

# **Factsheet 6: Management Orders under Part 4 of the Housing Bill**

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## Summary

Part 4 of the Housing Bill is concerned with a local authority's duties and powers to make management orders.

There are two types of orders:

- **Interim Management Orders** (IMOs) or
- **Final Management Orders** (FMOs).

This factsheet explains what these orders are, in which circumstances they can be made, how they operate and rights of appeal against them.

## **What is an IMO?**

An IMO transfers the management of a residential property to the LHA for a period of up to twelve months. The circumstances in which an order can be made are discussed below.

In particular the IMO allows the LHA:

- Possession of the house against the immediate landlord, and subject to existing rights to occupy;
- To do anything in relation to the house, which could have been done by the landlord, including repairs, collecting rents etc.;
- To spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the house;
- To create new tenancies (with the consent of the landlord).

## **Financial effect of an IMO**

Under the IMO the LHA must pay to the relevant landlord (that is the person(s) who immediately before the order was made was entitled to the rent for the property) any surplus of income over expenditure (and any interest on such sum) accrued during the period in which the IMO is in force.

It must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant person.

If the relevant landlord is dissatisfied with the accounts or the method of payment of surpluses there is a right of appeal (see *Appeals against IMOs in respect of licensable properties*)

## **Circumstances in which an IMO must be made in respect of licensable property**

An LHA must take enforcement action in respect of a licensable property (which means an HMO subject to Part 2, or other residential property subject to Part 3<sup>1</sup>) by making an Interim Management Order (IMO) if:

- The property ought to be licensed, but is not, and the LHA considers there is no reasonable prospect of it granting a licence in the near future. An IMO may not, however, be made on this ground if an effective application is outstanding with the authority for the grant of a licence or a temporary exemption<sup>2</sup> notice or if such a notice is in force.
- The LHA is satisfied that the Health and Safety Condition is met<sup>3</sup> and, therefore, it would not have granted an application for a licence.
- The LHA intends to revoke the licence on one or more of the grounds specified in Parts 2 or 3 of the Bill<sup>1</sup>, other than the property has ceased to be licensable, and upon revocation there will be no reasonable prospect of the property being licensed in the near future (e.g. to another suitable person) or
- The LHA is satisfied that when the licence is revoked the Health and Safety Condition test will be met<sup>3</sup>.

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<sup>1</sup> See fact sheets 3, 4 and 5 for further details

<sup>2</sup> See fact sheet 3 for details on temporary exemption notices

<sup>3</sup> (a) The Health and safety test Condition is satisfied if it is necessary to make the order to protect the health, safety and welfare of occupants of the property, or persons occupying or owning property in the vicinity.

(b) It is not satisfied if the LHA is required to take enforcement action under Part one (HHSRS) and it considers the health, safety or welfare of the persons in question would be protected by taking that course of action.

(c) The test may be satisfied, nevertheless, if the person having control of, or managing the property, on whom Part one notices have been served fails to comply with those notices and the LHA considers this to represent a management failure.

(d) The Health and Safety Condition test may be satisfied if the LHA is of the opinion that in respect of an HMO the occupiers are under a threat of eviction in order to avoid the requirement to be licensed.

## When an IMO comes into force and notification procedure

Other than on revocation of a licence an IMO takes effect when it is made.

Where an IMO is made on the revocation of a licence then, subject to the right of appeal, it does not take effect until the revocation comes into effect.

If upon revocation of a licence the LHA is satisfied that a new licence will be granted in the near future it may defer making the order.

When an order is made the LHA must serve a notice and copy of it upon the person who would be in control or managing the property (had the order not been made) and other persons with an interest in the property<sup>4</sup> ("the relevant persons") within seven days of making the order and must also serve the documents in such practical manner as it sees fit upon the occupiers of the property.

The notice must state:

- The reason for making the order and the date on which it is made;
- The general effect of the order;
- The date on which it is proposed the order will cease to have effect.

In addition the notice served upon the **relevant persons** must advise them of their right of appeal against the IMO.

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<sup>4</sup> Defined as persons with an estate in interest in the property, excluding those with a lease of three years or less which includes weekly, monthly tenants etc.

## Appeals against IMOs in respect of licensable properties

Once an IMO is in force a relevant person may appeal to a Residential Property Tribunal (RPT) against the making of the order or its terms. An appeal must normally be made within 28 days of the order being made (although in exceptional cases the tribunal has discretion to extend this period).

When an IMO is made to follow the revocation of a licence a relevant person may appeal to an RPT, normally within 28 days, against the proposed revocation of the licence and/ or the making and terms of the proposed management order, but the IMO does not come into force until the appeal is disposed of.

In exercising its jurisdiction on appeal the tribunal:

- Must quash the proposed IMO if it satisfied that the licence should not be revoked;
- Must quash the IMO if it is satisfied that a licence should be granted;
- Must quash the IMO or proposed IMO if it is satisfied that property is not licensable under Parts 2 or 3 or that a temporary exemption notice should be granted;
- Must in all other circumstances confirm the IMO or proposed IMO or confirm its making with such variations, as the tribunal considers appropriate. Where the tribunal confirms the making of a proposed IMO, the IMO takes effect on the date of its confirmation (subject to any appeal to the Lands Tribunal).

A relevant person may appeal against the **terms**, including any variation of those terms which that person had not agreed to, of an IMO at any time whilst it is in force. In relation to such appeals the tribunal's power is limited to consideration of whether or not to vary the terms of the order in relation to the matter(s) under appeal.

## **Circumstances in which an IMO may be made in respect of non licensable property**

An LHA may make an IMO in respect of a residential property that is not licensable under the Bill, in certain circumstances. .

An IMO may not be made in respect of non-licensable property unless it is authorised by an RPT.

The tribunal may not authorise an IMO in respect of a property unless it is satisfied:

- In the case of an HMO the Health and Safety Condition<sup>3</sup> test is satisfied and it must also have regard to the extent to which the property has been managed in accordance with any approved code of practice for the management of HMOs.
- In the case of non-HMOs that there is anti-social behaviour emanating from the property, that the landlord is failing to take appropriate action to deal with the problem and that it is necessary to make the order to protect the health, safety or welfare of persons occupying, visiting or engaged in lawful activities in the locality of the house. (These types of orders are called '*Special Interim Management Orders*').

## **Termination of an IMO**

An IMO cannot last longer than twelve months, but can be terminated sooner. At the end or termination of an IMO the LHA may not make a further IMO. Instead,

- In the case of a property which is required to be licensed under Parts 2 or 3 it must:
  - Grant a licence (if there is a suitable person to whom the licence can be granted) or
  - Make a Final Management Order if the LHA considers this is the better alternative available to it.
- In the case of a property which is not required to be licensed under Parts 2 or 3 on termination of the IMO the LHA must either:
  - If it satisfied the health, safety or welfare of the residents of the property or other persons in the locality would be adequately protected, return the property to the management of the immediate landlord; or
  - Make a Final Management Order if the LHA considers this is the better alternative available to it.

## **Right to ask for an IMO to be revoked**

Any person who (but for the order being in force) would be the person managing or in control of the property or any other person with a relevant interest in it<sup>4</sup> may at anytime ask the LHA to revoke the order and

- In the case of a property, subject to Part 2 or 3, grant a licence or issue a temporary exemption notice; or
- In any other case return the property to the management of the immediate landlord.

If the LHA refuses to revoke the IMO there is a right of appeal against that decision to the RPT. The tribunal may order that the IMO is not revoked or that it is revoked and a licence issued, or as the case may be, the property is returned to the management of the immediate landlord.

## **What is an FMO?**

A Final Management Order (FMO) cannot be made unless immediately beforehand an IMO or another FMO was in force.

An FMO lasts for a maximum of five years.

The FMO transfers the management of the house to the LHA for the duration of the order.

In particular the FMO allows the LHA

- Possession of the property against the immediate landlord, but subject to existing rights of occupation;
- To do anything in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc ;
- To spend monies received through rents and other charges for carrying out its responsibility of management , including the administration of the property;
- To create new tenancies (without the consent of the landlord).

## **FMO Management Schemes**

The LHA must make a management scheme for a property subject to an FMO. The scheme must set out how the LHA intends to manage the house. In particular the scheme must include:

- The amount of rent it will seek to obtain whilst the order is in force;
- Details of any works which the LHA intends to undertake in relation to the property;
- The estimate of the costs of carrying out those works;
- Provision as to the payment of any surpluses of income over expenditure to the relevant landlord, from time to time
- In general terms how the authority intends to address the matters that caused the LHA to make the order.

The LHA must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant landlord.

## Procedures for and Circumstances in which an FMO can be made

Before making an FMO the LHA must serve a copy of the proposed order on each relevant person and a notice stating the reason for making the order and the main terms of the proposed order, including the Management Scheme. The notice must also invite representations about the proposal (which the LHA must consider).

Once it has made the FMO the LHA must notify the occupiers of the order together with a copy of the order, and also advise the relevant persons of their right to appeal against the order.

An FMO can only be made if an IMO comes to an end or is otherwise revoked or it is made to immediately follow a previous FMO (which has ended or been revoked) and, in either case:

- In the case of a property which is subject to Parts 2 or 3, the LHA considers it is unable to grant a licence; or
- In the case of a property that is not subject to Parts 2 or 3, the LHA is satisfied it is necessary to make the order to protect, on a long term basis, the health, safety and welfare of the occupants of the property, or persons having occupying or having an estate or interest in any premises in the vicinity.

Subject to any appeal, an FMO comes into force no earlier than the day after the period for appealing has expired and lasts for the period specified in the order which can be up to five years, or if no period is specified -5 years.

## Appeals against FMOs

A relevant person who is aggrieved by the making of an FMO may appeal to the RPT within 28 days of the date the order is made (although in exceptional circumstances that period can be extended by leave of the tribunal).

If an appeal is made against the making of the order, it does not come into force until the appeal is determined (unless the order is, in any case, quashed), or if there is a further appeal until that is determined by the Lands Tribunal. In the meantime the IMO, or as the case may be the existing FMO remains in force.

In determining the appeal the tribunal may confirm (with or without variations) the order.

Or may quash the FMO and order that

- In the case of a property that is not licensable under Parts 2 or 3 if it is satisfied the health, safety or welfare of the residents of the property or other persons in the locality would be adequately protected, that the property is returned to the management of the immediate landlord or that a new IMO be made, or,
- In the case of a property that is licensable under Parts 2 or 3
  - the property is no longer licensable or a temporary exemption notice should be in force;
  - a licence be granted;
  - or a new IMO be made.

A relevant person may appeal against the **terms**, including any variation of those terms which that person had not agreed to, of an FMO (which includes a management scheme) at any time whilst it is in force. In relation to such appeals the tribunal's power is limited to consideration of whether or not to vary the terms of the order in relation to the matter(s) under appeal.

## **Termination of an FMO**

An LHA must revoke an FMO if it grants a licence.

An FMO may be revoked by the LHA, such as where the house ceases to be licensable.

When it is replaced by another order (whether an IMO or FMO) or when the property is not licensable the LHA terminates it.

Otherwise the FMO terminates, either on the date provided in the order, or five years from when it was made.

## **Right to ask for an FMO to be revoked**

Any person who (but for the order being in force) would be the person managing or in control of the property or any other person with a relevant interest in it<sup>4</sup> may at anytime ask the LHA to revoke the order and:

- In the case of a property, subject to Part 2 or 3, grant a licence or issue a temporary exemption notice;
- In any other case return the property to the management of the immediate landlord.

If the LHA refuses to revoke the FMO there is a right of appeal against that decision to the RPT. The tribunal may order that the FMO is not revoked or that it is revoked and a licence issued, or as the case may be, the property is returned to the management of the immediate landlord.

## **Management Orders - General**

A management order does not prevent a legal owner from selling the property, but any sale is subject to that order.

A management order does not preclude either a superior landlord or a mortgagee from recovering possession of a property subject to a management, and as part of such proceedings the court may, if it sees fit, quash the management order.

A final management order is a local land charge.

## **Management Orders and HHSRS Notices**

A notice served under Part 1 of the Bill (that is one requiring remedial attention to a housing, health and safety hazard) is suspended whilst a management order is in force.

## **Further information**

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