

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Housing Conditions

Chapter 3 - Emergency Measures

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.