



# Social Housing (Regulation) Act 2023

## 2023 CHAPTER 36

### *Monitoring and enforcement*

PROSPECTIVE

#### **32 Emergency remedial action**

After section 225 of the Housing and Regeneration Act 2008 insert—

#### *“Emergency remedial action*

##### **225A Overview**

This group of sections gives the regulator power to authorise persons to enter premises to take specified action to remedy specified failures on the part of registered providers.

##### **225B Power to take emergency remedial action**

- (1) If the conditions in subsections (2) to (4) are met, the regulator may arrange for an authorised person to take emergency remedial action in respect of premises.
- (2) Condition 1 is that a survey of the condition of the premises has been carried out under section 199.
- (3) Condition 2 is that the regulator is satisfied that—
  - (a) the registered provider has failed to maintain the premises in accordance with standards under section 193, and
  - (b) that failure has caused an imminent risk of serious harm to the health or safety of the occupiers of those or other premises.

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- (4) Condition 3 is that the registered provider has failed to comply with an enforcement notice requiring it to take action to address the failure mentioned in subsection (3)(a).
- (5) In this section and in sections 225C to 225G, “emergency remedial action”, in relation to premises, is carrying out such works to the premises as the authorised person considers immediately necessary to remove the imminent risk of serious harm mentioned in subsection (3)(b).
- (6) In this section and in sections 225C to 225G, “authorised person” means a member of the regulator’s staff, or another person, authorised in writing by the regulator for the purposes of the section concerned.
- (7) Arrangements for a person other than a member of the regulator’s staff to take emergency remedial action may include provision about payments.

#### **225C Emergency remedial action: power to enter without warrant**

- (1) An authorised person may enter premises at any reasonable time, or times, to take emergency remedial action.
- (2) The power in subsection (1) may only be exercised if an authorised person has given a pre-entry notice to—
  - (a) if the premises are occupied, the occupier (or any one of the occupiers),
  - (b) if the premises include common parts of a building and there are occupied dwellings in the building that have use of those common parts, the occupier (or any one of the occupiers) of each of those dwellings,
  - (c) the registered provider whose failure to maintain the premises has caused the imminent risk of serious harm, and
  - (d) each person registered in the register kept under section 1 of the Land Registration Act 2002 as the proprietor of a registered estate (within the meaning of that Act) in the premises.
- (3) A pre-entry notice required by subsection (2) need only be given once in respect of emergency remedial action in relation to premises, even if an authorised person enters the premises on more than one occasion in order to take the emergency remedial action.
- (4) A “pre-entry notice” is a notice which—
  - (a) identifies the premises to be entered;
  - (b) identifies the failure to maintain the premises which has caused the imminent risk of serious harm;
  - (c) states that a person authorised by the regulator intends to enter the premises;
  - (d) specifies the date (or the first date) that the authorised person proposes to enter the premises to take emergency remedial action;
  - (e) specifies the power under this section as the power under which the authorised person intends to enter the premises;
  - (f) explains the effect of section 225H.

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- (5) A pre-entry notice may state that, if entry to the premises were to be refused, an authorised person would propose to apply for a warrant under section 225E.
- (6) An authorised person may not enter premises in reliance on a pre-entry notice—
  - (a) before the date (or the first date) specified in the notice, or
  - (b) within 24 hours of giving the notice,except where the relevant person in respect of the notice consents.
- (7) In subsection (6), “the relevant person” in respect of the pre-entry notice means—
  - (a) in the case of a pre-entry notice required by subsection (2)(a) or (b), the occupier (or any one of the occupiers) of the premises or dwelling;
  - (b) in the case of a pre-entry notice required by subsection (2)(c) or (d), the person (or each person) to whom a pre-entry notice is required to be given.
- (8) In this section, “common parts”, in relation to a building, includes the structure and exterior of that building and any common facilities provided (whether or not in the building) for persons who occupy the building.

#### **225D Power under section 225C: supplementary**

- (1) A pre-entry notice required by section 225C(2)(a) or (b) may be given by fixing it to some conspicuous part of the premises.
- (2) A pre-entry notice required by section 225C(2)(d) may be given by sending it to an address supplied for the purpose of service of notice under the Land Registration Act 2002 (see paragraph 5 of Schedule 10 to that Act).
- (3) An authorised person who under section 225C has entered, or who is seeking to enter, premises to take emergency remedial action must produce a copy of the authorisation mentioned in 225B(6) on request by an occupier.
- (4) An authorised person entering premises to take emergency remedial action may—
  - (a) be accompanied by such other persons, and
  - (b) take onto the premises such equipment or materials,as the authorised person thinks necessary for the purposes of taking the emergency remedial action.
- (5) Equipment or materials taken onto premises by virtue of subsection (4)(b) may be left in a place on the premises until the emergency remedial action has been taken provided that—
  - (a) leaving the equipment or the materials in that place does not significantly impair the ability of an occupier to use the premises, or
  - (b) leaving the equipment or the materials on the premises is necessary for the purposes of taking the emergency remedial action and it is not possible to leave it or them in a place that does not significantly impair the ability of an occupier to use the premises.
- (6) Where the premises include common parts of a building (as defined in section 225C), references in subsection (5) to the ability of an occupier to use

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the premises include the ability of an occupier of a dwelling that has use of the common parts to use those parts or the dwelling.

### **225E Emergency remedial action: power to enter with warrant**

- (1) This section applies where a justice of the peace is satisfied, on sworn information in writing by an authorised person, that entry to premises specified in the information is reasonably required to take emergency remedial action under section [225B](#).
- (2) The justice may issue a warrant authorising the authorised person who is named in it to enter the premises to take emergency remedial action where the justice is satisfied that—
  - (a) entry to the premises has been sought under section [225C](#) but has been refused,
  - (b) the premises are unoccupied or that the occupier is temporarily absent, or
  - (c) there are reasonable grounds to believe that the authorised person will not be able to obtain entry to the premises without a warrant.
- (3) A warrant under this section authorises the authorised person to enter the premises at any reasonable time, or times, using reasonable force if necessary.
- (4) A warrant under this section authorises an authorised person entering premises to take onto the premises such equipment or materials as the authorised person thinks necessary for the purposes of taking the emergency remedial action.
- (5) Equipment or materials taken onto premises by virtue of subsection (4) may be left in a place on the premises until the emergency remedial action has been taken provided that—
  - (a) leaving the equipment or the materials in that place does not significantly impair the ability of an occupier to use the premises, or
  - (b) leaving the equipment or the materials on the premises is necessary for the purposes of taking the emergency remedial action and it is not possible to leave it or them in a place that does not significantly impair the ability of an occupier to use the premises.
- (6) Where the premises include common parts of a building (as defined in section [225C](#)), references in subsection (5) to the ability of an occupier to use the premises include the ability of an occupier of a dwelling that has use of the common parts to use those parts or the dwelling.
- (7) A warrant under this section may authorise persons (“accompanying persons”) to accompany the authorised person.
- (8) Accompanying persons—
  - (a) have the same powers as the authorised person in respect of execution of the warrant, but
  - (b) must exercise those powers only in the company, and under the supervision, of the authorised person.
- (9) An authorised person who has entered, or who is seeking to enter, premises under a warrant under this section must produce on request by any person—
  - (a) a copy of the warrant;

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(b) a copy of the authorisation mentioned in [225B\(6\)](#).

- (10) A warrant under this section continues in force until the emergency remedial action has been taken.
- (11) If the premises are unoccupied or the occupier is temporarily absent, the authorised person who has entered the premises under a warrant under this section must leave the premises as effectively secured against trespassers as the authorised person found them.

### **225F Offences**

- (1) A registered provider, or an officer of a registered provider, commits an offence if the provider or officer obstructs an authorised person—
- (a) in exercising a power under section [225C](#) or [225D](#), or
  - (b) in exercising a power under section [225B](#), where the authorised person has entered the premises to take emergency remedial action under the power in section [225C](#).
- (2) A person commits an offence if the person obstructs an authorised person—
- (a) in exercising a power conferred by a warrant under section [225E](#), or
  - (b) in exercising a power under section [225B](#), where the authorised person has entered the premises to take emergency remedial action under a warrant under section [225E](#).
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) Proceedings for an offence under this section may be brought only by or with the consent of—
- (a) the regulator, or
  - (b) the Director of Public Prosecutions.

### **225G Reclaiming expenses**

- (1) Where the regulator makes arrangements under section [225B](#), the regulator may by notice require the registered provider concerned to pay to the regulator—
- (a) such relevant expenses as are specified in the notice;
  - (b) interest on those expenses (see subsection [\(4\)](#)).
- (2) “Relevant expenses” are—
- (a) expenses reasonably incurred by the regulator—
    - (i) in deciding whether to make arrangements under section [225B](#);
    - (ii) in making those arrangements;
    - (iii) in the authorised person taking emergency remedial action;
  - (b) any costs reasonably incurred by the regulator related to the action in paragraph [\(a\)\(iii\)](#).
- (3) Sums mentioned in subsection [\(1\)\(a\)](#) are payable at the end of the period of 28 days beginning with the day on which the notice is given.

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- (4) Interest may be charged on any sums not paid by the end of the period mentioned in subsection (3) at such reasonable rate as the regulator may determine.

### **225H Appeals**

- (1) A registered provider may appeal to the High Court against—
- (a) a decision of the regulator to make arrangements under section 225B(1);
  - (b) a decision of the regulator to give a notice under section 225G(1).
- (2) An appeal under subsection (1)(a) must be brought within the period of 28 days beginning—
- (a) with the day on which the registered provider is given the pre-entry notice under section 225C(2), or
  - (b) with the day on which the premises were first entered under a warrant obtained under section 225E on the grounds in subsection (2)(b) or (c) of that section.
- (3) An appeal under subsection (1)(b) must be brought within the period of 28 days beginning with the day on which the registered provider is given the notice under section 225G(1).
- (4) No question may be raised on an appeal under subsection (1)(b) which might have been raised on an appeal under subsection (1)(a).
- (5) Where an appeal under subsection (1)(b) is brought—
- (a) the requirement to pay the sums described in section 225G(1)(a) is suspended during the period beginning with the day on which the notice under section 225G(1) is given and ending with the day on which the appeal is finally determined or withdrawn, and
  - (b) no interest is payable by virtue of section 225G(1)(b) in respect of that period.”

#### **Commencement Information**

**II** S. 32 not in force at Royal Assent, see s. 46(3)

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