

Emergency Remedial Action notes

Meaning of "category 1 hazard" (Section 2 of the Housing Act 2004)

(1) In this Act -

"category 1 hazard" means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;

"hazard" means any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).

(2) In subsection (1) –

"prescribed" means prescribed by regulations made by the appropriate national authority (see section 261(1)); and

"prescribed band" means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

Recovery of expenses of taking emergency remedial action (Section 42 of the Housing Act 2004)

- (1) This section relates to the recovery by a local Council of expenses reasonably incurred in taking emergency remedial action under section 40 ("emergency expenses").
- (2) Paragraphs 6 to 14 of Schedule 3 (improvement notices: enforcement action by local Councils apply for the purpose of enabling a local Council to recover emergency expenses as they apply for the purpose of enabling such a Council to recover expenses incurred in taking remedial action under paragraph 3 of that Schedule. But those paragraphs to apply with the modifications set out in subsection (3).
- (3) The modifications are as follows-
- (a) any reference to the improvement notice is to be read as a reference to the notice under section 41; and
 - (b) no amount is recoverable in respect of any emergency expenses until such time (if any) as is the operative time for the purposes of this subsection (see subsection (4)).
- (3) This subsection gives the meaning of "the operative time" for the purposes of subsection

(3) -

- (a) if no appeals against the Council's decision to take the emergency remedial action is made under section 45 before the end of the period of 28 days mentioned in subsection of that section "the operative time" is the end of that period;
- (b) if an appeal is made under that section within that period and a decision is given on the appeal which confirms the Council's decision, "the operative time" is as follows-
 - (i) if the period within which an appeal to the Lands Tribunal may be brought expires without such an appeal being brought, "the operative time" is the end of that period;
 - (ii) if an appeal to the Lands Tribunal is brought, "the operative time" is the time when a decision is given on the appeal which confirms the Council's decision.

(5) For the purposes of subsection (4)-

- (a) the withdrawal of an appeal has the same effect as a decision which confirms the Council's decision and,
- (b) references to a decision which confirms the Council's decision are to a decision which confirms it with or without variation.

Appeals under section 45 of Housing Act 2004

These notes are intended as general information to the recipient(s) of this as a broad summary of their right of appeal against the notice. They are not intended to be definitive and persons considering an appeal are advised to seek independent legal advice and/or refer to the full version of Schedule 1 to the Housing Act 2004. Further advice can be obtained from the Residential Property Tribunal:

Residential Property
1st Floor, Piccadilly Exchange
Piccadilly Plaza
Manchester
M14 4AH
Tel: 0161 237 9491
Fax: 01264 785 128
Email: rpnorthern@justice.gov.uk
Website: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

If you do not agree with this notice you may appeal against it to the Residential Property Tribunal, but you must do this within 28 days after the notice is served on you (see details below).

Appeals relating to emergency measures (Section 45 of the Housing Act 2004)

(1) A person on whom a notice under section 41 has been served in connection with the taking of emergency remedial action under section 40 may appeal to a residential property tribunal against the decision of the local housing authority to take that action.

(2) A relevant person may appeal to a residential property tribunal against an emergency prohibition order.

(3) An appeal under subsection (1) or (2) must be made within the period of 28 days beginning with-

(a) the date specified in the notice under section 41 as the date when the emergency remedial action was (or was to be) started, or

(c) the date specified in the emergency prohibition order as the date on which the order was made, as the case may be.

(4) A residential property tribunal may allow an appeal to be made to it after the end of that period if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

(5) An appeal under subsection (1) or (2)-

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(6) The tribunal may-

(a) in the case of an appeal under subsection (1), confirm, reverse or vary the decision of the authority;

(b) in the case of an appeal under subsection (2), confirm or vary the emergency prohibition order or make an order revoking it as from a date specified in that order.

(7) Paragraph 16 of Schedule 2 applies for the purpose of identifying who is a relevant person for the purposes of subsection (2) in relation to an emergency prohibition order as it applies for the purpose of identifying who is a relevant person for the purposes of Part 3 of that Schedule in relation to a prohibition order.

Advice

If you do not understand this notice or wish to know more about it, you should contact Bolton Council. If you want independent advice about your rights and obligations, you should go to a Citizens' Advice Bureau, Housing Aid Centre, Law Centre or a solicitor. You may be able to obtain help with all or part of the cost of legal advice from a solicitor under the Legal Aid Scheme. If you do not know whether you could apply for Legal Aid you can see a solicitor who may be prepared to give you half-an-hour of legal advice for a small fee. If you want to know more about the works Bolton Council requires you to do, you may wish to consult a surveyor.