



Factsheet: Declaring states of local emergency

The Civil Defence Emergency Management Act 2002

The Civil Defence Emergency Management Act 2002:

- provides for a state of local emergency to be declared.
- provides for certain people to be authorised to declare a state of local emergency.
- provides powers to the CDEM Group when a state of emergency is in force.

Who is authorised to declare a state of local emergency (s25)?

The CDEM Group must appoint at least one person (a representative of the Group) to declare a state of local emergency for the Group's area (s25(1)(a)).

If the Group appoint more than one person to declare, they must state whether they have equal status to make a declaration, or whether they are only authorised in the absence of another named person. They must also include any conditions or limitations to the appointment (s25(3)).

If the person(s) appointed by the Group is not able to declare a state of local emergency, a representative of the Group can declare (s25(4)).

A Mayor can declare a state of local emergency for their territorial district, and if the Mayor is absent, an elected member designated on behalf of the mayor may declare (s25(5)).

The Minister can also declare a state of local emergency if it appears to the Minister that it is required (s69(1)).

Authorised persons should refer to their CDEM Group plan as this must set out the arrangements for declaring a state of local emergency (section 49(2)(f)). It is important to know your Group's arrangements to avoid multiple declarations e.g. a district one and another declared by the CDEM Group person appointed to declare a state of local emergency.

When can declaration of state of local emergency be given?

A person who is authorised can declare a state of local emergency when an emergency (as defined in the CDEM Act 2002) has occurred or may occur within the area.

Emergency means a situation that:-

- (a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and
- (b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and
- (c) cannot be dealt with by emergency services, or otherwise requires a significant and co-ordinated response under this Act.

See the definition of emergency in section 4 of the Civil Defence Emergency Management Act 2002.

A state of local emergency provides access to powers that would not normally be available. Therefore, consideration should be given to whether emergency powers are required or likely to be required (e.g. the need to evacuate people from their homes).

The fact that an emergency exists does not necessarily warrant a declaration of state of local emergency.

An authorised person can also declare for an area that is not affected by an emergency if, in their opinion, the resources of that area are needed to assist any other area where a state of local emergency is in force (s68(3)). However, it is not

necessary to do this if the additional areas willingly provide resources.

Who needs to be involved in the decision?

Where possible, the authorised person should discuss the likelihood of a declaration with the Group Controller. They should also discuss it with the NEMA Regional Emergency Management Advisor to ensure that any necessary national level support is provided.

They should also consult with others to ensure an informed decision can be made and any relevant matters considered, including (as appropriate):

- Other members of the CDEM Group e.g. neighbouring mayors
- Local Controller and Emergency Management Officers
- Local Authority Utility Managers
- New Zealand Police
- Fire and Emergency New Zealand
- Providers of health and disability services (e.g. District Health Boards, Primary Health Organisations, Ambulance Services)

What needs to be considered about the area affected?

Generally, as states of emergency provide for powers that are not normally available, declarations should be limited to the area(s) affected. For example, a declaration of state of local emergency does not need to be declared for the entire area of the Group if the emergency only affects one or two districts or wards.

The person appointed by the CDEM Group can declare for the area of the CDEM Group concerned, or for one or more districts or wards within the area (68(2)).

The Mayor of a territorial authority, or the person designated to act on their behalf in their absence, may declare a state of local emergency that covers the district of their territorial authority (s25(5)).

Only one state of emergency (local or national) may exist at any time in any specified area, but several states of local emergency can be declared concurrently across the country.

If a state of local emergency is declared for a ward, but it is decided that a state of local emergency should be declared for a larger geographical area e.g. the district or areas of the CDEM Group, which includes that ward, then a new declaration is required. There is no requirement to terminate the original state of local emergency as it will cease to have effect (s68(2A)).

What if the Minister declares a national state of emergency?

If the Minister declares a national state of emergency, any other declarations in force in the area or district ceases to have effect (s66(3)).

Likewise, a declaration of state of local emergency cannot be given for any part of New Zealand while a national state of emergency is in force (s68(5)).

What if the emergency is during local government elections?

Only elected representatives of the members of the Group are able to declare a state of local emergency (s25). Following a local election there may be no-one available to declare as members cannot act as an elected representative until they are sworn in (clause 14, Schedule 7 of the Local Government Act 2002).

Therefore, if an emergency arises following a local election but before members are sworn in and emergency powers are needed, a state of local emergency can be declared by:

- The Minister for Emergency Management can declare a state of local emergency for a CDEM Group area or any district or ward within that area (s69); or
- In circumstances that provide a period of warning, such as an impending adverse weather event, a council meeting may be called as soon as practicable to have the new council sworn in (clause 21(3), Schedule 7, Local Government Act 2002), allowing the Mayor to declare a state of local emergency under s25(5) of the CDEM Act 2002.

When does a declaration of state of local emergency come into force?

Form 8 in Schedule 2 of the CDEM Regulations 2003 must be used to declare a state of local emergency, or a form of similar effect. The form must specify the time and date on which the declaration is made; this is the date and time that it comes into force (s70(1) & (2)).

It is recommended that a person who is authorised to declare a state of local emergency carries a declaration of a state of emergency form with them (or version they can complete on their phone/tablet/computer) so if they are not in an office they can complete the form.

How long does a declaration of state of local emergency last?

A state of local emergency expires seven days after the time and date on which the state of local emergency came into force (s70(3)).

This means that if a state of local emergency comes into force at 0935 on 1 January, it would expire at 0935 on 8 January.

How is a declaration of state of local emergency extended?

When deciding whether to extend the duration of a state of local emergency, the authorised person should consider:

- Whether the emergency still exists;
- Whether access to the powers are still required; and
- Whether the nature of the emergency is moving towards recovery where they may want to consider giving notice of a local transition period.

An authorised person can extend the duration of a state of local emergency before the expiry of the state of emergency that is in force at the time (s71(2)) using Form 9 in Schedule 2 of the CDEM Regulations 2003. It does not need to be the person who declared to do this.

If the state of local emergency expires, the authorised person must declare a new state of local emergency.

The Controller's powers cannot be exercised while there is no state of local emergency in place. In some cases the powers will need to be re-exercised e.g. if buildings have been placarded

under s92, that placard expires with the expiry of the state of local emergency and the power will need to be exercised again to re-placard the building under the new state of local emergency.

What if the state of local emergency needs to be terminated?

The person who is authorised to declare the state of local emergency, may terminate the state of local emergency (s72(1)). It does not need to be the person who declared to do this.

Form 10 in Schedule 2 of the CDEM Regulations 2003 must be used to terminate a state of local emergency. The form must specify the time and date it is made, which is when the termination will come into effect.

If an authorised person intends to give notice of a local transition period, they must terminate the state of local emergency unless the local transition period comes into effect after the state of emergency has expired (s94C(a) & (b)).

However, if the Minister gives notice of a local transition period, the state of local emergency is automatically terminated (s72(3)).

What are the publication requirements (s73(3))?

A person who declares, extends the duration of, or terminates a state of local emergency must immediately notify the public of the declaration by any means of communication that are reasonably practicable in the circumstances.

The declaration of state of local emergency, extension or termination must also be published in the Gazette as soon as practicable.

Gazette publication

A copy of the signed declaration form(s) (in Microsoft Word format) must be sent to the New Zealand Gazette Office at:

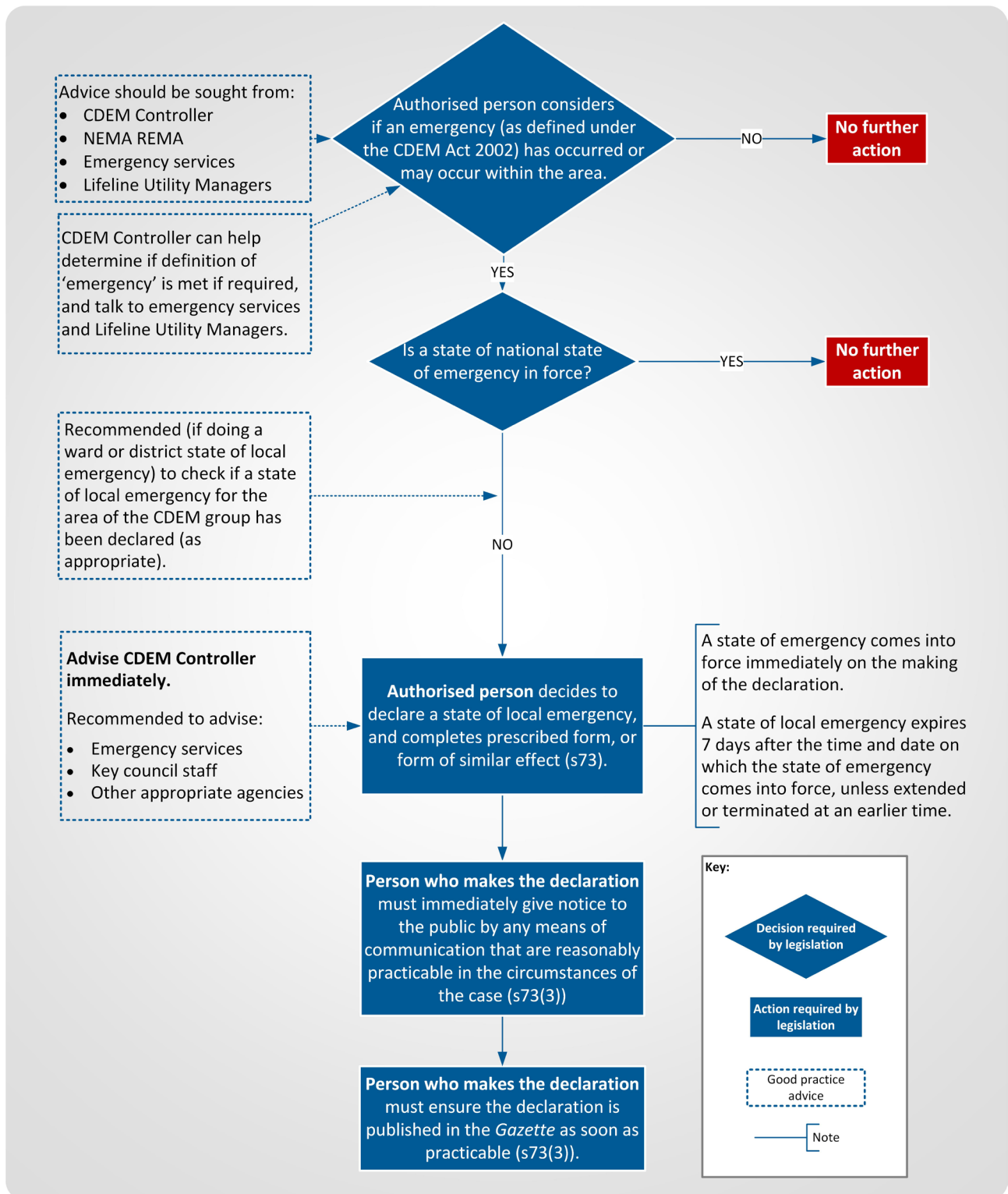
New Zealand Gazette Office
Department of Internal Affairs
PO Box 805
Wellington 6140

or

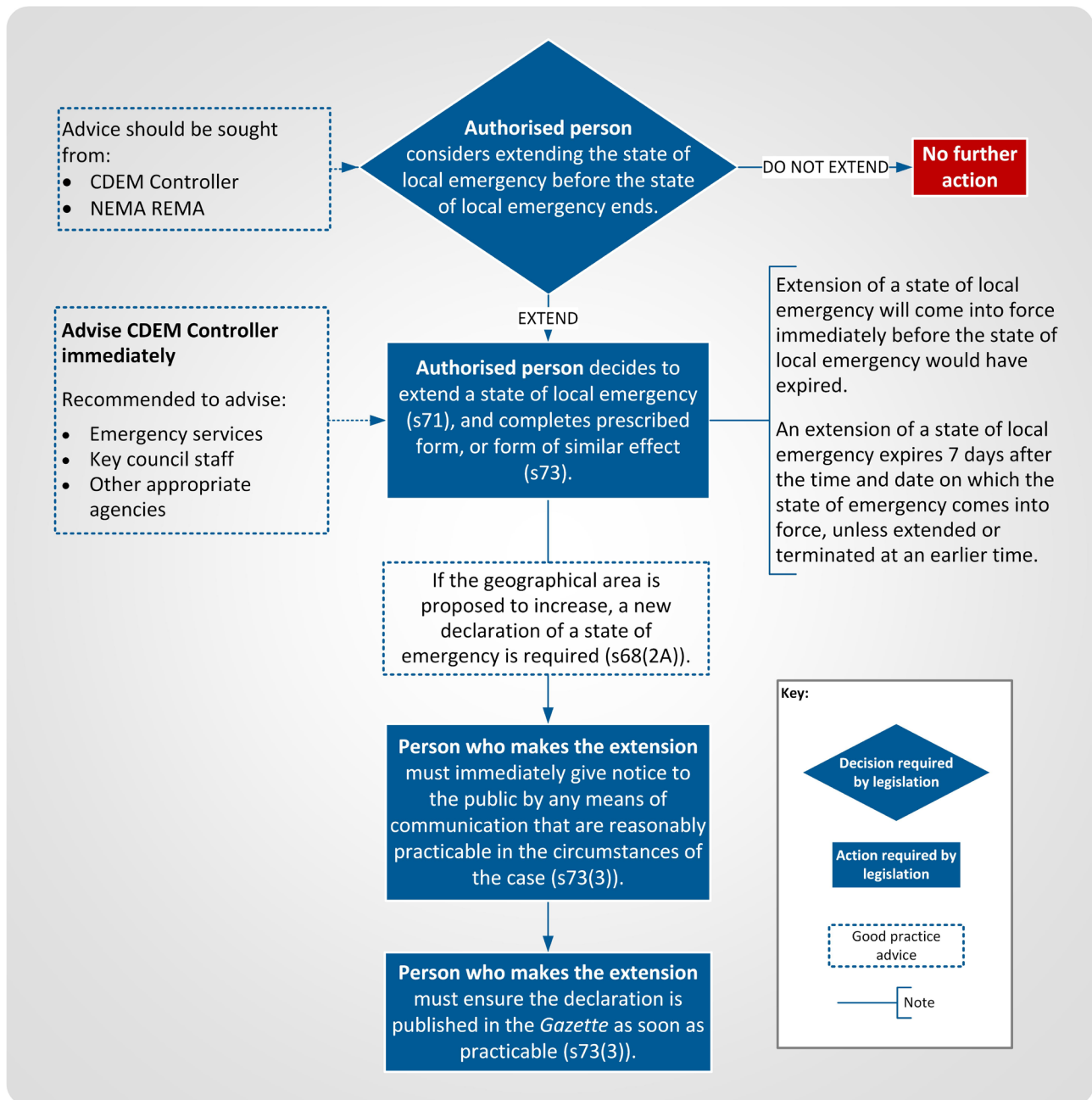
gazette@dia.govt.nz

See <https://gazette.govt.nz/how-to-submit> or details on how to submit a notice for publication in the Gazette.

Process for declaring a state of local emergency (s70)



Process for extending duration of a state of local emergency (s71)



Process for terminating a state of local emergency (s72)

