

Overcrowding Enforcement in the Private Rented Sector

Residential Environmental Health

Overcrowding

The Legislative Framework

Overcrowding Legislative Background

Statutory Overcrowding (Part X Housing Act 1985):

- The Room/Space Standards:
- “a dwelling is overcrowded if the number of persons sleeping in it exceeds a permitted number, based on the room or space standard.”
- **The Room Standard:** Persons per room
- **The Space Standard:** Floor Area calculations
- Relatively few households are assessed as statutorily overcrowded and hence quite rare or useful in practical use. Standards are very low and prescriptive, outdated and does not reflect modern day standards
- Note: Space and Room standards are not used by Residential Teams to enforce overcrowding

Housing Act 2004: Crowding and Space Hazard

- LA's regulatory teams have been advised to use their powers under Part 1 of the HA 2004 and follow the **Enforcement Guidance (EG)** rather than Part 10 of HA 1985
- LA's need to consider the following:
 - Meeting statutory duties vs. duty to rehouse occupiers
 - Homelessness implications and compensation
 - Clarifying enforcement options under Housing Act via the Most Appropriate Course of Action (MACA)

Powers Available under Part 1 Housing Act 2004

- Hazard Awareness Notice
- Improvement Notice
- Prohibition Order
- Suspension of Prohibition Order's (most commonly used power for crowding and space hazard)
- Emergency Action

Powers contd: HMO's

- HHSRS can be used but there are more specific regs:
- **HMO Licence conditions:** limits occupation levels
- **HMO standards:** LA's HMO space standards
- Specific powers for overcrowding in non-licensable HMO's
- Future occupation of non-licensable HMO's:
- Notices for where a non –licensable HMO is is likely to be overcrowded
- Maximum levels of occupancy can be set for overcrowding

Overcrowding Powers contd.: Housing and Planning Act 2016

Civil Penalty Notices & Rent Repayment Orders

- LA's can impose a civil penalty as an alternative to prosecution for the following offences (in both dwellings and HMO's):
- Failure to comply with HMO licence conditions (over occupation for example); all offences attract an unlimited fine or penalty of up to £30k
- Failure to comply with selective licensing conditions (as above)
- **Rent Repayment Orders** (RRO's) for following offences:
- Failure to comply with a Prohibition Order
- Illegal eviction and using violence to secure entry
- Failure to comply with an Improvement Notice

Rehousing Obligations & Prohibition Order Implications

- There are implications for some types of enforcement:
- Duty to rehouse if PO made under s20/21 of Housing act 2004
- Land Compensation Act 1973: Council duty to secure all persons displaced by a PO are provided with suitable accommodation, this duty applies to all displaced persons

Compensation

- **Owners:** Compensation paid to owners where certain relevant PO's become operative (Housing Act 1985 & 2004)
- **Home Loss Payments** (compensation to occupiers: LCA 1973): Paid when a person is displaced from a dwelling as a result of a PO
- **Disturbance payments:** These are mandatory payments to assist persons displaced from land (LCA 1973) as a consequence of a PO. Includes reasonable costs of moving home

Regulatory action taken by Res EH in last 5 years

- 5 x overcrowding notices (non-licensable HMO's)
- 5x PO's for overcrowding in SFO's
- 2x Hazard Awareness Notices in SFO's
- Selective Licensing Scheme (SFO's): 952 applications received
- HMO Licensing: 2647 apps received
- Note: Licensing Schemes regulate permitted nos per dwelling and also for all types of HMO's

Questions and Answers

- Contacts: Residential EH Team 020 7527 3083
- Email: property.licensing@islington.gov.uk
- Email: Residential.Envh@islington.gov.uk

Appendixes

- **Aid Memoir for Officers Dealing with Overcrowding Cases in RSL properties**

- Islington's policy when dealing with overcrowding cases in RSL properties is to serve a Suspended Prohibition Order (SPO). However, the service of this notice may have a number of effects on the tenants of the properties concerned. This Aid Memoir is designed to ensure that officers are able to inform tenants of the possible outcomes of serving a SPO so that tenants are made aware of the positive and negative aspects of the service of the notice and procedures involved.
- On review any SPO served will become a full Prohibition Order (PO). Tenants may or may not receive an offer of re-housing from the Housing Aid Centre (HAC) and this offer may or may not be agreeable to the tenants.
- As a result of serving the SPO, Environmental Health will inform HAC. HAC will contact the tenant and landlord with the options available to them. These options will include an offer of a council property, an offer of a private landlord property or no offer at all.
- The removal of the suspension may result in the lawful eviction of the tenants and the potential for them not to receive any state assistance.
- The service of a SPO will not entitle the tenants to any additional points under the council's system.
- Serving a SPO is not likely to speed up any re-housing claim.
- The Housing Department assess applications according to their housing allocation policy.
- Tenants should be advised to contact the Rehousing Team immediately to arrange a housing options interview/home visit to discuss all their housing options.
- Contact details for the Re-Housing Team: 222 Upper Street, 222 Upper Street, N1 1XR

Appendixes

- Rent Repayment Orders:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf
- Civil Penalty Guidance:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf
- Enforcement Guidance:
[190206_Note_on_LA_enforcement_powers_with_flowchart_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190206/190206_Note_on_LA_enforcement_powers_with_flowchart_FINAL.pdf)
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