

# HOUSING ACT 2004

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## 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.

***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.

***Chapter 2: Interim and Final Empty Dwelling Management Orders***

***Section 132: Empty dwelling management orders: introductory***

278. **Section 132** explains what interim and final empty dwelling management orders ("interim EDMOs" and "final EDMOs") are. EDMOs are similar to management orders under Chapter 1 of Part 4. They enable a local housing authority to step into the shoes of owners of unoccupied dwellings to secure the dwellings' occupation. The most significant difference in practice between interim and final EDMOs (apart from the period of time for which they may be made) is that under an interim EDMO, the local housing authority must obtain the consent of the owner before it can grant anyone a right to occupy the dwelling, whereas under a final EDMO, such consent is not required.
279. A "dwelling" is defined as a building intended to be occupied as a separate dwelling (such as a house) or a part of a building intended to be occupied as a separate dwelling (such as a flat) - provided it can be directly accessed without having to enter any non-residential accommodation in the building. For example, a flat above a shop would have to have its own access.
280. An EDMO is made against the person with the most relevant interest in the dwelling (the "relevant proprietor"). Where the dwelling is not subject to any lease, the relevant proprietor is the freehold owner. Where the dwelling is subject to a lease, the relevant proprietor would be the leaseholder with the shortest unexpired term, provided it still has more than seven years to run. Where the dwelling is subject to a lease that has less than seven years left to run, the relevant proprietor would be the next person up in the chain of ownership with a lease of more than seven years or, if there is no such superior lease, the freeholder. Any other person with an interest in the dwelling is treated as a "third party" to an EDMO.

***Section 133: Making of interim EDMOs***

281. A LHA must apply to a RPT for authorisation to make an interim EDMO. An RPT may authorise it on the terms requested or may vary those terms. The dwelling must be wholly unoccupied (e.g. not occupied either lawfully or unlawfully) and not owned or controlled by a public body (see paragraphs (a) to (f) of paragraph 2(1) of Schedule 14). Prior to seeking such authorisation, a LHA must make reasonable efforts to notify the relevant proprietor and ascertain if he intends to take steps to bring the dwelling back into occupation and must take into account the rights of the relevant proprietor and the interests of the wider community.
282. When applying for authorisation to make an interim EDMO, a LHA may also ask the RPT to make an order to terminate an existing lease or licence of the dwelling. This allows for termination of a lease or licence where the dwelling is not being occupied. For example, if the relevant proprietor has granted a right of possession of the dwelling to someone who has no intention of occupying it as a device to avoid an EDMO being made.

283. The procedure for making an interim EDMO is equivalent to that for making a discretionary IMO (see explanatory notes for Chapter 1 of Part 4), with some minor modifications.

***Section 134: Authorisation to make interim EDMOs***

284. This sets out the matters which a RPT must consider in deciding whether to authorise an application by a LHA to make an interim EDMO. It must be satisfied that:
- the dwelling has been unoccupied for at least six months or such longer period of time as may be prescribed by an order made by the appropriate national authority;
  - if the order is not made there would be no prospect of the dwelling becoming occupied in the near future;
  - if the order is made the dwelling is likely to become occupied;
  - the local authority has complied with its duties under section 133 in seeking to make an interim EDMO; and
  - any requirements which may be prescribed by a further order made by the appropriate national authority have been complied with.
285. The RPT must also take into account the effect that making the order is likely to have on the community and the rights of the relevant proprietor and third parties. The LHA must consider if it should pay compensation to any third party for interference with their rights.
286. The RPT must be satisfied that the case does not fall within any category of exception as may be prescribed in regulations. The appropriate national authority may prescribe exemptions for a range of circumstances but in particular for the following description of dwellings: the principal homes of absent owners;
- the principal homes of absent owners;
  - second homes and holiday homes;
  - homes undergoing repairs or renovation or awaiting planning or building regulations approval;
  - homes on the market for sale or letting; and
  - homes where the relevant proprietor died less than a specified period of time before the application for an order was made.

***Section 135: Local authority's duties once interim EDMO in force***

287. Once an interim EDMO has been authorised, the LHA is required to take any steps it considers appropriate to secure occupation and proper management of the dwelling pending either the making of a final EDMO or the revocation of the interim EDMO. If it concludes that there are no steps it could take, it must either make a final EDMO or revoke the interim EDMO without taking further action. For example, if the LHA was unable to secure occupation of the dwelling because the relevant proprietor refused to give consent to allow the dwelling to be occupied, it might conclude that the only reasonable course of action open to it would be to revoke the interim EDMO and make a final EDMO. However, if the relevant proprietor gave consent but the LHA concluded that the cost of works to make the dwelling habitable would be prohibitive, it might conclude that the only reasonable course of action would be to revoke the interim EDMO and take no further action.

### ***Section 136: Making of final EDMOs***

288. A LHA may make a final EDMO either to replace an interim EDMO or to replace a previous final EDMO that has expired if it considers the dwelling is likely to become or remain unoccupied if it did not do so. But it cannot do so if the dwelling is unoccupied, unless it has taken reasonable steps to secure its occupation whilst the previous EDMO was in force.
289. The LHA must take into account the effects that making the order is likely to have on the community and the rights of the relevant proprietor and third parties. The LHA must consider if it should pay compensation to any third party for interference with their rights.
290. The procedure for making a final EDMO is equivalent to that for making an FMO (see explanatory notes for Chapter 1 of Part 4) with some minor modifications - principally to ensure that third parties are served with relevant notices.

### ***Section 137: Local housing authority's duties once final EDMO in force***

291. Once a LHA has made a final EDMO it must take steps to secure that the dwelling is occupied and properly managed in accordance with the management scheme contained in the order. However, unlike an interim EDMO, it does not require the consent of the relevant proprietor to grant rights of occupation.
292. A final EDMO must contain a management scheme (see paragraph 13 of Schedule 7).
293. A LHA must from time to time review:
- the operation of the order and the management scheme;
  - if the dwelling is unoccupied, whether there are any steps it could take to secure that it becomes occupied; and
  - whether it is necessary to keep the order in force.
294. If it considers there are grounds to vary the order it must do so.
295. Where a dwelling subject to a final EDMO is unoccupied and the authority concludes on a review that there are no steps it could take to secure that it becomes occupied or it concludes that keeping the order in force is not necessary, it must revoke the order.

### ***Section 138: Compensation payable to third parties***

296. This sets out the rights of third parties to apply to a RPT for an order requiring the LHA to pay compensation for interference with their rights in respect of the dwelling on which an interim EDMO is made. In addition, third parties may also request a LHA pays compensation for interference with their rights in respect of the dwelling on which a final EDMO is made. For example, compensation might be paid to a mortgage lender whose right to restrict letting of a dwelling subject to a mortgage is overridden.

## ***Chapter 3: Overcrowding Notices***

### ***Section 139: Service of overcrowding notices***

297. [Sections 139 - 144](#) deal with the operation of overcrowding notices, which are applicable in HMOs that are not required to be licensed under Part 2. Overcrowding in larger HMOs is covered in Part 2 of the Act since a licence only permits a house to be licensed for a specified number of occupants. Section 139 permits LHAs to serve overcrowding notices in respect of HMOs that are not licensed or subject to an IMO or FMO. The LHA must give 7 days notice to all relevant persons (including occupiers) of its intentions and consider their representations. An overcrowding notice



becomes operative 21 days after it is served, unless an appeal is made (see section 143). Contravention of a notice is punishable with a fine of up to £2,500.

#### ***Section 140: Contents of overcrowding notice***

298. **Section 140** provides that an overcrowding notice must either stipulate the maximum number of persons who may occupy each room or specify that a room is unsuitable for occupation. The notice must also cover the requirements of either section 137 or section 138. A section 138 notice may be withdrawn and replaced with a section 137 notice.

#### ***Section 141: Requirements as to overcrowding generally***

299. **Section 141** requires that the terms of the notice must not be breached by allowing an unsuitable room to be occupied as sleeping accommodation. It also provides that residents should not have to live in a room with members of the opposite sex with whom they are not living together as husband and wife (excepting children under 10).

#### ***Section 142: Requirement as to new residents***

300. **Section 142** is very similar in its effect to section 141 except that it covers occupation by new residents i.e. anyone not resident when the notice was served.

#### ***Section 143: Appeals against overcrowding notices***

301. **Section 143** provides that appeals against the imposition of overcrowding notices may be made to a RPT within 21 days of the notice being served, with notices not taking effect until the appeal process is concluded. The section also provides that the RPT may allow an appeal to be made after the end of the period if it is satisfied that there is good reason for the failure to appeal before the end of the specified period.

#### ***Section 144: Revocation and variation of overcrowding notices***

302. **Section 144** permits an LHA, on the application of a landlord, to revoke or vary an overcrowding notice. If the LHA refuses to revoke or vary the order, or fails to give a written decision within 35 days of the application, the applicant may appeal to a RPT. The section also provides that such appeals should be made within 21 days and the RPT may allow an appeal to be made after the period if it is satisfied that there is good reason for the failure to appeal before the end of the period. The section also provides the definition of relevant persons for the purposes of appeals.

### ***Chapter 4: Supplementary Provisions***

#### ***Section 145: Supplementary Provisions***

303. **Section 145** permits the appropriate national authority to make regulations supplementing the provisions on management orders where an LHA is to be treated as the lessee under a lease under any of these provisions.

#### ***Section 146: Interpretation and Modification of this Part***

304. **Section 146** (in addition to setting out definitions) provides that the appropriate national authority may, by way of regulations, modify the provisions in Part 4 or section 263 in respect of section 257 HMOs (poorly converted blocks of flats).