



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).

Changes to legislation: *Housing Act 2004, Section 40 is up to date with all changes known to be in force on or before 12 June 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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

- II** 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.)

Changes to legislation:

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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\(3\)](#)