

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 - Additional Control Provisions in Relation to Residential Accommodation

Chapter 1: Interim and Final Management Orders

Section 101: Interim and final management orders: introductory

238. **Section 101** introduces Chapter 1 and explains what interim management orders (IMOs) are, what their purpose is and requires that they run for no longer than 12 months. The section also explains what final management orders (FMOs) are, what their purpose is and provides that they can run for no longer than 5 years. These management orders are designed to allow an LHA to step into the shoes of a private landlord and manage his property where he cannot be licensed or where there is some management problem which requires intervention by the LHA. An IMO is an interim measure designed to provide time for a longer-term management solution to be found, normally the grant of a licence under Parts 2 or 3 or, if that is not possible, the making of an FMO.
239. The section also defines "house" and "third party" for the purpose of the Chapter.

Section 102: Making of interim management orders.

240. **Section 102** sets out the circumstances in which an IMO must or can be made. An IMO must be made when:
- a HMO or a Part 3 house ought to be licensed but is not and either there is no reasonable prospect of the house becoming licensed in the near future, or the health and safety condition is met (see section 104); or
 - the LHA intends to revoke an existing licence and either there is no prospect of a new licence being issued in the near future, or the health and safety condition will be satisfied.
241. A LHA can apply to the RPT for authority to make an IMO for an HMO that is not licensable under Part 2. In deciding whether to authorise the making of the order, the RPT must be satisfied that the Health and Safety Condition (see section 104) is satisfied and must also have regard to the degree to which the management of the HMO has been in compliance with any approved code of practice made under section 233.
242. An LHA may also apply to the RPT for authority to make an IMO in respect of a house other than an HMO if the conditions in section 103 are met. In either case the RPT may authorise the making of an IMO on such terms as are contained in the draft order submitted with the application or on such other terms as it considers appropriate.
243. The section provides that IMOs may be made to exclude part of a property occupied by a person who is the owner or long leaseholder of the entire house and that two IMOs may not be made in succession.

Section 103: Special interim management orders

244. **Section 103** sets out the circumstances in which an IMO can be made for properties that are not HMOs, but could potentially be licensable under Part 3 if the LHA were to make a designation under that Part. The appropriate national authority may prescribe when this power may be used, but it must relate to combating anti-social behaviour or other circumstances required for the instigation of a Part 3 licensing regime (see section 80). A RPT can only authorise the making of an order in respect of a house if it satisfied that it is necessary to make the order to protect the health, safety and welfare of persons occupying or visiting or carrying out lawful activities in the vicinity of the house.

Section 104: The health and safety condition

245. **Section 104** defines the "health and safety condition" for the purposes of Section 102. The condition is satisfied when it is necessary to make an IMO or FMO in order to protect the health, safety and welfare of the occupiers of the house or persons occupying or owning property in its vicinity.
246. The condition can be satisfied if there is a threat to evict occupiers in order to avoid licensing under Part 2. It cannot be met where the threat relates to a category 1 or 2 hazard under Part 1 and the appropriate course of action is to take enforcement action under that Part.

Section 105: Operation of interim management orders

247. **Section 105** provides that an IMO normally comes into force when it is made, except if it is made to follow the revocation of a licence (in which case it comes into effect upon revocation). It also provides that an IMO will cease to have effect after 12 months, unless it provides for an earlier end date, or it is continued in force pending the disposal of an appeal against the making of an FMO.

248. ***Section 106: Local housing authority's duties once interim management order in force***

249. **Section 106** sets out the LHA's obligations after making an IMO, the first of which is to ensure the health and safety of occupants (subsection (2)). Subsections (3) to (6) describe the duty of the LHA to sort out long term management arrangements for the property:

- where the house is licensable the LHA must grant a licence or make an FMO
- where the house is not licensable, the LHA must consider whether it should make an FMO or revoke the IMO and take no further action.

The duty to sort out the long term management arrangements must be complied with as soon as is practicable.

Section 107: General effect of interim management orders

250. When an IMO is in force, the LHA takes over most of the rights and responsibilities of the landlord including (subject to the rights of existing occupiers) the right to possession of the dwelling. It does not, however, become the legal owner of the dwelling. With the consent of the landlord, the LHA may grant occupation rights. An IMO is a local land charge and the LHA can apply to H. M. Land Registry for a restriction on dealing with properties subject to the order.

Section 108: General Effect of interim management orders: leases and licences granted by the authority

251. **Section 108** explains that a tenancy or licence granted by an LHA is to be treated as if it were a legal lease or licence granted by a legal owner.

Section 109: General effect of interim management orders: immediate landlords, mortgagees etc

252. **Section 109** provides that the landlord is no longer entitled to receive any rent from occupiers of the house; may not exercise any management functions in respect of it; and may not grant any tenancies. The rights of an owner to sell the house or any rights of a mortgagee are unaffected by an IMO, except to the extent that any right would prevent the LHA from granting tenancies or licences under section 107.

Section 110: Financial arrangements while order is in force

253. **Section 110** sets out the framework for financial arrangements. It permits the LHA to spend rent it receives on "relevant expenditure" (including its administrative costs and any amounts paid as compensation to a third party) with the balance being paid to the landlord, at such intervals with interest if appropriate (subject to a right of appeal). The LHA must keep accounts of relevant expenditure and income and make these available for inspection. A relevant person entitled to review the accounts may seek a declaration from the RPT that the amount of expenditure claimed is unreasonable and an order making the appropriate financial adjustments.

Section 111: Variation of interim management orders

254. **Section 111** provides that the LHA may vary an IMO at the request of a relevant person or on its own volition. Schedule 6 sets out the procedure to be followed when a variation is made or refused. No variation comes into force until the period for appealing against it has expired, or when any appeal is finally determined.

Section 112: Revocation of interim management orders

255. **Section 112** permits the LHA to revoke the IMO in certain circumstances. These are:
- if the house ceases to be required to be licensed;
 - if the LHA grants a licence;
 - if the LHA makes an FMO; or
 - other appropriate circumstances.
256. **Schedule 6** describes in more detail the procedures for revocation of IMOs. No revocation comes into force until the period for appealing against it has expired, or when any appeal is finally determined.

Section 113: Making of final management orders

257. **Section 113** provides that the LHA:
- must make an FMO if the house is licensable under part 2 or 3 and, when an IMO is ending, the LHA cannot grant a licence.
 - may make an FMO for a non-licensable house where an IMO is ending and the LHA considers it necessary.
258. The section describes that FMOs may be made to exclude part of a property occupied by a person who is the owner or long leaseholder of the entire house.

Section 114: Operation of final management orders

259. **Section 114** provides that an FMO comes into force when the period for appealing against it expires (or if there is an appeal the date on which the order is confirmed). It also provides that an FMO will cease to have effect after 5 years, unless it provides for

an earlier end date, or it is continued in force pending the disposal of an appeal against the making of a new FMO.

Section 115: Local housing authority's duties once final management order in force

260. **Section 115** provides that when an FMO is in force, the LHA must take steps to secure the proper management of the house through the management scheme (see section 119) and from time to time review the order and scheme and consider whether the order should remain in force.

Section 116: General effect of final management orders

261. The general effect of an FMO is largely the same as for an IMO. The principal difference being that a LHA does not require the consent of the landlord to grant occupation rights. Any occupation rights granted cannot be for a fixed term expiring after the order is due to expire, or terminable by notice of more than 4 weeks, without the consent of the landlord. But consent to create a tenancy equivalent to an assured shorthold tenancy is not needed, provided it is created more than 6 months before the expiry of the order.

Section 117: General effect of final management orders: leases and licences granted by the authority

262. **Section 117** has the same effect as section 108 (see note), but in relation to FMOs.

Section 118: General effect of final management orders: immediate landlords, mortgagees etc

263. **Section 118** has the same effect in respect of FMOs as section 109 does for IMOs.

Section 119: Management scheme and accounts

264. **Section 119** requires that an FMO must contain a management scheme. A management scheme only comes into force, after the landlord has the opportunity either to agree its terms or to appeal to a RPT. The section describes what such a scheme should include with Part 1 covering financial matters (e.g. rental income expected, projected expenditure on repairs and management) and Part 2 saying how the LHA intends to address the matters which caused them to make the FMO.

Section 120: Enforcement of management scheme by relevant landlord

265. **Section 120** provides that a relevant person may apply to the RPT for an order requiring the LHA to manage the property in accordance with the management scheme and for damages for non-compliance. The RPT may make such an order, or revoke the FMO, if it considers it is appropriate to do so.

Section 121: Variation of final management orders

266. **Section 121** has the same effect in respect of FMOs as section 111 does for IMOs.

Section 122: Revocation of final management orders

267. **Section 122** permits the LHA to revoke an FMO in certain circumstances. These are:
- if the house ceases to be licensable;
 - if the LHA grants a licence;
 - if the LHA makes a further FMO; or
 - other appropriate circumstances.

268. **Schedule 6** describes in more detail the procedures for revocation of FMOs. No revocation comes into force until the period for appealing against it has expired, or when any appeal is finally determined.

Section 123: Procedural requirements and appeals

269. **Section 123** gives effect to the procedural requirements and appeals procedure set out in Schedule 6.

Section 124: Effect of management orders: occupiers

270. **Section 124** provides that occupiers of a house subject to an IMO or FMO retain the same legal status they had before the management order was made. Nothing in the section prevents the LHA from granting a private sector type tenancy, but provides that a tenant is not to be a secure tenant.

Section 125: Effect of management orders: agreements and legal proceedings

271. **Section 125** provides for an LHA, by serving written notice, to take the place of the landlord in legal proceedings, and as a party to agreements relating to the management of the house. It also permits a LHA to pass on the costs of any liability to pay damages that are incurred as a result of actions by the landlord. By way of examples of how the notice procedure may be used, the LHA can take over the utility contracts or can continue legal proceedings already in existence against a tenant.

Section 126: Effect of management orders: furniture

272. **Section 126** deals with furniture that tenants have the right to use, in furnished accommodation. Furnishings which the occupants are paying for, either through rent or a separate payment, becomes the possession of the LHA while an IMO or FMO is in force. This prevents the owner of a property from seeking to remove furniture and fittings from the property. "Furniture" includes any objects that are supplied as part of a property being "furnished".

Section 127: Management orders: powers to supply furniture

273. **Section 127** permits an LHA to supply furniture to a house subject to an IMO or FMO, and to recover its expenditure as relevant expenditure.

Section 128: Compensation

274. **Section 128** provides for compensation to be paid to third parties in respect of any interference or loss with their rights in consequence of an IMO or FMO. If the LHA refuses to grant compensation, or does not agree with the amount claimed, its decision may be challenged at the RPT (see Schedule 6). Under an FMO where a claim for compensation has been agreed it must be included in the management scheme.

Section 129: Termination of management orders: financial arrangements

275. **Section 129** provides that, at the end of an IMO, any surplus of rent received over an LHA's relevant expenditure (and any amounts of compensation payable to third parties) must be paid to the landlord (unless a subsequent FMO stipulates not) with similar provisions for FMOs. Conversely, if the balance is in deficit, the LHA may recover that from the immediate landlord. Subsection 9 provides that a licence granted after the termination of a management order may contain conditions concerning the recovery of sums due to the LHA. The section also provides that if at the end of either an IMO or FMO, a new FMO is made, then the way any money held by the local authority is to be treated will be determined by the management scheme contained in that FMO. This provision will allow balances of income or deficit to be carried forward to a second or subsequent FMO.

*These notes refer to the Housing Act 2004 (c.34)
which received Royal Assent on Thursday 18 November 2004*

Section 130: Termination of management order: leases, agreement and proceedings

276. **Section 130** provides that, subject to a written notice being served, when an IMO or FMO ceases to be in effect the landlord replaces the LHA in legal proceedings, and as a party to agreements relating to the management of the house.

Section 131: Management orders: power of entry to carry out work

277. **Section 131** provides that representatives of the LHA have the power to enter a house subject to an IMO or FMO to carry out works. If an occupier, having been notified, obstructs them, he commits an offence punishable by a fine of up to £5,000.