



Housing Act 2004

2004 CHAPTER 34

PART 4

ADDITIONAL CONTROL PROVISIONS IN RELATION TO RESIDENTIAL ACCOMMODATION

CHAPTER 1

INTERIM AND FINAL MANAGEMENT ORDERS

Final management orders: making and operation of orders

113 Making of final management orders

- (1) A local housing authority who have made an interim management order in respect of a house under section 102 ("the IMO")—
 - (a) have a duty to make a final management order in respect of the house in a case within subsection (2), and
 - (b) have power to make such an order in a case within subsection (3).
- (2) The authority must make a final management order so as to replace the IMO as from its expiry date if—
 - (a) on that date the house would be required to be licensed under Part 2 or 3 of this Act (see section 61(1) or 85(1)), and
 - (b) the authority consider that they are unable to grant a licence under Part 2 or 3 in respect of the house that would replace the IMO as from that date.
- (3) The authority may make a final management order so as to replace the IMO as from its expiry date if—
 - (a) on that date the house will not be one that would be required to be licensed as mentioned in subsection (2)(a), and
 - (b) the authority consider that making the final management order is necessary for the purpose of protecting, on a long-term basis, the health, safety or welfare

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of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.

- (4) A local housing authority who have made a final management order in respect of a house under this section (“the existing order”)—
- (a) have a duty to make a final management order in respect of the house in a case within subsection (5), and
 - (b) have power to make such an order in a case within subsection (6).
- (5) The authority must make a new final management order so as to replace the existing order as from its expiry date if—
- (a) on that date the condition in subsection (2)(a) will be satisfied in relation to the house, and
 - (b) the authority consider that they are unable to grant a licence under Part 2 or 3 in respect of the house that would replace the existing order as from that date.
- (6) The authority may make a new final management order so as to replace the existing order as from its expiry date if—
- (a) on that date the condition in subsection (3)(a) will be satisfied in relation to the house, and
 - (b) the authority consider that making the new order is necessary for the purpose of protecting, on a long-term basis, the health, safety or welfare of persons within subsection (3)(b).
- (7) The authority may make a final management order which is expressed not to apply to a part of the house that is occupied by a person who has an estate or interest in the whole of the house.

In relation to such an order, a reference in this Chapter to “the house” does not include the part so excluded (unless the context requires otherwise, such as where the reference is to the house as an HMO or a Part 3 house).

- (8) In this section “expiry date”, in relation to an interim or final management order, means—
- (a) where the order is revoked, the date as from which it is revoked, and
 - (b) otherwise the date on which the order ceases to have effect under section 105 or 114;

and nothing in this section applies in relation to an interim or final management order which has been revoked on an appeal under Part 3 of Schedule 6.

114 Operation of final management orders

- (1) This section deals with the time when a final management order comes into force or ceases to have effect.
- (2) The order does not come into force until such time (if any) as is the operative time for the purposes of this subsection under paragraph 27 of Schedule 6 (time when period for appealing expires without an appeal being made or when order is confirmed on appeal).
- (3) The order ceases to have effect at the end of the period of 5 years beginning with the date on which it comes into force, unless it ceases to have effect at some other time as mentioned below.

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- (4) If the order provides that it is to cease to have effect on a date falling before the end of that period, it accordingly ceases to have effect on that date.
- (5) Subsections (6) and (7) apply where—
 - (a) a new final management order (“the new order”) has been made so as to replace the order (“the existing order”), but
 - (b) the new order has not come into force because of an appeal to a residential property tribunal under paragraph 24 of Schedule 6 against the making of that order.
- (6) If—
 - (a) the house would (but for the existing order being in force) be required to be licensed under Part 2 or 3 of this Act (see section 61(1) or 85(1)), and
 - (b) the date on which—
 - (i) the new order, or
 - (ii) any licence under Part 2 or 3, or
 - (iii) a temporary exemption notice under section 62 or 86,comes into force in relation to the house (or part of it) following the disposal of the appeal is later than the date on which the existing order would cease to have effect apart from this subsection,
the existing order continues in force until that later date.
- (7) If, on the application of the authority, the tribunal makes an order providing for the existing order to continue in force, pending the disposal of the appeal, until a date later than that on which it would cease to have effect apart from this subsection, the existing order accordingly continues in force until that later date.
- (8) This section has effect subject to sections 121 and 122 (variation or revocation of orders) and to the power of revocation exercisable by a residential property tribunal on an appeal made under paragraph 24 or 28 of Schedule 6.

115 Local housing authority’s duties once final management order in force

- (1) A local housing authority who have made a final management order in respect of a house must comply with the following provisions once the order has come into force.
- (2) The local housing authority must take such steps as they consider appropriate with a view to the proper management of the house in accordance with the management scheme contained in the order (see section 119).
- (3) The local housing authority must from time to time review—
 - (a) the operation of the order and in particular the management scheme contained in it, and
 - (b) whether keeping the order in force in relation to the house (with or without making any variations under section 121) is the best alternative available to them.
- (4) If on a review the authority consider that any variations should be made under section 121, they must proceed to make those variations.
- (5) If on a review the authority consider that either—
 - (a) granting a licence under Part 2 or 3 in respect of the house, or

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(b) revoking the order under section 122 and taking no further action, is the best alternative available to them, the authority must grant such a licence or revoke the order (as the case may be).

(6) For the avoidance of doubt, the authority's duty under subsection (2) includes taking such steps as are necessary to ensure that, while the order is in force, reasonable provision is made for insurance of the house against destruction or damage by fire or other causes.

116 General effect of final management orders

(1) This section applies while a final management order is in force in relation to a house.

(2) The rights and powers conferred by subsection (3) are exercisable by the authority in performing their duty under section 115(2) in respect of the house.

(3) The authority—

(a) have the right to possession of the house (subject to the rights of existing and other occupiers preserved by section 124(3) and (6));

(b) have the right to do (and authorise a manager or other person to do) in relation to the house anything which a person having an estate or interest in the house would (but for the order) be entitled to do;

(c) may create one or more of the following—

(i) an interest in the house which, as far as possible, has all the incidents of a leasehold, or

(ii) a right in the nature of a licence to occupy part of the house.

(4) The powers of the authority under subsection (3)(c) are restricted as follows—

(a) they may not create any interest or right in the nature of a lease or licence—

(i) which is for a fixed term expiring after the date on which the order is due to expire, or

(ii) (subject to paragraph (b)) which is terminable by notice to quit, or an equivalent notice, of more than 4 weeks,

unless consent in writing has been given by the person who would (but for the order) have power to create the lease or licence in question;

(b) they may create an interest in the nature of an assured shorthold tenancy without any such consent so long as it is created before the beginning of the period of 6 months that ends with the date on which the order is due to expire.

(5) The authority—

(a) do not under this section acquire any estate or interest in the house, and

(b) accordingly are not entitled by virtue of this section to sell, lease, charge or make any other disposition of any such estate or interest;

but, where the immediate landlord of the house or part of it (within the meaning of section 118) is a lessee under a lease of the house or part, the authority is to be treated (subject to paragraph (a)) as if they were the lessee instead.

(6) Any enactment or rule of law relating to landlords and tenants or leases applies in relation to—

(a) a lease in relation to which the authority are to be treated as the lessee under subsection (5), or

(b) a lease to which the authority become a party under section 124(4),

as if the authority were the legal owner of the premises (but this is subject to section 124(7) to (9)).

- (7) None of the following, namely—
 - (a) the authority, or
 - (b) any person authorised under subsection (3)(b),is liable to any person having an estate or interest in the house for anything done or omitted to be done in the performance (or intended performance) of the authority's duty under section 115(2) unless the act or omission is due to the negligence of the authority or any such person.
- (8) References in any enactment to housing accommodation provided or managed by a local housing authority do not include a house in relation to which a final management order is in force.
- (9) A final management order which has come into force is a local land charge.
- (10) The authority may apply to the Chief Land Registrar for the entry of an appropriate restriction in the register in respect of such an order.
- (11) In this section “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

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

- (1) This section applies in relation to any interest or right created by the authority under section 116(3)(c).
- (2) For the purposes of any enactment or rule of law—
 - (a) any interest created by the authority under section 116(3)(c)(i) is to be treated as if it were a legal lease, and
 - (b) any right created by the authority under section 116(3)(c)(ii) is to be treated as if it were a licence to occupy granted by the legal owner of the premises,despite the fact that the authority have no legal estate in the premises (see section 116(5)(a)).
- (3) Any enactment or rule of law relating to landlords and tenants or leases accordingly applies in relation to any interest created by the authority under section 116(3)(c)(i) as if the authority were the legal owner of the premises.
- (4) References to leases and licences—
 - (a) in this Chapter, and
 - (b) in any other enactment,accordingly include (where the context permits) interests and rights created by the authority under section 116(3)(c).
- (5) The preceding provisions of this section have effect subject to—
 - (a) section 124(7) to (9), and
 - (b) any provision to the contrary contained in an order made by the appropriate national authority.
- (6) In section 116(5)(b) the reference to leasing does not include the creation of interests under section 116(3)(c)(i).

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(7) In this section—

“enactment” has the meaning given by section 116(11);

“legal lease” means a term of years absolute (within section 1(1)(b) of the Law of Property Act 1925 (c. 20)).

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

(1) This section applies in relation to—

- (a) immediate landlords, and
 - (b) other persons with an estate or interest in the house,
- while a final management order is in force in relation to a house.

(2) A person who is an immediate landlord of the house or a part of it—

- (a) is not entitled to receive—
 - (i) any rents or other payments from persons occupying the house or part which are payable to the local housing authority by virtue of section 124(4), or
 - (ii) any rents or other payments from persons occupying the house or part which are payable to the authority by virtue of any leases or licences granted by them under section 107(3)(c) or 116(3)(c);
- (b) may not exercise any rights or powers with respect to the management of the house or part; and
- (c) may not create any of the following—
 - (i) any leasehold interest in the house or part (other than a lease of a reversion), or
 - (ii) any licence or other right to occupy it.

(3) However (subject to subsection (2)(c)) nothing in section 116 or this section affects the ability of a person having an estate or interest in the house to make any disposition of that estate or interest.

(4) Nothing in section 116 or this section affects—

- (a) the validity of any mortgage relating to the house or any rights or remedies available to the mortgagee under such a mortgage, or
- (b) the validity of any lease of the house or part of it under which the immediate landlord is a lessee, or any superior lease, or (subject to section 116(5)) any rights or remedies available to the lessor under such a lease,

except to the extent that any of those rights or remedies would prevent the local housing authority from exercising their power under section 116(3)(c).

(5) In proceedings for the enforcement of any such rights or remedies the court may make such order as it thinks fit as regards the operation of the final management order (including an order quashing it).

(6) For the purposes of this Chapter, as it applies in relation to a final management order, a person is an “immediate landlord” of the house or a part of it if—

- (a) he is an owner or lessee of the house or part, and
- (b) (but for the order) he would be entitled to receive the rents or other payments from persons occupying the house or part which are payable to the authority by virtue of section 124(4).

119 Management schemes and accounts

- (1) A final management order must contain a management scheme.
- (2) A “management scheme” is a scheme setting out how the local housing authority are to carry out their duty under section 115(2) as respects the management of the house.
- (3) A management scheme is to be divided into two parts.
- (4) Part 1 of the scheme is to contain a plan giving details of the way in which the authority propose to manage the house, which must (in particular) include—
 - (a) details of any works that the authority intend to carry out in connection with the house;
 - (b) an estimate of the capital and other expenditure to be incurred by the authority in respect of the house while the order is in force;
 - (c) the amount of rent or other payments that the authority will seek to obtain having regard to the condition or expected condition of the house at any time while the order is in force;
 - (d) the amount of any compensation that is payable to a third party by virtue of a decision of the authority under section 128 in respect of any interference in consequence of the final management order with the rights of that person;
 - (e) provision as to the payment of any such compensation;
 - (f) provision as to the payment by the authority to a relevant landlord, from time to time, of amounts of rent or other payments that remain after the deduction of—
 - (i) relevant expenditure, and
 - (ii) any amounts of compensation payable as mentioned in paragraph (d);
 - (g) provision as to the manner in which the authority are to pay to a relevant landlord, on the termination of the final management order, any amounts of rent or other payments that remain after the deduction of—
 - (i) relevant expenditure, and
 - (ii) any amounts of compensation payable as mentioned in paragraph (d);
 - (h) provision as to the manner in which the authority are to pay, on the termination of the final management order, any outstanding balance of compensation payable to a third party.
- (5) Part 1 of the scheme may also state—
 - (a) the authority’s intentions as regards the use of rent or other payments to meet relevant expenditure;
 - (b) the authority’s intentions as regards the payment to a relevant landlord (where appropriate) of interest on amounts within subsection (4)(f) and (g);
 - (c) that section 129(2) or (4) is not to apply in relation to an interim or (as the case may be) final management order that immediately preceded the final management order, and that instead the authority intend to use any balance or amount such as is mentioned in that subsection to meet—
 - (i) relevant expenditure incurred during the currency of the final management order, and
 - (ii) any compensation that may become payable to a third party;
 - (d) that section 129(3) or (5) is not to apply in relation to an interim or (as the case may be) final management order that immediately preceded the final management order (“the order”), and that instead the authority intend to use

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- rent or other payments collected during the currency of the order to reimburse the authority in respect of any deficit or amount such as is mentioned in that subsection;
- (e) the authority's intentions as regards the recovery from a relevant landlord, with or without interest, of any amount of relevant expenditure that cannot be reimbursed out of the total amount of rent or other payments.
- (6) Part 2 of the scheme is to describe in general terms how the authority intend to address the matters which caused them to make the final management order and may, for example, include—
- (a) descriptions of any steps that the authority intend to take to require persons occupying the house to comply with their obligations under any lease or licence or under the general law;
- (b) descriptions of any repairs that are needed to the property and an explanation as to why those repairs are necessary.
- (7) The authority must—
- (a) keep full accounts of their income and expenditure in respect of the house; and
- (b) afford to each relevant landlord, and to any other person who has an estate or interest in the house, all reasonable facilities for inspecting, taking copies of and verifying those accounts.
- (8) In this section—
- “relevant expenditure” means expenditure reasonably incurred by the authority in connection with performing their duties under section 115(2) in respect of the house (including any reasonable administrative costs and any premiums paid for insurance of the premises);
- “relevant landlord” means any person who is an immediate landlord of the house or part of it;
- “rent or other payments” means rent or other payments—
- (a) which are payable under leases or licences or in respect of furniture within section 126(1), and
- (b) which the authority have collected or recovered by virtue of this Chapter.
- (9) In the provisions of this Chapter relating to varying, revoking or appealing against decisions relating to a final management order, any reference to such an order includes (where the context permits) a reference to the management scheme contained in it.

120 Enforcement of management scheme by relevant landlord

- (1) An affected person may apply to a residential property tribunal for an order requiring the local housing authority to manage the whole or part of a house in accordance with the management scheme contained in a final management order made in respect of the house.
- (2) On such an application the tribunal may, if it considers it appropriate to do so, make an order—
- (a) requiring the local housing authority to manage the whole or part of the house in accordance with the management scheme, or
- (b) revoking the final management order as from a date specified in the tribunal's order.
- (3) An order under subsection (2) may—

- (a) specify the steps which the authority are to take to manage the whole or part of the house in accordance with the management scheme,
 - (b) include provision varying the final management order,
 - (c) require the payment of money to an affected person by way of damages.
- (4) In this section “affected person” means—
- (a) a relevant landlord (within the meaning of section 119), and
 - (b) any third party to whom compensation is payable by virtue of a decision of the authority under section 128.