



# Housing Act 2004

## 2004 CHAPTER 34

### PART 1

#### HOUSING CONDITIONS

### CHAPTER 3

#### EMERGENCY MEASURES

##### *Emergency remedial action*

#### **40 Emergency remedial action**

(1) If—

- (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
- (b) they are further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, and
- (c) no management order is in force under Chapter 1 or 2 of Part 4 in relation to the premises mentioned in paragraph (a),

the taking by the authority of emergency remedial action 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) “Emergency remedial action” means such remedial action in respect of the hazard concerned as the authority consider immediately necessary in order to remove the imminent risk of serious harm within subsection (1)(b).

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- (3) Emergency remedial action under this section may be taken by the authority in relation to any premises in relation to which remedial action could be required to be taken by an improvement notice under section 11 (see subsections (3) and (4) of that section).
- (4) Emergency remedial action under this section may be taken by the authority in respect of more than one category 1 hazard on the same premises or in the same building containing one or more flats.
- (5) Paragraphs 3 to 5 of Schedule 3 (improvement notices: enforcement action by local authorities) apply in connection with the taking of emergency remedial action under this section as they apply in connection with the taking of the remedial action required by an improvement notice which has become operative but has not been complied with.

But those paragraphs so apply with the modifications set out in subsection (6).

- (6) The modifications are as follows—
  - (a) the right of entry conferred by paragraph 3(4) may be exercised at any time; and
  - (b) the notice required by paragraph 4 (notice before entering premises) must (instead of being served in accordance with that paragraph) be served on every person, who to the authority’s knowledge—
    - (i) is an occupier of the premises in relation to which the authority propose to take emergency remedial action, or
    - (ii) if those premises are common parts of a building containing one or more flats, is an occupier of any part of the building; but
  - (c) that notice is to be regarded as so served if a copy of it is fixed to some conspicuous part of the premises or building.
- (7) Within the period of seven days beginning with the date when the authority start taking emergency remedial action, the authority must serve—
  - (a) a notice under section 41, and
  - (b) copies of such a notice,
 on the persons on whom the authority would be required under Part 1 of Schedule 1 to serve an improvement notice and copies of it.
- (8) Section 240 (warrant to authorise entry) applies for the purpose of enabling a local housing authority to enter any premises to take emergency remedial action under this section in relation to the premises, as if—
  - (a) that purpose were mentioned in subsection (2) of that section, and
  - (b) the circumstances as to which the justice of the peace must be satisfied under subsection (4) were that there are reasonable grounds for believing that the authority will not be able to gain admission to the premises without a warrant.
- (9) For the purposes of the operation of any provision relating to improvement notices as it applies by virtue of this section in connection with emergency remedial action or a notice under section 41, any reference in that provision to the specified premises is to be read as a reference to the premises specified, in accordance with section 41(2)(c), as those in relation to which emergency remedial action has been (or is to be) taken.

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#### Commencement Information

- I1** S. 40 wholly in force at 16.6.2006; s. 40 not in force at Royal Assent see s. 270(4)(5); s. 40 in force for E. at 6.4.2006 by S. I. 2006/1060, art. 2(1)(a) (with Sch.); s. 40 in force for W. at 16.6.2006 by S. I. 2006/1535, art. 2(a) (with Sch.)

### 41 Notice of emergency remedial action

- (1) The notice required by section 40(7) is a notice which complies with the following requirements of this section.
- (2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—
  - (a) the nature of the hazard and the residential premises on which it exists,
  - (b) the deficiency giving rise to the hazard,
  - (c) the premises in relation to which emergency remedial action has been (or is to be) taken by the authority under section 40 and the nature of that remedial action,
  - (d) the power under which that remedial action has been (or is to be) taken by the authority, and
  - (e) the date when that remedial action was (or is to be) started.
- (3) The notice must contain information about—
  - (a) the right to appeal under section 45 against the decision of the authority to make the order, and
  - (b) the period within which an appeal may be made.

#### Commencement Information

- I2** S. 41 wholly in force at 16.6.2006; s. 41 not in force at Royal Assent see s. 270(4)(5); s. 41 in force for E. at 6.4.2006 by S. I. 2006/1060, art. 2(1)(a) (with Sch.); s. 41 in force for W. at 16.6.2006 by S. I. 2006/1535, art. 2(a) (with Sch.)

### 42 Recovery of expenses of taking emergency remedial action

- (1) This section relates to the recovery by a local housing authority of expenses reasonably incurred in taking emergency remedial action under section 40 (“emergency expenses”).
- (2) Paragraphs 6 to 14 of Schedule 3 (improvement notices: enforcement action by local authorities) apply for the purpose of enabling a local housing authority to recover emergency expenses as they apply for the purpose of enabling such an authority to recover expenses incurred in taking remedial action under paragraph 3 of that Schedule.  
  
But those paragraphs so apply with the modifications set out in subsection (3).
- (3) The modifications are as follows—
  - (a) any reference to the improvement notice is to be read as a reference to the notice under section 41; and

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- (b) no amount is recoverable in respect of any emergency expenses until such time (if any) as is the operative time for the purposes of this subsection (see subsection (4)).
- (4) This subsection gives the meaning of “the operative time” for the purposes of subsection (3)—
- (a) if no appeal against the authority’s decision to take the emergency remedial action is made under section 45 before the end of the period of 28 days mentioned in subsection (3)(a) of that section, “the operative time” is the end of that period;
  - (b) if an appeal is made under that section within that period and a decision is given on the appeal which confirms the authority’s decision, “the operative time” is as follows—
    - (i) if the period within which an appeal to the [F1Upper Tribunal] may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;
    - (ii) if an appeal to the [F1Upper Tribunal] is brought, “the operative time” is the time when a decision is given on the appeal which confirms the authority’s decision.
- (5) For the purposes of subsection (4)—
- (a) the withdrawal of an appeal has the same effect as a decision which confirms the authority’s decision, and
  - (b) references to a decision which confirms the authority’s decision are to a decision which confirms it with or without variation.

#### Textual Amendments

**F1** Words in s. 42(4)(b)(i)(ii) substituted (1.6.2009) by [Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 5(1)(2), **Sch. 1 para. 272** (with Sch. 5)

#### Commencement Information

**I3** S. 42 wholly in force at 16.6.2006; s. 42 not in force at Royal Assent see s. 270(4)(5); s. 42 in force for E. at 6.4.2006 by [S. I. 2006/1060](#), **art. 2(1)(a)** (with Sch.); s. 42 in force for W. at 16.6.2006 by [S. I. 2006/1535](#), **art. 2(a)** (with Sch.)

### *Emergency prohibition orders*

#### 43 Emergency prohibition orders

- (1) If—
- (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
  - (b) they are further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, and
  - (c) no management order is in force under Chapter 1 or 2 of Part 4 in relation to the premises mentioned in paragraph (a),

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making an emergency 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) An emergency prohibition order under this section is an order imposing, with immediate effect, such prohibition or prohibitions on the use of any premises as are specified in the order in accordance with subsection (3) and section 44.
- (3) As regards the imposition of any such prohibition or prohibitions, the following provisions apply to an emergency prohibition order as they apply to a prohibition order under section 20—
  - (a) subsections (3) to (5) of that section, and
  - (b) subsections (3) to (5) and (7) to (9) of section 22.
- (4) Part 1 of Schedule 2 (service of copies of prohibition orders) applies in relation to an emergency prohibition order as it applies to a prohibition order, but any requirement to serve copies within a specified period of seven days is to be read as a reference to serve them on the day on which the emergency prohibition order is made (or, if that is not possible, as soon after that day as is possible).
- (5) The following provisions also apply to an emergency prohibition order as they apply to a prohibition order (or to a prohibition order which has become operative, as the case may be)—
  - (a) section 25 (revocation and variation);
  - (b) sections 32 to 36 (enforcement);
  - (c) sections 37 to 39 (supplementary provisions); and
  - (d) Part 2 of Schedule 2 (notices relating to revocation or variation);
  - (e) Part 3 of that Schedule (appeals) so far as it relates to any decision to vary, or to refuse to revoke or vary, a prohibition order; and
  - (f) sections 584A and 584B of the Housing Act 1985 (c. 68) (payment, and repayment, of compensation).
- (6) For the purposes of the operation of any provision relating to prohibition orders as it applies in connection with emergency prohibition orders by virtue of this section or section 45, any reference in that provision to the specified premises is to be read as a reference to the premises specified, in accordance with section 44(2)(c), as the premises in relation to which prohibitions are imposed by the order.

#### Commencement Information

- I4** [S. 43](#) wholly in force at 16.6.2006; [s. 43](#) not in force at Royal Assent see [s. 270\(4\)\(5\)](#); [s. 43](#) in force for E. at 6.4.2006 by [S. I. 2006/1060](#), [art. 2\(1\)\(a\)](#) (with [Sch.](#)); [s. 43](#) in force for W. at 16.6.2006 by [S. I. 2006/1535](#), [art. 2\(a\)](#) (with [Sch.](#))

#### 44 Contents of emergency prohibition orders

- (1) An emergency prohibition order under section 43 must comply with the following requirements of this section.
- (2) The order must specify, in relation to the hazard (or each of the hazards) to which it relates—

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- (a) the nature of the hazard concerned and the residential premises on which it exists,
  - (b) the deficiency giving rise to the hazard,
  - (c) the premises in relation to which prohibitions are imposed by the order (see subsections (3) and (4) of section 22 as applied by section 43(3)), and
  - (d) any remedial action which the authority consider would, if taken in relation to the hazard, result in their revoking the order under section 25 (as applied by section 43(5)).
- (3) The order must contain information about—
- (a) the right to appeal under section 45 against the order, and
  - (b) the period within which an appeal may be made,
- and specify the date on which the order is made.

#### **Commencement Information**

**I5** S. 44 wholly in force at 16.6.2006; s. 44 not in force at Royal Assent see s. 270(4)(5); s. 44 in force for E. at 6.4.2006 by S. I. 2006/1060, art. 2(1)(a) (with Sch.); s. 44 in force for W. at 16.6.2006 by S. I. 2006/1535, art. 2(a) (with Sch.)

### *Appeals*

#### **45 Appeals relating to emergency measures**

- (1) A person on whom a notice under section 41 has been served in connection with the taking of emergency remedial action under section 40 may appeal to [<sup>F2</sup>the appropriate tribunal] against the decision of the local housing authority to take that action.
- (2) A relevant person may appeal to [<sup>F3</sup>the appropriate tribunal] against an emergency prohibition order.
- (3) An appeal under subsection (1) or (2) must be made within the period of 28 days beginning with—
  - (a) the date specified in the notice under section 41 as the date when the emergency remedial action was (or was to be) started, or
  - (b) the date specified in the emergency prohibition order as the date on which the order was made,
 as the case may be.
- (4) [<sup>F4</sup>The appropriate tribunal] may allow an appeal to be made to it after the end of that period 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).
- (5) An appeal under subsection (1) or (2)—
  - (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.
- (6) The tribunal may—

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- (a) in the case of an appeal under subsection (1), confirm, reverse or vary the decision of the authority;
  - (b) in the case of an appeal under subsection (2), confirm or vary the emergency prohibition order or make an order revoking it as from a date specified in that order.
- (7) Paragraph 16 of Schedule 2 applies for the purpose of identifying who is a relevant person for the purposes of subsection (2) in relation to an emergency prohibition order as it applies for the purpose of identifying who is a relevant person for the purposes of Part 3 of that Schedule in relation to a prohibition order.

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#### Textual Amendments

- F2** Words in s. 45(1) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 152(a)** (with Sch. 3)
- F3** Words in s. 45(2) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 152(a)** (with Sch. 3)
- F4** Words in s. 45(4) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 152(b)** (with Sch. 3)

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#### Commencement Information

- I6** S. 45 wholly in force at 16.6.2006; s. 45 not in force at Royal Assent see s. 270(4)(5); s. 45 in force for E. at 6.4.2006 by [S. I. 2006/1060](#), **art. 2(1)(a)** (with Sch.); s. 45 in force for W. at 16.6.2006 by [S. I. 2006/1535](#), **art. 2(a)** (with Sch.)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 66(1A) inserted by [2016 c. 22 s. 125\(3\)\(a\)](#)
- s. 66(3A)(3B) inserted by [2016 c. 22 s. 125\(3\)\(c\)](#)
- s. 89(1A) inserted by [2016 c. 22 s. 125\(6\)\(a\)](#)
- s. 89(3A)(3B) inserted by [2016 c. 22 s. 125\(6\)\(c\)](#)
- s. 139(7A)(7B) inserted by [2016 c. 22 s. 127\(3\)](#)