Interim and Final Management Orders (IMOS & FMOs) for HMO and Selective Licensing Schemes under the Housing Act 2004

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1. Overview of management orders

Policy and background

Management orders are a feature of the Housing Act 2004. One of the key aims of that legislation is to improve the conditions and management of the Private Rented Sector (PRS), which accounts for 10% of the housing stock in England. Put another way, 2.2 million households rely upon the PRS for their homes.

The PRS plays a crucial role in society, providing a range of accommodation which is responsive to market forces, accessible and flexible. For many, unable to access social housing (maybe because they do not qualify or due to shortages), the PRS is the only option they have. For most landlords and occupiers in the PRS, it is a sector which works and which benefits all concerned.

However, there remains a minority of properties where this is not the case. Some landlords lack the skill or knowledge to manage their properties professionally. This can have a devastating impact upon occupiers, many of whom are some of the most vulnerable in society. Some landlords are engaged in criminal behaviour or condone such behaviour by their tenants.

The Government has made clear its desire to improve conditions for occupiers in the PRS. The Housing Act gives local authorities the powers to regulate those properties in the PRS which have been the cause of most concern – houses in multiple occupation (HMOs), properties in low demand areas and properties suffering from anti-social behaviour. This is achieved by the introduction of licensing, whereby the landlords and managers of certain properties in the PRS will have to hold a licence with their local authority.

Where a licence is not obtained or the terms of the licence are not being adhered to, there are sanctions available against the landlord. But such sanctions may not be sufficient to protect the occupiers if the property is being poorly managed. That's where management orders come in.

What is a management order?

A management order authorise the local authority to manage the property in place of the landlord. The aim is to protect the current occupiers of the property and, if applicable, those occupying or owning properties in the vicinity.

By taking such direct intervention, the aim is to improve the management of the property so that, hopefully, the property can be returned to the landlord. Where that is not possible, there are provisions to allow the local authority to take long term responsibility for managing the property.

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Management orders are a vital tool in ensuring that, whilst steps are taken to improve the skills and approach of the landlord, the occupiers are not put at risk.

Current legislation relating to management orders

Licensing and management orders came into force in England on 3rd April 2006. The legal basis upon which management orders operate is set out in the following legislation:

Housing Act 2004 (Chapter 1 of Part 4 & Schedule 6)

The Housing (Management Orders and Empty Dwelling Management Orders) (Supplemental Provisions) (England) Regulations 2006 No. 368

The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006 No. 369

The Residential Property Tribunal Procedure (England) Regulations 2006 No. 831

The Residential Property Tribunal (Fees) (England) Regulations 2006 No. 830

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2. Impact of the management order

Once a management order is in force, it places obligations on the local authority and impacts upon the rights and powers of the immediate landlord, those living in the property and those with interests in the property (e.g. a mortgage company). The following gives an overview, with more detail being found in later chapters.

Impact upon the local authority

When a management order comes into force, the local authority must:

a. Take immediate steps to protect the health, safety and welfare of those living in the property and those living in or owning properties in the vicinity;

b. Take steps to ensure the property is properly managed;

c. Ensure the property is insured against destruction or damage;

The management order also gives the local authority the following rights over the property:

a. Possession of the property (subject to the rights of any existing occupiers);

b. All the rights which a landlord has, including collection of rent;

c. The power to spend the money received through rent to carry out its duties to manage the property;

d. The power to grant new tenancies and licences.

However, the local authority has no right to sell the property or to use the property to secure a mortgage.

Impact upon the landlord

The management order effectively places the local authority in the landlord's shoes and as a result, upon it coming into force, the landlord can no longer:

a. Receive any rent from those living in the property;

b. Exercise any rights or powers in respect of the management of the property;

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c. Grant any tenancies or licences in the property.

However, the landlord is not prevented from selling the property.

Impact upon the occupiers

A management order does not impact upon the existing occupiers' status within the property. For example, if they had a 6 month assured shorthold tenancy with the landlord, they continue to have a 6 month assured shorthold tenancy even after the management order comes into force.

However, the order does have a practical impact upon the occupiers, in that:

a. Their rent will be paid to the local authority, not their landlord;

b. The local authority will be responsible for managing the property.

Where the local authority grants any new tenancies under the management order, these will not be council tenancies (e.g. secure or introductory tenancies). Instead, these new occupiers will be granted private sector tenancies (e.g. assured shorthold tenancies).

Impact upon those with an interest in the property

The landlord and the occupiers may not be the only people with a legal interest in the property. There may be a mortgage in force or the property may be leasehold, with a freeholder who has an interest in it.

The making of a management order has no impact upon these interests and does not prevent either the mortgage company or the freeholder exercising any of its rights.

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3. Interim management orders

When to make an IMO

Depending on the circumstances, local authorities can be compelled to make an IMO. In other case, they have discretion.

Duty to make an IMO

A local authority must make an IMO in respect of a property if:

a. It should be licensed and isn't, and either:

   i. there is no reasonable prospect of a licence being granted in the near future; or

   ii. the health and safety condition applies.

b. It is licensed but the local authority have decided to revoke the licence but the revocation is not yet in force, and that when the revocation comes into force, either:

   i. there is no reasonable prospect of a licence being granted in the near future; or

   ii. the health and safety condition applies.

The obligation to make an IMO therefore arises both where a property should be licensed but it isn't and also in pre-empting the revoking of a licence. However, note that either not being licensed or having the licence revoked is not enough. The local authority must also be satisfied that there is either no reasonable prospect of a licence being granted in the near future or the health and safety condition applies. These factors are considered further below.

It should be licensed
The landlords and/or managers of houses in multiple occupation (HMOs) that are 3 storeys or above in size and occupied by at least 5 people must be licensed with their local authority.[1] In addition, every local authority has the power to extend or designate other types of HMOs within their borough as also being subject to licensing (e.g. 2 storey HMOs). Note that there are certain properties which are exempt from being defined as a HMO including

[1] See further Part 2 Housing Act 2004.

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those owned or managed by local authorities and registered social landlords and cannot therefore be subject to HMO licensing (see **Annex 1**).

Local authorities also have the power to require non-HMO properties in the private sector to also be licensed. This is known as selective licensing and is a tool which can be used in conjunction with other initiatives to either regenerate areas of low housing demand or to address persistent and serious areas of anti-social behaviour.[2]

Every local authority must maintain a register of properties which have licences in force and will be able to provide details of the extent of its own licensing regime.

It is possible to obtain a temporary exemption from licensing for up to 3 months. The local authority, at the request of the landlord, can issue a Temporary Exemption Notice (TEN) and details of those currently in force are held on the local authorities register. As well as exempting the property from having to be licensed, a TEN (including a pending application for a TEN) also prevents the making of an IMO (unless the health and safety condition applies – see below).

An IMO is also prohibited where a property which should be licensed is not licensed but a licence application has been made but not yet determined (unless the health and safety condition applies – see below).

No reasonable prospect of granting a licence in the near future

It is for the local authority to decide whether, on the facts of each case, they believe there is a reasonable prospect that they will be able to grant a licence in the near future. Factors influencing the local authority's decision could include:

a. Whether the landlord is proposing to make a licence application;
b. Any plans to sell the property;
c. Any proposal to use a managing agent;
d. Any plans for the use of the property (e.g. is it proposed that the property will be redeveloped so that it falls outside of the licensing threshold)
e. Where the licence is to be revoked, the reasons why.

The health & safety condition

The health and safety condition is satisfied where the making of the IMO is necessary for the purpose of protecting the health, safety or welfare of any person:

a. Occupying the property;

[2] See further Part 3 Housing Act 2004. Selective licensing can not be used in respect of properties owned or managed by registered social landlords.

b. Occupying any property in the vicinity
c. Owning or having a legal interest in any property in the vicinity.

Note that even if there is a pending licence application or a TEN in force, the local authority must make an IMO if the health and safety condition is satisfied.

The local authority must be satisfied that the making of the IMO is necessary. This is a high threshold. It is not sufficient that the IMO would be desirable or preferable – it must be necessary. As such, the health and safety condition cannot be satisfied where the local authority are under a duty to take enforcement action under the Housing Health and Safety Rating System (HHSRS) and consider that such enforcement action would be sufficient to protect the health, safety or welfare of the occupiers and those living in the vicinity.[3]

Health, safety and welfare have a wide application and it is for the local authority to have regard to all the relevant factors in a particular case. Early discussions with the local authority's environmental health team are likely to be of use, as well as consideration of any medical evidence. In addition, a threat by the landlord to evict the occupiers in order to avoid a HMO being subject to licensing (by reducing the number of occupiers to a number below the licensing threshold) may also constitute a threat to those occupiers welfare.

Local authorities may also want to have regard to the extent to which any HMO management regulations and codes of practice currently in force have been adhered to by the landlord or manager.[4] A copy of current HMO management regulations is at **Annex 2**.

Revoking the licence

IMOs have a pre-emptive role. Where a licence has been revoked but the revocation is not yet taken effect, the local authority must make an IMO if satisfied that there is no reasonable prospect of a new licence being granted in the near future or the health a safety condition applies (as described above).

Local authorities may revoke a licence (i.e. bring it an end before it expires by passage of time) in the following circumstances:

a. with the agreement of the licence holder;
b. there has been serious or repeated breaches of a licence condition;

[3] See further Part 1 Housing Act 2004. The HHSRS enables local authorities to establish whether there are unacceptable hazards within properties. Where these hazards are particularly serious (known as Category 1 hazards), the local authority is under a duty to take appropriate action to address the hazards. Actions can include serving notice of the landlord to undertake improvement work or prohibiting the use of all or part of the property.
[4] See further s.233 & 234 Housing Act 2004

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c. the licence holder is no longer a fit and proper person to hold the licence;
d. the management of the property is no longer being carried out by persons who are fit and proper persons to be involved in its management.

Once the local authority decides to revoke a licence, there is a consultation and notification procedure which must be followed.[5]

Power to make an IMO

The local authority may make an IMO in respect of a property if:

a. it is an HMO that is not required to be licensed; or

b. it is a privately rented property whose occupants are causing anti-social behaviour (known as a Special IMO).

However, before the IMO can come into force, it must be authorised by the Residential Property Tribunal (RPT), who must be satisfied that the health and safety condition applies (see above). This involves an application by the local authority to the RPT, details of which are covered in **Chapter 3**.

HMO that is not required to be licensed

Not all HMOs have to be licensed. Unless the local authority has extended HMO licensing in its own borough, licensing only applies to those HMOs that are of at least 3 storeys and occupied by at least 5 people. Many HMOs fall outside this threshold. However, because of the inherent risks within HMOs (caused mainly because no one occupier has control of the whole property and is not therefore aware of any risks or dangers developing in another part of the property), local authorities can still obtain IMOs in respect of them, if they can satisfy the RPT that the IMO is necessary to protect health, safety or welfare.

Special IMOs

A Special IMO can be authorised by the RPT in respect of any property in the local authority's borough which is rented out by a private landlord (but not a registered social landlord). The RPT must be satisfied that:

a. the area in which the property is located is experiencing a significant and persistent problem with anti-social behaviour;

b. that problem is attributable, either completely or partially, to the anti-social behaviour of someone occupying the house;

[5] See further Schedule 5 Housing Act 2004.

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c. the landlord is failing to take appropriate action to combat the problem;

d. the making of the Special IMO, when combined with other measures taken by the local authority and others will lead to the reduction or elimination of the problem.

‘Anti-social behaviour’ means conduct by the occupier which:

a. causes or is likely to cause a nuisance or annoyance to anyone living in or visiting the property or the surrounding area; or

b. involves or is likely to involve the use of the property for illegal purposes.

A Special IMO cannot be used as an isolated tool. It must be part of a package of measures being pursued by the local authority and other organisations in partnership. This fits in with wider obligations on local authorities to play a leading role in tackling anti-social behaviour, whether through their relationships with the police and other social landlords (via the Crime and Disorder Reduction Partnerships), by implementing and adhering to their own anti-social behaviour policies or by exercising their powers in securing injunctions, anti-social behaviour orders (ASBOs) or possession orders.

In deciding whether a Special IMO is appropriate, it is essential for local authorities to liaise with their housing departments and partner agencies to ensure that any order is part of a cohesive and co-ordinated attack on anti-social behaviour.

Operation of IMOs

Commencement and length

An IMO comes into force on the day it is made (whether by the local authority or when it is authorised by the RPT). However, where the IMO is being made in the wake of an imminent revocation of an existing license, it comes into force when the existing licence is revoked.

The IMO must state when it ceases to be in force. That cannot be longer than 12 months from the date the IMO came into force. For details of the circumstances in which an IMO can be revoked (i.e. ended before it was due to expire), see **Chapter 5**.

After the IMO has been made, the local authority must serve on the landlord, any freeholder and the occupiers of the property:

a. a copy of the IMO;

b. a notice setting out the reasons for making the order, the date on which it was made, the general effect of the order and the date on which it will cease to have effect;

c. where the notice is served on the landlord and any freeholder, it must also contain information about how to appeal the making of the IMO (see **Chapter 5** for more details on the appeals process).

The copy of the order and the notice must be served on the landlord and any freeholder within 7 days of the order being made. It must be served on the occupiers as soon as reasonably practicable.

Powers & duties once IMO in force

Once the IMO comes into force, the local authority must as soon as practicable:

a. Take immediate steps to protect the health, safety or welfare of the occupiers of the property or those living in or owning properties in the vicinity (if applicable);

b. Take appropriate steps to ensure the property is properly managed.

The local authority must also consider the long term future of the property. If it is a property which should be licensed but isn't, the local authority has to keep at the forefront of its mind whether it is possible to grant a licence whilst the IMO is in force. If possible, the IMO should be used to get the property (and the landlord) into a position where the local authority is able to grant a licence. If this cannot be achieved within the life of the IMO, it may become necessary for the local authority to make a Final Management Order (FMO), which are considered in **Chapter 4**.

If the property is not one which requires a licence, the local authority should be working towards addressing the health and safety condition as far as possible during the life of IMO. Thereafter, management of the property can be returned to the landlord. If this is not possible, it may again be necessary for the local authority to make a FMO.

Addressing the health & safety condition

Where the IMO has been granted because of the health and safety condition, local authorities will need to address this as a matter of urgency. The steps taken will depend upon the circumstances of each case but ideally plans should be formulated as early as possible, even before the IMO comes into force. This is likely to require co-operation and partnership working involving, for example:

- different departments within the local authority (e.g. housing, environmental health, maintenance);

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- occupiers of the property itself;
- occupiers and owners of neighbouring properties;
- private works contractors (if work is required to the property);
- social services and education departments (if there is a threat to the welfare of children or vulnerable adults)
- advice and support agencies (to reassure and support occupiers)

Managing the property

Local authorities should endeavour to have identified the reasons why the property is being poorly managed in the course of making the IMO, so that steps can be taken to address these shortcomings as soon as reasonably practicable once the IMO is in force.

If they wish, a local authority may ask another individual or organisation to undertake the actual management of the property, although the local authority retains the legal responsibilities under the IMO. This could be a private management company or another social landlord.

The local authority must also ensure that the property is adequately insured against destruction or damage.

The local authority should always keep at the forefront of its mind the purpose of the IMO – to protect the occupiers and those living in the vicinity and to ensure the property is properly managed. In some cases, these objectives will be achieved relatively quickly and management of the property can be returned to the landlord. In other cases, this process may take longer. If it appears that it is likely to take longer than 12 months, the local authority will need to make a FMO (see **Chapter 4**).

Local authority powers under an IMO

In order to be able to fulfil obligations under an IMO, local authorities are give extensive powers and rights over the property in question.

As such, upon the order coming into force, the local authority effectively steps into the landlord's shoes. The IMO allows the local authority to possession of the property, subject to the rights of existing occupiers. They have the right to do anything in respect of the property that the landlord was able to do (except sell it). This could include increasing the rent or taking proceedings to evict one or all of the occupiers. In addition, the local authority can rent the property out to new occupiers, granting them a tenancy in the property, but only with the consent of the landlord.

Collecting and utilising the rent

Perhaps most significantly, once the IMO is in force, the local authority collects the rent in place of the landlord. The rent can be used by the local

authority to cover any costs reasonably incurred in meeting its obligations under the IMO, either as to the health and safety condition or in the management of the property. That expenditure can include any costs reasonably incurred in administering the IMO. Any money left over is paid to the landlord. The local authority is under an obligation to keep full accounts of their income and expenditure in respect of the property and to make those accounts available to the landlord.

Note that the expenditure by the local authority must be reasonably incurred. If it is incurred unreasonably, it cannot be deducted from the rent and the cost has to be borne by the local authority. It is open to the landlord to apply to the RPT to determine whether costs have been reasonably incurred by the local authority. It is therefore important that local authorities are able to justify any expenditure and this should be done bearing in mind the reasons the IMO was made.

The local authority may also recover from the landlord any expenditure reasonably incurred which exceeds the collected rent (see further in **Chapter 5**)

New and existing occupiers

The IMO has no effect upon any existing tenancies or licences in force at the time it becomes effective. That means that the rights of the existing occupiers do not change. The IMO allows the local authority to manage the property but it does not turn the local authority into the owner of the property. As such, although the occupiers begin paying their rent to the local authority, they do not become local authority tenants.

That said, the local authority has the same legal obligations towards the occupiers as the landlord had prior to the IMO. Therefore, if there is disrepair at the property, the occupiers would report it to the local authority that would then become liable to undertake necessary repairs. Conversely, the local authority, under the IMO, could take possession proceedings against the occupiers, as if it were the landlord (e.g. if one of the occupiers refused to pay their rent).

In addition, but only with the landlord's consent, the local authority can also grant new tenancies and licences in the property. Any new tenancies would be between the new occupier and the local authority but would not be secure or introductory tenancies (i.e. the standard tenancies created when the landlord is a local authority). Although a new tenancy under an IMO would be granted by the local authority, its status would be that of a private sector tenancy (which in most cases, will be an assured shorthold tenancy).

The landlord

Once the IMO is in force, the landlord is not entitled to:

a. receive any rent from existing occupiers or any new occupiers whose rights of occupation are granted by the local authority under the IMO;

b. undertake any rights or powers of management over the property;

c. create any new tenancies or licences in the property.

However, the landlord does retain one important right – he can sell the property. The IMO operates as a local land charge and would come to the attention of any prospective purchaser but the IMO does not allow the local authority to in any way prevent a sale. At the same time, selling the property does not end the IMO but the existence of a new landlord would be a factor that the local authority must take into account in deciding whether the IMO needs to continue (because, for example, the local authority feel able to grant a licence to the new landlord).

As set out above, the landlord is entitled to the balance of the rent after the local authority has deducted reasonably incurred expenditure. The landlord is also entitled to view the local authority's accounts and challenge, via an application to the RPT, the reasonableness of the local authority's expenditure.

The landlord can also appeal to the RPT against the making of an IMO or the terms of an IMO (for more details see **Chapter 5**).

The freeholder

There will be circumstances where the landlord of the property is a long leaseholder. It is necessary for the freeholder to be informed of the making of the IMO (see above) but there are also consequences regarding the performance of the landlord's obligations under his long lease.

When the IMO comes into force, the local authority is treated as the new lessee of the freeholder under the terms of the long lease. This includes an obligation to pay any ground rent or service charges due under the long lease. The local authority can also challenge the reasonableness of any charges, just like a long leaseholder can do.

As well as notifying the freeholder of the making of the IMO and reasons for it, the local authority should also provide the freeholder with the name and address of the local authority (or any person authorised on their behalf) for the proposes of any demand by the freeholder for the payment of ground rent, services charges or other charges under the long lease and for the service of any notices by the freeholder. Once the local authority have done this, they are only obliged to paying any further charges under the long lease if the freeholder sends a demand to the local authority for payment of the same.

Any demand for payment of any charges under the long lease received by the local authority must be also passed on to the landlord.

The mortgage lender

The local authority may find that the property is subject to one or more mortgages**.** The making of an IMO has no bearing upon the mortgage company's rights over the property, including the right to take possession if the mortgage instalments are not paid. Note that the IMO does not impose an obligation on the local authority to pay these mortgage instalments. If the mortgage company takes possession action, the court, in the course of those proceedings, can make any order it thinks appropriate in respect of the IMO (including ending it).

The role of the RPT in authorising IMOs

In respect of an HMO which is not required to be licensed and private lettings involved in or contributing to anti-social behaviour, the IMO has to be authorised by the Residential Property Tribunal (RPT).

The procedure for applying to the RPT involves:

- a formal application;[6]
- the application being sent to the landlord who can oppose it;[7]
- provisions for the management of evidence, inspection of the property and oral hearings.

The application must be accompanied by a fee, which is currently £150.[8]

Urgent IMO applications

There is also provision for this procedure to be shortened where the RPT is satisfied that the IMO application is urgent.[9] From the information contained in the application, the RPT must be satisfied that:

a. there is an immediate threat to the health and safety of the occupiers or to those living in or owning properties in the vicinity; and

b. by making the IMO as soon as possible, the local authority will be able to take steps to stop or significantly reduce the threat.

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[6] The Residential Property Tribunal Procedure (England) Regulations 2006 No. 831, Regulation 6
[7] Regulations 7 & 8
[8] The Residential Property Tribunal (Fees) (England) Regulations 2006 No. 830
[9] The Residential Property Tribunal Procedure (England) Regulations 2006 No. 831, Regulation 9

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4. Final management orders

When to make a FMOs

A Final Management Order (FMO) can only follow the making of an Interim Management Order (IMO) and is one option available to the local authority regarding the long term management of the property.

Procedure before making a FMO

Before a FMO can be made, the local authority must first notify the landlord (and any freeholder) that it is proposing to make the FMO, provide them with details of the proposed order, the reasons for making it and invite them to make any representations. The local authority must then consider any representations made.

Duty to make a FMO

Where an IMO has been made in respect of a property which should but licensed but isn't, a FMO must be made to take effect when the IMO expires if:

a. the property is still one which requires a licence (because it falls within the local authority's licensing regime); and

b. the local authority decides that they are still unable, despite the IMO, to grant a licence.

In addition, when a FMO expires in respect of a property which falls within the local authority's licensing regime, a further FMO must be made where:

a. the property is still one which requires a licence; and

b. the local authority decides that they are still unable, despite the earlier FMO, to grant a licence.

A management order expires when:

a. it reaches its expiry date (which must be stated within the order and, for IMOs cannot exceed 12 months); or

b. it is revoked.

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Power to make a FMO

The local authority may make a FMO upon the expiry of an IMO where:

a. on the day the IMO expires, the property is not one which is required to be licensed; and

b. the local authority consider that it is necessary to make a FMO to protect, on a long-term basis, the health, safety or welfare of those living in the property or those living or owning properties in the vicinity.

In addition, when a FMO expires in respect of a property which doesn't fall within the local authority's licensing regime, a further FMO may be made where the local authority consider that it is necessary to make the order to protect, on a long-term basis, the health, safety or welfare of those living in the property or those living or owning properties in the vicinity.

Note that the RPT has no involvement in the actual making of FMOs (although it can be called upon to challenge the making of an FMO or its terms. See **Chapter 5** for more details).

Operation of FMOs

Commencement and length

Unlike an IMO, a FMO does not come into effect on the day it is made. Instead, it comes into force when the time period for bringing an appeal against the making of the order has elapsed (28 days). Alternatively, if an appeal is brought by the landlord, the FMO does not take effect until an appeal is dealt with (and assuming the decision to make the FMO is upheld on appeal). Details of the appeal procedure can be found in **Chapter 5**.

There is a potential problem if this appeal period coincides with the IMO expiring. This could leave a gap between the end of the Imo and the FMO coming into force, possibly to the detriment of the occupiers.

In those circumstances, if the property is question is one which would be subject to licensing, the IMO will continue in force until the FMO takes effect. For non-licensable properties, the local authority can apply for to the RPT for the IMO to remain in force in the interim. This also applies where a new FMO has been made to replace a previous FMO (i.e. the old FMO remains in force to bridge any gap before the new order takes effect).

The FMO must state when it ceases to be in force. That cannot be longer than 5 years from the date it came into force. For details of the circumstances in which a FMO can be revoked (i.e. ended before it is due to expire), see **Chapter 5**.

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After the FMO has been made, the local authority must serve on the landlord, any freeholder and the occupiers of the property:

a. a copy of the IMO;

b. a notice setting out the reasons for making the order, the date on which it was made, the general effect of the order and the date on which it will cease to have effect;

c. where the notice is served on the landlord and any freeholder, it must also contain information about how to appeal the making of the FMO (see **Chapter 5** for more details of the appeals process).

The copy of the order and the notice must be served on the landlord and any freeholder within 7 days of the order being made. It must be served on the occupiers as soon as reasonably practicable.

Powers & duties once FMO in force

The powers afforded to the local authority in respect of the property are similar to those provided under an IMO (see **Chapter 3**). However there are a number of important differences.

a. The local authority can grant tenancies and licences in the property <u>without</u> the landlord's consent provided:

    i. It is not for a fixed term which expires beyond the end of the FMO;

    ii. It is not a licence or tenancy which cannot be terminated on less that 4 weeks notice (i.e. any periodic tenancy or licence must be weekly) unless it is an assured shorthold tenancy, in which case consent is not required provided it is created at least 6 months before the expiry of the FMO.

    The aim of this provision is to balance the long term management needs of the property with ensuring the landlord's property is not subject to long term tenancies after the FMO has ended. However, longer term interests can still be granted with the landlord's consent.

    In practice, a FMO will enable the local authority to grant the standard private sector tenancy (the assured shorthold) without the landlord's consent.

b. A FMO must contain a <u>management scheme</u>. The purpose of the scheme is to set out how the local authority proposes to manage the property over the relative long term of the FMO. The scheme must be split into 2 parts. Part 1 must contain a plan giving details of how the local authority intend to manage the property including:

i. Any work to be carried out;

ii. Estimates of expenditure likely to be incurred whilst the order is in force;

iii. Levels of rent likely to be collected;

iv. Provisions for the payments of any money to the landlord and/or the recovery of any expenditure from the landlord which cannot be covered by the collected rent.

Part 2 of the scheme must set out how the local authority intends to address the matters which caused the making of the FMO in the first place.

If the local authority does not adhere to its management scheme, the landlord is entitled to apply to the RPT for an order that the scheme is followed or, if appropriate, that the FMO is revoked. The RPT also has the power to order the local authority to pay compensation if satisfied that the failure to follow the management scheme has led to the landlord incurring some form of loss.

In addition, the landlord can also appeal to the RPT against the terms of the management scheme (for further details, see **Chapter 5**).

c. Since the FMO follows an IMO, there is no requirement on the local authority to take immediate steps to protect health and safety (since this will have been addressed under the IMO). A FMO is a longer term provision. Instead, the local authority must from time to time review the operation of the FMO and the management scheme and decide whether the FMO is still the best course of action for this property.

In particular, the local authority must decide whether to:

i. Vary the terms of the FMO (including the terms of the management scheme);

ii. Grant a licence (if relevant);

iii. Revoke the FMO and take no further action (for more on revoking FMOs, see **Chapter 5**).

5. Appealing, revoking, varying and ending management orders

Since management orders impact so directly upon the interests of landlords in particular, there are provisions for challenging both their making and operation.

Rights of appeal

The landlord or the freeholder of the property may appeal to the Residential Property Tribunal (RPT) against either the making of a management order or the terms of the order.

The appeal must be brought within 28 days of the landlord (and freeholder, if relevant) receiving notification that the order has been made. The RPT may allow an appeal to be brought outside of that time limit if there is good reason for any delay.

The RPT has the power to confirm, vary or revoke the order. The RPT will look at the circumstances of the case and can consider any new information which has come to light since the order was made. The key issue for the RPT will be whether, based upon the requirements for the making of the management order, it should have been made in its current terms. For example, in respect of an IMO, the RPT may be asked to consider whether the health and safety condition has been satisfied.

However, the right of appeal against the making of an order is limited where the order is an Interim Management Order (IMO) that has been authorised already by the RPT (i.e. in respect of non-licensable houses in multiple occupation (HMOs) or private lettings suffering from anti-social behaviour. For more details, see **Chapter 3**).In this cases, any appeal is limited to the financial arrangements contained within the IMO (and not whether the IMO should have been at all, since the RPT has already considered that when it authorised the making of the IMO initially).

Revoking the order

Revoking a management order means the local authority bringing it to an end before the date it scheduled to cease to be in force.

This can be when:

a. Where the management order was granted in respect of a property which should have been licensed, the property no longer falls within the local authority's licensing regime (e.g. because it is no longer a HMO);

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b. Where the management order was granted in respect of a property which should have been licensed, a licence has been granted;

c. A Final Management Order (FMO) or a further FMO has been made in respect of the property;

d. Any other circumstances the local authority considers appropriate (e.g. where the health and safety condition no longer applies).

The local authority can revoke the order on its own initiative or at the request of the landlord.

Before revoking the order, the local authority must serve notice on the landlord (and freeholder) providing reasons for the revocation. They must also consider any representations they receive before deciding to revoke. If the order is revoked, the local authority must serve a further notice on the landlord (and freeholder) setting the reasons for the revocation, the date on which the decision was made and details of the appeal procedure (see below).

A similar notice and consultation process applies where the landlord (or freeholder) asks the local authority to revoke the management order and the local authority refuses.

An appeal can be made to the RPT by the landlord (or a freeholder) against any decision by the local authority to either revoke or refuse to revoke any type of management order. The Rpt may uphold, overturn or vary the local authority's decision. The same time limits and powers of the RPT apply as for appeals against the making of the order set out above.

Any decision to revoke the order does not come into force until either the time for appealing the decision has expired (28 days) or, if an appeal is pursued, the date on which the decision to revoke is confirmed by the RPT.

Varying the order

Local authorities also have the power to vary the terms of management orders. This would include varying the terms of the management scheme within a FMO. It is left to the each local authority to determine when this would be appropriate and the nature and extent of any variation. The order can be varied by the local authority on its own initiative or upon application by the landlord (or freeholder).

As with revocations, the local authority must serve notice on the landlord (and the freeholder) of any proposed variation and the reasons for it. They must also have regard to any representations they receive from the landlord (or freeholder) about the proposed variation. Similarly, if the local authority proceed with the variation, they must again notify the landlord (and the freeholder) of the reasons for and effect of the variation and provide details of the appeal procedure.

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A similar notice and consultation process applies where the landlord (or freeholder) asks the local authority to vary the management order and the local authority refuses.

The same time limits and procedure for appealing the local authority's decision applies to variations as it does to decisions to revoke the order (see above). The RPT has the same powers to uphold, overturn or vary the local authority's decision. Any variation does not take effect until the appeal time limit of 28 days has expired or, if there is an appeal to the RPT, the appeal is determined in favour of the local authority.

Effects of ending a management order

However a management order comes to an end (whether by passage of time, revocation or the replacement of an IMO with a FMO), there are a number of important consequences. Note that the landlord when the order ends may be different from the landlord when the order was made (e.g. because the property was been sold or the original landlord died and the new landlord inherited the property). Reference to the landlord below means the landlord at the time the order ends:

1. If upon finalising the accounts recording expenditure and income, it transpires that there is a surplus of income (i.e. from collected rent), that surplus must be paid to the landlord.

2. Conversely, if there is a deficit, that can be recovered from the landlord.

3. If during the life of the management order there has been more than one landlord, the local authority must apportion either the surplus of the deficit between them as the local authority deems appropriate.

4. Any sum owed to the local authority is a charge over the property until it is paid. As with all charges, this can be enforced by applying to court for the property to be sold and the sum owed is then paid out of the sale proceeds.

5. If the management order is being ended because a licence has been granted, the terms of the licence may include a requirement on the licence holder to pay the sum owed to local authority (which can be in instalments).

6. The tenancies and licences in the property (whether they existed before the order cam into force or were created by the local authority under the management order) revert into the name of the landlord in place of the local authority. There is however no other change in the terms and conditions of these agreements.

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7. Any other agreements (other than tenancies and licences in the property) that the local authority entered into under the management order also pass to the landlord, who takes the place of the local authority. However, this only happens where the local authority serve notice of the other party to the agreement that this is taking place.

8. Any other rights, liabilities or court proceedings which arose or were begun under the management order buy the local authority also pass to the landlord when the order ends. If the landlord becomes liable to pay compensation to a third party as a result of these liabilities or court proceedings because of actions by the local authority whilst the management order was in force, the local authority must reimburse the landlord by an equivalent amount.

Occupiers and management orders

Only those with a legal interest in the property can challenge the making and operation of management orders. The definition excludes those with a lease of less than 3 years. As a result, in nearly every case, those occupying the property will be unable to challenge in the RPT the local authority's actions.

However, that does not mean they have no recourse. As the local authority steps into the shoes of their landlord and the management order has no effect of the terms and conditions of their occupation, those living in the property will have all the same rights of action against the local authority as landlord. So for example, if repairs are not carried out or if the rent is increased unlawfully, the occupiers will be able to take action in the usual way.

In addition, and in respect of decisions by local authorities to both take action and refuse to take action under the management order provisions, occupiers still retain the right to complain to the Local Government Ombudsman. The Ombudsman has the power to investigate allegations of maladministration and can order local authorities to change their policies, revisit a decision and compensate for any loss or inconvenience they have caused.

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6. Miscellaneous Procedures

Register of orders

Every local authority must establish and maintain a register containing details of all management orders currently in force. The register must be available at the local authority's head office for inspection by the public and, upon payment of a reasonable fee, the local authority must provide a copy of the register (or part of it) to anyone who asks for it.

Furniture

When the management order comes into force, any furniture in the property which is provided for the use of the occupiers becomes the property of the local authority. If the person owning the furniture (who may or may not be the landlord) applies in writing to the local authority for the return of the furniture, the local authority may return it to them. In addition, the management order allows the local authority to provide furniture for the occupiers. The cost of providing such furniture constitutes expenditure and must therefore be incurred reasonably (for further details on expenditure under a management order, see **Chapter 3**).

Local land charges

A management order is a local land charge and the local authority may apply to the Land Registry to have it entered onto the register of title relating to the property. This ensures that any prospective purchaser of the property is aware that a management order is in force.

Existing legal proceedings

For the purposes of managing the property, when the management order comes into force, the local authority steps into the shoes of the landlord. However, the local authority may also bring or defend legal proceedings which relate to the property and which arise out of actions undertake by the landlord before the management order came into force. However, the local authority must serve notice on all the parties to any legal proceedings that they are acting under a management order.

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Resident landlords

Where the landlord lives in the property itself, the local authority can make the management order so that it does not apply to that part of the property which the landlord occupies.

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7. Additional powers under Housing Act 2004

The Housing Act 2004 provides local authorities with a number of additional powers which can be utilised to ensure their management orders are used in an effective manner.

Power of entry - works

The management order gives the local authority (or anyone authorised by them) a power of entry to the property for the purpose of carry out works. Entry is allowed at a reasonable time and, save for emergencies (e.g. because there is an urgent need to address the health and safety condition), the occupiers should be given reasonable notice that the access is required.

If any of the occupiers, after receiving reasonable notice, prevent access to the property or the required work being carried out, the local authority may obtain an order from the magistrates requiring the occupiers not to interfere with access or prevent the work from being carried out. It is an offence to then fail to comply with the magistrates' order, for which the occupier can be fined.

Power of entry - inspection

Where a local authority considers that a survey or examination of premises is necessary, the Housing Act authorises entry any premises at a reasonable time upon giving the owner and any occupiers at least 24 hours notice.

If entry is refused, the local authority can apply to the court for a warrant authorising entry (by force, if necessary). Anyone who obstructs entry after the court order has been made commits an offence for which they can be fined.

Obtaining information

The Housing Act gives local authorities powers to obtain information and imposes sanction on those who fail to co-operate. Such information may be crucial in allowing the local authority to determine whether a management order should be made or revoking or varying the terms of the order once it is in force.

The local authority is empowered to request documents reasonably required in the exercise of their management order functions. The request must be in writing, must set out what documents are required, when and where they must be produced and the possible consequences of not complying with the request (see below).

Such documents can be requested from those who:

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a. have an estate or interest in the property (e.g. the landlord or the freeholder);

b. manage the property;

c. occupy the property

Local authorities may also use information which has been obtained via their housing benefit and council tax functions.

Anyone who fails, without reasonable excuse, to comply with the request for information commits an offence, as does anyone who intentionally alters, suppresses or destroys requested documents.

In addition, an offence is committed by any person who supplies any information to a local authority which is false or misleading and they knew or were reckless as to whether it was false or misleading.

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ANNEX 1

Buildings which are exempt from being defined as a house in multiple occupation **(HMO)**[10]

- buildings managed by a local housing authority, registered social landlord, police, fire or health authority

- buildings occupied by students and managed by the educational establishment in question, on condition that the body has in place an Approved Code of Practice (see approved codes of practice by ANUK (www.anuk.org.uk/LargeCode/code.asp) and UUK (www.universitiesuk.ac.uk/acop/)

- buildings occupied by religious communities

- buildings predominantly owner-occupied, including resident landlords where the owner occupier (and members of his family) occupies the building (or flat) with no more than two other persons

- buildings occupied by only two persons who do not form a single household

- children's' homes

- care homes

- residential family centres

- boarding schools & colleges

- approved bail hostels, probation hostels, removal centres, prisons, remand centres, young offender institutions, secure training centres and accommodation centres for destitute asylum seekers

[10] Housing Act 2004, Schedule 14 & Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 No 373, Regulation 6

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ANNEX 2

The Management of Houses in Multiple Occupation (England) Regulations 2006 **No. 372**

Made	*15th February 2006*
Laid before Parliament	*22nd February 2006*
Coming into force	*6th April 2006*

The Secretary of State, in exercise of the powers conferred by section 234 of the Housing Act 2004[1], makes the following Regulations:

Citation, commencement and application

1. —(1) These Regulations may be cited as The Management of Houses in Multiple Occupation (England) Regulations 2006 and shall come into force on 6th April 2006.

(2) These Regulations apply to any HMO[2] in England other than a converted block of flats to which section 257 of the Act applies.

Interpretation

2. In these Regulations—

(a) "the Act" means the Housing Act 2004;

(b) "fixtures, fittings or appliances" are—

(i) lighting, space heating or water heating appliances;

(ii) toilets, baths, showers, sinks, or wash basins or any cupboards, shelving or fittings supplied in a bathroom or lavatory;

(iii) cupboards, shelving or appliances used for the storage, preparation or cooking of food; and

(iv) washing machines or other laundry appliances; and

(c) "the manager", in relation to an HMO, means the person managing[3] the HMO.

Duty of manager to provide information to occupier

3. The manager must ensure that—

(a) his name, address and any telephone contact number are made available to each household in the HMO; and

(b) such details are clearly displayed in a prominent position in the HMO.

Duty of manager to take safety measures

4. —(1) The manager must ensure that all means of escape from fire in the HMO are—

(a) kept free from obstruction; and

(b) maintained in good order and repair.

(2) The manager must ensure that any fire fighting equipment and fire alarms are maintained in good working order.

(3) Subject to paragraph (6), the manager must ensure that all notices indicating the location of means of escape from fire are displayed in positions within the HMO that enable them to be clearly visible to the occupiers.

(4) The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to—

(a) the design of the HMO;

(b) the structural conditions in the HMO; and

(c) the number of occupiers in the HMO.

(5) In performing the duty imposed by paragraph (4) the manager must in particular—

(a) in relation to any roof or balcony that is unsafe, either ensure that it is made safe or take all reasonable measures to prevent access to it for so long as it remains unsafe; and

(b) in relation to any window the sill of which is at or near floor level, ensure that bars or other such safeguards as may be necessary are provided to protect the occupiers against the danger of accidents which may be caused in connection with such windows.

(6) The duty imposed by paragraph (3) does not apply where the HMO has four or fewer occupiers.

Duty of manager to maintain water supply and drainage

5. —(1) The manager must ensure that the water supply and drainage system serving the HMO is maintained in good, clean and working condition and in particular he must ensure that—

(a) any tank, cistern or similar receptacle used for the storage of water for drinking or other domestic purposes is kept in a good, clean and working condition, with a cover kept over it to keep the water in a clean and proper condition; and

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(b) any water fitting which is liable to damage by frost is protected from frost damage.

(2) The manager must not unreasonably cause or permit the water or drainage supply that is used by any occupier at the HMO to be interrupted.

(3) In this regulation "water fitting" means a pipe, tap, cock, valve, ferrule, meter, cistern, bath, water closet or soil pan used in connection with the supply or use of water, but the reference in this definition to a pipe does not include an overflow pipe or the mains supply pipe.

Duty of manager to supply and maintain gas and electricity

6. —(1) The manager must supply to the local housing authority within 7 days of receiving a request in writing from that authority the latest gas appliance test certificate it has received in relation to the testing of any gas appliance at the HMO by a recognised engineer.

(2) In paragraph (1), "recognised engineer" means an engineer recognised by the Council of Registered Gas Installers as being competent to undertake such testing.

(3) The manager must—

(a) ensure that every fixed electrical installation is inspected and tested at intervals not exceeding five years by a person qualified to undertake such inspection and testing;

(b) obtain a certificate from the person conducting that test, specifying the results of the test; and

(c) supply that certificate to the local housing authority within 7 days of receiving a request in writing for it from that authority.

(4) The manager must not unreasonably cause the gas or electricity supply that is used by any occupier within the HMO to be interrupted.

Duty of manager to maintain common parts, fixtures, fittings and appliances

7. —(1) The manager must ensure that all common parts of the HMO are—

(a) maintained in good and clean decorative repair;

(b) maintained in a safe and working condition; and

(c) kept reasonably clear from obstruction.

(2) In performing the duty imposed by paragraph (1), the manager must in particular ensure that—

(a) all handrails and banisters are at all times kept in good repair;

(b) such additional handrails or banisters as are necessary for the safety of the occupiers of the HMO are provided;

(c) any stair coverings are safely fixed and kept in good repair;

(d) all windows and other means of ventilation within the common parts are kept in good repair;

(e) the common parts are fitted with adequate light fittings that are available for use at all times by every occupier of the HMO; and

(f) subject to paragraph (3), fixtures, fittings or appliances used in common by two or more households within the HMO are maintained in good and safe repair and in clean working order.

(3) The duty imposed by paragraph (2)(f) does not apply in relation to fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(4) The manager must ensure that—

(a) outbuildings, yards and forecourts which are used in common by two or more households living within the HMO are maintained in repair, clean condition and good order;

(b) any garden belonging to the HMO is kept in a safe and tidy condition; and

(c) boundary walls, fences and railings (including any basement area railings), in so far as they belong to the HMO, are kept and maintained in good and safe repair so as not to constitute a danger to occupiers.

(5) If any part of the HMO is not in use the manager shall ensure that such part, including any passage and staircase directly giving access to it, is kept reasonably clean and free from refuse and litter.

(6) In this regulation—

(a) "common parts" means—

(i) the entrance door to the HMO and the entrance doors leading to each unit of living accommodation within the HMO;

(ii) all such parts of the HMO as comprise staircases, passageways, corridors, halls, lobbies, entrances, balconies, porches and steps that are used by the occupiers of the units of living accommodation within the HMO to gain access to the entrance doors of their respective unit of living accommodation; and

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(iii) any other part of an HMO the use of which is shared by two or more households living in the HMO, with the knowledge of the landlord.

Duty of manager to maintain living accommodation

8. —(1) Subject to paragraph (4), the manager must ensure that each unit of living accommodation within the HMO and any furniture supplied with it are in clean condition at the beginning of a person's occupation of it.

(2) Subject to paragraphs (3) and (4), the manager must ensure, in relation to each part of the HMO that is used as living accommodation, that—

(a) the internal structure is maintained in good repair;

(b) any fixtures, fittings or appliances within the part are maintained in good repair and in clean working order; and

(c) every window and other means of ventilation are kept in good repair.

(3) The duties imposed under paragraph (2) do not require the manager to carry out any repair the need for which arises in consequence of use by the occupier of his living accommodation otherwise than in a tenant-like manner.

(4) The duties imposed under paragraphs (1) and (2) (b) do not apply in relation to furniture, fixtures, fittings or appliances that the occupier is entitled to remove from the HMO or which are otherwise outside the control of the manager.

(5) For the purpose of this regulation a person shall be regarded as using his living accommodation otherwise than in a tenant-like manner where he fails to treat the property in accordance with the covenants or conditions contained in his lease or licence or otherwise fails to conduct himself as a reasonable tenant or licensee would do.

Duty to provide waste disposal facilities

9. The manager must—

(a) ensure that sufficient bins or other suitable receptacles are provided that are adequate for the requirements of each household occupying the HMO for the storage of refuse and litter pending their disposal; and

(b) make such further arrangements for the disposal of refuse and litter from the HMO as may be necessary, having regard to any service for such disposal provided by the local authority.

Duties of occupiers of HMOs

10. Every occupier of the HMO must—

(a) conduct himself in a way that will not hinder or frustrate the manager in the performance of his duties;

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(b) allow the manager, for any purpose connected with the carrying out of any duty imposed on him by these Regulations, at all reasonable times to enter any living accommodation or other place occupied by that person;

(c) provide the manager, at his request, with any such information as he may reasonably require for the purpose of carrying out any such duty;

(d) take reasonable care to avoid causing damage to anything which the manager is under a duty to supply, maintain or repair under these Regulations;

(e) store and dispose of litter in accordance with the arrangements made by the manager under regulation 9; and

(f) comply with the reasonable instructions of the manager in respect of any means of escape from fire, the prevention of fire and the use of fire equipment.

General

11. Nothing in these Regulations shall—

(a) require or authorise anything to be done in connection with the water supply or drainage or the supply of gas or electricity otherwise than in accordance with any enactment; or

(b) oblige the manager to take, in connection with those matters, any action which is the responsibility of a local authority or any other person, other than such action as may be necessary to bring the matter promptly to the attention of the authority or person concerned.

(2) Any duty imposed by these Regulations to maintain or keep in repair are to be construed as requiring a standard of maintenance or repair that is reasonable in all the circumstances, taking account of the age, character and prospective life of the house and the locality in which it is situated.

Notes:

[1] The powers conferred by section 234(1) of the Act are exercisable, as respects England, by the Secretary of State and, as respects Wales, by the National Assembly for Wales. See the definition of the appropriate national authority in section 261(1) of the Act.

[2] For the meaning of HMO see sections 254 to 259 of the Act.

[3] For the meaning of "person managing" see section 263(3) of the Act.

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ANNEX 3

Case Studies

Case Study 1

Mr Jones is the landlord of a 3 storey house in multiple occupation (HMO), currently occupied by 6 people. When he applied for his licence, he did not disclose on his application form that he had convictions for fraud and assault. Neither did he disclose that he has been prosecuted and successfully sued in the past for unlawfully evicting tenants from other properties he has owned and managed. As such, he was granted a licence.

However, these past offences have now come to light and the local authority has begun steps to revoke the licence because Mr Smith, in their opinion, is not a fit and proper person. When the licence is revoked, there is nobody else who is in a position to manage the HMO and the local authority has no immediate plans to grant a new licence to Mr Jones.

Since, in the local authority's view, there is no reasonable prospect that a HMO licence will be granted in the near future and this is a property that must be licensed (being a HMO that is 3 storeys high and occupied by at least 5 people), the local authority must make an Interim Management Order (IMO) that comes into force upon the current licence being revoked.

Case Study 2

The local authority's environmental health team have just inspected a 2 storey HMO and have concerns that the property may be hazardous (as defined by the Housing Health & Safety Rating System or HHSRS). The property falls outside the mandatory licensing threshold for HMOs and the local authority have not extended licensing in their borough to cover 2 storey properties. As such, the HMO does not have to be licensed.

In considering how to address this issue, the local authority considers whether it would be appropriate to apply to the Residential Property Tribunal (RPT) for authorisation to make an IMO. Since the property is a HMO which does not require a licence, the local authority would need to satisfy the RPT that the health and safety condition applies – namely, that the IMO is necessary to protect the health, safety and welfare of the occupiers or of any occupiers or owners of properties in the vicinity.

In deciding whether to take this course of action, the opinion of the environmental health department is sought. They confirm that the property exhibits Category 1 hazards which require the local authority to take appropriate enforcement action. The local authority concludes that action by the environmental health department will protect the health, safety and welfare

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of the occupiers. As such, it is not appropriate to seek authorisation from the RPT for an IMO.

Case Study 3

An IMO has been made in respect of an unlicensed HMO. The IMO is about to expire and the local authority are still not satisfied that they will be able to grant a licence in the near future. As such, a Final Management Order (FMO) is made and comes into force.

The local authority's concerns centre around the current landlord. He has proved difficult to work with, believing that licensing is a waste of money and just another way of penalising private landlords. However, he rarely visits the property and has failed to manage it adequately. It is suspected that his negative views of licensing may in part be fuelled by the fact that his only licence application was refused because of concerns over the suitability of the property and the absence of any proposals for managing the HMO.

The current landlord decides that renting HMOs is not for her and sells the property. The new owner contacts the local authority and submits a licence application. She is an experienced landlord who has a string of well-managed HMOs throughout the borough. The local authority grants her a licence and revokes the FMO.

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