

# HOUSING ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 - Housing Conditions**

#### ***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.
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.