

# Prohibition Order and Suspended Prohibition Order Notes

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 n of Schedule 1 to the Housing Act 2004. Further advice can be obtained from the:

Residential Property  
1<sup>st</sup> Floor, Piccadilly Exchange  
Piccadilly Plaza  
Manchester  
M14 AH  
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>

## 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 (Schedule 2, Part 3 of the Housing Act 2004)

7. (1) a relevant person may appeal to residential property tribunal against a prohibition order.
- (2) paragraph 8 sets out a specific ground on which an appeal may be made under this paragraph, but it does not affect the generality of Paragraph 7 sub-paragraph (1).
8. (1) An appeal may be made by a person under paragraph 7 on the ground that one of the

courses of action mentioned in Paragraph 8, sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the order was made.

- (2) The courses of action are:-
- (a) serving an improvement notice under section 11 or 12 of the Act;
  - (b) serving a hazard awareness notice under section 28 or 29 of the Act;
  - (c) making a demolition order under section 265 of the Housing Act 1985 (c.68).

Appeal against decision relating to revocation or variation of prohibition order

- 9 A relevant person may appeal to a residential property tribunal against—
- (a) decision by the local housing authority to vary a prohibition order, or
  - (b) a decision by the authority to refuse to revoke or vary a prohibition order.

Time limit for appeal

- 10 (1) Any appeal under paragraph 7 must be made within the period of 28 days beginning with the date specified in the prohibition order as the date on which the order was made.
- (2) Any appeal under paragraph 9 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 3 or 5 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 residential property tribunal on appeal under paragraph 7

- 11 (1) This paragraph applies to an appeal to a residential property tribunal under paragraph 7.
- (2) The appeal—
- (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.
- (3) The tribunal may by order confirm, quash or vary the prohibition order.
- (4) Paragraph 12 makes special provision in connection with the ground of appeal set out in paragraph

- 12 (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 8.

- (2) When deciding whether one of the courses of action mentioned in paragraph 8(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 7 is allowed against a prohibition order made in respect of a particular hazard; and
  - (b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 8(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 9

- 13 (1) This paragraph applies to an appeal to a residential property tribunal under paragraph 9.
- (2) Paragraph 11(2) applies to such an appeal as it applies to an appeal under paragraph 7.
- (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 a prohibition order, the tribunal may make an order revoking the prohibition order as from a date specified in its order.

#### “The operative time” for the purposes of section 24(5)

- 14 (1) This paragraph defines “the operative time” for the purposes of section 24(5) (operation of prohibition orders).
- (2) If an appeal is made under paragraph 7 against a prohibition order which is not suspended, and a decision on the appeal is given which confirms the order, “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 order.
- (3) If an appeal is made under paragraph 7 against a prohibition order which is suspended, and a decision is given on the appeal which confirms the order, “the operative time” is as follows—

- (a) the time that would be the operative time under sub-paragraph (2) if the order were not 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) references to a decision which confirms the order are to a decision which confirms it with or without variation.

“The operative time” for the purposes of section 25(7)

- 15 (1) This paragraph defines “the operative time” for the purposes of section 25(7) (revocation or variation of prohibition orders).
- (2) If no appeal is made under paragraph 9 before the end of the period of 28 days mentioned in paragraph 10(2), “the operative time” is the end of that period.
- (3) If an appeal is made under paragraph 10 within 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” is 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 variation, and
  - (b) references to a decision which confirms the variation are to a decision which confirms it with or without variation.

Meaning of “relevant person”

- 16 (1) In this Part of this Schedule “relevant person”, in relation to a prohibition order, means a person who is—
- (a) an owner or occupier of the whole or part of the specified premises,
  - (b) authorised to permit persons to occupy the whole or part of those premises,
- or
- (c) a mortgagee of the whole or part of those premises.
- (2) If any specified premises are common parts of a building containing one or more flats, then in relation to those specified premises, “relevant person” means every person who is an owner or mortgagee of the premises in which the common parts are comprised.

## **Application for revocation or variation of order (Section 25 of the Housing Act 2004)**

If you are satisfied that the remedial action specified in the order to remove the specified hazards(s) have been complied with in full, or where the order relates to a number of different hazards that the remedial action relating to some of the hazards have been complied with, you may apply to the Council revocation or variation of the order as appropriate.

## **Application for approval to use the premises for a particular purpose (Section 22 of the Housing Act 2004)**

You may apply to the council for approval to use part or all of the premises for a particular purpose. The Council must not unreasonably withhold approval but if approval is refused they must notify you of that decision and the reasons for it within 7 days of making it. If you disagree with the decision you may appeal to the residential property tribunal but you must do so within 28 days of the notification of the refusal.

## **Offence of failing to comply with prohibition order (Section 32 Housing Act 2004)**

- (1) A person commits an offence if, knowing that a prohibition order has become operative in relation to any specified premises, he:-
  - (a) uses the premises in contravention of the order, or
  - (b) permits the premises to be used
- (2) A person who commits an offence under subsection (1) is liable on summary conviction-
  - (a) to a fine not exceeding level 5 on the standard scale, and
  - (b) to a further fine not exceeding £20 for every day or part of a day on which he so uses the premises, or permits them to be so used, after conviction
- (3) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for using the premises, or (as the case may be) permitting them to be used, in contravention of the order

## **Recovery of possession of premises in order to comply with order (Section 33 Housing Act 2004)**

Nothing in-

- (a) the Rent Act 1977 (c.42) or the Rent (Agriculture) Act 1976 (c.80); or
- (b) Part 1 of the Housing Act 1988 (c.50), prevents possession being obtained by the owner of any specific premises in relation to which a prohibition order is operative if possession of the premises is necessary for the purpose of complying with the order

## **Effect of improvement notices and prohibition orders as local land charges (Section 37 Housing Act 2004)**

When the Order 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.

### **General 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, 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.