



Housing Act 2004

2004 CHAPTER 34

PART 1

HOUSING CONDITIONS

CHAPTER 1

ENFORCEMENT OF HOUSING STANDARDS: GENERAL

Enforcement of housing standards

5 Category 1 hazards: general duty to take enforcement action

- (1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.
- (2) In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated by subsection (3) or (4)—
 - (a) serving an improvement notice under section 11;
 - (b) making a prohibition order under section 20;
 - (c) serving a hazard awareness notice under section 28;
 - (d) taking emergency remedial action under section 40;
 - (e) making an emergency prohibition order under section 43;
 - (f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);
 - (g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.
- (3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

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- (4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.
- (5) The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard—
 - (a) either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or
 - (b) another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under section 289(2F) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.
- (6) To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is “available” to the authority in relation to the hazard, see the provision mentioned in that paragraph.
- (7) Section 6 applies for the purposes of this section.

6 Category 1 hazards: how duty under section 5 operates in certain cases

- (1) This section explains the effect of provisions contained in subsection (2) of section 5.
- (2) In the case of paragraph (b) or (f) of that subsection, the reference to making an order such as is mentioned in that paragraph is to be read as a reference to making instead a determination under section 300(1) or (2) of the Housing Act 1985 (c. 68) (power to purchase for temporary housing use) in a case where the authority consider the latter course of action to be the better alternative in the circumstances.
- (3) In the case of paragraph (d) of that subsection, the authority may regard the taking of emergency remedial action under section 40 followed by the service of an improvement notice under section 11 as a single course of action.
- (4) In the case of paragraph (e) of that subsection, the authority may regard the making of an emergency prohibition order under section 43 followed by the service of a prohibition order under section 20 as a single course of action.
- (5) In the case of paragraph (g) of that subsection—
 - (a) any duty to take the course of action mentioned in that paragraph is subject to the operation of subsections (2B) to (4) and (5B) of section 289 of the Housing Act 1985 (procedural and other restrictions relating to slum clearance declarations); and
 - (b) that paragraph does not apply in a case where the authority have already declared the area in which the premises concerned are situated to be a clearance area in accordance with section 289, but the premises have been excluded by virtue of section 289(2F)(b).

7 Category 2 hazards: powers to take enforcement action

- (1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.
- (2) The provisions are—

- (a) section 12 (power to serve an improvement notice),
 - (b) section 21 (power to make a prohibition order),
 - (c) section 29 (power to serve a hazard awareness notice),
 - (d) section 265(3) and (4) of the Housing Act 1985 (power to make a demolition order), and
 - (e) section 289(2ZB) of that Act (power to make a slum clearance declaration).
- (3) The taking by the authority of one of those kinds of enforcement action in relation to a particular category 2 hazard does not prevent them from taking either—
- (a) the same kind of action again, or
 - (b) a different kind of enforcement action,
- in relation to the hazard, where they consider that the action taken by them so far has not proved satisfactory.

8 Reasons for decision to take enforcement action

- (1) This section applies where a local housing authority decide to take one of the kinds of enforcement action mentioned in section 5(2) or 7(2) (“the relevant action”).
- (2) The authority must prepare a statement of the reasons for their decision to take the relevant action.
- (3) Those reasons must include the reasons why the authority decided to take the relevant action rather than any other kind (or kinds) of enforcement action available to them under the provisions mentioned in section 5(2) or 7(2).
- (4) A copy of the statement prepared under subsection (2) must accompany every notice, copy of a notice, or copy of an order which is served in accordance with—
- (a) Part 1 of Schedule 1 to this Act (service of improvement notices etc.),
 - (b) Part 1 of Schedule 2 to this Act (service of copies of prohibition orders etc.), or
 - (c) section 268 of the Housing Act 1985 (service of copies of demolition orders),
- in or in connection with the taking of the relevant action.
- (5) In subsection (4)—
- (a) the reference to Part 1 of Schedule 1 to this Act includes a reference to that Part as applied by section 28(7) or 29(7) (hazard awareness notices) or to section 40(7) (emergency remedial action); and
 - (b) the reference to Part 1 of Schedule 2 to this Act includes a reference to that Part as applied by section 43(4) (emergency prohibition orders).
- (6) If the relevant action consists of declaring an area to be a clearance area, the statement prepared under subsection (2) must be published—
- (a) as soon as possible after the relevant resolution is passed under section 289 of the Housing Act 1985, and
 - (b) in such manner as the authority consider appropriate.

9 Guidance about inspections and enforcement action

- (1) The appropriate national authority may give guidance to local housing authorities about exercising—

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- (a) their functions under this Chapter in relation to the inspection of premises and the assessment of hazards,
 - (b) their functions under Chapter 2 of this Part in relation to improvement notices, prohibition orders or hazard awareness notices,
 - (c) their functions under Chapter 3 in relation to emergency remedial action and emergency prohibition orders, or
 - (d) their functions under Part 9 of the Housing Act 1985 (c. 68) in relation to demolition orders and slum clearance.
- (2) A local housing authority must have regard to any guidance for the time being given under this section.
- (3) The appropriate national authority may give different guidance for different cases or descriptions of case or different purposes (including different guidance to different descriptions of local housing authority or to local housing authorities in different areas).
- (4) Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay a draft of the proposed guidance or alterations before each House of Parliament.
- (5) The Secretary of State must not give or revise the guidance before the end of the period of 40 days beginning with the day on which the draft is laid before each House of Parliament (or, if copies are laid before each House of Parliament on different days, the later of those days).
- (6) The Secretary of State must not proceed with the proposed guidance or alterations if, within the period of 40 days mentioned in subsection (5), either House resolves that the guidance or alterations be withdrawn.
- (7) Subsection (6) is without prejudice to the possibility of laying a further draft of the guidance or alterations before each House of Parliament.
- (8) In calculating the period of 40 days mentioned in subsection (5), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

10 Consultation with fire and rescue authorities in certain cases

- (1) This section applies where a local housing authority—
- (a) are satisfied that a prescribed fire hazard exists in an HMO or in any common parts of a building containing one or more flats, and
 - (b) intend to take in relation to the hazard one of the kinds of enforcement action mentioned in section 5(2) or section 7(2).
- (2) Before taking the enforcement action in question, the authority must consult the fire and rescue authority for the area in which the HMO or building is situated.
- (3) In the case of any proposed emergency measures, the authority's duty under subsection (2) is a duty to consult that fire and rescue authority so far as it is practicable to do so before taking those measures.
- (4) In this section—
“emergency measures” means emergency remedial action under section 40 or an emergency prohibition order under section 43;

“fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act [2004 \(c. 21\)](#);

“prescribed fire hazard” means a category 1 or 2 hazard which is prescribed as a fire hazard for the purposes of this section by regulations under section 2.