

REGULATORY APPRAISAL

HOUSING, WALES

THE HOUSING (INTERIM MANAGEMENT ORDERS) (PRESCRIBED CIRCUMSTANCES) (WALES) ORDER 2006

Purpose and intended effect of the measure

1. The purpose of this Order is to prescribe the category of circumstances that need to be satisfied before a Residential Property Tribunal (RPT) can authorise a local housing authority to make an interim management order in respect of a house to which section 103 of the Housing Act 2004 applies. An interim management order is an order made by a local housing authority in respect of a house in multiple occupation (HMO), as defined in sections 254 to 259 of the Housing Act 2004 or a house to which Part 3 of that Act applies. Section 102 of the Housing Act 2004 describes the circumstances in which a local housing authority must make an interim management order and when it has discretion to do so. The discretionary making of such an order must be authorised by a residential property tribunal.
2. Interim Management Orders (IMOs) transfer the management of a residential property to the local housing authority for a period of up to twelve months. They provide local housing authorities with mechanisms to ensure necessary improvements in the physical conditions, the management of the rented accommodation and the behaviour of the occupiers, where there is no available 'fit and proper' person to take on the responsibilities of a licence, in areas where licensing is required under Parts 2 and 3 of the Act. In particular, IMOs allow a local housing authority:
 - 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; and
 - to create new tenancies (with the consent of the landlord).
3. The prescribed circumstances are:
 - the area in which the house is located is experiencing a significant and persistent problem caused by anti-social behaviour;

- that problem is attributable, in whole or in part, to the anti-social behaviour of an occupier of the house;
 - the landlord of the house is a private sector landlord;
 - the landlord of the house is failing to take action to combat that problem which it would be appropriate for a landlord to take; and
 - the making of an interim management order, when combined with other measures taken in the area by the local housing authority, or by other persons, together with the local housing authority, will lead to a reduction in, or elimination of that problem.
4. Sections 103(5)(a) and (6) of the Housing Act 2004 allow the appropriate national authority to prescribe the category of circumstances that need to be satisfied before a residential property tribunal can authorise a local housing authority to make an interim management order in respect of a house to which section 103 of the Housing Act 2004 applies. Section 261(1) provides that the National Assembly for Wales is the appropriate national authority in respect to Wales.
5. Similar legislation was introduced in England on 6 April 2006.

Risk Assessment

6. This order provides a safeguard for people living in the private rented sector in that it allows a local housing authority to make an interim management order on a property, which is required to be licensed as an HMO when it has no prospect of being licensed or when the health and safety of the persons occupying the house is at risk. If this order is not brought into force as soon as possible then there will be direct implications for tenants in the private rented sector, local housing authorities and voluntary organisations such as the Citizens Advice Bureau.
7. If these Regulations are not enacted local housing authorities will not be able to get authorisation from a residential property tribunal to introduce an IMO in order to take over the management of an HMO for the benefit of tenants and existing residents. This would, in effect, weaken the purpose and effect of the legislation and limit the powers of local housing authorities with regard to this sector in Wales. The benefits to tenants and increasing standards in particular would consequently be invalidated, which would result in differentiated standards applying in Wales and England. It could also result in greater pressure being exerted by tenants on other parts of the voluntary sector in seeking redress on issues and problems that are not being tackled.

Options

Option 1: Do Nothing

8. This option risks disadvantaging tenants in the private rented sector. They could be living in property, which is substandard and requires local

authority management by way of an IMO. They would not be able to seek redress via the residential property tribunal who would not be able to authorise the order in the first place.

Option 2: Make the Legislation

9. Introducing this Order would benefit tenants in the private rented sector, and local housing authorities who have to deal with houses in multiple occupation (HMOs) that cannot be licensed and properties that pose a risk to the health and safety of their occupants.
10. Tenants will not need to live in property, which is substandard as local authorities will be able to provide management if required by way of an IMO. They will be able to seek redress via the residential property tribunal if required.

Benefits

11. Tenants in the private rented sector will benefit from the introduction of this Order as their health and safety in their homes will be safeguarded.
12. The Assembly Government's overall policy is to enable decent homes for all and particularly to secure a larger, better quality, better managed private rented sector. The latter plays an important role in accommodating the young, the less well-off and the social disadvantaged who have no other housing choice. HMO licensing in particular, aims for greater management control of this sector by local housing authorities. It will aim for greater strategic coherence and higher standards in what is a diffuse but significant sector.

Costs

13. Any financial implications associated with the implementation of this Order will be expenditure incurred by local housing authorities in relation to HMO licensing. These costs will include initial training and running costs of the licensing scheme as well as administration and enforcement costs. The costs will be met by the additional £1.0 million that the Welsh Assembly Government has provided in the Revenue Support Grant. This grant will cover the totality of the HMO licensing scheme. A further £200k for the costs of training has been provided, via the Welsh Local Government Association (WLGA).
14. The costs of making IMOs cannot be quantified as the making of them are demand led. In taking over the management of a property on an interim basis, this allows the local authority to charge the relevant rental value to cover costs incurred in rehabilitating the property
15. The only other costs to the Assembly relating to the introduction of this Order will be in respect of supplying hard copies of the Statutory Instrument to local authorities and other interested parties. This is likely to be in the region of £200 and will be accommodated within existing budgets held by the Housing Directorate.

Consultation

With Stakeholders

16. Consultation on the policy behind this Order has been undertaken on several occasions:

- 31 March 2003 - 9 June 2003 – *The Housing Bill – Consultation on Draft Legislation*. This consultation was undertaken by ODPM for England and Wales. There were 12 responses from Wales. A list of the respondees is at Annex A; and
- 13 January 2005 – 28 February 2005 – *Licensing in the Private Rented Sector – Consultation on the Implementation of HMO Licensing*. A list of consultees is at Annex B. There were 27 responses received.

17. There has been overwhelming support for the proposals to license HMOs with the vast majority of respondents to the consultation exercise welcoming the licensing proposals as an effective way of regulating the sector. A few respondents, notably Shelter Cymru, suggested that mandatory licensing should apply to all HMOs. Given the numbers involved this was considered to be unrealistic, being overly costly and bureaucratic. However, local authorities will have powers in the Act to licence HMOs over and above the mandatory level of three storeys and five or more occupants.

With Subject Committee

18. This Order has been notified to the Social Justice and Regeneration Committee, via the list of forthcoming legislation on 12 January 2006 (Paper SJR(2)01-06, paper 4, Annex 1 page 4) and has remained there ever since. This Order was not identified for detailed scrutiny. Progress on the provisions of the Housing Act is regularly reported to the Subject Committee.

Review

19. The Assembly Government will review the operation and implementation of the HMO regime including the scope of mandatory licensing within three years of it being introduced. It will be in light of experience and discussions with relevant parties when licensing has been in place for three years. England will be following the same approach.

Summary

20. This Order prescribes the category of circumstances that need to be satisfied before a Residential Property Tribunal can authorise a local housing authority to make an interim management order in respect of a house to which section 103 of the Housing Act 2004 applies. The Order, when implemented will be a valuable tool for local authorities to safeguard the wellbeing of tenants in the private rented sector. Any costs will be met out of existing provision and will fall within local authorities' annual budget allocation.

Annex A

The Housing Bill – Consultation on Draft Legislation.(2003)

List of Respondeees in Wales

Auditor General for Wales
Cardiff Law School
Wrexham County Borough Council
Age Concern Cymru
South Wales Police
Neath Port Talbot County Borough Council
John Francis (Wales) Ltd
Jon Owen Jones (MP for Cardiff Central)
Wales Council for Voluntary Action/ Cymorth Cymru Interim Steering
Group
North Wales Society of Directors of Public Protection
Newport City Council
City & County of Swansea

Annex B

Licensing in the Private Rented Sector – Consultation on the Implementation of HMO Licensing.

List of Consultees

All Local Authorities in Wales
All Police & Fire Authorities in Wales
All Wales Chief Housing Officers Group
Association of Chief Police Officers
Association of Letting Management Agents
Association of Residential Letting Agents
Caer Las
Cardiff Bond Board
Cardiff Law Centre
Care and Repair Cymru
Chartered Institute of Housing Cymru
Chief & Assistant Chief Fire Officers Association
Commission for Local Administration in Wales
Council of Mortgage Lenders
Federation of Small Business
Fire Brigades Union
Fire Officers Association
Further Education Funding Council in Wales
Health & Safety Executive in Wales
Higher Education Funding Council for Wales
National Association of Estate Agents
National Federation of Builders (Wales Area)
National Landlords Association
National Union of Students Wales
Pembrokeshire Action for Single Homeless
Royal College of Nursing Wales
Royal Institution of Chartered Surveyors
Royal Society for Prevention of Accidents

Salvation Army
Shelter Cymru
Society of Architects in Wales
Society of Directors of Public Protection in Wales
Trades Union Congress Wales
Wales Council for Voluntary Action
Wales Tourist Board
Welsh Federation of Housing Associations
Welsh Local Government Association
Welsh Tenants' Federation Ltd