

# **Improvement Notice and Suspended Improvement Notice notes**

## **Meaning of "category 1 & 2 hazards" (Section 2 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;

"category 2 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 below the minimum amount prescribed for a category 1 hazard of that description; and

"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.

## **Right of appeal (under Schedule 3 of Schedule 1, Housing Act 2004)**

**If you do not agree with this notice you may appeal against it to the Residential Property Tribunal, but you must do this within 21 days after the notice is served.**

**These notes are intended as general information to the recipient(s) of this as a broad summary of their rights 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, available to view at [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk). Further advice can be obtained from the Residential Property Tribunal Services:**

**Residential Property, 1<sup>st</sup> Floor, Piccadilly Exchange, Piccadilly Plaza, Manchester M14AH.  
Tel: 0161 237 9491, Fax: 01264 785 128, Email: [rpnorthern@justice.gov.uk](mailto:rpnorthern@justice.gov.uk) , Website:  
<https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>**

- (10) (1) The person on whom this notice is served may appeal to a residential property tribunal against the notice.
- (2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).
- (3) (1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to –

- (a) take the action concerned, or
- (b) pay the whole or part of the cost of taking that action.

(2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

- (12) (1) An appeal may be made by a person under sub-paragraph 10 on the ground that one of the courses of action in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.
- (2) The courses of action are –
- (a) making a prohibition order under section 20 or 21 of this Act;
  - (b) serving a hazard awareness notice under 28 or 29 of this Act; and
  - (c) making a demolition order under section 265 of the Housing Act 1985 (c.68)

Appeal against decision relating to variation or revocation of improvement notice

- (13) (1) The relevant person may appeal to a residential property tribunal against –
- (a) a decision by the local housing authority to vary an improvement notice, or
  - (b) a decision by the authority to refuse to revoke or vary an improvement notice.
- (2) In sub-paragraph (1) “the relevant person” means –
- (a) in relation to a decision within paragraph (a) of that provision, the person on whom the notice was served;
  - (b) in relation to a decision within paragraph (b) of that provision, the person who applied for the revocation or variation.

Time limit for appeal

- (14) (1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.
- (2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.
- (3) A residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) 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)

Powers of the residential property tribunal on appeal under paragraph 10

- (15) (1) This paragraph applied to an appeal to a residential property tribunal under paragraph 10.

- (2) The appeal –
  - (a) is to be way of a re-hearing, but
  - (b) may be determined having regards to matters of which the authority were unaware
- (3) The tribunal may by order confirm, quash or vary the improvement notice
- (4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.
- (16) (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 11.
- (2) On the hearing of the appeal the tribunal may –
  - (a) vary the improvement notice so as to require the action to be taken by any owner mention in the notice of appeal in accordance with paragraph 11; or
  - (b) make such order as it considers appropriate with respect to the payment to be made by any such owner to the appellant or, where the action is to be taken by the local housing authority, to the authority.
- (3) In the exercise of its powers under sub-paragraph (2), the tribunal must take into account, as between the appellant and any such owner –
  - (a) their relative interests in the premises concerned (considering both the nature of the interests and the rights and obligation arising under or by virtue of them);
  - (b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned; and
  - (c) the relative degree of benefit to be derived from the taking of the action concerned.
- (4) Sub-paragraph (5) applies where, by virtue of the exercise of the tribunal's powers under sub-paragraph (2), a person other than the appellant is required to take the action specified in an improvement notice.
- (5) So long as that other person remains an owner of the premises to which the notice relates, he is to be regarded for the purposes of this Part as the person on whom the notice was served (in place of any other person).
- (17) (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 12.
- (2) When deciding whether one of the course of action mentioned in paragraph 12(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.
- (3) Sub paragraph (4) applies where –
  - (a) an appeal under paragraph 10 is allowed against an improvement notice in respect of a particular hazards; and
  - (b) the reasons, or one of the reasons, for allowing the appeal is that one of the courses of action in paragraph 12(2) is the best course of action in relation to that hazard.

- (4) The tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned.

Powers of residential property tribunal on appeal under paragraph 13

- (18) (1) This paragraph applies to an appeal to a residential property tribunal under paragraph 13.
- (2) Paragraph 15(2) applies to such an appeal as it applies to an appeal under paragraph 10.
- (3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.
- (4) If the appeal is against a decision of the authority to refuse to revoke an improvement notice, the tribunal may make an order revoking the notice as from a date specified in the order.

“The operative time” for the purposes of section 15(5)

- (19) (1) This paragraph defines “the operative time” for the purposes of section 15(5) (operation of improvement notices).
- (2) If an appeal is made under paragraph 10 against an improvement notice which is not suspended, and a decision on the appeal is given which confirmed the notice, the operative time is as follows –
  - (a) if the period within which an appeal to the Lands Tribunal may be brought expires without such an appeal having been brought, “the operative time” is the end of that period.
  - (b) 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 notice.
- (3) If an appeal is made under paragraph 10 against an improvement notice which is suspended, and a decision is given on the appeal which confirmed the notice, “the operative time” is as follows –
  - (a) the time that would be the operative time under sub-paragraph (2) if the notice were suspended,  
or
  - (b) if later, the time when the suspension ends.
- (4) For the purposes of sub-paragraph (2) or (3) –
  - (a) The withdrawal of an appeal has the same effect as a decision which confirms the notice, and
  - (b) Reference to a decision which confirms the notice are to a decision which confirms it with or without variation

“The operative time” for the purposes of section 16(7)

- 20 (1) This paragraph defines “the operative time” for the purposes of section 16(7)

(postponement of time when a variation of an improvement notices comes in to force)

- (2) If no appeal is made under paragraph 13 before the end of the period of 28 days mentioned in paragraph 14(2), “the operative time” is the end of that period.
- (3) If an appeal is made under paragraph 13 before the end of that period and a decision is given on the appeal which confirms the variation, “the operative time” is as follows –
  - (a) if the period within which an appeal to the lands Tribunal may be brought expires without such an appeal having been brought. “the operative time” is the end of that period;
  - (b) if an appeal to the Lands Tribunal is brought, “the operative time” if the time when a decision is given on the appeal which confirms the variation.
- (4) For the purposes of sub-paragraph (3) –
  - (a) the withdrawal of an appeal has the same effect as a decision which confirms the variations, and
  - (b) references to a decision which confirms the variation are to a decision which confirms it with or without variation.

## **Power to take action without agreement (under Part 2 and 3 of schedule 3 of the Housing Act 2004)**

### Power to take action without agreement

3. (1) The local housing authority may themselves take the action required to be taken in relation to a hazard by an improvement notice if sub-paragraph (2) or (3) applies.
  - (2) This sub-paragraph applies if the notice is not complied with in relation to that hazard.
  - (3) This sub-paragraph applies if, before the end of the period which under section 30(2) is appropriate for completion of the action specified in the notice in relation to the hazard, they consider that reasonable progress is not being made towards compliance with the notice in relation to the hazard.
  - (4) Any person authorised in writing by the authority may enter any part of the specified premises for the purposes of the taking of any action which the authority are authorised to take under this paragraph.
  - (5) The right of entry conferred by sub-paragraph (4) may be exercised at any reasonable time.
  - (6) Any reference in this Part of this Schedule (of whatever nature) to a local housing authority entering any premises under this paragraph is a reference to their doing so in accordance with sub-paragraph (4).

- (7) In this paragraph "improvement notice" means an improvement notice which has become operative under Chapter 2 of Part 1 of this Act.

#### Notice requirements in relation to taking action without agreement

- (4) (1) The local housing authority must serve a notice under this paragraph before they enter any premises under paragraph 3 for the purpose of taking action in relation to a hazard.
- (2) The notice must identify the improvement notice to which it relates and state-
- (a) the premises and hazard concerned;
  - (b) that the authority intend to enter the premises;
  - (c) the action which the authority intend to take on the premises; and
  - (d) the power under which the authority intend to enter the premises and take the action.
- (3) The notice must be served on the person on whom the improvement notice was served, and a copy of the notice must be served on any other person who is an occupier of the premises.
- (4) The notice and any such copy must be served sufficiently in advance of the time when the authority intend to enter the premises as to give the recipients reasonable notice of the intended entry.
- (5) A copy of the notice may also be served on any owner of the premises.

#### Obstruction of action taken without agreement

- (5) (1) If, at any relevant time-
- (a) the person on whom the notice under paragraph 4 was served is on the premises for the purpose of carrying out any works, or
  - (b) any workman employed by that person, or by any contractor employed by that person, is on the premises for such a purpose,
- that person is to be taken to have committed an offence under section 241(1).
- (2) In proceedings for such an offence it is a defence that there was an urgent necessity to carry out the works in order to prevent danger to persons occupying the premises.
- (3) In sub-paragraph (1) "relevant time" means any time-
- (a) after the end of the period of 7 days beginning with the date of service of the notice under paragraph 4, and
  - (b) when any workman or contractor employed by the local housing authority is taking action on the premises which has been mentioned in the notice in accordance with paragraph 4(2)(c).

#### Expenses in relation to taking action without agreement.

- (6) (1) Part 3 of this Schedule applies with respect to the recovery by the local housing authority of expenses incurred by them in taking action under paragraph 3.

(2) Sub-paragraph (3) applies where, after a local housing authority have given notice under paragraph 4 of their intention to enter premises and take action, the action is in fact taken by the person on whom the improvement notice is served.

- (3) Any administrative and other expenses incurred by the authority with a view to themselves taking the action are to be treated for the purposes of Part 3 of this Schedule as expenses incurred by them in taking action under paragraph 3.

## **Revocation and variation of improvement notices (Section 16 Housing Act 2004)**

- (16) (1) The local housing authority must revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with.
- (2) The local housing authority may revoke an improvement notice if-
- (a) in the case of a notice served under section 11, they consider that there are any special circumstances making it appropriate to revoke the notice; or
  - (b) in the case of a notice served under section 12, they consider that it is appropriate to revoke the notice.
- (3) Where an improvement notice relates to a number of hazards-
- (a) subsection (1) is to be read as applying separately in relation to each of those hazards, and
  - (b) if, as a result, the authority are required to revoke only part of the notice, they may vary the remainder as they consider appropriate.
- (4) The local housing authority may vary an improvement notice-
- (a) with the agreement of the person on whom the notice was served, or
  - (b) in the case of a notice whose operation is suspended, so as to alter the time or events by reference to which the suspension is to come to an end.
- (5) A revocation under this section comes into force at the time when it is made.
- (6) If it is made with the agreement of the person on whom the improvement notice was served, a variation under this section comes into force at the time when it is made.
- (7) Otherwise a variation under this section does not come into force until such time (if any) as is the operative time for the purposes of this subsection under paragraph 20 of Schedule 1 (time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).
- (8) The power to revoke or vary an improvement notice under this section is exercisable by the authority either-
- (a) on an application made by the person on whom the improvement notice was served, or
  - (b) on the authority's own initiative.

## **Change in person liable to comply with improvement notice (Section 19 Housing Act 2004)**

- (19) (1) This section applies where-
- (a) an improvement notice has been served on any person ("the original recipient") in respect of any premises, and
  - (b) at a later date ("the changeover date") that person ceases to be a person of the relevant category in respect of the premises.
- (2) In subsection (1) the reference to a person ceasing to be a "person of the relevant category" is a reference to his ceasing to fall within the description of person (such as, for example, the holder of a licence under Part 2 or 3 or the person managing a dwelling) by reference to which the improvement notice was served on him.
- (3) As from the changeover date, the liable person in respect of the premises is to be in the same position as if-
- (a) the improvement notice had originally been served on him, and
  - (b) he had taken all steps relevant for the purposes of this Part which the original recipient had taken.
- (4) The effect of subsection (3) is that, in particular, any period for compliance with the notice or for bringing any appeal is unaffected.
- (5) But where the original recipient has become subject to any liability arising by virtue of this Part before the changeover date, subsection (3) does not have the effect of-
- (a) relieving him of the liability, or
  - (b) making the new liable person subject to it.
- (6) Subsection (3) applies with any necessary modifications where a person to whom it applies (by virtue of any provision of this section) ceases to be the liable person in respect of the premises.
- (7) Unless subsection (8) or (9) applies, the person who is at any time the "liable person" in respect of any premises is the person having control of the premises.
- (8) If-
- (a) the original recipient was served as the person managing the premises, and
  - (b) there is a new person managing the premises as from the changeover date, that new person is the "liable person".
- (9) If the original recipient was served as an owner of the premises, the "liable person" is the owner's successor in title on the changeover date.

## **Offence of failing to comply with improvement notice (Section 30 Housing Act 2004)**

- (30) (1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.



- (2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice-
- (a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);
  - (b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and
  - (c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.
- (5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.
- (6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

## **Land Charge**

When the notice becomes operative it will be a local land charge on the premises to which it relates. This means that it will be recorded in the register of local land charges kept by Bolton Council. This register is public and anyone may search for entries in it upon payment of a fee. Purchasers will normally search this register.

## **Grant**

You may be entitled, under Part I of the 1996 Act, to a discretionary grant from Bolton Council towards the cost of the works. The premises will have to satisfy the preliminary conditions of grant in each case. You should contact Bolton Council about the possibility of obtaining a grant, and submit a formal application for grant, before appointing contractors or starting the works.

## **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.