

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.