



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case references** : CAM/00KA/HIN/2019/0011

**Property** : 127 Brennan Road, Tilbury, Essex RM18 8AU

**Applicant** : Oghogho Lucky Igiewe

**Applicant's Representative** : Not represented

**Respondent** : Thurrock Council

**Respondent's Representative** : Janet Donnelly (Principal Environmental Health Officer)

**Type of application** : Appeal against a Housing Improvement Notice pursuant to Part 3 of Schedule 1 to Housing Act 2004

**Tribunal members** : Mr Max Thorowgood and Mr Roland Thomas

**Venue** : Marriott Hotel, Bexleyheath

**Date of Decision** : 4 March 2020

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**DECISION**

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**1. The application**

- 1.1. By his application, dated 23<sup>rd</sup> September 2019, the Applicant seeks to appeal against the Improvement Notice dated 6<sup>th</sup> September 2019 in respect of what the Respondent alleges are electrical hazards arising from the condition of the electrical installations in the Applicant's property 127 Brennan Road, Tilbury.
- 1.2. The hazards are the 1 x Category 1 Hazard and 13 x Category 2 Hazards identified in the Domestic Electrical Installation Condition Report dated 10<sup>th</sup> August 2019 which was prepared for the Applicant by Mr Samuel Gyan who trades as Spark D Electrical.

**2. The nature of the appeal**

- 2.1. Part 3 of Schedule 1 to Housing Act 2004 provides as follows in relation to appeals against Improvement Notices:

**10 Appeal against improvement notice**

- (1) The person on whom an improvement notice is served may appeal to [the appropriate 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).

...

**15. Powers of tribunal on appeal under paragraph 10**

- (1) This paragraph applies to an appeal to [the appropriate tribunal] under paragraph 10.
- (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 improvement notice.

- 2.2. We were accordingly entitled to hear evidence as to matters which occurred both before and after the Improvement Notice was served which we duly did from the Applicant and from his tenant, Ms Karen Williamson, as well as Ms Donnelly who has had conduct of the matter on behalf of the Respondent.
- 2.3. We also had the benefit of an inspection of the property in the morning before the hearing in company with the Applicant, Ms Williamson and Ms Donnelly. This decision is informed by our observations in the course of that inspection.
- 2.4. It is also clear that the legislation accords us a broad ambit of response to the matters submitted to us. We can uphold the notice, quash it or vary it so as to make it accord with what we consider to be just, having regard of course to the legislation pursuant to which the notice was served as it is set out in ss. 5-19 of Housing Act 2004.
- 2.5. By its order of 16<sup>th</sup> October 2019 the Tribunal identified various issues which needed to be considered. Those were:
  - 2.5.1. Whether the Council has gone through the necessary procedural steps prior to the issue of the notice.
  - 2.5.2. Whether the hazards identified exist and if so what category do they fall into.
  - 2.5.3. Should the Council have taken enforcement action and if so, what sort.
  - 2.5.4. If an Improvement Notice was the correct step, should its terms nevertheless be varied.
- 2.6. There is also a reference to the Council's charges under s. 49 Housing Act 2004 but that seems to be erroneous since there is no reference in the papers before us nor was any reference made in the course of the hearing to any such charges.
- 2.7. It became apparent in the course of the hearing that the matters principally in dispute were these:
  - 2.7.1. Whether Ms Williamson was responsible for the damage to the main light fitting in the kitchen ceiling which constituted the Category 1 hazard identified in the notice.

- 2.7.2. Whether Ms Williamson was justified in refusing permission for Spark D Electrical's employee to carry out remedial works on 27<sup>th</sup> September 2019 in order to comply with the notice.
  - 2.7.3. Whether the Council acted reasonably in refusing to withdraw the notice in light of Ms Williamson's alleged damage to the light fitting in the kitchen and her continued refusal to permit Mr Gyan to carry out the works identified in his condition report as being necessary.
  - 2.7.4. Whether Mr Gyan did or did not agree to refund monies paid to him by the Applicant in the course of a meeting with Ms Donnelly at the Council's offices in November 2019.
  - 2.7.5. Whether it is relevant that Ms Williamson has failed to pay her rent since she went into possession of the property, despite receiving Housing Benefit in respect of her occupation, and has been resisting the making of an order for possession of the property in favour of the Applicant on the ground that he has failed to carry out the works required by the notice.
- 2.8. It will be apparent from the above that the Applicant does not challenge the service of this Improvement Notice on the ground that the work does not need to be done or that it is insufficiently serious to warrant a notice or on any procedural basis. His position is that he has tried to comply but his tenant won't allow him access and the Council will not either oblige her to do so or withdraw the notice.

### **3. The factual matters**

- 3.1. The chronology of events is as follows.
- 3.2. On 26<sup>th</sup> April 2019 the Applicant agreed to grant Ms Williamson a tenancy of the property at 127 Brennan Road. She was homeless and was being housed out of the borough by the LB Lewisham. Upon the grant of tenancy the Applicant provided an EPC, Electrical Installation Condition Report to the LB Lewisham and a Gas Safety Certificate to Ms Williamson on 1<sup>st</sup> May 2019.
- 3.3. The certificate which the Applicant provided had been prepared by Mr Gyan and said that the inspection had taken place between 23<sup>rd</sup> August 2014 and 23<sup>rd</sup> August 2014 and that the date of the last inspection had also been 23<sup>rd</sup> August 2014.
- 3.4. LB Lewisham contacted the Applicant to say that they did not consider that certificate to be satisfactory and the Applicant agreed to provide

them with an up to-date certificate in the correct form. He says that he spoke to Mr Gyan and asked him to prepare a replacement certificate. Unfortunately, the certificate which Mr Gyan prepared was, at best, seriously misleading insofar as it stated that the premises had been inspected on 6<sup>th</sup> May 2019 and that the condition of the electrical installations was 'satisfactory'. It was certainly not the case that he had inspected the premises on 6<sup>th</sup> May 2019 and it is the case that when Mr Gyan inspected the premises on 10<sup>th</sup> August 2019 he found them to be 'unsatisfactory'.

- 3.5. The Applicant protests that it was not the intention that the certificate should be misleading, and that he understood that the only way in which what he considered to be a duplicate certificate could be produced was by doing what Mr Gyan had done. Intentional or not, Ms Williamson said that, knowing no inspection had taken place on the date Mr Gyan claimed, gave her cause to be extremely mistrustful of him. We consider that judgment was a reasonable one. Mr Gyan certificate stated unequivocally that he had inspected the property on 6<sup>th</sup> May 2019 when that was not the case and that the condition of the electrical installations at that time was satisfactory when he could not have known whether that was indeed the case. Mr Gyan, as a qualified professional, must have been aware that, whatever his intention and whatever he had been told by the Applicant, the Applicant would have been able to rely upon his certificate as a basis to claim that the electrical installations in the property had been recently inspected and that they were in a satisfactory condition.
- 3.6. The other relevant matter which occurred at or around the time Ms Williamson went into possession of the property in the first week in May was that the ceiling light fitting in the kitchen was moved. That this is so appears from our observations of the position of the fitting in the course of our inspection and the photographs taken by the Applicant before Ms Williamson went into possession which he showed us on his phone in the course of the hearing. We also regard it as significant in this regard that the Council's Statement of its Grounds for resisting the appeal includes the following statement:

"It is accepted that the tenant removing the light fitting on the kitchen would have exposed the wiring however it is apparent from both electrical installation condition reports the tenant has not caused all the defects listed."

In light of this material, we did not consider Ms Williamson's denial that she had removed the light fitting convincing. We do accept, indeed the Applicant admitted that, in the course of his initial discussions with Ms

Williamson at the time she went into possession he promised both to replace the cupboards and to cut down a tree in the garden.

- 3.7. The next relevant event for these purposes is Ms Williamson's complaint on 29<sup>th</sup> July 2019 about the Applicant's failure to attend to the two agreed matters and a complaint about the electricians which she said were very dangerous. It is probably not a coincidence that these complaints arose for the first time in the context of Ms Williamson being in arrears of rent.
- 3.8. On 8<sup>th</sup> August 2019 Ms Williamson made a complaint about the electrical installations at the property to the Respondent. Ms Donnelly investigated that complaint and discovered the 2014 report which had been provided to Thurrock BC for the purposes of a previous letting to a tenant of its. She contacted the Applicant and asked him to provide a compliant report within 48 hours. He responded by providing a copy of the 6<sup>th</sup> May 2019 report to which I have referred above but said that the property was due to be reinspected by 23<sup>rd</sup> August 2019. She also contacted Mr Gyan who said that he was happy to go back and inspect.
- 3.9. On 10<sup>th</sup> August 2019 Mr Gyan attended to inspect the property. He issued a certificate stating that the condition of the works was unsatisfactory and identifying the defects which are the subject of the notice including the exposed wiring of the ceiling fitting.
- 3.10. On 12<sup>th</sup> August an electrician instructed by Ms Williamson also carried out an inspection which also declared the electrical installations to be unsatisfactory.
- 3.11. An inspection by the Respondent then took place on 14<sup>th</sup> August 2019 and on 15<sup>th</sup> August 2019 Ms Donnelly emailed the Applicant raising the various deficiencies identified including in particular the deficiencies identified by Mr Gyan.
- 3.12. Those deficiencies had not been rectified by the time of Ms Donnelly's inspection on 23<sup>rd</sup> August 2019
- 3.13. Ms Donnelly wrote to the Applicant on 2<sup>nd</sup> September 2019 warning him that an improvement notice was to be served and on 6<sup>th</sup> September 2019 a notice as served.
- 3.14. On 27<sup>th</sup> September 2019 an employee of Mr Gyan's attended at the property for the apparent purpose of carrying out works pursuant to the notice apparently the installation of a new consumer unit. He began work before being asked by Ms Williamson to produce documents certifying his identity and his qualifications. He was unable to produce those documents and apparently told Ms Williamson that he had left them at home which was two hours away. Ms Williamson refused to permit him to continue working and asked him to leave, which he did.

- 3.15. Since then no further works have been carried out. On 5<sup>th</sup> November 2019 a meeting was held at the Respondent's offices which was attended by the Applicant, Ms Donnelly and Mr Gyan. At that meeting it was agreed that Mr Gyan would supply proof of his professional credentials to the Council and that, if satisfied, it would pass those on to Ms Williamson together with a request that she permit Mr Gyan to carry out the necessary works.
- 3.16. Although this matter did not form part of the Respondent's Statement of its Case, Ms Donnelly told me that in the course of her evidence that in the course of the meeting Mr Gyan had said that he would be willing to return to payment which he had received from the Applicant (£300.00, as the invoice which the Applicant produced in the course of the hearing demonstrated) and that he could use the consumer unit which he had purchased for the purpose of installation at the property on another job so that there would be no cost to the Applicant on that account either.
- 3.17. Mr Gyan did supply his credentials; he is Stroma Certified to carry out installation of low voltage or extra low voltage electrical installations in dwellings. Having satisfied herself that these qualifications were genuine and appropriate to the works in question Ms Donnelly forwarded the documents to Ms Williamson with a request that she permit Mr Gyan to carry out the works in respect of which he has already been paid.
- 3.18. Ms Williamson refused to permit Mr Gyan to carry out the works, she said that she did not trust him because of what had gone before and that she felt none of the Applicant's tradespeople were properly qualified.
- 3.19. The Applicant asked the Respondent to withdraw the Improvement Notice in light of Ms Williamson's refusal to permit Mr Gyan to carry out the works on the basis that he is entitled to instruct a tradesman of his choice to carry out the works. The Council has, self-evidently, declined to do so.

#### **4. Our decision**

- 4.1. We are satisfied that it was appropriate for the improvement notice to be issued and we are also satisfied that there are problems with the electrical installations to the property which are significant and which require urgent attention.
- 4.2. We are also satisfied that Ms Williamson has good grounds for refusing to permit Mr Gyan to carry out the works which are the subject of the notice. His agreement to produce the certificate which he did was a very serious matter which was sufficient in itself to undermine completely Ms Williamson's trust and confidence in both his competence and his

honesty. Added to that, his instruction of an operative to carry out the works required by the notice without bringing evidence of either his identity or his qualifications (if he had any) was also seriously undermining of her confidence.

- 4.3. It may be that Ms Williamson is manipulating this situation to her advantage so as to avoid paying her rent but she is not a party to these proceedings. The relevant facts are that the electrical installations in this property are unsatisfactory and work is required to make them satisfactory. Those works have not been carried out despite the fact that the Applicant has had it within his power since the meeting on 5<sup>th</sup> November 2019, at least, to instruct another properly qualified electrician to carry out these works but has deliberately refused to do so. Quite apart from Mr Gyan's offer to repay the money which he had received from the Applicant, we would have thought the Applicant would have had grounds to seek to recover those monies on the basis that the failures we have identified above had disqualified Mr Gyan from carrying out the work.
- 4.4. There is accordingly no good ground upon which to withdraw the notice. Since Mr Gyan has forfeited Ms Williamson's trust for reasons which appear to us to be substantial, he will need to instruct an alternative electrician to do the work in order to comply with the notice.



## **APPENDIX 1- RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **APPENDIX 2**

### **RELEVANT LEGISLATION**

#### ***Enforcement of housing standards***

##### **5 Category 1 hazards: general duty to take enforcement action**

(1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated by subsection (3) or (4)—

- (a) serving an improvement notice under section 11;
- (b) making a prohibition order under section 20;
- (c) serving a hazard awareness notice under section 28;
- (d) taking emergency remedial action under section 40;
- (e) making an emergency prohibition order under section 43;
- (f) making a demolition order under subsection (1) or (2) of [section 265](#) of the Housing Act 1985 (c 68);
- (g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

(4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.

(5) The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard—

(a) either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or

(b) another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under [section 289\(2F\)](#) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.

(6) To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is “available” to the authority in relation to the hazard, see the provision mentioned in that paragraph.

(7) Section 6 applies for the purposes of this section.

### **6 Category 1 hazards: how duty under section 5 operates in certain cases**

(1) This section explains the effect of provisions contained in subsection (2) of section 5.

(2) In the case of paragraph (b) or (f) of that subsection, the reference to making an order such as is mentioned in that paragraph is to be read as a reference to making instead a determination under [section 300\(1\) or \(2\)](#) of the Housing Act 1985 (c 68) (power to purchase for temporary housing use) in a case where the authority consider the latter course of action to be the better alternative in the circumstances.

(3) In the case of paragraph (d) of that subsection, the authority may regard the taking of emergency remedial action under section 40 followed by the service of an improvement notice under section 11 as a single course of action.

(4) In the case of paragraph (e) of that subsection, the authority may regard the making of an emergency prohibition order under section 43 followed by the service of a prohibition order under section 20 as a single course of action.

(5) In the case of paragraph (g) of that subsection—

(a) any duty to take the course of action mentioned in that paragraph is subject to the operation of subsections (2B) to (4) and (5B) of [section 289](#) of the Housing Act 1985 (procedural and other restrictions relating to slum clearance declarations); and

(b) that paragraph does not apply in a case where the authority have already declared the area in which the premises concerned are situated to be a clearance area in accordance with section 289, but the premises have been excluded by virtue of section 289(2F)(b).

### **7 Category 2 hazards: powers to take enforcement action**

(1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.

(2) The provisions are—

(a) section 12 (power to serve an improvement notice),

(b) section 21 (power to make a prohibition order),

(c) section 29 (power to serve a hazard awareness notice),

(d) [section 265\(3\) and \(4\)](#) of the Housing Act 1985 (power to make a demolition order), and

(e) section 289(2ZB) of that Act (power to make a slum clearance declaration).

(3) The taking by the authority of one of those kinds of enforcement action in relation to a particular category 2 hazard does not prevent them from taking either—

(a) the same kind of action again, or

(b) a different kind of enforcement action,

in relation to the hazard, where they consider that the action taken by them so far has not proved satisfactory.

### **8 Reasons for decision to take enforcement action**

(1) This section applies where a local housing authority decide to take one of the kinds of enforcement action mentioned in section 5(2) or 7(2) (“the relevant action”).

(2) The authority must prepare a statement of the reasons for their decision to take the relevant action.

(3) Those reasons must include the reasons why the authority decided to take the relevant action rather than any other kind (or kinds) of enforcement action available to them under the provisions mentioned in section 5(2) or 7(2).

(4) A copy of the statement prepared under subsection (2) must accompany every notice, copy of a notice, or copy of an order which is served in accordance with—

(a) Part 1 of Schedule 1 to this Act (service of improvement notices etc),

(b) Part 1 of Schedule 2 to this Act (service of copies of prohibition orders etc), or

(c) [section 268](#) of the Housing Act 1985 (service of copies of demolition orders),  
in or in connection with the taking of the relevant action.

(5) In subsection (4)—

(a) the reference to Part 1 of Schedule 1 to this Act includes a reference to that Part as applied by section 28(7) or 29(7) (hazard awareness notices) or to section 40(7) (emergency remedial action); and

(b) the reference to Part 1 of Schedule 2 to this Act includes a reference to that Part as applied by section 43(4) (emergency prohibition orders).

(6) If the relevant action consists of declaring an area to be a clearance area, the statement prepared under subsection (2) must be published—

- (a) as soon as possible after the relevant resolution is passed under [section 289](#) of the Housing Act 1985, and
- (b) in such manner as the authority consider appropriate.

### **9 Guidance about inspections and enforcement action**

- (1) The appropriate national authority may give guidance to local housing authorities about exercising—
  - (a) their functions under this Chapter in relation to the inspection of premises and the assessment of hazards,
  - (b) their functions under Chapter 2 of this Part in relation to improvement notices, prohibition orders or hazard awareness notices,
  - (c) their functions under Chapter 3 in relation to emergency remedial action and emergency prohibition orders, or
  - (d) their functions under [Part 9](#) of the Housing Act 1985 (c 68) in relation to demolition orders and slum clearance.
- (2) A local housing authority must have regard to any guidance for the time being given under this section.
- (3) The appropriate national authority may give different guidance for different cases or descriptions of case or different purposes (including different guidance to different descriptions of local housing authority or to local housing authorities in different areas).
- (4) Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay a draft of the proposed guidance or alterations before each House of Parliament.
- (5) The Secretary of State must not give or revise the guidance before the end of the period of 40 days beginning with the day on which the draft is laid before each House of Parliament (or, if copies are laid before each House of Parliament on different days, the later of those days).
- (6) The Secretary of State must not proceed with the proposed guidance or alterations if, within the period of 40 days mentioned in subsection (5), either House resolves that the guidance or alterations be withdrawn.
- (7) Subsection (6) is without prejudice to the possibility of laying a further draft of the guidance or alterations before each House of Parliament.
- (8) In calculating the period of 40 days mentioned in subsection (5), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

### **10 Consultation with fire and rescue authorities in certain cases**

- (1) This section applies where a local housing authority—

- (a) are satisfied that a prescribed fire hazard exists in an HMO or in any common parts of a building containing one or more flats, and
  - (b) intend to take in relation to the hazard one of the kinds of enforcement action mentioned in section 5(2) or section 7(2).
- (2) Before taking the enforcement action in question, the authority must consult the fire and rescue authority for the area in which the HMO or building is situated.
- (3) In the case of any proposed emergency measures, the authority's duty under subsection (2) is a duty to consult that fire and rescue authority so far as it is practicable to do so before taking those measures.
- (4) In this section—

“emergency measures” means emergency remedial action under section 40 or an emergency prohibition order under section 43;

“fire and rescue authority” means a fire and rescue authority under the [Fire and Rescue Services Act 2004 \(c 21\)](#);

“prescribed fire hazard” means a category 1 or 2 hazard which is prescribed as a fire hazard for the purposes of this section by regulations under section 2.

## **Chapter 2**

### **Improvement Notices, Prohibition Orders and Hazard Awareness**

#### **Notices**

##### ***Improvement notices***

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

- (1) If—
  - (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
  - (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).
- (2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

- (3) The notice may require remedial action to be taken in relation to the following premises—
- (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;
  - (b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;
  - (c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

- (4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—
- (a) that the deficiency from which the hazard arises is situated there, and
  - (b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.
- (5) The remedial action required to be taken by the notice—
- (a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but
  - (b) may extend beyond such action.
- (6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.
- (7) The operation of an improvement notice under this section may be suspended in accordance with section 14.
- (8) In this Part “remedial action”, in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

## **12 Improvement notices relating to category 2 hazards: power of authority to serve notice**

- (1) If—
- (a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.

(3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

(4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

### **13 Contents of improvement notices**

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,

(c) the deficiency giving rise to the hazard,

(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,

(e) the date when the remedial action is to be started (see subsection (3)), and

(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

(4) The notice must contain information about—



- (a) the right of appeal against the decision under Part 3 of Schedule 1, and
- (b) the period within which an appeal may be made.

(5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

#### **14 Suspension of improvement notices**

(1) An improvement notice may provide for the operation of the notice to be suspended until a time, or the occurrence of an event, specified in the notice.

(2) The time so specified may, in particular, be the time when a person of a particular description begins, or ceases, to occupy any premises.

(3) The event so specified may, in particular, be a notified breach of an undertaking accepted by the local housing authority for the purposes of this section from the person on whom the notice is served.

(4) In subsection (3) a “notified breach”, in relation to such an undertaking, means an act or omission by the person on whom the notice is served—

(a) which the local housing authority consider to be a breach of the undertaking, and

(b) which is notified to that person in accordance with the terms of the undertaking.

(5) If an improvement notice does provide for the operation of the notice to be suspended under this section—

(a) any periods specified in the notice under section 13 are to be fixed by reference to the day when the suspension ends, and

(b) in subsection (3) of that section the reference to the 28th day after that on which the notice is served is to be read as referring to the 21st day after that on which the suspension ends.

#### **15 Operation of improvement notices**

(1) This section deals with the time when an improvement notice becomes operative.

(2) The general rule is that an improvement notice becomes operative at the end of the period of 21 days beginning with the day on which it is served under Part 1 of Schedule 1 (which is the period for appealing against the notice under Part 3 of that Schedule).

- (3) The general rule is subject to subsection (4) (suspended notices) and subsection (5) (appeals).
- (4) If the notice is suspended under section 14, the notice becomes operative at the time when the suspension ends.

This is subject to subsection (5).

(5) If an appeal against the notice is made under Part 3 of Schedule 1, the notice does not become operative until such time (if any) as is the operative time for the purposes of this subsection under paragraph 19 of that Schedule (time when notice is confirmed on appeal, period for further appeal expires or suspension ends).

(6) If no appeal against an improvement notice is made under that Part of that Schedule within the period for appealing against it, the notice is final and conclusive as to matters which could have been raised on an appeal.

## **16 Revocation and variation of improvement notices**

- (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.

### **17 Review of suspended improvement notices**

(1) The local housing authority may at any time review an improvement notice whose operation is suspended.

(2) The local housing authority must review an improvement notice whose operation is suspended not later than one year after the date of service of the notice and at subsequent intervals of not more than one year.

(3) Copies of the authority's decision on a review under this section must be served—

(a) on the person on whom the improvement notice was served, and

(b) on every other person on whom a copy of the notice was required to be served.

### **18 Service of improvement notices etc and related appeals**

Schedule 1 (which deals with the service of improvement notices, and notices relating to their revocation or variation, and with related appeals) has effect.

## **Schedule 1**

### **Part 3 Appeals Relating to Improvement Notices**

#### ***Appeal against improvement notice***

##### **10**

(1) The person on whom an improvement notice is served may appeal to [the appropriate 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).

#### ***Appeal against decision relating to variation or revocation of improvement notice***

##### **13**

- (1) The relevant person may appeal to [the appropriate 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) [The appropriate 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 . . . tribunal on appeal under paragraph 10***

**15**

- (1) This paragraph applies to an appeal to [the appropriate tribunal] under paragraph 10.
- (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 improvement notice.
- (4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

***Powers of . . . tribunal on appeal under paragraph 13***

**18**

- (1) This paragraph applies to an appeal to [the appropriate 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 confirms the notice, “the operative time” is as follows—
  - (a) if the period within which an appeal to the [Upper 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 [Upper 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 confirms 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 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 notice are to a decision which confirms it with or without variation.