



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

**Case Reference:** CHI/18UD/HIN/2019/0004  
CHI/18UD/HPO/2019/0001

**Property:** 4 Charlotte Court, Charlotte Street,  
Crediton, Devon EX17 3FE

**Applicant:** Mrs C Cockram

**Representative:** In Person

**Respondent:** Mid Devon District Council

**Representative:** Miss T Webber  
Miss T Wenham

**Type of Application:** An appeal against the service of an  
Improvement Notice -  
Sections 12 & Schedule 1, Pt 3 of the  
Housing Act 2004 [The Act]

An appeal against the service of a  
Prohibition Order -  
Sections 20 & Schedule 2, Pt 3 of the  
Housing Act 2004

**Tribunal Members:** Judge A Cresswell (Chairman)  
Mr M Woodrow MRICS

**Date and venue of Hearing:** 24 May 2019 at Exeter Magistrates' Court

**Date of Decision:** 3 June 2019

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**DECISION**

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### **The Application**

1. The Respondent served a Notice of Improvement under Section 12 of the Act in relation to a hazard under the Housing Health and Safety Rating System and a Prohibition Order under Section 20 of the Act in relation to a hazard under the Housing Health and Safety Rating System both dated 4 January 2019 on the Applicant, the owner of the property, 4 Charlotte Court, Charlotte Street, Crediton, Devon EX17 3FE.
2. On 10 January 2019, the Applicant made an appeal to the Tribunal against the Notice of Improvement and the Prohibition Order. The Applicant's objection related to the hazards identified in the Notices.
3. The appeal was under Paragraph 10 of Schedule 1 and Paragraph 7 of Schedule 2 Housing Act 2004 and was on the general grounds of Paragraph 10(1) and 7(1) respectively, submitting that serving a Notice of Improvement and Prohibition Order was not necessary and the nature and scope of some of the works were disputed.
4. Given its findings and the case for the Applicant, it was not necessary for the Tribunal to undertake its own HHSRS (Housing Health & Safety Rating System) calculations.

### **Summary Decision**

5. This case arises out of the tenant's appeal, made on 10 January 2019, against the service of a Notice of Improvement and a Prohibition Order.
6. The Tribunal has determined that the Prohibition Order should be quashed.
7. The Tribunal has determined that the Improvement Notice be varied with one variation, which is detailed below, (but otherwise confirmed).

### **Inspection and Description of Property**

8. The Tribunal inspected the property on 24 May 2019 at 10.00. Present at that time were the Applicant, Mrs Cockram, and Rupert Geering and Kathy Holland, respectively Director and office manager of Carter Geering Lettings, and Miss Tanya Webber and Miss Tanya Wenham, respectively specialist officer private sector housing and team leader of the community team of Mid Devon District Council.
9. The property in question consists of a 2-bedroom first floor flat in a modern block in the centre of Crediton fronting a busy through road. The Tribunal saw evidence of present and removed mould in a number of the rooms. There was evidence too of tobacco staining within the bathroom.
10. The Tribunal took its own simple measurements of the smaller bedroom and the living area.
11. The Property had fitted a Vent-Axia Sentinel Kinetic *heat recovery unit designed for the energy efficient ventilation of houses and similar dwellings. The units are designed for continuous 24-hour exhaust ventilation of stale moist air from bathrooms, toilets and kitchens* (as per the User Instructions).

### **Directions**

12. Directions were issued on 15 February 2019. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
13. The directions provided for the matter to be heard on the basis of an oral hearing, and for any statements and documents upon which the parties intended to rely to be provided to the Tribunal

14. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given at the hearing by Miss Webber, Miss Wenham and Mrs Cockram.
15. At the end of the hearing, the parties told the Tribunal that they had nothing further to add.

### **The Law**

16. The relevant law is set out in sections 1(4), 5, 11, 12, 28, 49 and Schedules 1 and 3 Housing Act 2004.
17. The Housing Act 2004 (the Act) introduced a new system for assessing the condition of residential premises operating by reference to the existence of category 1 and category 2 hazards.
18. By reason of Section 1(4), *residential premises* means a dwelling or *any common parts of a building containing one or more flats*.
19. Section 2 of the Act defines Category 1 and 2 hazards and provides for regulations for calculating the seriousness of such hazards. The applicable regulations are the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) (the HHSRS).
20. Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review. Section 4 imposes a duty on a local housing authority to inspect property in certain circumstances.
21. If on such an inspection the local housing authority considers that a category 1 hazard exists, section 5 imposes a duty to take the appropriate enforcement action. Section 5(2) sets out the various courses of action available to the authority including the service of an Improvement Notice. Although a duty is imposed on the authority to take action no timescale is specified in the Act.
22. If on such an inspection the local housing authority considers that a category 2 hazard exists, section 7 confers a power to take the appropriate enforcement action.
23. Section 11 of the Act sets out the statutory provisions regarding Improvement Notices relating to category 1 hazards. Section 13 requires an Improvement Notice to comply with the provisions of that section.
24. Section 12 of the Act sets out the statutory provisions regarding Improvement Notices relating to category 2 hazards. Section 13 requires an Improvement Notice to comply with the provisions of that section.
25. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. Paragraph 10 provides that a person on whom an Improvement Notice is served may appeal against the notice to the first-tier Tribunal (Property Chamber). Paragraph 15(2) provides that the appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority are unaware. Paragraph 15(3) provides that the Tribunal may by order confirm, quash or vary the Improvement Notice.
26. Sections 20 and 21 of the Act sets out the statutory provisions regarding Prohibition Orders relating to Category 1 and Category 2 hazards respectively. Section 22 requires a Prohibition Order to comply with the provisions of that section.
27. Part 3 of Schedule 2 to the Act provides for appeals against Prohibition Orders. Paragraph 7 provides that a person on whom a Prohibition Order is served may appeal against the notice to the first-tier Tribunal (Property Chamber). Paragraph 8 provides that the appeal may be made on the ground

that the best course of action in relation to the hazard in respect of which the Order was made is serving an improvement notice or serving a hazard awareness order or making a demolition order. Paragraph 11(2) provides that the appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority were unaware. Paragraph 11(3) provides that the Tribunal may by order confirm, quash or vary the Prohibition Order.

28. Section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about exercising their functions under the Act. In particular their functions under chapter 2 of Part 1 of the Act relating to Improvement Notices. Section 9(2) provides that a local housing authority must have regard to any such guidance.
29. The office of the Deputy Prime Minister issued guidance under section 9 relating to Operating Guidance (reference 05HMD0385/A) and Enforcement Guidance (reference 05HMD0385/B).
30. In **Stevenage Borough Council v ML (HB)** [2016] UKUT 0164 (AAC), the Upper Tribunal gave the following guidance:

*..... Secondly, nowhere in the Housing Act 2004 or in the operating guidance and enforcement guidance given under section 9 of the 2004 Act in relation to space and overcrowding is there any mention of specific room sizes. Thirdly, it is clear from the operating guidance, the enforcement guidance and regulation 6(7)(e) of the Housing Health and Safety Rating System (England) Regulations 2005 that questions arising with regard to space and overcrowding can only be decided by reference to the actual occupiers at any time and not potential, hypothetical, future occupiers; that is to say, that where the current occupiers do not give rise to any space or overcrowding concerns, the regulations and guidance cannot bite, but can only be taken into account where the actual occupants give rise to such concerns. Fourthly, the LACORS guidance is just that, guidance relating to best practice in connection with space and overcrowding: it has no statutory effect .....*

31. The relevant statute law and Guidance is set out in the Annex below.

### **Agreed History**

32. The Tribunal first records the relevant history agreed by the parties.
33. The property has an entrance hall with a walk-in store cupboard off, an open plan living room/kitchen, a main bedroom, a second bedroom/study and a bathroom with wc.
34. Following a complaint by the tenant, Miss Webber inspected the property on 19 December 2018. She found untidy living conditions. The tenant and her 4-year old daughter were sleeping in the living room/kitchen area and an 18-year old child of the tenant was sleeping in the main bedroom. The family's possessions were untidily stored throughout the property and bedroom 2 was filled with such items.
35. There was evidence of mould growth around windows in the flat and there was a build-up of moisture in the bathroom which was making the wall especially around the window very wet.

36. As a result of her findings, Miss Webber issued the Prohibition Order in respect of crowding and space and an Improvement Notice in respect of damp and mould growth.
37. Apart from being invited to the initial inspection visit when reference was made in the text of the invitation to the possibility of orders being made, the Respondent had not given the Applicant prior notice that the relevant orders would be made.

## **The Issues Before the Tribunal**

### **Crowding and Space**

#### **The Respondent**

38. The Respondent had issued the Prohibition Order in respect of crowding based on Miss Webber's calculations of the space within the property. Her measurement of bedroom 2 revealed a floor area of 4.42 m<sup>2</sup>. She reasoned, using the guidance from Housing Act 1985, that bedroom 1 provided sufficient space for 1 person and that bedroom 2 provided sufficient space for 0.5 persons and that the living room could not be used as a bedroom because it was combined with or open to the kitchen facilities.
39. Miss Webber consulted the planning records and saw that the plans showed the property to be a 1-bedroom flat with a study.

#### **The Applicant**

40. The Applicant contended that the property had been sold to her as a 2-bedroom flat and that she had let the flat continuously using Carter Geering Lettings Agents since her purchase some 6 years previously as a 2-bedroom flat.
41. She knew that bedroom 1 had adequate room for a double bed or two single beds plus furniture and believed that bedroom 2 was a good-sized single room with enough space for a single bed and furniture. It was the choice of the then tenants to fill bedroom 2 with furniture and sleep in bedroom 1 and the living space.
42. The result of the Prohibition Order is that the family has been evicted from the flat and the Local Authority was unable to find the family alternative accommodation. The Applicant has been deprived of rental income.

#### **The Tribunal**

43. Miss Webber viewed the description of bedroom 2 as a study in the planning document as supportive of her decision. The Tribunal noted, however, that her own plan of the room, as well as her annotated photographs, described it as "Bed 2" and a plan made by Ms Thomas (see below) described the room as "Small bedroom". The Tribunal also noted the unchallenged statement of the Applicant that it is common for this second room to be used as a bedroom and that it was described as a bedroom when she bought the property and since then when under tenancy. The Tribunal saw also that, apart from its size, shape and sealed window, there was nothing to distinguish this room from bedroom 1; it benefited from natural light, a radiator, electricity supply, was private having its own door, and could accommodate a single bed and bedside table and still leave room for changing of clothing, even with the presence within the room of the housed Vent Axia air filtration unit.
44. The Tribunal noted that the walls of the smaller bedroom were asymmetrical and there were a number of niches/recesses as a result of that asymmetry.

45. Miss Webber told the Tribunal that she had used an electronic measure and had been trained in its use. She had not, however, been trained to measure rooms and did not apply the RICS Code of Measuring Practice or similar guidance, such as IPMS (International Property Measurement Standards). Nor did she say whether her measuring device had been calibrated or checked for accuracy.
46. Miss Webber admitted that her diagram, made during her initial inspection, did not accurately reflect the shape of bedroom 2. This was obvious to the Tribunal from the Inspection and from comparison with the architect's drawing, which formed the next page in the Bundle and which Miss Webber had obtained from the planning application for the building.
47. Miss Webber admitted that her measurements were not correct as she had failed to apply any form of accepted measurement standards and had failed to cater for a built-in cupboard and various niches/recesses.
48. Miss Webber had assessed the dimensions of bedroom 2 as equating to 4.42 m<sup>2</sup> which she rounded up to 4.65 m<sup>2</sup> to equate to 50 sq ft as an "allowance" for the irregular shape. On her own admission, this was a guess.
49. Within the bundle of documents prepared by Miss Webber was a further calculation for the size of this room by Carole Thomas, a specialist officer – private sector housing officer for the Respondent, giving a size of 5.4m<sup>2</sup>, just on a full square metre greater than Miss Webber's measurement of the same room. Ms Thomas had, apparently, re-measured the 2 bedrooms. A copy of Ms Thomas's measurements can be seen in exhibit TW29 in the bundle; her plan also does not accord with the shape of the room measured.
50. The Applicant's appeal statement gives measurements equating to 6.41 m<sup>2</sup>. It was not suggested by the Applicant that her measurement accorded with accepted measurement standards (see above).
51. The Tribunal's own quick measurements suggested an effective floor area larger still than Carole Thomas's calculation, at some 6.5 m<sup>2</sup> (the Tribunal accepts that this will not be an exact measure and places no reliance upon it as being accurate).
52. The Tribunal works here, when considering the 1985 Act, on the basis of the conversions suggested by Miss Webber of 90 square feet = 8.36m<sup>2</sup>; 70 square feet = 6.50m<sup>2</sup>; 50 square feet = 4.65m<sup>2</sup>.
53. It is not possible, on the evidence available, for the Tribunal to conclude the precise size of the room. Taking a balanced view, Miss Webber has mis-measured the room and the effective floor area is likely to be considerably larger than her measurement.
54. Miss Webber appears also to have confused the relationship between the Housing Acts of 1985 and 2004. The former creates a criminal sanction regime and the latter a regulatory regime. The Enforcement Guidance suggests that officers should first consider the 2004 Act:  
*4.25 Authorities are advised, as a first step, to assess the health and safety implications of overcrowding and to consider the appropriateness of action under Part 1 of the Act.*
55. The Respondent has conflated the two regimes. It has purported to use the space standard in the 1985 Act for its justification for crowding, but used incorrect measurement and has failed to allow for the space in the living room (*Section 326(2)(b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom*) by reason of following guidance for the 2004 Act, notwithstanding that the

- guidance used relates not to crowding, but to fire (as Miss Wenham properly accepted).
56. The Operating Guidance for the 2004 Act suggests that, as a guide, a dwelling house containing 2 bedrooms is suitable for up to 4 persons:  
*11.16 There should be sufficient provision for sleeping having regard to the numbers likely to be accommodated in the dwelling. As a guide, and depending on the sex of household members and their relationship, and the size of rooms, a dwelling containing one bedroom is suitable for up to two persons, irrespective of age. A dwelling containing two bedrooms is suitable for up to four persons.* The Respondent appears to have ignored this guidance. The Tribunal notes that this is general guidance and is dependent upon the actual layout of the property in question and other factors, but has considered the actual layout in reaching the conclusion it has reached. The HHSRS Operating Guidance details numerous factors making up an ideal, but the absence of factors does not inevitably lead to a finding that there is a category 1 hazard; one example of those factors being the lack of visible outdoor play space.
57. The Tribunal has sympathy with Miss Webber here. She inspected a property which the tenant had filled with possessions; where the smaller bedroom was being used as a store room; where the mother and 4-year old daughter were sleeping in the living room; and where a failure by the tenant to use the Vent-Axia system had led to an impression of overcrowded, damp and mouldy living conditions.
58. The Tribunal has to consider the actual occupants. The actual occupants were 3 females, mother and 2 daughters, being 2 adults and 1 child under 10.
59. The Operational Guidance suggests that there was no crowding in the property. Bedroom 1 has sufficient space for 2 people *irrespective of age* and bedroom 2 clearly has sufficient space for one person and certainly for a child under 10 (i.e. the situation found by Miss Webber at the time of her inspection) whether applying the Operational Guidance or the tables in Housing Act 1985. In respect of the former, there is no designated room size and in relation to the latter there is no proscription on regarding the living room as a bedroom. The Tribunal addressed its mind only to the issue before it when determining the appeal, which was crowding and space in terms of Housing Act 2004.
60. The Tribunal conducted a re-hearing in accordance with Paragraph 11 of Schedule 2 (see above) and concluded that the Prohibition Order in respect of the property specifically relating to use for residential purposes was one that was not properly available to the Respondent under Sections 20 and 21 of the Act on the basis of the evidence available to the Tribunal and should be quashed for the reasons discussed and detailed above.

## **Damp and Mould Growth**

### **The Respondent**

61. The Respondent's inspection had revealed considerable mould growth on walls, particularly around windows, and damp and mould within the bathroom. The Vent-Axia system was not being used by the tenant all the time, as admitted by the tenant at the initial inspection, the landlord's agent present explaining that the system should be on continuously.
62. Miss Webber had telephoned Vent-Axia but had been unable to obtain answers to the queries she raised from the person she spoke to.

63. Miss Webber was of the view that the system should be checked and serviced to ensure it was still suitable and adequate and that an additional extract fan should be installed.
64. Miss Webber was buoyed in her view that a further extract fan should be installed by a report from Whitton & Laing of 21 February 2019 (which post-dated the Improvement Notice) which had revealed an inoperative radiator in the bathroom and posited that the installation of a further extract fan in the bathroom may be required (but cautioning that this *should only be carried out having consulted with Vent- Axia to ensure additional ventilation would not interrupt the running of centrally installed system which could be inadequate at this location*).

#### **The Applicant**

65. The Applicant said that the Improvement Notice actually stated that the Vent-Axia system was used “when needed”, but there was no reference to advice sought by Miss Webber. Vent-Axia recommend that the system is on continually as it has humidity sensors and will prevent condensation and consequent mould growth.
66. The requirement of an outside vent in the bathroom makes no reference to any expert advice sought. The planning department of the Respondent authority advised no ventilation on this side of the building due to pollution problems from the road. Ventilation may also negate the effectiveness of the Vent-Axia system.
67. The flat is inspected every 6 months by Carter Geering; no problems were found at the last inspection of August 2018.
68. Every time there is a visit for maintenance or inspection, the report is that the Vent-Axia system is switched off despite the tenant being told repeatedly that this is the cause of the problem. The tenant told the surveyor that it was cold when it was on.

#### **The Tribunal**

69. The Tribunal noted that the Vent-Axia system is required to run continuously. It further noted that this had not been the case. It was apparent that the system was turned off at the time of the Respondent Council’s Inspection, turned off when SG Property Maintenance attended on or about 5 January 2019, and turned off when the Vent-Axia engineer attended for the annual service on 7 February 2019. The engineer reported that the tenant had told him that she was not bothered about the system being switched off as the family was moving out in April. She told the engineer that she believed that the system was not heating the property and the engineer explained that the system was not able to heat and could recover heat energy. The engineer reported that all four systems examined in the block were found to be working, and that only the property’s system had been switched off and only that flat was showing any signs of mould. The engineer also reported that the run hours of the system suggested that it had been running almost 1 year less than 3 other flats of the block.
70. The Tribunal believes that there has been a measure of ignorance here about the Vent-Axia system. It is apparent that the system is designed to ensure ventilation of the flat, removal of condensation, retention of heat, and that the system requires continuous use. It is significant that only this of 4 flats visited by the Vent-Axia engineer showed signs of mould. Whitton & Laing have been raised as supportive of the Respondent’s case, but the Tribunal saw what they said as raising a question rather than presenting an answer.



71. Miss Webber appears to have spoken to someone at Vent-Axia who arranges appointments for engineers rather than made full enquiries of the company. Had she conducted the latter enquiries, it must have caused her to think again about what she had found at the property. She knew that the system was not being used and would have learnt that it required continuous use. A simple search of the Internet would have led her to the operating instructions for the system and the same advice.
72. The Tribunal is, however, mindful that mould presents a health risk to an inhabitant of the property and that this is a serious issue. It is clear to the Tribunal that an extract vent is not required if the Vent-Axia system is working correctly. However, the report from Vent-Axia following the servicing visit of 7 February 2019 does not give a wholly clean bill of health. The engineer notes: “*Unable to get proper reading in bathroom due to shower curtain pole obstructing ceiling valve.*” Clearly this is a circumstance which requires further examination so as to produce a full assurance that the system is operating correctly and thereby negating the risk of damp and mould.
73. The Improvement Notice resulted from the presence of a Category 2 hazard, detailed in the Schedule of the Improvement Notice and discussed above.
74. The Tribunal conducted a re-hearing in accordance with Paragraph 15 of Schedule 1 (see above) and concluded that the Improvement Notice in respect of the property specifically relating to use for residential purposes was one that was properly available to the Respondent under Section 12 of the Act and should be varied only by the exclusion of “*Provide a moisture extraction system/unit in the bathroom that is vented externally*” (confirmed in the main) for the reasons discussed and detailed above. Although the Vent-Axia system was serviced on 7 February 2019, there is still required an assurance that the system is “*in proper and efficient working order*” because the bathroom element has yet to be tested for “*proper reading*”. Once that final assurance has been given, the Notice can be withdrawn.
75. The Tribunal, accordingly, varies the Improvement Notice.

A Cresswell (Judge)

#### APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-

day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

## ANNEX

### Housing Act 2004

#### **1 New system for assessing housing conditions and enforcing housing standards**

*(1) This Part provides—*

*(a) for a new system of assessing the condition of residential premises, and  
(b) for that system to be used in the enforcement of housing standards in relation to such premises.*

*(2) The new system—*

*(a) operates by reference to the existence of category 1 or category 2 hazards on residential premises (see section 2), and*

*(b) replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c. 68).*

*(3) The kinds of enforcement action which are to involve the use of the new system are—*

*(a) the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices),*

*(b) the new emergency measures contained in Chapter 3 (emergency remedial action and emergency prohibition orders), and*

*(c) the existing kinds of enforcement action dealt with in Chapter 4 (demolition orders and slum clearance declarations).*

*(4) In this Part “residential premises” means—*

*(a) a dwelling;*

*(b) an HMO;*

*(c) unoccupied HMO accommodation;*

*(d) any common parts of a building containing one or more flats.*

*(5) In this Part—*

*“building containing one or more flats” does not include an HMO;*

*“common parts”, in relation to a building containing one or more flats, includes—*

*(a) the structure and exterior of the building, and*

*(b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats;*

*“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;*

*“external common parts”, in relation to a building containing one or more flats, means common parts of the building which are outside it;*

*“flat” means a separate set of premises (whether or not on the same floor)—*

*(a) which forms part of a building,*

(b) which is constructed or adapted for use for the purposes of a dwelling, and

(c) either the whole or a material part of which lies above or below some other part of the building;

“HMO” means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, without the exclusions contained in Schedule 14);

“unoccupied HMO accommodation” means a building or part of a building constructed or adapted for use as a house in multiple occupation but for the time being either unoccupied or only occupied by persons who form a single household.

(6) In this Part any reference to a dwelling, an HMO or a building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the dwelling, HMO or building (or any part of it).

(7) The following indicates how this Part applies to flats—

(a) references to a dwelling or an HMO include a dwelling or HMO which is a flat (as defined by subsection (5)); and

(b) subsection (6) applies in relation to such a dwelling or HMO as it applies in relation to other dwellings or HMOs (but it is not to be taken as referring to any common parts of the building containing the flat).

(8) This Part applies to unoccupied HMO accommodation as it applies to an HMO, and references to an HMO in subsections (6) and (7) and in the following provisions of this Part are to be read accordingly.

### **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)

servicing 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.*

### **S12 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.

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

(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,

making a prohibition order 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) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) and section 22.

(3) The order may prohibit use of 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 prohibit use of the dwelling or HMO;

(b) if those premises are one or more flats, it may prohibit use of 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 prohibit use of 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), prohibit use of 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 such use to be prohibited in order to protect the

health or safety of any actual or potential occupiers of one or more of the flats.

(5) A prohibition order 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.

(6) The operation of a prohibition order under this section may be suspended in accordance with section 23.

*SCHEDULE 1*

*Section 18*

*PROCEDURE AND APPEALS RELATING TO IMPROVEMENT NOTICES*

**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 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).*

**11** (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 paragraph 10 on the ground that one of the courses of action mentioned 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) *servicing a hazard awareness notice under section 28 or 29 of this Act; and*

(c) *making a demolition order under section 265 of the Housing Act 1985 (c. 68).*

*Powers of residential property tribunal on appeal under paragraph 10*

**15** (1) *This paragraph applies to an appeal to a residential property 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.*

**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 mentioned 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 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 obligations 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 courses 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 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 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.*

## **SCHEDULE 2**

### **PROCEDURE AND APPEALS RELATING TO PROHIBITION ORDERS**

#### **PART 3 APPEALS RELATING TO PROHIBITION ORDERS**

##### **Appeal against prohibition order**

###### **Para 7**

(1) A relevant person may appeal to a 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 sub-paragraph (1).

###### **Para 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 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 this Act;<sup>[L]</sup><sub>[SEP]</sub>
- (b) serving a hazard awareness notice under section 28 or 29 of this Act;
- (c) making a demolition order under section 265 of the Housing Act 1985 (c. 68).

### ***Powers of residential property tribunal on appeal under paragraph 7***

#### **Para 11**

(1) This paragraph applies to an appeal to a residential property tribunal under paragraph 7.

(2) The appeal<sup>[L]</sup><sub>[SEP]</sub>(a) is to be by way of a re-hearing, but<sup>[L]</sup><sub>[SEP]</sub>(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 8.

#### **Para 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.

## **Housing Health and Safety Rating System, ODPM Operating Guidance**

11.11 Space and crowding deficiencies can result in beds being placed too close to fixed heating appliances. Crowded conditions can result in a moisture burden above that which the dwelling is designed to safely deal with, and this can be a cause of condensation and high humidities, giving rise to associated health risk. <sup>[[L]]</sup><sub>[[SEP]]</sub>

11.16 There should be sufficient provision for sleeping having regard to the numbers likely to be accommodated in the dwelling. As a guide, and depending on the sex of household members and their relationship, and the size of rooms, a dwelling containing one bedroom is suitable for up to two persons, irrespective of age. A dwelling containing two bedrooms is suitable for up to four persons. One containing three bedrooms is suitable for up to six persons, and one containing four bedrooms is suitable for up to seven persons. <sup>[[L]]</sup><sub>[[SEP]]</sub>

11.17 As well as sufficient sleeping space, there should be a living area of sufficient size for the household. Indoor and outdoor play and recreation space is necessary in accommodation housing children. Outdoor play space should be readily visible from within the dwelling and safely separated from public and neighbouring areas. <sup>[[L]]</sup><sub>[[SEP]]</sub>

## **Housing Health and Safety rating System, ODPM Enforcement Guidance**

### **Space and crowding** <sup>[[L]]</sup><sub>[[SEP]]</sub>

4.23 Authorities should take note that in assessing this hazard only the risk to the current occupiers is considered. <sup>[[L]]</sup><sub>[[SEP]]</sub>

4.24 There are other statutory provisions in relation to overcrowding and the numbers permitted to occupy residential premises. The overcrowding provisions in Part 10 of <sup>[[L]]</sup><sub>[[SEP]]</sub>the 1985 Act define overcrowding in housing accommodation other than HMOs and provide authorities with certain powers to act. An Order under section 216 of the Act may disapply or amend the standards in Part 10. It may also disapply or amend sections 139 to 144 of the Act, under which local authorities may control overcrowding in <sup>[[L]]</sup><sub>[[SEP]]</sub>HMOs not subject to mandatory licensing. Section 216 of the Act also enables the Secretary of State to prescribe the factors that local authorities should take into account in making determinations. <sup>[[L]]</sup><sub>[[SEP]]</sub>

4.25 Authorities are advised, as a first step, to assess the health and safety implications of overcrowding and to consider the appropriateness of action under Part 1 of the Act. Such action would need to be based on the evidence of the harmful impact of overcrowding in relation to the household's needs. A wide range of factors is relevant to the space and crowding hazard, including the number, sizes and layout of rooms.<sup>[L]  
[SEP]</sup> If authorities choose to use their Part 1 powers it will not normally be appropriate to make parallel use of the Part 10 provisions. Concerns over the provision of facilities in HMOs not subject to licensing which do not give rise to health and safety issues might still be addressed under sections 139 to 144 of the Act, should authorities consider that they should act to influence the provision of amenities in such HMOs.<sup>[L]  
[SEP]</sup>

## **Housing Act 1985**

### *Definition of overcrowding*

#### **324 Definition of overcrowding.**

A dwelling is overcrowded for the purposes of this Part when the number of persons sleeping in the dwelling is such as to contravene—

(a) the standard specified in section 325 (the room standard), or (b) the standard specified in section 326 (the space standard).

#### **325 The room standard.**

(1) The room standard is contravened when the number of persons sleeping in a dwelling and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes who are not living together as husband and wife must sleep in the same room.<sup>[L]  
[SEP]</sup>

(2) For this purpose—<sup>[L]  
[SEP]</sup>(a) children under the age of ten shall be left out of account, and<sup>[L]  
[SEP]</sup>(b) a room is available as sleeping accommodation if it is of a type normally used<sup>[L]  
[SEP]</sup> in the locality either as a bedroom or as a living room.<sup>[L]  
[SEP]</sup>

#### **326 The space standard.**

(1) The space standard is contravened when the number of persons sleeping in a dwelling is in excess of the permitted number, having regard to the number and floor area of the rooms of the dwelling available as sleeping accommodation.<sup>[L]  
[SEP]</sup>

(2) For this purpose—

- (a) no account shall be taken of a child under the age of one and a child aged one or over but under ten shall be reckoned as one-half of a unit, and [L] [SEP]
- (b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom. [L] [SEP]
- (3) The permitted number of persons in relation to a dwelling is whichever is the less of—
- (a) the number specified in Table I in relation to the number of rooms in the dwelling available as sleeping accommodation, and [L] [SEP]
- (b) the aggregate for all such rooms in the dwelling of the numbers specified in column 2 of Table II in relation to each room of the floor area specified in column 1 [L] [SEP]

No account shall be taken for the purposes of either Table of a room having a floor area of less than 50 square feet. [L] [SEP]

TABLE I

<b>Number of rooms</b>	<b>Number of persons</b>
1	2
2	3
3	5
4	7 1/2
5 or more	2 for each room

TABLE II

<b>Floor area of room</b>	<b>Number of persons</b>
110 sq. ft. or more	2
90 sq. ft. or more but less than 110 sq.ft.	1 1/2
70 sq. ft. or more but less than 90 sq. ft.	1
50 sq. ft. or more but less than 70 sq. ft.	1/2