

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Housing Conditions

Chapter 2 – Improvement Notices, Prohibition Orders and Hazard Awareness Notices

Section 11: Improvement notices relating to category 1 hazards: duty of authority to serve notice

79. Subsection (1) provides that if a category 1 hazard exists on any residential premises, serving an improvement notice is one of the courses of action available to an LHA in discharging its general duty under section 5 (to take the most appropriate enforcement action to deal with such a hazard). This is only the case where the premises in respect of which the notice is to be served are not the subject of a management order made under Part 4 of the Act. An improvement notice is a notice requiring the person on whom it is served to take the remedial action specified in the notice and remedial action means the action which will remove or reduce the hazard.
80. Subsection (3) provides that remedial action may be taken in relation to any dwelling or HMO, an individual flat or multiple flats within a building, any common parts of a building containing one or more flats and any external common parts. Subsection (4) restricts remedial action in respect of the non-residential part of any premises (for example, a shop under a flat) to cases where the deficiency giving rise to the hazard is located there, and the remedial action is necessary for the health or safety of actual or potential residential occupiers.
81. Subsection (5) provides that the remedial action must, as a minimum, remove the category 1 hazard, but may go further.
82. An improvement notice may be suspended in accordance with section 14.

Section 12: Improvement notices relating to category 2 hazards: power of authority to serve notice.

83. Subsection (1) enables an LHA to serve an improvement notice if it is satisfied that a category 2 hazard exists on residential premises and the premises in respect of which the notice is to be served are not the subject of a management order under Part 4.
84. Subsection (2) explains that an improvement notice is a notice requiring the person on whom the notice is served to take the remedial action specified in the notice.
85. Subsection (3) applies subsections (3) and (4) of section 11, which set out that remedial action may be taken in relation to any dwelling or HMO, an individual flat or multiple flats within a building, any common parts of a building containing one or more flats and any external common parts. Subsection (4) restricts remedial action in respect of the non-residential part of any premises (for example, a shop under a flat) to cases where the

deficiency giving rise to the hazard is located there, and the remedial action is necessary for the health or safety of actual or potential residential occupiers.

- 86. Subsection (5) allows for only one improvement notice to be served where both a category 1 and a category 2 hazard exists.
- 87. An improvement notice may be suspended in accordance with section 14.

Section 13: Contents of improvement notices

- 88. Section 13 sets out the mandatory contents of improvement notices, which include the details of the hazard and the category into which it falls, the remedial action to be taken and the period of time allowed for compliance. As more than one hazard may be dealt with in the same notice, the notice will be able to prescribe different deadlines for completion of the various actions required. The notice must also contain information about the right to appeal the notice and the time limits for such appeal. Under subsection (3), an improvement notice cannot require remedial works to start earlier than 28 days after the date of service of the notice.

Section 14: Suspension of improvement notices

- 89. Section 14 provides for the suspension of an improvement notice at the LHA's discretion. A notice may for example be suspended until such time as the current occupant ceases to occupy the premises. The notice may specify an event, such as non-compliance with an undertaking given to the LHA by the person on whom the notice is served, that will trigger the end of the suspension. Guidance on the use of suspended notices will be given under section 9. The purpose of suspensions is to enable the LHA to prioritise action. Where an improvement notice has been suspended, any periods specified in the notice will run from the day when the suspension ends and the 28 day period is replaced with a period of 21 days from the day the suspension ends.

Section 15: Operation of improvement notices

- 90. Section 15 provides for the operation of improvement notices. Notices, as a general rule, will come into operation 21 days after they are served. Notices whose operation is suspended will become operative at the end of the suspension period.
- 91. Subsection (5) provides for the notices against which appeals are brought under Part 3 of Schedule 1 to become operative in accordance with paragraph 19 of that Schedule. If an improvement notice is appealed to the residential property tribunal in accordance with Part 3 of Schedule 1 and that tribunal confirms the notice, it does not become operative until the time for an appeal to the Lands Tribunal has expired without an appeal having been brought or, if an appeal is brought, the time when a decision confirming the notice is given by the Lands Tribunal. Subsection (6) has the effect of preventing any appeal against the contents of a notice more than 21 days after it has been served.

Section 16: Revocation and variation of improvement notice

- 92. Section 16 provides for the revocation and variation of improvement notices.
- 93. Subsection (1) requires an LHA to revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with.
- 94. Where the notice relates to more than one hazard, this requirement applies to each of the hazards individually (see subsection (3)).
- 95. Subsection (2) provides a discretionary power for an LHA to revoke an improvement notice. In the case of a notice served under section 11 (in respect of a category 1 hazard), they may only do so if they are satisfied that there are special circumstances making it appropriate to revoke the notice. A notice served under section 12 (in respect of a category 2 hazard) may be revoked where the LHA considers that it is appropriate.

- 96. Subsection (3) provides that, where an LHA is required by subsection (1) to revoke only part of a notice that relates to a number of hazards, they may vary the remainder of the notice, as they consider appropriate.
- 97. Subsection (4) enables an LHA to vary an improvement notice, either with the agreement of the person on whom it was served or, where the notice has been suspended under section 14, without their agreement but only to alter the time or events triggering the end of the suspension.
- 98. Subsection (5) provides that a revocation comes into force when it is made and subsection (6) provides that, where a variation is made with the agreement of the person on whom it is served, the variation shall come into force when it is made. If a variation is made without such agreement, the notice will become operative 28 days after the date on which the decision was made or, if an appeal against a variation or revocation is made, it will not come into force until the appeal has been dealt with (see subsection (7)).
- 99. Subsection (8) provides that an LHA may revoke or vary an improvement notice either in response to an application from the person on whom the notice was served, or on their own initiative.

Section 17: Review of suspended improvement notices

- 100. Section 17 requires an LHA to review a suspended improvement notice within a year of service of the notice, and at least annually thereafter. Subject to these requirements, LHAs may review suspended notices at any time. Copies of an LHA's decision on a review must be served on every person on whom the original notice was served, or on whom a copy of it was required to be served.

Section 18: Service of improvement notices etc. and related appeals

- 101. Section 18 gives effect to Schedule 1, which sets out the procedures for serving improvement notices, for revocation and variation of such notices, and for dealing with appeals against such notices.

Section 19: Change in person liable to comply with improvement notice

- 102. Section 19 makes provision for a change in circumstance where the original recipient of an improvement notice is no longer the person on whom it would have been appropriate to serve the notice. For example, an owner or landlord may have sold the property, or the manager of an HMO may have been replaced. In such cases, the requirement to comply with the improvement notice transfers to a relevant successor. This should not take new owners unawares, as improvement notices are land charges and will be revealed by the local search.
- 103. Subsection (4) provides that, in the event of a change in the liable person (for the meaning of which see subsections (7), (8) and (9)), the period for complying with a notice or bringing an appeal is unaffected.
- 104. Subsection (5) provides that, where the original recipient of an improvement notice has already incurred a liability - e.g. he has been fined for non-compliance or obstruction - he retains that liability despite the subsequent transfer of responsibility.

Section 20: Prohibition orders relating to category 1 hazards: duty of authority to make order

- 105. Subsection (1) provides that, if a category 1 hazard exists on any residential premises, making a prohibition order is one of the courses of action available to an LHA in discharging its general duty under section 5 to take the most appropriate enforcement action to deal with a such a hazard, so long as the premises in respect of which the order is to be made are not the subject of a management order under Part 4.

- 106. Subsection (3) provides that a prohibition order may prohibit the use of residential premises which are dwellings or HMOs, one or more flats contained in a building, the common parts of the building containing one or more flats, or external common parts of such buildings.
- 107. Subsection (4) enables the use of the non-residential element of a building containing one or more flats to be prohibited, but only if the deficiency giving rise to the hazard is located there and the prohibition is necessary for the health or safety of actual or potential residential occupiers of the flat or flats within the premises.
- 108. Under subsection (5), a prohibition order can relate to more than one category 1 hazard.
- 109. Subsection (6) provides that the operation of an order may be suspended in accordance with section 23.

Section 21: Prohibition orders relating to category 2 hazards: power of authority to make order

- 110. Subsection (1) provides a discretionary power for an LHA to make a prohibition order if it is satisfied that a category 2 hazard exists on residential premises and the premises in respect of which the order is to be made are not the subject of a management order under Part 4 of the Act.
- 111. Subsection (3) applies subsections (3) of section 20, which provide that a prohibition order may prohibit the use of residential premises which are dwellings or HMOs, one or more flats contained in a building, the common parts of the building containing one or more flats, or external common parts of such buildings. It also applies subsection (4) which allows the prohibition of the use of the non-residential element of a building containing one or more flats, but only if the deficiency giving rise to the hazard is located there and the prohibition is necessary for the health or safety of actual or potential residential occupiers of the flat or flats within the premises.
- 112. Under subsection (4), an order may apply to more than one category 2 hazard and may relate to both category 1 and category 2 hazards while subsection (5) provides that prohibition orders under sections 20 and 21 can be combined if they relate to the same premises.

Section 22: Contents of prohibition orders

- 113. Section 22 deals with the contents of prohibition orders. For each hazard to which it relates, whether the order is made under section 20 or 21 (that is, whether the hazard is a category 1 or 2 hazard) the order must set out: the nature of the hazard, the deficiency giving rise to it and the premises where it exists; the premises the use of which is prohibited by the order; and any remedial action which, if carried out, would result in the revocation of the order by the LHA. An order must also contain information regarding the right to appeal against a prohibition order and the time limits within which any appeal can be made.
- 114. Prohibition orders may prohibit the use of part or all of the premises for some or all purposes, unless approved by the LHA; or occupation of the premises or part of them by a particular number of households or occupants, or by particular descriptions of persons, unless approved by the LHA. So for example a prohibition order may prohibit the use of the top floor of an HMO for more than one household, or for persons over the age of 65 or under the age of 5.
- 115. Where a LHA is asked to approve a use which has been prohibited, that approval should not be unreasonably withheld. Any such refusal must be notified to the applicant within 7 days of the date of the decision to refuse.

There is an additional right of appeal against an LHA's refusal to permit the use of the premises for all or any purposes while the prohibition order is in operation, within 28 days of the date on which the decision was made.

Section 23: Suspension of prohibition orders

116. **Section 23** provides for the suspension of a prohibition order at the LHA's discretion. The order may specify an event, such as non-compliance with an undertaking given to the LHA by the person on whom the notice is served, that will trigger the end of the suspension, or may specify a time when the suspension ceases. For example, an order may be suspended until such time as a person of a particular description, e.g. a university student, ceases to occupy the premises.

Section 24: Operation of prohibition orders

117. **Section 24** provides for the operation of prohibition orders. As a general rule, they will come into operation 28 days after they are made. Orders whose operation is suspended will come into operation when the suspension ends.
118. Subsection (5) provides for orders against which appeals are brought under Part 3 of Schedule 2 to become operative in accordance with paragraph 14 of that Schedule. If a prohibition order is appealed to the residential property tribunal in accordance with Part 3 of Schedule 2 and that tribunal confirms the order, it does not become operative until the time for an appeal to the Lands Tribunal has expired without an appeal having been brought or, if an appeal is brought, the time when a decision confirming the notice is given by the Lands Tribunal.
119. Subsection (6) has the effect of preventing any appeal against the contents of an order more than 28 days after it has been made.

Section 25: Revocation and variation of prohibition orders

120. **Section 25** provides for the revocation and variation of prohibition orders.
121. Subsection (1) requires an LHA to revoke a prohibition order if it is satisfied that the hazard in respect of which the order was made no longer exists on the premises specified in the order.
122. Subsection (2) provides a discretionary power for an LHA to revoke a prohibition order. In the case of an order made under section 20 (in respect of a category 1 hazard), they may only do so if they are satisfied that there are special circumstances making it appropriate to revoke the order.
123. Subsection (3) provides that, where an order relates to a number of hazards, subsection (1) is to be read as applying separately to each hazard. Where a revocation applies only to certain of the hazards specified in an order, the LHA may vary the remainder of the order, as they consider appropriate.
124. Subsection (4) enables an LHA to vary a prohibition order. Subsection (5) provides that a revocation comes into force when it is made. Subsection (6) provides that, if a prohibition order is varied with the agreement of every person on whom the copies of the order were required to be served, the variation comes into force when it is made. Otherwise, by virtue of subsection (7), it comes into force 28 days after the decision to vary or, if an appeal against a variation is made, it will not come into force until the appeal has been dealt with.
125. Subsection (8) provides that an LHA may revoke or vary a prohibition order either in response to an application from any person on whom a copy of the order was required to be served, or on their own initiative.

Section 26: Review of suspended prohibition orders

126. **Section 26** requires an LHA to review a suspended prohibition order within a year of making the order, and at least annually thereafter. Subject to these requirements, LHAs may review suspended orders at any time. Copies of an LHA's decision on a review must be served on every person on whom a copy of the order was required to be served.

Section 27: Service of copies of prohibition orders etc. and related appeals

127. **Section 27** gives effect to Schedule 2, which sets out the procedures for making prohibition orders, for the revocation and variation of such orders, and for dealing with appeals against such orders.

Section 28: Hazard awareness notices relating to category 1 hazards: duty of authority to serve notice

128. Subsection (1) provides that, if a category 1 hazard exists on any residential premises, serving a hazard awareness notice is one of the courses of action available to an LHA in discharging its general duty under section 5, so long as the premises in respect of which the notice is to be served are not the subject of a management order under Part 4.
129. Subsection (2) defines a hazard awareness notice under this section as a notice advising the person on whom it is served that a category 1 hazard exists on the residential premises concerned.
130. Subsection (3) sets out the premises and common parts in respect of which a hazard awareness notice may be served. Subsection (4) enables notice to be served in respect of non-residential premises, but only if the deficiency giving rise to the hazard is located there, and it is desirable for the notice to be served in the interests of the health or safety of actual or potential residential occupiers.
131. Subsection (6) sets out the mandatory contents of hazard awareness notices under this section, which include the details of the hazard and the category into which it falls, the reasons for serving the notice and the details of any remedial action which the LHA consider it would be practicable and appropriate to take in relation to the hazard.
132. Subsection (7) provides that the requirements for the service of improvement notices, and copies of such notices, also apply to the service of hazard awareness notices under this section.

Section 29: Hazard awareness notices relating to category 2 hazards: power of authority to serve notice

133. Subsection (1) provides a discretionary power for an LHA to serve a hazard awareness notice if it is satisfied that a category 2 hazard exists on residential premises and the premises in respect of which the notice is to be served are not the subject of a management order under Part 4.
134. Subsection (2) defines a hazard awareness notice under this section as a notice advising the person on whom it is served that a category 2 hazard exists on the residential premises concerned.
135. Subsection (3) applies subsections (3) and (4) of section 28, which set out the premises and common parts in respect of which a hazard awareness notice may be served, and enable action to be taken in respect of non-residential premises if the deficiency giving rise to the hazard is located there, and it is desirable for the notice to be served in the interests of the health or safety of actual or potential residential occupiers.
136. Subsection (5) sets out the mandatory contents of hazard awareness notices under this section, which include the details of the hazard and the category into which it falls, the

reasons for serving the notice and the details of any remedial action which the LHA consider it would be practicable and appropriate to take in relation to the hazard.

137. Subsection (7) provides that the requirements for the service of improvement notices, and of copies of such notices, also apply to the service of hazard awareness notices under this section.

Section 30: Offence of failing to comply with improvement notice

138. Section 30 makes it an offence for a person on whom an improvement notice is served not to comply with that notice, and provides penalties for non-compliance.
139. Subsection (2) explains that compliance means beginning and completing any remedial action specified in the notice within a specified period. Such an offence is punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).

Section 31: Enforcement action by local housing authorities

140. Section 31 gives effect to Schedule 3, which enables LHAs to take enforcement action in respect of improvement notices and recover related expenses.

Section 32: Offence of failing to comply with prohibition order etc.

141. Section 32 makes it an offence for a person, knowing a prohibition order has become operative, not to comply with that order, and provides penalties for non-compliance.
142. Such an offence is punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).

Section 33: Recovery of possession of premises in order to comply with order

143. Restrictions on recovering possession under the Rent Act 1977, the Rent (Agriculture) Act 1976 or Part 1 of the Housing Act 1988 will not apply where a prohibition order is in force and the owner seeks possession of the premises. Therefore, where possession of the premises specified in a prohibition order is sought, for the purposes of complying with the prohibition order, the owner will be able to determine a tenancy by a notice to quit and then recover possession.

Section 34: Power of tribunal to determine or vary lease

144. Section 34 enables a lessor or lessee to apply to a tribunal for an order terminating or varying a lease on a property which is the subject of a prohibition order. Before making an order, the tribunal must take account of all the circumstances of the case, the respective rights and obligations of all parties to the lease and allow any sub-lessees to be heard.

Section 35: Power of court to order occupier or owner to allow action to be taken on premises

145. Section 35 provides that, where an occupier, owner, person having control of or managing the premises, or licence holder under Part 2 or 3 of the Act is preventing the putting into effect of any action required by an improvement notice or necessary to give effect to a prohibition order, a magistrates' court may order that person to permit that which the court considers necessary or expedient to be done on the premises.
146. Subsections (4), (5) and (6) make it an offence to fail to comply with an order of the court and provide penalties for non-compliance.

Section 36: Power of court to authorise action by one owner on behalf of another

147. **Section 36** enables a magistrates' court to make an order allowing an owner of premises to enter those premises and, within a fixed period of time, to take any action required by an improvement notice or prohibition order. Before making an order, the court needs to be satisfied that such an order is necessary to safeguard the interests of the applicant, and that the LHA has been given notice of the application. The purpose of this provision is to ensure that an owner or superior landlord is able to deal with a problem where they have reason to believe that the person served with the notice may not take the necessary action.

Section 37: Effect of improvement notices and prohibition orders as local land charges

148. **Section 37** provides that an improvement notice or prohibition order which is in operation or is suspended, and in respect of which there is no outstanding appeal, is a local land charge. Local land charges protect buyers of land, by ensuring they are not caught unawares by obligations enforceable against successive owners.

Section 38: Savings for rights arising from breach of covenant etc.

149. **Section 38** provides that nothing in Chapter 2 prejudices any rights of an owner of property arising from any breach of covenant or contract by the lessee. The effect of subsection (2) is that, even where the owner has to take possession in order to comply with an improvement notice or prohibition order, he can still sue the tenant for breaches of contract or covenant by the tenant that occurred before he took possession. This section also protects the rights of tenants against their landlords.

Section 39: Effect of Part 4 enforcement action and redevelopment proposals

150. **Section 39** provides that an improvement notice or prohibition order ceases to have effect where a management order under Part 4 comes into force in relation to the premises the subject of the notice or order. Nothing in this section affects any right acquired or liability incurred before the notice or order ceases to have effect.
151. Under subsections (4) and (5) where land is in the process of being redeveloped in accordance with the owner's approved proposals (see further section 308 of the Housing Act 1985), the LHA is prevented from taking any action under Chapter 2 of Part 1 of the Act in relation to that land.