

# Prohibition Orders Protocol

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## **1. Introduction**

In Newcastle, the Council's approach to homelessness prevention includes identifying all possible situations which might lead to people losing their accommodation, and finding ways to bring in earlier interventions so that, where possible, crises can be averted, and people can retain the accommodation they have, or diverted into other accommodation without needing to use temporary accommodation.

Several protocols have been developed in the last two years in Newcastle with the aim of preventing homelessness amongst particularly vulnerable groups of people. Protocols are agreements which set out how different parts of the Council and other agencies will work together to prevent homelessness amongst particular groups, and what the responsibilities of each agency are.

## **2. Signatories**

This Protocol is an agreement between the following agencies and departments:

- Newcastle City Council (including Housing Advice Centre and Private Rented Service), and the Public Protection & Neighbourhoods Team within Public Safety and Regulation
- Tyne & Wear Fire and Rescue Service
- Newcastle University and Northumbria University,

## **3. Purpose of the Protocol**

The aim of this Prohibition Orders Protocol is to prevent homelessness amongst people whose house is the subject of a Prohibition Order which stops all or part of it from being used for habitation (either on a short or longer term basis) because of the conditions seen in the property. The Protocol should ensure that together we are able to plan to help any households likely to be made homeless as a result of a Prohibition Order, in a way that, as far as possible, does not result in them needing to use temporary accommodation.

The Protocol clarifies who is responsible for which type of action, and how agencies will work together most effectively. It was developed by a cross-agency group including all signatories.

## **4. Good practice principles to follow when a Prohibition Order is being considered**

**Our main aspirations are that:**

- By signing up to this Protocol, partners agree to share information with others as soon as possible once it becomes likely that a Prohibition Order may be served

- Partners also recognise that, where there is a possibility that alternative accommodation might be needed, the earlier information is shared with others, the easier it will be to avoid homelessness and other consequent problems
- By working effectively together, agencies and departments will allow the best short and long term solutions to be found, so that any need for temporary accommodation, and disruption to the lives of tenants, is minimised
- The aim of the action is to ensure that people are not put at risk by the action being taken or proposed to be taken, and all partners will ensure that they are aware of and try to minimise the risk to staff, local residents, and the local community.

## 5. The process to be followed

Once there is a possibility that a Prohibition Order might lead to tenants being asked to leave the property, the following steps should be taken:

1. The initiating agency Public Safety and Regulation or the Fire & Rescue Service will consult the other of these two authorities, and provide information when a property inspection has led to a Prohibition Order being considered, in line with the *Protocol between Local Housing Authorities and Fire and Rescue Authorities to improve fire safety*, published by LACORS in 2006, and the Housing Fire Safety guidance published by LACORS in 2008. If the prohibition order is not in relation to fire safety there is no requirement for the Public Safety and Regulation team to consult with the Fire & Rescue Service.
2. Wherever possible, at this stage the initiating agency will inform the Housing Advice Centre so that they can make a start on preventing homelessness by talking to the tenant or tenants about their options. Public Safety and Regulation will inform the relevant university or college, if it is known that any tenants are students, so that the students can learn of their options as soon as possible.
3. If any Order is proposed which will mean that any or all current tenants will not be able to stay in the property (on either a short or long term basis), the Officer involved will, on each occasion, inform a representative at the Housing Advice Centre during that working day. If the matter arises outside office hours, the Emergency Homeless Service will immediately be informed of the decision to serve an Emergency Order.
4. The Police Neighbourhood Beat Team will also be informed where a Prohibition Order restricting access to a property is to be enforced. This would ensure that they were able to be present to prevent a breach of the peace if the situation appears to warrant it.
5. A joint visit may then be arranged between the Public Safety and Regulation, Housing Advice, and Fire Service, or others as appropriate, taking account of any potential risk factors. It may be necessary to arrange this visit to take place outside office hours.
6. Where any occupier is asked to leave and has nowhere they can go during the time that they are prohibited from staying in the property, they will be advised

about alternative accommodation by a Homelessness Prevention Officer either during the joint visit, or in a visit to the Housing Advice Centre.

7. Occupiers will be given advice on their housing options by staff at the Housing Advice Centre (or the Emergency Housing Service, outside office hours), to include information about whether they are likely to be provided with temporary accommodation, and what other options they could consider, including those for students (see below).
8. Where the tenants are students, the Universities' Accommodation Officers will give advice, practical help, and help students to find alternative accommodation, and should be informed about actions involving properties let to students as early as possible in the process.
9. The agency serving the Prohibition Order will inform all signatories of the outcome of the enforcement action, including (where it is known) any action taken by the landlord to end the tenancy in order to carry out the works, so that the occupants can be advised of their long term housing options.
10. The Housing Advice Centre will keep the Public Safety and Regulation Officer informed about outcomes of any assessment of the need for temporary accommodation.
11. The Public Safety and Regulation team and Fire Officer will each be responsible for keeping publicly available records of all instances where Orders are served (as required by the legislation), and noting the outcomes of each case.

## **6. Helping the tenant(s) to find alternative housing**

The responsibility for providing alternative accommodation lies with the landlord of the property, and some landlords may have other accommodation they can use in this case. However, although this would be a breach of contract by the landlord which the tenant would have to take (lengthy) action to resolve, and the local authority accepts that many landlords are not in a position to provide alternative accommodation. The local authority will therefore take action to try to ensure that no-one is left without accommodation whilst an Order is in place, as follows:

- **Anyone who is assessed as being in priority need** under the homelessness legislation would be accommodated in temporary accommodation arranged by the Housing Advice Centre or Emergency Homelessness Service. This would not necessarily lead to a permanent offer of alternative housing: if the defects are remedied, they may be able to return to the property. The Homelessness Prevention Officer will consider the most appropriate options once temporary accommodation has been arranged.
- **Those who are not in priority need** will be helped to find alternative accommodation, again with a view to returning once defects are remedied if this is appropriate, or to being helped to move elsewhere if not.
- **Where the occupant owns the property**, the assessment process is the same as above.

- **Where some or all of the occupants are students**, the Universities or Newcastle College may be able to help students to find alternative short term accommodation, and should be contacted early in the process.
- **In all cases**, an individual assessment will include what the most appropriate long term housing solution would be. Your Homes Newcastle may be able to help, if it is recognised that there is an urgent or immediate need for housing.

## **7. Each agency's responsibilities if serving a Prohibition Order could result in homelessness**

### **Public Safety and Regulation**

- Informing a representative at the Housing Advice Centre, or Emergency Homelessness Service, as soon as it appears likely that an Emergency or other Prohibition Order may be served which would result in people being told they could not stay in a property until specified works or have been carried out, or the number of people living in the property has reduced to satisfactory level.
- Keeping the Fire Officer informed about such action, where relevant
- Contacting the relevant University / College accommodation office where the property is let to any students
- Keeping all partners informed about progress on serving and enforcing a Prohibition Order (including Fire Safety Orders) which could result in homelessness

### **Fire Officer**

- Informing the Public Safety and Regulation team who will contact the Housing Advice Centre or Emergency Homelessness Service, as soon as it appears likely that a Fire Safety Order may be served which would result in people being told they could not stay in a property until it was made safe
- Keeping the Public Safety and Regulation Officer informed about such action
- Keeping the Public Safety and Regulation Officer informed about progress on serving and enforcing an Order which could result in homelessness

### **Housing Advice Centre**

- Responding within 24 hours to notification that an Emergency or other Prohibition Order could result in tenants being asked to leave the premises
- Informing any tenants affected by a Prohibition Order of the Council's response to any request for alternative accommodation, either short or long term, and helping anyone affected to find alternative accommodation
- Keeping other partners informed about outcomes of requests for help with accommodation

## **Private Rented Service**

- Helping tenants affected to find alternative accommodation
- Signposting landlords and tenants to the Housing Advice Centre for advice, and to appropriate training and other support services

## **8. Reviewing and monitoring, and reporting any problems**

This process will be monitored by the Private Sector Liaison Group, through the following steps:

- Each case, including the outcomes of any action, will be recorded by the Council's Public Safety and Regulation team
- An exception record will be held by Active Inclusion Newcastle of instances where the protocol has not been followed or has resulted in unplanned use of emergency accommodation
- Problems encountered by any of the signatories will be resolved between the contact people set out in the list below, or raised at the monthly Liaison Group meeting, or raised with the Active Inclusion Newcastle Unit ([activeinclusion@newcastle.gov.uk](mailto:activeinclusion@newcastle.gov.uk))
- A report of any actions taken in the last month and outcomes of previous actions will be made by the Public Safety and Regulation team at the Liaison Group meeting
- Use of the Protocol will be discussed annually at the Private Rented Sector meeting, with the Fire Service invited to that part of the Liaison Group meeting (and the Universities and College if appropriate)
- The Protocol will be reviewed on an annual basis

## **9. Prohibition Orders as a result of Over Crowding**

Where a prohibition order is served as a result of overcrowding the Public Safety and Regulation team will initiate the process detailed above. Such Orders may be suspended to allow all interested parties to work together to find alternative accommodation for the family involved; this will be at the discretion of the Public Safety and Regulation team.

The Housing Assessment and Advice Manager is the nominated response co-ordinator, and will liaise with all relevant parties and where necessary co-ordinate case conferences between teams including:

- Public Safety and Regulation
- Housing Advice Centre
- Private Rented Service
- Legal

- Your Homes Newcastle
- Family intervention teams
- Any other partner agency as deemed appropriate

Case conferences will be with the purpose of identifying the best course of action for working with and relocating families which may be vulnerable, or in need of enhanced advice and support.

In the vast majority of cases families welcome the actions of the Public Safety and Regulation team. However should a family wish to reside in the property and refuse to comply with the Prohibition Order a case conference may also be called to discuss the most appropriate course of action.

## **10. Compensation and Home Loss Payments**

### **Home Loss Payments**

The Council will have a duty to make a home loss payment when a person is displaced from their dwelling as a result of a Prohibition Order made under section 20 or 21 of the Housing Act 2004. There is no duty to make a home loss payment where a person is displaced as a result of an Emergency Prohibition Order.

To qualify for a home loss payment, a person must have occupied the land as their only or main residence for at least one year up to the date of displacement and have an interest or right to occupy the dwelling.

Payment will be made by Public Safety and Regulation department following the making of a claim in writing from the tenants of the property.

### **Disturbance payments**

Disturbance payments are mandatory payments to assist persons displaced from land, and apply when a person is displaced as a result of a Prohibition Order. There is no duty to make a disturbance payment where a person is displaced as a result of an Emergency Prohibition Order.

Where a prohibition Order becomes operative in respect of any premises, the local housing authority shall pay every owner an amount determined by the legislation. The owner is entitled to compensation, and the amount is calculated on the reduction in the value of the owner's interest.

Payment will be made by Public Safety and Regulation department.



## 11. Rehousing by Your Homes Newcastle

No additional priority status will be provided by YHN when evidence exists that a tenant has deliberately worsened their circumstances to qualify for a higher band under the scheme e.g. deliberately over occupying a property.

A Band C status will be provided in relation to overcrowded properties where the following apply

- The applicant is lacking a bedroom for an adult or two adults who are a couple
- An applicant has two children of the opposite sex sharing a bedroom, one of which is over 10 years old
- An applicant has more than two children sharing a bedroom.

Band status will usually be awarded following evidence from a qualified assessor such as an Environmental Health Officer or YHN Technical Assessor.

## 12. Background information about Prohibition Orders

### What are Prohibition Orders?

Prohibition Orders are orders which can be served by either the Council's Public Safety and Regulation department or the Fire and Rescue Service, to address hazards in residential accommodation which are so severe that the resident or residents could be significantly affected by them.

For **local authorities**, the orders are served under a system for tackling houses previously regarded as 'unfit' which comes into Part 1 of the Housing Act 2004, known as the **Housing, Health and Safety Rating System (HHSRS)**. This is an evidence-based system that has replaced the 'Fitness' Standard. The emphasis is now on the risk to health and safety of occupants (and visitors) caused by its condition. Prohibition Orders served under the HHSRS apply to single occupancy housing, multi-occupied housing (HMOs), and to communal areas.

For **Fire and Rescue Services**, Prohibition Orders are served under the **Regulatory Reform (Fire Safety) Order 2005**, and may apply only to domestic premises which are not occupied as a single private dwelling, and only to the communal parts, rather than the private dwelling themselves. The Fire Safety Order (FSO) applies to common parts of HMOs, common parts of buildings containing flats and maisonettes, and common parts of sheltered housing. The FSO is enforced by the local Fire and Rescue Authority (FRA) but it must consult the LHA before taking enforcement action.

In the rest of this document, the two different types of Order are dealt with separately under each heading.

## **When would a Prohibition Order be appropriate?**

Any residential premises should provide a safe and healthy environment for any potential occupier or visitor. Prohibition Orders may be used where there are hazards which put the safety of residents at risk, or at serious or imminent risk from fire.

**a) The HHSRS hazard rating system** puts any property inspected into a scale of risk, taking account of the chance of something serious happening within the next 12 months and the severity of the problems it would cause (taking into account what type of household would be affected e.g. children or vulnerable people).

Risks are assessed using guidance issued by the Communities and Local Government department. The risk assessment uses a formula to produce a **hazard rating score** and the value of the hazard rating score indicates whether a **Category 1** or a **Category 2 hazard** exists.

Where a **Category 1 hazard** exists, the Public Safety and Regulation Team must take enforcement action.

Where a **Category 2 hazard** exists, the Public Safety and Regulation Team have discretion, and may take enforcement action.

When deciding whether to serve an Order, the Council should take into account the following factors, amongst others:

- The character of the building, neighbouring buildings, and area (for example if the property is listed, or in a conservation or renewal area)
- Whether there are other uses for the building
- The effect on the locality and community
- How easy it would be to rehouse people displaced by the serving of the Order

**b) The Fire Safety Order** places an emphasis on the dangers to the person resulting from the risk created from fire. A Prohibition Order will be considered in all circumstances the use of the premises involves a risk to relevant persons so serious that the use of the premises ought to be restricted or prohibited. This risk can come from a range of factors, including (but not exclusively) a lack of maintenance of fire alarm systems to inadequate structural fire protection. The FRA will, however, consider anything which affects the escape from the premises in the event of a fire.

## The different types of Prohibition Orders

a) **Under the HHSRS system**, the types of Prohibition Orders available are as follows:

- **Prohibition Order** – prohibits the use of the whole house or restricts use of part of a house for habitation where Category 1 and/or Category 2 hazards exist and the conditions are so bad that the property, or part of it, should not be occupied. The Public Safety and Regulation Team may vary or revoke the order as a result of works carried out, to their satisfaction, by the owner of the property. There is no facility for the Public Safety and Regulation Team to carry out works in default of the owner of the property.

A Prohibition Order becomes operative 28 days after it is made (unless it is appealed), and makes it an offence for anyone to live in the whole or part of a property as described in the order. An offence is committed by the owner for allowing tenants to live in the property, and by the tenants if they continue to live there.

- **Emergency Prohibition Order** – has the same effect as a Prohibition Order but it becomes operative *immediately*, and can only be made where a Category 1 hazard exists which, in the opinion of the enforcing authority, involves an imminent risk of serious harm. An offence is committed by the owner if s/he allows tenants to live in the property, and by the tenants if they continue to live there.

b) **Under the Fire Safety Order**, there is just one type of Prohibition Notice which takes immediate effect. It can prohibit all or part of the use of the premises, and focuses on the common parts of a House in Multiple Occupation. The Fire Safety Order can be enforced through the Courts, and the FRA may in exceptional circumstances apply for an injunction from the County Court.

## Other options for making a property safe to live in

a) **Under the HHSRS**, other options include hazard awareness notices, demolition orders, or clearance orders, and the following actions:

- **An Improvement Notice** – requires improvements to be carried out to properties where Category 1 and/or Category 2 hazards exist. Works can be done by contractors employed by the Public Safety and Regulation Team if the notice is not complied with (i.e. carried out in default).

An Improvement Notice could result in an occupier having to leave the premises, on order for the work to be done. Whether a tenant will have to leave while the work is done is a matter for discussion (and agreement) between the landlord and tenant.

- **Emergency remedial action** – where the Council decides that a Category 1 hazard exists at a dwelling and that the hazard involves an imminent risk of serious harm to the health or safety of any occupiers, Public Safety and Regulation officers can enter at any time to carry out emergency remedial action to remove the imminent risk of serious harm associated with the hazard or hazards. They must serve a Notice within 7 days of the start of the remedial action stating, among other things,

the hazards and the remedial action. They may also have to follow up any emergency remedial action with an Improvement Notice in order to remedy any remaining Category 1 hazards once the imminent risk of serious harm has been removed.

The aim of all these actions is to make the property safer for current or potential occupants.

**b) Under the Fire Safety Reform Order**, the FRA may serve alteration notices or enforcement notices:

- **Alterations Notices** – the FRA may serve an alteration notices if they are of the opinion that the premises constitutes a serious risk to relevant persons or may constitute such a risk if a change is made to them or to the use to which they are put. Where an alteration notice has been served, the responsible person must inform the FRA of any changes which may result in a significant increase in risk such as: a change to the services, fittings or equipment in or on the premises; a change to the premises; or change to the use or an increase in the quantities of dangerous substances which are present on the premises.
- **Enforcement Notices** - if the FRA is of the opinion that the responsible person has failed to comply with the provisions of the Fire Safety Order or any regulations made under it, it may serve an enforcement notice. The enforcement notice must specify the provisions which have not been complied with, and require steps to remedy the failure with a period not less than 28 days, as specified in the notice. If an enforcement notice requires alteration to the premises, the FRA must consult with the Local Authority.

## How are Prohibition Orders served?

**a) A Prohibition Order** comes into effect after 28 days (unless it is appealed) and copies must be served on everyone who, to the knowledge of the enforcing authority, is:

- an owner, or someone who is authorised to permit occupation (i.e. an agent)
- an occupier
- or a mortgage lender, in relation to the whole or part of the premises

**An Emergency Prohibition Order** comes into effect immediately.

In both cases, copies must be served within 7 days of making the order and satisfactory service on occupiers can be met by fixing a copy of the order to a conspicuous part of the premises.

**b) Fire Safety Order Prohibition Notices** come into effect immediately they are served. Prohibition Notices are served by the Fire and Rescue Service on a person who has a degree of control of the premises. In relation to a workplace, it is the employer, or it may be a person who has a degree of control of the premises as an occupier (or otherwise) in connection with a trade, business or undertaking, or the

owner of the premises when the person in control does not have control in connection with a trade business or undertaking. Notices may be served in person or by leaving it at the proper address or by post.

## **What is the effect of a Prohibition Order on the occupants?**

**HHSRS Prohibition Orders** may restrict the number of people using the property, or may require that a particularly vulnerable group of people should not use the premises until any defects are rectified by the owner to the satisfaction of the enforcing authority.

Any of the people served with a Prohibition Order may appeal to the Residential Property Tribunal Service against the order. In the case of a Prohibition Order, an appeal has the effect of suspending the Order, and the operative date is changed.

In the case of an Emergency Prohibition Order, the order comes into effect immediately, and an appeal does not suspend the order, and the operative date remains the date on which the order was made.

The effect of an Emergency Prohibition Order is that anyone (landlord, agent, and tenants) who is served with a copy of the order must make arrangements for the property to be vacated (within the law). Failure to do so could result in a prosecution by the local authority.

An enforcing authority may suspend the action specified in a Prohibition Order and can specify an event which will trigger the end of the suspension, such as future occupation by a vulnerable group, non-compliance with an undertaking given to the authority, or a change of occupancy.

**b) Fire Safety Prohibition Order Notices** may require the responsible person to ensure that an occupant or occupants leave the premises. It is an offence for any person to fail to comply with any prohibition or restriction imposed by a prohibition notice. If it is considered necessary, the FRA may apply for an injunction to direct the occupants to leave the premises. As above, an appeal does not suspend a Fire Safety Prohibition Order, which remains in force until the appeal is heard.

## **What effect does a Prohibition Order have on the tenancy?**

**a) HHSRS Prohibition Orders** do not end the tenancy. However, a landlord who fails to comply with the Order can be found prosecuted, and on conviction would face a fine of up to £5,000. This means that they are placed under an obligation to ensure that the tenant or tenants leave if the Order requires this, but they should be encouraged to do this through the proper procedures since they have contractual obligations to the tenant.

The Council may also prosecute any resident or tenant under the provisions of the Prohibition Order if they fail to leave. However, they may have a defence if they have a reasonable excuse for continuing to reside in the property (S32 subsection 3 HA 2004).

Neither the Council, nor the Police or other enforcement agency can require a resident to leave the property. Only a County Court bailiff with a warrant for possession can undertake an eviction, following possession proceedings initiated by the landlord.

**b)** Fire Safety Prohibition Order Notices do not have the effect of ending a tenancy when served.

**c)** Further reading

- Housing Act 1985, s604, as amended by the Local Government and Housing Act 1989
- Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No. 3208)

More information about the HHSRS can be found on the following web pages:

- <http://www.communities.gov.uk/housing/rentingandletting/housinghealth/>
- <http://england.shelter.org.uk/policy/policy-5039.cfm>

The Protocol between Local Housing Authorities and Fire and Rescue authorities to improve fire safety, and the new guidance on housing fire safety, can be found on the LACORS website:

<http://www.lacors.gov.uk/lacors/home.aspx> (see publications/HMOs)

More information on homelessness can be found on the following websites:

- <http://www.communities.gov.uk/housing/homelessness>
- [www.england.shelter.org.uk](http://www.england.shelter.org.uk)
- <http://www.newcastle.gov.uk/nhf>

## 12. Contact details for all agencies

| Agency   | Name of key contact                          | Phone details | e-mail   |
|--|--|---------------|--|
| Housing Advice Centre                          | Gill Simm<br>Debra Shiel or<br>Jacqui Oliver | 277 1711      | <a href="mailto:gill.simm@newcastle.gov.uk">gill.simm@newcastle.gov.uk</a><br><a href="mailto:debra.shiel@newcastle.gov.uk">debra.shiel@newcastle.gov.uk</a><br><a href="mailto:jacqui.oliver@newcastle.gov.uk">jacqui.oliver@newcastle.gov.uk</a> |
| Emergency Homeless Service                     | Homelessness Prevention Officers             | 232 8520      | 5.30pm – 8am Mon – Fri<br>5.30pm Friday – 8am Monday   |
| Public Health and Private Sector Housing       | Paula Davis                                  | 211 6175      | <a href="mailto:paula.davis@newcastle.gov.uk">paula.davis@newcastle.gov.uk</a>   |
| T & W Fire & Rescue Service                    | Richie Ricakby                               | 444 1002      | <a href="mailto:Richie.Rickaby@twfire.gov.uk">Richie.Rickaby@twfire.gov.uk</a>   |
| Newcastle City Council Legal Services Division | Yvonne Donaldson                             | 211 5104      | <a href="mailto:Yvonne.donaldson@newcastle.gov.uk">Yvonne.donaldson@newcastle.gov.uk</a>   |
| Private Rented Service                         | Gwen Smith                                   | 2771456       | <a href="mailto:gwen.smith@newcastle.gov.uk">gwen.smith@newcastle.gov.uk</a>   |
| Newcastle University                           | Vivienne Robinson,<br>Accommodation Manager  | 222 6360      | <a href="mailto:vivienne.robinson@newcastle.ac.uk">vivienne.robinson@newcastle.ac.uk</a>   |
| Northumbria University                         | Alistair Reekie<br>Accommodation Manager     | 227 4048      | <a href="mailto:alastair.reekie@northumbria.ac.uk">alastair.reekie@northumbria.ac.uk</a>   |