



Housing Act 2004

2004 CHAPTER 34

PART 4

ADDITIONAL CONTROL PROVISIONS IN RELATION TO RESIDENTIAL ACCOMMODATION

CHAPTER 1

INTERIM AND FINAL MANAGEMENT ORDERS

Interim management orders: making and operation of orders

102 Making of interim management orders

- (1) A local housing authority—
 - (a) are under a duty to make an interim management order in respect of a house in a case within subsection (2) or (3), and
 - (b) have power to make an interim management order in respect of a house in a case within subsection (4) or (7).
- (2) The authority must make an interim management order in respect of a house if—
 - (a) it is an HMO or a Part 3 house which is required to be licensed under Part 2 or Part 3 (see section 61(1) or 85(1)) but is not so licensed, and
 - (b) they consider either—
 - (i) that there is no reasonable prospect of its being so licensed in the near future, or
 - (ii) that the health and safety condition is satisfied (see section 104).
- (3) The authority must make an interim management order in respect of a house if—
 - (a) it is an HMO or a Part 3 house which is required to be licensed under Part 2 or Part 3 and is so licensed,
 - (b) they have revoked the licence concerned but the revocation is not yet in force, and

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- (c) they consider either—
 - (i) that, on the revocation coming into force, there will be no reasonable prospect of the house being so licensed in the near future, or
 - (ii) that, on the revocation coming into force, the health and safety condition will be satisfied (see section 104).

- (4) The authority may make an interim management order in respect of a house if—
 - (a) it is an HMO other than one that is required to be licensed under Part 2, and
 - (b) on an application by the authority to a residential property tribunal, the tribunal by order authorises them to make such an order, either in the terms of a draft order submitted by them or in those terms as varied by the tribunal;

and the authority may make such an order despite any pending appeal against the order of the tribunal (but this is without prejudice to any order that may be made on the disposal of any such appeal).

- (5) The tribunal may only authorise the authority to make an interim management order under subsection (4) if it considers that the health and safety condition is satisfied (see section 104).

- (6) In determining whether to authorise the authority to make an interim management order in respect of an HMO under subsection (4), the tribunal must have regard to the extent to which any applicable code of practice approved under section 233 has been complied with in respect of the HMO in the past.

- (7) The authority may make an interim management order in respect of a house if—
 - (a) it is a house to which section 103 (special interim management orders) applies, and
 - (b) on an application by the authority to a residential property tribunal, the tribunal by order authorises them to make such an order, either in the terms of a draft order submitted by them or in those terms as varied by the tribunal;

and the authority may make such an order despite any pending appeal against the order of the tribunal (but this is without prejudice to any order that may be made on the disposal of any such appeal).

Subsections (2) to (6) of section 103 apply in relation to the power of a residential property tribunal to authorise the making of an interim management order under this subsection.

- (8) The authority may make an interim 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).

- (9) Nothing in this section requires or authorises the making of an interim management order in respect of a house if—
 - (a) an interim management order has been previously made in respect of it, and
 - (b) the authority have not exercised any relevant function in respect of the house at any time after the making of the interim management order.

- (10) In subsection (9) “relevant function” means the function of—
 - (a) granting a licence under Part 2 or 3,

- (b) serving a temporary exemption notice under section 62 or section 86, or
- (c) making a final management order under section 113.

103 Special interim management orders

- (1) This section applies to a house if the whole of it is occupied either—
 - (a) under a single tenancy or licence that is not an exempt tenancy or licence under section 79(3) or (4), or
 - (b) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under section 79(3) or (4).
- (2) A residential property tribunal may only authorise the authority to make an interim management order in respect of such a house under section 102(7) if it considers that both of the following conditions are satisfied.
- (3) The first condition is that the circumstances relating to the house fall within any category of circumstances prescribed for the purposes of this subsection by an order under subsection (5).
- (4) The second condition is that the making of the order is necessary for the purpose of protecting the health, safety or welfare of persons occupying, visiting or otherwise engaging in lawful activities in the vicinity of the house.
- (5) The appropriate national authority may by order—
 - (a) prescribe categories of circumstances for the purposes of subsection (3),
 - (b) provide for any of the provisions of this Act to apply in relation to houses to which this section applies, or interim or final management orders made in respect of them, with any modifications specified in the order.
- (6) The categories prescribed by an order under subsection (5) are to reflect one or more of the following—
 - (a) the first or second set of general conditions mentioned in subsection (3) or (6) of section 80, or
 - (b) any additional set of conditions specified under subsection (7) of that section, but (in each case) with such modifications as the appropriate national authority considers appropriate to adapt them to the circumstances of a single house.
- (7) In this section “house” has the same meaning as in Part 3 (see section 99).
- (8) In this Chapter—
 - (a) any reference to “the house”, in relation to an interim management order under section 102(7), is a reference to the house to which the order relates, and
 - (b) any such reference includes (where the context permits) a reference to any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, it (or any part of it).

104 The health and safety condition

- (1) This section explains what “the health and safety condition” is for the purposes of section 102.

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- (2) The health and safety condition is that the making of an interim management order is necessary for the purpose of protecting the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.
- (3) A threat to evict persons occupying a house in order to avoid the house being required to be licensed under Part 2 may constitute a threat to the welfare of those persons for the purposes of subsection (2).

This does not affect the generality of that subsection.

- (4) The health and safety condition is not to be regarded as satisfied for the purposes of section 102(2)(b)(ii) or (3)(c)(ii) where both of the conditions in subsections (5) and (6) are satisfied.
- (5) The first condition is that the local housing authority either—
 - (a) (in a case within section 102(2)(b)(ii)) are required by section 5 (general duty to take enforcement action in respect of category 1 hazards) to take a course of action within subsection (2) of that section in relation to the house, or
 - (b) (in a case within section 102(3)(c)(ii)) consider that on the revocation coming into force they will be required to take such a course of action.
- (6) The second condition is that the local housing authority consider that the health, safety or welfare of the persons in question would be adequately protected by taking that course of action.

105 Operation of interim management orders

- (1) This section deals with the time when an interim management order comes into force or ceases to have effect.
- (2) The order comes into force when it is made, unless it is made under section 102(3).
- (3) If the order is made under section 102(3), it comes into force when the revocation of the licence comes into force.
- (4) The order ceases to have effect at the end of the period of 12 months beginning with the date on which it is made, unless it ceases to have effect at some other time as mentioned below.
- (5) 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.
- (6) If the order is made under section 102(3)—
 - (a) it must include a provision for determining the date on which it will cease to have effect, and
 - (b) it accordingly ceases to have effect on the date so determined.
- (7) That date must be no later than 12 months after the date on which the order comes into force.
- (8) Subsections (9) and (10) apply where—
 - (a) a final management order (“the FMO”) has been made under section 113 so as to replace the order (“the IMO”), but

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- (b) the FMO has not come into force because of an appeal to a residential property tribunal under paragraph 24 of Schedule 6 against the making of the FMO.
- (9) If—
- (a) the house would (but for the IMO 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 FMO,
 - (ii) any licence under Part 2 or 3, or
 - (iii) another interim management order,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 IMO would cease to have effect apart from this subsection,
- the IMO continues in force until that later date.
- (10) If, on the application of the authority, the tribunal makes an order providing for the IMO to continue in force, pending the disposal of the appeal, until a date later than that on which the IMO would cease to have effect apart from this subsection, the IMO accordingly continues in force until that later date.
- (11) This section has effect subject to sections 111 and 112 (variation or revocation of orders by authority) and to the power of revocation exercisable by a residential property tribunal on an appeal made under paragraph 24 or 28 of Schedule 6.

106 Local housing authority's duties once interim management order in force

- (1) A local housing authority who have made an interim management order in respect of a house must comply with the following provisions as soon as practicable after the order has come into force.
- (2) The authority must first take any immediate steps which they consider to be necessary for the purpose of protecting the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.
- (3) The authority must also take such other steps as they consider appropriate with a view to the proper management of the house pending—
 - (a) the grant of a licence or the making of a final management order in respect of the house as mentioned in subsection (4) or (5), or
 - (b) the revocation of the interim management order as mentioned in subsection (5).
- (4) If the house would (but for the order being in force) be required to be licensed under Part 2 or 3 of this Act (see section 61(1) or 85(1)), the authority must, after considering all the circumstances of the case, decide to take one of the following courses of action—
 - (a) to grant a licence under that Part in respect of the house, or
 - (b) to make a final management order in respect of it under section 113(1).
- (5) If subsection (4) does not apply to the house, the authority must, after considering all the circumstances of the case, decide to take one of the following courses of action—
 - (a) to make a final management order in respect of the house under section 113(3),or

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- (b) to revoke the order under section 112 without taking any further action.
- (6) In the following provisions, namely—
 - (a) subsections (3) and (4), and
 - (b) section 101(3)(b),
 the reference to the grant of a licence under Part 2 or 3 in respect of the house includes a reference to serving a temporary exemption notice under section 62 or section 86 in respect of it (whether or not a notification is given under subsection (1) of that section).
- (7) For the avoidance of doubt, the authority's duty under subsection (3) 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.

107 General effect of interim management orders

- (1) This section applies while an interim 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 duties under section 106(1) to (3) in respect of the house.
- (3) The authority—
 - (a) have the right to possession of the house (subject to the rights of existing occupiers preserved by section 124(3));
 - (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) But the authority may not under subsection (3)(c) create any interest or right in the nature of a lease or licence unless consent in writing has been given by the person who (but for the order) would have power to create the lease or licence in question.
- (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 109) 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 duties under section 106(1) to (3) 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 an interim management order is in force.
- (9) An interim 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 of title 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)).

108 General effect of interim 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 107(3)(c).
- (2) For the purposes of any enactment or rule of law—
 - (a) any interest created by the authority under section 107(3)(c)(i) is to be treated as if it were a legal lease, and
 - (b) any right created by the authority under section 107(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 107(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 107(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 107(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 107(5)(b) the reference to leasing does not include the creation of interests under section 107(3)(c)(i).
- (7) In this section—

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“enactment” has the meaning given by section 107(11);
“legal lease” means a term of years absolute (within section 1(1)(b) of the Law of Property Act 1925 (c. 20)).

109 General effect of interim 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 an interim 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);
 - (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 107 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 107 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 107(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 107(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 interim management order (including an order quashing it).
- (6) For the purposes of this Chapter, as it applies in relation to an interim 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 local housing authority by virtue of section 124(4).

110 Financial arrangements while order is in force

- (1) This section applies to relevant expenditure of a local housing authority who have made an interim management order.
- (2) “Relevant expenditure” means expenditure reasonably incurred by the authority in connection with performing their duties under section 106(1) to (3) in respect of the house (including any premiums paid for insurance of the premises).
- (3) Rent or other payments which the authority have collected or recovered, by virtue of this Chapter, from persons occupying the house may be used by the authority to meet—
 - (a) relevant expenditure, and
 - (b) any amounts of compensation payable to a third party by virtue of a decision of the authority under section 128.
- (4) The authority must pay to such relevant landlord, or to such relevant landlords in such proportions, as they consider appropriate—
 - (a) any amount of rent or other payments collected or recovered as mentioned in subsection (3) that remains after deductions to meet relevant expenditure and any amounts of compensation payable as mentioned in that subsection, and
 - (b) (where appropriate) interest on that amount at a reasonable rate fixed by the authority,and such payments are to be made at such intervals as the authority consider appropriate.
- (5) The interim management order may provide for—
 - (a) the rate of interest which is to apply for the purposes of paragraph (b) of subsection (4); and
 - (b) the intervals at which payments are to be made under that subsection.

Paragraph 24(3) of Schedule 6 enables an appeal to be brought where the order does not provide for both of those matters.

- (6) 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.
- (7) A relevant landlord may apply to a residential property tribunal for an order—
 - (a) declaring that an amount shown in the accounts as expenditure of the authority does not constitute expenditure reasonably incurred by the authority as mentioned in subsection (2);
 - (b) requiring the authority to make such financial adjustments (in the accounts and otherwise) as are necessary to reflect the tribunal’s declaration.
- (8) In this section—
 - “expenditure” includes administrative costs;
 - “relevant landlord” means any person who is an immediate landlord of the house or part of it;
 - “rent or other payments” means rents or other payments payable under leases or licences or in respect of furniture within section 126(1).