding fire safety requirements with landlords where they have a lead role but may refer cases to Avon Fire and Rescue Service for enforcement under the FSO where appropriate.

14.The West of England Local Authorities will when dealing with landlords make them aware of the FSO and outline its requirements in relation to fire safety.

15.West of England Local Authority officers will refer landlords with detailed queries about the FSO to Avon Fire and Rescue Service for advice.

16.Avon Fire and Rescue Service and the West of England Local Authorities have agreed to adopt the LACoRS 'Housing – Fire Safety, Guidance on fire safety provisions' for certain types of existing housing as the appropriate approach to fire safety in the properties specified in that guidance. The Local Government Group's 'Fire safety in purpose-built blocks of flats' is the adopted guidance for that type of premises.

17.Avon Fire and Rescue Service will consider that the fire precautions in a property have been improved if the local authority have carried out compliance visits and confirmed that all the licence conditions and or other fire safety requirements under the FSO have been met.

18.This does not remove the ultimate responsibility of the Fire and Rescue Authority for the enforcement of the FSO.

20. For purpose-built blocks of flats where building elements such as flat entrance doors are inadequate for fire safety and are the responsibility of leaseholders, Avon Fire and Rescue will seek improvements on an informal basis

in the first instance and will liaise with the West of England Local Authorities regarding action under the Housing Act 2004 if this is unsuccessful.

### Objective 3

*To confirm the arrangements for meeting the requirements for authorities to consult under the 2004 Act and the FSO.*

Avon Fire and Rescue Service are under a duty in relation any property they are dealing with to:

a. Inform the Local Authority of any formal action they take.

21. Avon Fire and Rescue Service will write or email the relevant Local Authority informing them of the details of any formal action they have taken under the FSO as soon as possible within 5 working days.

b. Consult before serving an Enforcement Notice.

22. Avon Fire and Rescue Service will contact the relevant Local Authority in writing or by email before serving an Enforcement Notice.

23. The communication will confirm that any fire safety requirements are in accordance with the FSO and it will be deemed that the officer has consulted on the standards that should be applied.

c. Notify the Local Authority's Homelessness Service before serving a Prohibition Order, where practicable.

24. Emergency contact details for Local Authorities are in Appendix B.

Local Authorities are under a duty to:

a. Ensure Avon Fire and Rescue Service has been given the opportunity to make representations before issuing a licence.

25. The West of England Local Authorities and Avon Fire and Rescue Service discussed the Fire Safety licence conditions required in the mandatory HMO



licences over a series of consultation meetings during 2005.

26. These meetings are accepted by Avon Fire and Rescue Service as the opportunity to make representations about Fire Safety issues in the Licence conditions.

27. Avon Fire and Rescue Service will be given the opportunity to make representations about any further changes in relation to fire safety measures of the licence conditions. The licensing conditions have been amended to provide the licence holder with the option to carry out a fire risk assessment and comply with the above LACoRS guidance.

b. Consult Avon Fire and Rescue Service before taking any formal action under the HHSRS enforcement powers of the 2004 Act.

28. In an emergency, consult as far as is it is practical before taking any formal action under the HHSRS enforcement powers of the 2004 Act.

29. West of England Local Authorities will be deemed to have consulted Avon Fire Service if before taking action under the HHSRS enforcement powers they have specified fire safety requirements in line with the the above LACoRS guidance.

30. A Local Authority taking action on a property where the FSO applies will advise landlords appropriately and will provide information to enable them to carry out a risk assessment under the FSO and contact details of the relevant Fire Safety Office.

#### **Objective 4**

***To confirm communication strategies and commitment to joint training and support on fire safety issues.***

31. The National protocol advocates strategic and tactical level consultation as well as on an individual level.

32. Avon Fire and Rescue Service and the West of England Authorities adopt this

approach and will:

- meet annually to review procedural and policy issues and consider if this protocol requires amendment with ad hoc interim meetings if particular issues arise.
- meet to discuss operational issues such as inspection programmes
- meet to discuss complex schemes of work or carry out joint inspections where necessary.

33. The West of England Local Authorities will provide Avon Fire and Rescue Service with a list of HMOs that are licensed in their areas on a quarterly basis. Avon Fire and Rescue Service will enquire on a property by property basis how whether or not the Fire Safety Order is likely to apply and establish if West of England Local Authorities are able to make a joint visit to the property. In routine visits to hostels where management issues relating to fire safety are identified West of England Authorities will deal with these under the HMO Management Regulations and will inform the Avon Fire and Rescue Service of action taken.

Where Avon Fire and Rescue Service visit HMOs at the request of a landlord for free battery detectors they will advise the landlord of the need to follow LACoRS guidance and inform West of England Authorities that they have given this advice.

34. Avon Fire and Rescue Service and West of England Local Authorities commit in principle to carry out joint training on Fire Safety issues.

35. Avon Fire and Rescue Service will in principle provide support at Residential Property Tribunal hearings by offering professional opinions on fire safety matters.

### **Review of Protocol**

36. This protocol will be reviewed annually alongside procedural and policy issues (see para 32).

Avon Fire and Rescue Service and the West of England Local Authorities  
Fire Safety Enforcement Protocol

Agreed by:

Avon Fire and Rescue Service  
Assistant Chief Fire Officer



Dave Salmon  
Assistant Chief Fire Officer  
Director Risk Reduction

Bath and North East Somerset Council



Graham Sabourn  
Group Manager

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Private Rented Housing Manager

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Chris Johnson  
Private Sector Housing Manager

November 2008

## **Appendix A – Detailed Clarification of Roles and Responsibilities**

### **Issues addressed in this Appendix:**

Who has responsibility for enforcement of Fire safety in a residential premises

Who is responsible for meeting the duties imposed by the Order

Which residential properties the Order applies to

What duties are imposed by the Order

Duties of Authorities to communicate with each other

How does the Regulatory Reform (Fire Safety) Order 2005 (FSO) affect licensing under the Housing Act

How the legislative fire safety provisions will be enforced in a way that is as simple and straight forwards for landlords and agents as is possible.

What fire precautions can be required by law and what is best practice advice

Consultation between West of England Local Authorities and Avon Fire and Rescue Service.

### **Who has responsibility for enforcing the Order?**

The FSO places a duty on Avon Fire and Rescue Service to enforce the provisions of the Order (Article 26(1)).

### **Who is responsible for meeting the duties imposed by the order?**

The FSO places duties on the person having control of the premises or the owner known as the “responsible person” except to the extent mentioned in Article 3.

In relation to residential properties the responsible person could be:

Landlords – as the owner

Managing agents – where they have control of the undertaking

Leaseholders – as owners

### **Which residential properties does the order apply to?**

The order only applies to domestic premises (Article 6(1)) which do not consist of or comprise in a house which is occupied as a single private dwelling. (Article

31(10)).

A domestic premises is defined as:

“a premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises **which are not used in common by the occupants of more than one such dwelling**” (Article 2)

This means it does **not** apply to:

owner occupied houses or  
owner occupied houses with a lodger or lodgers \*  
single household rented houses; or  
any other domestic premises where there are no parts used in common.

\* for the purposes of this protocol a lodger is a person who lives in a property with the owner and shares the main common areas of the accommodation but will have their own bedroom which may include ensuite facilities.

The Department of Communities and Local Government (DCLG ) have interpreted this to mean that the provisions will apply to :

- the common areas of houses in multiple occupation (HMO) (The above LACoRS guidance has clarified that this does not include HMOs let as shared houses where the tenants have exclusive possession of a whole dwelling; however, it does apply to shared houses with multiple tenancies)
- the common area of flats and maisonettes
- guest houses and bed and breakfast accommodation
- hostels
- refuges (unless a shared house as above)
- residential conference, seminar and training centres
- student halls of residence and other areas of sleeping accommodation in other training institutions
- seminaries and other religious colleges
- the common areas of sheltered accommodation (where care is not provided)
- areas in work places where staff sleep in as a condition of employment or a business requirement, but doesn't include tied accommodation such as separate

flats, houses or apartments

- hotels and motels
- residential health and beauty spa centres
- sleeping accommodation in boarding schools
- holiday chalets, holiday flat complexes camping and caravan parks (other than privately owned individual units)

(DCLG guidance Fire safety Risk assessment – Sleeping accommodation page 4)

The guidance further clarifies HMOs to include:

- Bedsits
- Hostels (eg YMCA, YWCA, youth hostels, bail hostels or homeless persons' accommodation)
- Accommodation above shops
- Shared houses (see above for LACoRS clarification)
- Flats
- Houses partly converted into self contained flats and
- Buildings fully converted into self contained flats where the conversion work does not fully comply with 1991 Building Regulations and where less than 2/3 of the flats are occupied by long leaseholders. (DCLG guidance p 133)

So the FSO applies to the common areas of the above types of properties.

### **What duties are imposed on the responsible person by the order**

These are some of the duties covered by Articles 8 to 22 but it should not be taken as an exhaustive list of duties under the order.

Where relevant persons are not employees of the responsible person he must:

Take such general fire precautions as may be reasonably be required to ensure that the premises are safe. (Article 8(b))

Make a suitable and sufficient risk assessment of the fire safety risks to which relevant persons are exposed. (Article 9(1))

The relevant person is someone:

who is or may be lawfully on the premises,  
in the immediate vicinity of the premises  
this does not include fire fighters carrying out their emergency duties.  
(Article 2)

Where there is a licence in force:

Record the significant findings of the risk assessment including measures to  
be taken by the responsible person and  
any groups of persons identified as especially being at risk

These are some of the other duties in the FSO which are in brief :

Principles of Prevention to be applied

Fire Safety Arrangements

Elimination or reduction of risks from dangerous substances

Fire-fighting and fire detection

Emergency routes and exits

Procedures for serious and imminent danger and danger areas

Additional Emergency measures in respect of dangerous substances

Maintenance

Safety Assistance

Provision of Information to employers and the self employed from outside  
undertakings

Training

Co-operation and co-ordination

**Duties of Avon Fire and Rescue Service and Local Authorities to consult with each other**

The Fire and Rescue Service is under a duty to:

inform the relevant Local Authority of any action they are taking in relation to  
premises on which there is a licence. (Article 42(1)(b)).

before serving an Enforcement Notice consult with the relevant Local Authority

(Article 30(5)(a))

before serving a Prohibition order on an HMO, where practicable notify the Local Housing Authority of the intention and what they intend to prohibit (Article 31(6))

The Local Authorities are under a duty to:

ensure that the Fire and Rescue Service has the opportunity to make representations before issuing a licence (Article 42 1(a))

Insert details of section 10 of the 2004 Act.

### **How does the FSO affect licensing under the Housing Act**

The West of England Local Authorities have a duty to licence all HMOS in their area which are:

3 storeys or more,  
with 5 or more persons  
in 2 or more households.

In relation to Fire Safety the West of England Local Authorities are required by the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 SI 373/2006 (the 2006 Regulations) to place conditions in the licence:

for smoke alarms in the house to be installed and maintained

for shared kitchens to be provided with a fire door and a fire blanket

West of England Local Authorities have used their power to impose other fire safety conditions which are:

To provide an appropriate Automatic Fire Detection System

To provide an Emergency Lighting system

To ensure that any security locks provided onto the means of escape and on final exit doors can be operated from the risk side without the use of a key

When the FSO was made on 7<sup>th</sup> June 2005 Article 43 had the effect of suspending



any terms and conditions which are covered by the FSO eg fire precautions to common parts of residential properties for any licences in place at that time.

Article 43 states if there is a licence in force:

whether issued before or after the order came into force  
in relation to a premises or person in respect of a premises  
to which the order applies **and**

The licensing authority is required or authorised to

impose terms  
conditions or restrictions in connection with the issue of licences

Then at any time the FSO applies to a premises

Any term condition or restriction has no effect in relation to any requirements or prohibitions under the FSO

This means that if the FSO applies to a property all fire safety provisions required under the Licensing scheme including mandatory and discretionary licence conditions cannot be enforced by the Local Authority and it is the responsibility of Avon Fire and Rescue Service to enforce fire safety provision they believe are appropriate. ”

#### HMO Licence Conditions

Local Authorities are directed by section 67 of the 2004 Act with regard to the relationship between the Local Authorities' Licensing powers and their Part 1 (Housing Health and Safety Rating (HHSRS)) powers:

“in general they should seek to identify remove or reduce Category 1 or 2 Hazards in the House by exercise of Part 1 functions and not by means of licence conditions”

It has been acknowledged by the government departments issuing both the FSO legislation and the HMO licensing legislation that the new legislative

frameworks were constructed in parallel without consultation between the 2 parties on how enforcing authorities would operate in conjunction with each other.

**How the legislative fire safety provisions will be enforced in a way that is as simple and straightforward for landlords and agents as is possible.**

When a property is licensed under the Housing Act the Local Authority will still issue a licence with conditions in relation to Fire Precautions.

The local authority will issue the licence with conditions relating to fire safety that were agreed by the West of England Local Authorities and include as an option for the LACoRS guidance to be followed.

The local authority will issue a schedule of works requiring fire safety requirements that they believe are required under either :

HMO Licence conditions

Part 1: 2004 Act – HHSRS assessment

HMO Management Regulations

Local authorities will have regard to the LACoRS guidance when specifying work and will, as a minimum, advise landlords of the FSO and that additional fire safety works may be required as well as the responsibility under Article 9 of the FSO to carry out a suitable and sufficient risk assessment. Landlords will be informed of the guidance and how they can obtain a copy.

Where the FSO does not apply, landlords will be encouraged to follow the LACoRS guidance as best practice.

Landlords with any detailed queries about the FSO requirements will be referred to the relevant Avon Fire and Rescue Service's Fire Safety Officer.

Local Authority Officers will pass on any written fire risk assessments to Avon Fire and Rescue Service who will be responsible for assessing their suitability and will deal with any issues arising from them.

Local Authorities will use their enforcement powers to deal with landlords not providing adequate fire safety provisions. However in some cases where it is not practical or appropriate to do so the case will be passed to the Fire Authority to deal with the non-compliance as they see fit.

### **Consultation between West of England Local Authorities and Avon Fire and Rescue Service.**

Officers making fire safety requirements in line with any guidance that has been agreed will have deemed to have consulted with Avon Fire and Rescue Service in that matter.

In the absence of an agreement officers will need to consult with Avon Fire and Rescue Service on a case by case basis.

### **Rehousing of occupants following service of a prohibition notice**

Avon Fire and Rescue Service have no duty to rehouse occupants following service of a prohibition notice West of England Authorities may only be able to assist with rehousing if there is a statutory duty to do so because the person is in 'priority need'. However, West of England Authorities have a duty to provide advice and assistance to all who become homeless. All four West of England Authorities use the out of hours Social Services Emergency Duty Team run by S Gloucestershire tel. 01454) 615165 for emergency housing advice, contact could be made by the persons affected or by Avon Fire and Rescue Service.

In working hours (and other out of hours services) housing advice is provided as follows:

#### **For Bristol:**

Persons should present themselves at the Customer Service Points 0830 – 1700 (1630 Fri) at –

#### **Bedminster**

2–3 Waring House, Redcliff Hill, Redcliffe, Bristol, BS1 6TB

#### **Fishponds**

Robinson House, Hockeys Lane, Fishponds, BS16 3HL

**Hartcliffe**

Symes House, Peterson Square, Hartcliffe, BS13 0BD

**Knowle**

Salcombe House, 147 Salcombe Road, Knowle, BS4 1AB

**Lawrence Weston**

Ridingleaze House, Ridingleaze, Lawrence Weston, BS11 0QE

**Central – Phoenix Court**

Bond Street South, Bristol, BS1 3PH

**Southmead**

Southmead House, Greystoke Ave, Southmead, BS10 6BQ

**For South Gloucestershire:**

Persons should contact the HomeChoice team, Monday to Friday 9.00 – 3pm at:  
Civic Centre, High Street, Kingswood, South Gloucestershire, BS15 9TR

**For N. Somerset:**

An appointment can be made with the Housing Advice team tel: 01934 426 330.  
For emergencies out of hours tel; 01934 622 669

**For Bath and NES:**

An appointment can be made with the Housing Options and Homelessness team  
tel: 01225 396296

## Appendix B – Emergency Out of Hours Contact Details

	Section	Contact details
Avon Fire and Rescue Service	Avon Fire and Rescue Service Control	999 or 0117 9262061 extension 311
Bath and North East Somerset Council	LA officers are not available out of hours.	
Bristol		
North Somerset		
South Gloucestershire Council		