

These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Housing Conditions

Chapter 1 - Enforcement of Housing Standards: General

Section 1: New system for assessing housing conditions and enforcing housing standards

51. **Section 1** introduces a new system for assessing housing conditions that is to be used in the enforcement of housing standards. It replaces the existing system which is based on a test of fitness for human habitation under section 604 of the Housing Act 1985 (the 1985 Act).
52. Subsection (2) provides for the new system to operate by reference to the existence of category 1 or category 2 hazards (defined in section 2) in residential premises.
53. Subsection (3) sets out the enforcement options which will be available to LHAs under the Act. These options are dealt with in more detail in Chapters 2 and 3 of Part 1, and in provisions of the 1985 Act which are substituted by Chapter 4 of Part 1.
54. Subsections (4) to (8) define some of the terms used in Part 1.
55. The purpose of the Housing Health and Safety Rating System (HHSRS) introduced by section 1 is to apply objective information to the taking of enforcement decisions by LHAs.

Section 2: Meaning of "category 1 hazard" and "category 2 hazard"

56. Subsection (1) provides a definition of "hazard" for the purposes of Part 1. It also provides for the prescription by regulations of two categories of hazard -

category 1 and category 2 - according to their seriousness as calculated under the method prescribed in regulations under subsections (2) and (3). It is intended that regulations under subsection (1) will describe 29 different types of hazards which can be assessed by LHAs.
57. Under subsections (2) and (3) a method for calculating the seriousness of each hazard which exists on residential premises may be prescribed by secondary legislation. The calculation will be based on the risk to the most vulnerable potential occupant of that dwelling, whether or not anyone, or a most vulnerable occupant, is resident in the premises at the time of the inspection, and the calculation will result in the hazard being given a score. That score will determine the band into which the hazard will fall. The regulations will prescribe that hazards falling within bands A to C are category 1 hazards, while those within bands D to J are category 2 hazards. Banding is intended to avoid the impression of spurious accuracy. The system relates poor housing conditions to the kinds of harm attributable to such conditions - it does not try to assess a specific health outcome in relation to the current occupant.

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58. Under section 5, LHAs will have a general duty to take action to deal with category 1 hazards, and under section 7 they will have discretionary powers to take action to deal with category 2 hazards.
59. The enforcement action an LHA takes under the provisions of Part 1 will be based on (a) the band into which the hazard falls as a result of the HHSRS calculation; (b) whether the LHA has a duty or a power to act; and (c) the LHA's judgement as to the best means of dealing with that hazard.

Section 3: Local housing authorities to review housing conditions in their districts

60. Subsection (1) requires LHAs to keep under review the housing conditions in their district with a view to identifying what, if any, course of action should be taken by the LHA. This provision replaces, with modifications, section 605 of the 1985 Act.
61. Subsection (2) sets out the courses of action the LHA could take. These include the use of the enforcement powers under Part 1, the licensing of property and provision of management orders provided for under Parts 2 to 4, and the use of the powers enabling LHAs to declare a renewal area and provide financial assistance towards the cost of improvement and repair of residential property.

Section 4: Inspections by local housing authorities to see whether category 1 or 2 hazards exist

62. This provision replaces, with modifications, section 606 of the 1985 Act. Under subsection (1) if the LHA considers that it would be appropriate to inspect residential premises to establish whether or not there is a category 1 or category 2 hazard, the authority must arrange for an inspection to be carried out.
63. Subsection (2) retains the complaint procedure in section 606 of the 1985 Act so that where an official complaint is made to a proper officer, that a category 1 or 2 hazard may exist on residential premises, or that an area should be dealt with as a clearance area, the proper officer must inspect the premises or area. An official complaint is a complaint made in writing by a local JP or a parish or community council.
64. Inspections of premises under section 4 must be carried out in accordance with regulations made under sub-section (4). Where an inspection is made following an official complaint and the proper officer concludes that a category 1 or category 2 hazard exists, or that an area should be declared a clearance area, he is required to make a report in writing to the LHA. The LHA must consider any such report as soon as possible.

Section 5: Category 1 hazards: general duty to take enforcement action

65. **Section 5** imposes a general duty on LHAs to take appropriate enforcement action where there is a category 1 hazard. Subsection (1) sets out the courses of action that may be available to the local housing authority:
 - to serve an improvement notice under section 11;
 - to make a prohibition order under section 20;
 - to serve a hazard awareness notice under section 28;
 - to take emergency remedial action under section 40;
 - to make an emergency prohibition order under section 43;
 - to make a demolition order under section 265(1) or (2) of the 1985 Act;
 - to declare a clearance area under section 289 (2) of the 1985 Act.

66. Under subsections (3) and (4), the LHA is under a duty to take the best course of action available to it in relation to the hazard. LHAs cannot simultaneously take more than one of the actions set out in subsection (2), for example make a prohibition order and serve an improvement notice dealing with the same hazard. This is to ensure that LHAs have properly considered the appropriate action and owners are not asked to comply unnecessarily with more than one requirement.
67. Subsection (5) enables an LHA to take the same course or a different course of action if the action already taken has not proved satisfactory. It also provides that, where an LHA has given notice, under section 289 of the 1985 Act, that it intends to declare a clearance area containing a property to which the duty in section 5 applies, but has decided to exclude that property from the area, it remains under a duty to take one of the remaining courses of action in section 5 in relation to the hazard.

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

68. Section 6 enables an LHA, instead of making a prohibition order or a demolition order under section 5(2) in respect of a property, to make a determination under section 300(1) or (2) of the 1985 Act, enabling it to purchase the property if the LHA considers the property is capable of providing adequate accommodation for temporary housing use.
69. Subsections (3) and (4) have the effect of enabling LHAs to take emergency remedial action and another course of action as a single step rather than wait until the emergency action has proved effective. This is because the LHA will be aware that certain emergency remedial action will not have the effect of removing the category 1 hazard entirely.
70. Sub-section (5) provides that the option of declaring a clearance area under section 5(2) is not available to an LHA in respect of a property if that property has already been proposed for inclusion within a clearance area but excluded from it.

Section 7: Category 2 hazards: power to take enforcement action

71. Section 7 lists the enforcement powers available to LHAs where a category 2 hazard exists on residential premises. Subsection (2) sets out the courses of action that available to the LHA:
- to serve an improvement notice under section 12;
 - to make a prohibition order under section 21;
 - to serve a hazard awareness notice under section 29;
 - to make a demolition order under s265 (3) or (4) of the 1985 Act, but only in circumstances prescribed by the Secretary of State or, in relation to Wales, by the National Assembly for Wales;
 - to include the premises in the declaration of a clearance area under s289 (2ZB) of the 1985 Act, but only in circumstances so prescribed.
72. Subsection (3) makes clear that an LHA can take the same course or a different course of action if the action already taken has not proved satisfactory.

Section 8: Reasons for decision to take enforcement action

73. Section 8 imposes a duty on LHAs to prepare a statement of reasons for their decision to take enforcement action. The statement should include an explanation as to why a particular course of action was taken rather than any of the other courses that were available.
74. A copy of the statement of reasons should be served on people who were served with the Part 1 notice or a copy of a Part 1 notice or order.

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75. Under subsection (6) if the relevant enforcement action consists of declaring an area to be a clearance area, the statement of reasons must be published as soon as possible after the resolution declaring that the area be defined as a clearance area under section 289 of the Housing Act 1985 is passed, and in such manner as the authority consider appropriate.
76. **Section 8** is intended to ensure that the enforcement provisions of Part 1 do not give rise to disproportionate interference with Article 8 of the European Convention on Human Rights - respect for private and family life, and also with Article 6 and Article 1 of the First Protocol - the right to a fair hearing, and protection of property.

Section 9: Guidance about inspections and enforcement action

77. **Section 9** enables the appropriate national authority to give statutory guidance to LHAs on a number of matters. Guidance may be issued on the inspection of premises and the assessment of hazards on those premises (the technical guidance) and on the use of the enforcement functions (the enforcement guidance) set out in sections 5 and 7. There is a duty on LHAs to have regard to such guidance. It is intended that the technical guidance will include the profiles of the potential health and safety hazards, their causes and preventive measures. The enforcement guidance will apply both where an LHA is exercising a duty in respect of a category 1 hazard and where it is exercising a discretionary power to take action in respect of a category 2 hazard. Any guidance under section 9 must be laid in draft before each House before it is given.

Section 10: Consultation with fire authorities in certain cases

78. **Section 10** requires an LHA to consult the local fire and rescue authority before taking enforcement action in respect of a prescribed fire hazard in an HMO or in the common parts of a building containing flats. The form of any such consultation is not set out in the Act but advice on such consultation will be contained in the enforcement guidance to be given under section 9. In the case of action under the emergency measures in Chapter 3 of Part 1, the LHA must consult the local fire and rescue authority only so far as is practicable. A fire hazard prescribed for the purposes of consultation will be one which is prescribed in regulations under section 2.

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

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

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

82. An improvement notice may be suspended in accordance with section 14.

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

83. Subsection (1) enables an LHA to serve an improvement notice if it is satisfied that a category 2 hazard exists on residential premises and the premises in respect of which the notice is to be served are not the subject of a management order under Part 4.
84. Subsection (2) explains that an improvement notice is a notice requiring the person on whom the notice is served to take the remedial action specified in the notice.
85. Subsection (3) applies subsections (3) and (4) of section 11, which set out that remedial action may be taken in relation to any dwelling or HMO, an individual flat or multiple flats within a building, any common parts of a building containing one or more flats and any external common parts. Subsection (4) restricts remedial action in respect of the non-residential part of any premises (for example, a shop under a flat) to cases where the deficiency giving rise to the hazard is located there, and the remedial action is necessary for the health or safety of actual or potential residential occupiers.
86. Subsection (5) allows for only one improvement notice to be served where both a category 1 and a category 2 hazard exists.
87. An improvement notice may be suspended in accordance with section 14.

Section 13: Contents of improvement notices

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

Section 14: Suspension of improvement notices

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

Section 15: Operation of improvement notices

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

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is given by the Lands Tribunal. Subsection (6) has the effect of preventing any appeal against the contents of a notice more than 21 days after it has been served.

Section 16: Revocation and variation of improvement notice

92. **Section 16** provides for the revocation and variation of improvement notices.
93. Subsection (1) requires an LHA to revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with.
94. Where the notice relates to more than one hazard, this requirement applies to each of the hazards individually (see subsection (3)).
95. Subsection (2) provides a discretionary power for an LHA to revoke an improvement notice. In the case of a notice served under section 11 (in respect of a category 1 hazard), they may only do so if they are satisfied that there are special circumstances making it appropriate to revoke the notice. A notice served under section 12 (in respect of a category 2 hazard) may be revoked where the LHA considers that it is appropriate.
96. Subsection (3) provides that, where an LHA is required by subsection (1) to revoke only part of a notice that relates to a number of hazards, they may vary the remainder of the notice, as they consider appropriate.
97. Subsection (4) enables an LHA to vary an improvement notice, either with the agreement of the person on whom it was served or, where the notice has been suspended under section 14, without their agreement but only to alter the time or events triggering the end of the suspension.
98. Subsection (5) provides that a revocation comes into force when it is made and subsection (6) provides that, where a variation is made with the agreement of the person on whom it is served, the variation shall come into force when it is made. If a variation is made without such agreement, the notice will become operative 28 days after the date on which the decision was made or, if an appeal against a variation or revocation is made, it will not come into force until the appeal has been dealt with (see subsection (7)).
99. Subsection (8) provides that an LHA may revoke or vary an improvement notice either in response to an application from the person on whom the notice was served, or on their own initiative.

Section 17: Review of suspended improvement notices

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

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

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

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

102. **Section 19** makes provision for a change in circumstance where the original recipient of an improvement notice is no longer the person on whom it would have been appropriate to serve the notice. For example, an owner or landlord may have sold the property, or the manager of an HMO may have been replaced. In such cases, the requirement to comply with the improvement notice transfers to a relevant successor. This should

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not take new owners unawares, as improvement notices are land charges and will be revealed by the local search.

103. Subsection (4) provides that, in the event of a change in the liable person (for the meaning of which see subsections (7), (8) and (9)), the period for complying with a notice or bringing an appeal is unaffected.
104. Subsection (5) provides that, where the original recipient of an improvement notice has already incurred a liability - e.g. he has been fined for non-compliance or obstruction - he retains that liability despite the subsequent transfer of responsibility.

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

105. Subsection (1) provides that, if a category 1 hazard exists on any residential premises, making a prohibition order is one of the courses of action available to an LHA in discharging its general duty under section 5 to take the most appropriate enforcement action to deal with a such a hazard, so long as the premises in respect of which the order is to be made are not the subject of a management order under Part 4.
106. Subsection (3) provides that a prohibition order may prohibit the use of residential premises which are dwellings or HMOs, one or more flats contained in a building, the common parts of the building containing one or more flats, or external common parts of such buildings.
107. Subsection (4) enables the use of the non-residential element of a building containing one or more flats to be prohibited, but only if the deficiency giving rise to the hazard is located there and the prohibition is necessary for the health or safety of actual or potential residential occupiers of the flat or flats within the premises.
108. Under subsection (5), a prohibition order can relate to more than one category 1 hazard.
109. Subsection (6) provides that the operation of an order may be suspended in accordance with section 23.

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

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

Section 22: Contents of prohibition orders

113. Section 22 deals with the contents of prohibition orders. For each hazard to which it relates, whether the order is made under section 20 or 21 (that is, whether the hazard is

a category 1 or 2 hazard) the order must set out: the nature of the hazard, the deficiency giving rise to it and the premises where it exists; the premises the use of which is prohibited by the order; and any remedial action which, if carried out, would result in the revocation of the order by the LHA. An order must also contain information regarding the right to appeal against a prohibition order and the time limits within which any appeal can be made.

114. Prohibition orders may prohibit the use of part or all of the premises for some or all purposes, unless approved by the LHA; or occupation of the premises or part of them by a particular number of households or occupants, or by particular descriptions of persons, unless approved by the LHA. So for example a prohibition order may prohibit the use of the top floor of an HMO for more than one household, or for persons over the age of 65 or under the age of 5.
115. Where a LHA is asked to approve a use which has been prohibited, that approval should not be unreasonably withheld. Any such refusal must be notified to the applicant within 7 days of the date of the decision to refuse.

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

Section 23: Suspension of prohibition orders

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

Section 24: Operation of prohibition orders

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

Section 25: Revocation and variation of prohibition orders

120. **Section 25** provides for the revocation and variation of prohibition orders.
121. Subsection (1) requires an LHA to revoke a prohibition order if it is satisfied that the hazard in respect of which the order was made no longer exists on the premises specified in the order.
122. Subsection (2) provides a discretionary power for an LHA to revoke a prohibition order. In the case of an order made under section 20 (in respect of a category 1 hazard), they may only do so if they are satisfied that there are special circumstances making it appropriate to revoke the order.

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123. Subsection (3) provides that, where an order relates to a number of hazards, subsection (1) is to be read as applying separately to each hazard. Where a revocation applies only to certain of the hazards specified in an order, the LHA may vary the remainder of the order, as they consider appropriate.
124. Subsection (4) enables an LHA to vary a prohibition order. Subsection (5) provides that a revocation comes into force when it is made. Subsection (6) provides that, if a prohibition order is varied with the agreement of every person on whom the copies of the order were required to be served, the variation comes into force when it is made. Otherwise, by virtue of subsection (7), it comes into force 28 days after the decision to vary or, if an appeal against a variation is made, it will not come into force until the appeal has been dealt with.
125. Subsection (8) provides that an LHA may revoke or vary a prohibition order either in response to an application from any person on whom a copy of the order was required to be served, or on their own initiative.

Section 26: Review of suspended prohibition orders

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

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

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

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

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

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

133. Subsection (1) provides a discretionary power for an LHA to serve a hazard awareness notice if it is satisfied that a category 2 hazard exists on residential premises and the premises in respect of which the notice is to be served are not the subject of a management order under Part 4.
134. Subsection (2) defines a hazard awareness notice under this section as a notice advising the person on whom it is served that a category 2 hazard exists on the residential premises concerned.
135. Subsection (3) applies subsections (3) and (4) of section 28, which set out the premises and common parts in respect of which a hazard awareness notice may be served, and enable action to be taken in respect of non-residential premises if the deficiency giving rise to the hazard is located there, and it is desirable for the notice to be served in the interests of the health or safety of actual or potential residential occupiers.
136. Subsection (5) sets out the mandatory contents of hazard awareness notices under this section, which include the details of the hazard and the category into which it falls, the reasons for serving the notice and the details of any remedial action which the LHA consider it would be practicable and appropriate to take in relation to the hazard.
137. Subsection (7) provides that the requirements for the service of improvement notices, and of copies of such notices, also apply to the service of hazard awareness notices under this section.

Section 30: Offence of failing to comply with improvement notice

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

Section 31: Enforcement action by local housing authorities

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

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

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

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

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

Section 34: Power of tribunal to determine or vary lease

144. Section 34 enables a lessor or lessee to apply to a tribunal for an order terminating or varying a lease on a property which is the subject of a prohibition order. Before

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making an order, the tribunal must take account of all the circumstances of the case, the respective rights and obligations of all parties to the lease and allow any sub-lessees to be heard.

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

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

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

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

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

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

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

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

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

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

Chapter 3 - Emergency Measures

152. The purpose of the emergency measures in sections 40 to 45 is to enable local housing authorities to take emergency enforcement action against hazards which present an

imminent risk of serious harm to the occupiers of residential premises. Their effect is that LHAs will themselves be able to take remedial action to remove a hazard, or prohibit the use of all or part of a property. The owner of a property will be able to appeal, but such an appeal will not prevent the action or prohibition from being put into effect. Action may begin and be completed before a notice is served.

Section 40: Emergency remedial action

153. **Section 40** enables a LHA, if it is satisfied that a category 1 hazard exists on residential premises which are not the subject of a management order in force under Part 4 of the Act, and is 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, to enter the premises at any time in order to take emergency remedial action.
154. Subsection (2) defines "emergency remedial action" as remedial action the LHA considers necessary to remove an imminent risk of serious harm. Where there is a category 1 hazard on premises which does not give rise to an imminent risk of serious harm, the LHA will need to consider taking one of the courses of action mentioned in section 5(2).
155. Subsection (3) limits emergency remedial action to premises in relation to which action could be taken by an improvement notice under section 11. Subsection (4) allows action to be taken in respect of more than one category 1 hazard in the same premises. Subsection (5) applies paragraphs 3 to 5 of Schedule 3 (enforcement action by LHAs), subject to modifications, to emergency remedial action taken by a LHA, as they apply to an operative improvement notice which has not been complied with. The modifications are set out in subsection (6) and relate to the power of entry and the requirements as to the service of notice.
156. Subsection (7) requires the LHA, within 7 days of taking the emergency remedial action, to serve a notice of emergency remedial action under section 41. Copies of that notice should be served on those persons on whom the authority would be required under Part 1 to serve an improvement notice and copies of it. Subsection (8) applies section 240 (warrant to authorise entry) to enable the LHA to enter premises to take emergency remedial action. The Justice of the Peace to whom a warrant application is made must be satisfied there are reasonable grounds to believe the LHA would not gain admission without a warrant.

Section 41: Notice of emergency remedial action

157. **Section 41** sets out the mandatory contents of the notice of emergency remedial action. Such a notice must include the details of the hazard, the premises in which the action has been or is to be taken and the nature of the remedial action, the date the action was or is to be started, and the right to appeal.

Section 42: Recovery of expenses of taking emergency remedial action

158. **Section 42** applies, with minor and technical modifications, paragraphs 6 to 14 of Schedule 3 for the purposes of allowing LHAs to recover certain expenses incurred in taking emergency remedial action. The modifications are set out in subsection (3).

Section 43: Emergency prohibition orders

159. **Section 43** enables an authority, if it is satisfied that a category 1 hazard exists on residential premises which are not the subject of a management order in force under Part 4 of the Act, and is 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, to enter the premises at any time in order to make an emergency prohibition order, prohibiting the use of all or any part of the premises.

These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004

160. Subsection (2) defines an emergency prohibition order as an order prohibiting the use of any premises with immediate effect. Subsection (3) applies the provisions of subsections 3 to 5 of section 20 and subsections 3 to 5 and 7 to 9 of section 22.
161. Subsection (4) applies Part 1 of Schedule 2 for the purposes of the service of copies of prohibition orders, with the modification that the order is to be served on the day it is made instead of within 7 days.
162. Subsection (5) applies other provisions of the Act to emergency prohibition orders as they apply to prohibition orders, including revocation and variation, enforcement and appeals.

Section 44: Contents of emergency prohibition orders

163. **Section 44** sets out the mandatory contents of an emergency prohibition order, which include the details of the hazard, the remedial action which, if taken by the owner, would result in the revocation of the order, the date the order was made and the right to appeal against the order.

Section 45: Appeals relating to emergency measures

164. **Section 45** provides for an appeal against a notice of remedial action or an emergency prohibition order to a residential property tribunal. An appeal must be made within 28 days of the date specified in the notice of emergency remedial action or the date on which the emergency prohibition order was made, as the case may be, subject to the tribunal's discretion to extend the period for appeal where there is good reason for the delay.
165. A tribunal may confirm, reverse or vary an emergency remedial action notice and may confirm, vary or revoke an emergency prohibition order.

Chapter 4 - Demolition Orders and Slum Clearance Declarations

Section 46: Demolition orders

166. **Section 46** substitutes a new section 265 of the Housing Act 1985 (power to make a demolition order). The new subsections (1) and (2) provide that if a category 1 hazard exists on any residential premises, making a demolition order is one of the courses of action available to an LHA in discharging its general duty under section 5 to take the most appropriate enforcement action to deal with a category 1 hazard.
167. New subsections (3) and (4) provide a discretionary power for an LHA to make a demolition order if it is satisfied that a category 2 hazard exists on residential premises and if the circumstances of the case are specified or described in an Order made by the Secretary of State or, in relation to Wales, by the National Assembly for Wales.
168. New subsection (5) prevents a demolition order from being made in respect of premises that are the subject of a management order in force under Part 4 of the Act. New subsection (6) prevents a demolition order from being made in respect of a listed building.

Section 47: Clearance areas

169. **Section 47** amends section 289 of the Housing Act 1985 (declaration of clearance area) in order to align it with the hazard assessment and enforcement provisions in Part 1 of the Act. The effect of this realignment is to retain the link between poor housing conditions and enforcement action and it does not introduce factors which fall outside this consideration.
170. New subsection (2) provides that, if a category 1 hazard exists in each of the residential buildings in an area, and if the other buildings (if any) in the area are dangerous or

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harmful to the health or safety of the inhabitants of the area, declaring a clearance area is one of the courses of action available to an LHA in discharging its general duty under section 5 to take the most appropriate enforcement action to deal with a category 1 hazard.

171. New subsection (2ZA) provides a discretionary power for an LHA to declare a clearance area if it is satisfied that the residential buildings in the area, as a result of their bad arrangement of the narrowness or bad arrangement of the streets; and any other buildings, are dangerous or harmful to the health or safety of the inhabitants of the area.
172. New subsection (2ZB) provides that, if a category 2 hazard exists in each of the residential buildings in an area, and if the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, the LHA may only declare the area to be a clearance area if the circumstances of the case are specified or described in an Order made by the Secretary of State or, in relation to Wales, by the National Assembly for Wales.

Section 48: Transfer of jurisdiction in respect of appeals relating to demolition orders etc.

173. **Section 48** amends a number of provisions in Part 9 of the Housing Act 1985 in order to provide for the transfer of jurisdiction of appeals relating to demolition orders to the Residential Property Tribunal. This ensures that all appeals relating to enforcement options under Part 1 are heard by the Tribunal.

Chapter 5 - General and Miscellaneous Provisions Relating to Enforcement Action

Section 49: Power to charge for certain enforcement action

Section 50: Recovery of charge under section 49

174. **Sections 49** and **50** provide powers for LHAs to charge, and to recover charges, incurred in respect of certain enforcement powers and duties exercised under Part 1. These provisions re-enact with modifications sections 87 and 88 of the Housing Grants, Construction and Regeneration Act 1996, which are repealed by Schedule 16 to this Act.

Section 51: Repeal of power to improve existing enforcement procedures

175. **Section 51** repeals section 86 of the Housing Grants, Construction and Regeneration Act 1996, which provides a pre-notice procedure enabling forewarning to be given of the enforcement action contemplated by an LHA. The **Housing (Fitness Enforcement Procedures) Order 1996 (SI 1996 No 2885)** requires an LHA to issue a "minded to take action" notice prior to taking enforcement action.

Section 52: Repeal of provisions relating to demolition of obstructive buildings

176. **Section 52** repeals the provisions in sections 283-288 of the Housing Act 1985 relating to the demolition of obstructive buildings.

Section 53: Miscellaneous repeals etc in relation to fire hazards

177. **Section 53** repeals certain provisions of the Building Act 1984 and in a number of local acts dealing with fire safety in buildings. These provisions are made redundant by Part 1.