



Housing Act 2004

2004 CHAPTER 34

PART 1

HOUSING CONDITIONS

CHAPTER 1

ENFORCEMENT OF HOUSING STANDARDS: GENERAL

New system for assessing housing conditions

1 New system for assessing housing conditions and enforcing housing standards

- (1) This Part provides—
 - (a) for a new system of assessing the condition of residential premises, and
 - (b) for that system to be used in the enforcement of housing standards in relation to such premises.
- (2) The new system—
 - (a) operates by reference to the existence of category 1 or category 2 hazards on residential premises (see section 2), and
 - (b) replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c. 68).
- (3) The kinds of enforcement action which are to involve the use of the new system are—
 - (a) the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices),
 - (b) the new emergency measures contained in Chapter 3 (emergency remedial action and emergency prohibition orders), and
 - (c) the existing kinds of enforcement action dealt with in Chapter 4 (demolition orders and slum clearance declarations).

Status: This is the original version (as it was originally enacted).

- (4) In this Part “residential premises” means—
- (a) a dwelling;
 - (b) an HMO;
 - (c) unoccupied HMO accommodation;
 - (d) any common parts of a building containing one or more flats.
- (5) In this Part—
- “building containing one or more flats” does not include an HMO;
- “common parts”, in relation to a building containing one or more flats, includes—
- (a) the structure and exterior of the building, and
 - (b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats;
- “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;
- “external common parts”, in relation to a building containing one or more flats, means common parts of the building which are outside it;
- “flat” means a separate set of premises (whether or not on the same floor)—
- (a) which forms part of a building,
 - (b) which is constructed or adapted for use for the purposes of a dwelling, and
 - (c) either the whole or a material part of which lies above or below some other part of the building;
- “HMO” means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, without the exclusions contained in Schedule 14);
- “unoccupied HMO accommodation” means a building or part of a building constructed or adapted for use as a house in multiple occupation but for the time being either unoccupied or only occupied by persons who form a single household.
- (6) In this Part any reference to a dwelling, an HMO or a building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the dwelling, HMO or building (or any part of it).
- (7) The following indicates how this Part applies to flats—
- (a) references to a dwelling or an HMO include a dwelling or HMO which is a flat (as defined by subsection (5)); and
 - (b) subsection (6) applies in relation to such a dwelling or HMO as it applies in relation to other dwellings or HMOs (but it is not to be taken as referring to any common parts of the building containing the flat).
- (8) This Part applies to unoccupied HMO accommodation as it applies to an HMO, and references to an HMO in subsections (6) and (7) and in the following provisions of this Part are to be read accordingly.

2 **Meaning of “category 1 hazard” and “category 2 hazard”**

- (1) In this Act—

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“category 1 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;

“category 2 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description; and

“hazard” means any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).

(2) In subsection (1)—

“prescribed” means prescribed by regulations made by the appropriate national authority (see section 261(1)); and

“prescribed band” means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

(3) Regulations under this section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur.

(4) In this section—

“building” includes part of a building;

“harm” includes temporary harm.

(5) In this Act “health” includes mental health.

Procedure for assessing housing conditions

3 Local housing authorities to review housing conditions in their districts

(1) A local housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under any of the provisions mentioned in subsection (2).

(2) The provisions are—

(a) the following provisions of this Act—

(i) this Part,

(ii) Part 2 (licensing of HMOs),

(iii) Part 3 (selective licensing of other houses), and

(iv) Chapters 1 and 2 of Part 4 (management orders);

(b) Part 9 of the Housing Act 1985 (c. 68) (demolition orders and slum clearance);

(c) Part 7 of the Local Government and Housing Act 1989 (c. 42) (renewal areas); and

(d) article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (S.I. 2002/1860).

Status: This is the original version (as it was originally enacted).

- (3) For the purpose of carrying out their duty under subsection (1) a local housing authority and their officers must—
- (a) comply with any directions that may be given by the appropriate national authority, and
 - (b) keep such records, and supply the appropriate national authority with such information, as that authority may specify.

4 Inspections by local housing authorities to see whether category 1 or 2 hazards exist

- (1) If a local housing authority consider—
- (a) as a result of any matters of which they have become aware in carrying out their duty under section 3, or
 - (b) for any other reason,
- that it would be appropriate for any residential premises in their district to be inspected with a view to determining whether any category 1 or 2 hazard exists on those premises, the authority must arrange for such an inspection to be carried out.
- (2) If an official complaint about the condition of any residential premises in the district of a local housing authority is made to the proper officer of the authority, and the circumstances complained of indicate—
- (a) that any category 1 or category 2 hazard may exist on those premises, or
 - (b) that an area in the district should be dealt with as a clearance area,
- the proper officer must inspect the premises or area.
- (3) In this section “an official complaint” means a complaint in writing made by—
- (a) a justice of the peace having jurisdiction in any part of the district, or
 - (b) the parish or community council for a parish or community within the district.
- (4) An inspection of any premises under subsection (1) or (2)—
- (a) is to be carried out in accordance with regulations made by the appropriate national authority; and
 - (b) is to extend to so much of the premises as the local housing authority or proper officer (as the case may be) consider appropriate in the circumstances having regard to any applicable provisions of the regulations.
- (5) Regulations under subsection (4) may in particular make provision about—
- (a) the manner in which, and the extent to which, premises are to be inspected under subsection (1) or (2), and
 - (b) the manner in which the assessment of hazards is to be carried out.
- (6) Where an inspection under subsection (2) has been carried out and the proper officer of a local housing authority is of the opinion—
- (a) that a category 1 or 2 hazard exists on any residential premises in the authority’s district, or
 - (b) that an area in their district should be dealt with as a clearance area,
- the officer must, without delay, make a report in writing to the authority which sets out his opinion together with the facts of the case.
- (7) The authority must consider any report made to them under subsection (6) as soon as possible.

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.
- (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.

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- (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—
- (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.

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- (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.