SCHEDULES

SCHEDULE 7

FURTHER PROVISIONS REGARDING EMPTY DWELLING MANAGEMENT ORDERS

PART 2

FINAL EDMOS

Operation of final EDMOs

9 (1) This paragraph deals with the time when a final EDMO comes into force or ceases to have effect.

(2) The order does not come into force until such time (if any) as is the operative time for the purposes of this sub-paragraph under paragraph 29 (time when period for appealing expires without an appeal being made or when order is confirmed on appeal).

(3) The order ceases to have effect at the end of the period of 7 years beginning with the date on which it comes into force, unless it ceases to have effect at some other time as mentioned below.

(4) If the order provides that it is to cease to have effect on a date falling before the end of that period, it accordingly ceases to have effect on that date.

(5) If—

(a) the order provides that it is to cease to have effect on a date falling after the end of that period, and

(b) the relevant proprietor of the dwelling has consented to that provision,

the order accordingly ceases to have effect on that date.

(6) Sub-paragraphs (7) and (8) apply where—

(a) a new final EDMO ("the new order") has been made so as to replace the order ("the existing order"), but

(b) the new order has not come into force because of an appeal to a residential property tribunal under paragraph 26 against the making of that order.

(7) If the date on which the new order comes into force in relation to the dwelling following the disposal of the appeal is later than the date on which the existing order would cease to have effect apart from this sub-paragraph, the existing order continues in force until that later date.

(8) If, on the application of the authority, the tribunal makes an order providing for the existing order to continue in force, pending the disposal of the appeal, until a date later than that on which it would cease to have effect apart from this sub-paragraph, the existing order accordingly continues in force until that later date.

(9) This paragraph has effect subject to paragraphs 15 and 16 (variation or revocation of orders) and to the power of revocation exercisable by a residential property tribunal on an appeal made under paragraph 26 or 30.

General effect of final EDMOs

10 (1) This paragraph applies while a final EDMO is in force in relation to a dwelling.

(2) The rights and powers conferred by sub-paragraph (3) are exercisable by the authority in performing their duties under section 137(1) to (3) in respect of the dwelling.

(3) The authority—

(a) have the right to possession of the dwelling (subject to the rights of existing and other occupiers preserved by paragraph 18(3) and (4));

(b) have the right to do (and authorise a manager or other person to do) in relation to the dwelling anything which the relevant proprietor of the dwelling would (but for the order) be entitled to do;

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

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

(ii) a right in the nature of a licence to occupy part of the dwelling;

(d) may apply to a residential property tribunal for an order under paragraph 22 determining a lease or licence of the dwelling.

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

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

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

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

unless consent in writing has been given by the relevant proprietor;

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

(5) The authority—

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

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

(6) But, where the relevant proprietor of the dwelling is a lessee under a lease of the dwelling, the authority are to be treated (subject to sub-paragraph (5)(a)) as if they were the lessee instead.

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

(a) a lease in relation to which the authority are to be treated as the lessee under sub-paragraph (6), or

(b) a lease to which the authority become a party under paragraph 12(2),

as if the authority were the legal owner of the premises (but this is subject to paragraph 12(4) to (6)).

(8) None of the following, namely—

(a) the authority, or

(b) any person authorised under sub-paragraph (3)(b),

is liable to any person having an estate or interest in the dwelling for anything done or omitted to be done in the performance (or intended performance) of the authority's duties under section 137(1) to (3) unless the act or omission is due to negligence of the authority or any such person.

(9) A final EDMO which has come into force is a local land charge.

(10) The authority may apply to the Chief Land Registrar for the entry of an appropriate restriction in the register in respect of such an order.

(11) In this paragraph "enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

General effect of final EDMOs: leases and licences granted by authority

11 (1) This paragraph applies in relation to any interest or right created by the authority under paragraph 10(3)(c).

(2) For the purposes of any enactment or rule of law—

(a) any interest created by the authority under paragraph 10(3)(c)(i) is to be treated as if it were a legal lease, and

(b) any right created by the authority under paragraph 10(3)(c)(ii) is to be treated as if it were a licence to occupy granted by the legal owner of the dwelling,

despite the fact that the authority have no legal estate in the dwelling (see paragraph 10(5)(a)).

(3) Any enactment or rule of law relating to landlords and tenants or leases accordingly applies in relation to any interest created by the authority under paragraph 10(3)(c)(i) as if the authority were the legal owner of the dwelling.

(4) References to leases and licences—

(a) in this Chapter, and

(b) in any other enactment,

accordingly include (where the context permits) interests and rights created by the authority under paragraph 10(3)(c).

(5) The preceding provisions of this paragraph have effect subject to—

(a) paragraph 12(4) to (6), and

(b) any provision to the contrary contained in an order made by the appropriate national authority.

(6) In paragraph 10(5)(b) the reference to leasing does not include the creation of interests under paragraph 10(3)(c)(i).

(7) In this paragraph—

"enactment" has the meaning given by paragraph 10(11);

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

General effect of final EDMOs: relevant proprietor, mortgagees etc.

12 (1) This paragraph applies in relation to—

(a) the relevant proprietor, and

(b) other persons with an estate or interest in the dwelling,

while a final EDMO is in force in relation to a dwelling.

(2) Where the relevant proprietor is a lessor or licensor under a lease or licence of the dwelling, the lease or licence has effect while the order is in force as if the local housing authority were substituted in it for the lessor or licensor.

(3) Such a lease continues to have effect, as far as possible, as a lease despite the fact that the rights of the local housing authority, as substituted for the lessor, do not amount to an estate in law in the dwelling.

(4) The provisions mentioned in sub-paragraph (5) do not apply to a lease or licence within sub-paragraph (2).

(5) The provisions are—

(a) the provisions which exclude local authority lettings from the Rent Acts, namely—

(i) sections 14 to 16 of the Rent Act 1977 (c. 42), and

(ii) those sections as applied by Schedule 2 to the Rent (Agriculture) Act 1976 (c. 80) and section 5(2) to (4) of that Act; and

(b) section 1(2) of, and paragraph 12 of Part 1 of Schedule 1 to, the Housing Act 1988 (c. 50) (which exclude local authority lettings from Part 1 of that Act).

(6) Nothing in this Chapter has the result that the authority are to be treated as the legal owner of any premises for the purposes of—

(a) section 80 of the Housing Act 1985 (c. 68) (the landlord condition for secure tenancies); or

(b) section 124 of the Housing Act 1996 (c. 52) (introductory tenancies).

(7) The relevant proprietor of the dwelling—

(a) is not entitled to receive any rents or other payments made in respect of occupation of the dwelling;

(b) may not exercise any rights or powers with respect to the management of the dwelling; and

(c) may not create any of the following—

(i) any leasehold interest in the dwelling or a part of it (other than a lease of a reversion), or

(ii) any licence or other right to occupy it.

(8) However (subject to sub-paragraph (7)(c)) nothing in paragraph 10 or this paragraph affects the ability of a person having an estate or interest in the dwelling to make any disposition of that estate or interest.

(9) Nothing in paragraph 10 or this paragraph affects—

(a) the validity of any mortgage relating to the dwelling or any rights or remedies available to the mortgagee under such a mortgage, or

(b) the validity of any lease of the dwelling under which the relevant proprietor is a lessee, or any superior lease, or (subject to paragraph 10(6)) any rights or remedies available to the lessor under such a lease;

except to the extent that any of those rights or remedies would prevent the local housing authority from exercising their power under paragraph 10(3)(c).

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

Management scheme and accounts

13 (1) A final EDMO must contain a management scheme.

(2) A "management scheme" is a scheme setting out how the local housing authority are to carry out their duties under section 137(1) to (3) as respects the dwelling.

(3) The scheme is to contain a plan giving details of the way in which the authority propose to manage the dwelling, which must (in particular) include—

(a) details of any works that the authority intend to carry out in connection with the dwelling;

(b) an estimate of the capital and other expenditure to be incurred by the authority in respect of the dwelling while the order is in force;

(c) the amount of rent which, in the opinion of the authority, the dwelling might reasonably be expected to fetch on the open market at the time the management scheme is made;

(d) the amount of rent or other payments that the authority will seek to obtain;

(e) the amount of any compensation that is payable to a third party by virtue of a decision of the authority under section 136(4) or 138(3) in respect of any interference in consequence of the final EDMO with the rights of that person;

(f) provision as to the payment of any such compensation and of any compensation payable to a dispossessed landlord or tenant by virtue of an order under paragraph 22(5);

(g) where the amount of rent payable to the authority in respect of the dwelling for a period is less than the amount of rent mentioned in paragraph (c) in respect of a period of the same length, provision as to the following—

(i) the deduction from the difference of relevant expenditure and any amounts of compensation payable to a third party or dispossessed landlord or tenant;

(ii) the payment of any remaining amount to the relevant proprietor;

(iii) the deduction from time to time of any remaining amount from any amount that the authority are entitled to recover from the proprietor under paragraph 23(5) or (6);

(h) provision as to the payment by the authority to the relevant proprietor from time to time of amounts of rent or other payments that remain after the deduction of—

(i) relevant expenditure, and

(ii) any amount of compensation payable to a third party or dispossessed landlord or tenant;

(i) provision as to the manner in which the authority are to pay to the relevant proprietor, on the termination of the final EDMO, the balance of any

amounts of rent or other payments that remain after the deduction of relevant expenditure and any amounts of compensation payable to a third party or dispossessed landlord or tenant;

(j) provision as to the manner in which the authority are to pay, on the termination of the final EDMO, any outstanding amount of compensation payable to a third party or dispossessed landlord or tenant.

(4) The scheme may also state—

(a) the authority's intentions as regards the use of rent or other payments to meet relevant expenditure;

(b) the authority's intentions as regards the payment to the relevant proprietor (where appropriate) of interest on amounts within sub-paragraph (3)(h) and (i);

(c) that paragraph 23(2) or, where the relevant proprietor consents, paragraph 23(3)(c) is not to apply in relation to an interim EDMO or (as the case may be) final EDMO that immediately preceded the final EDMO, and that instead the authority intend to use any balance such as is mentioned in that sub-paragraph to meet—

(i) relevant expenditure incurred during the currency of that final EDMO, and

(ii) any compensation that may become payable to a third party or a dispossessed landlord or tenant;

(d) that paragraph 23(4) to (6) are not to apply in relation to an interim EDMO or, where the relevant proprietor consents, a final EDMO that immediately preceded the final EDMO, and that instead the authority intend to use rent or other payments collected during the currency of that final EDMO to reimburse the authority in respect of any deficit such as is mentioned in paragraph 23(4);

(e) the authority's intentions as regards the recovery from the relevant proprietor, with or without interest, of any amount of relevant expenditure incurred under a previous interim EDMO or final EDMO that the authority are entitled to recover from the proprietor under paragraph 23(5) or (6).

(5) The authority must—

(a) keep full accounts of their income and expenditure in respect of the dwelling; and

(b) afford to the relevant proprietor, and to any other person who has an estate or interest in the dwelling, all reasonable facilities for inspecting, taking copies of and verifying those accounts.

(6) In this paragraph—

"dispossessed landlord or tenant" means a person who was a lessor, lessee, licensor or licensee under a lease or licence determined by an order under paragraph 22;

"relevant expenditure" means—

(a) expenditure incurred by the authority with the consent of the relevant proprietor, or

(b) any other expenditure reasonably incurred by the authority, in connection with performing their duties under section 135(1) to (3) or 137(1) to (3) in respect of the dwelling (including any reasonable

administrative costs and any premiums paid for insurance of the premises);

"rent or other payments" means rent or other payments collected or recovered, by virtue of this Chapter, from persons occupying or having the right to occupy the dwelling.

(7) In any provision of this Chapter relating to varying, revoking or appealing against decisions relating to a final EDMO, any reference to such an order includes (where the context permits) a reference to the management scheme contained in it.

Application to residential property tribunal in respect of breach of management scheme

14 (1) An affected person may apply to a residential property tribunal for an order requiring the local housing authority to manage a dwelling in accordance with the management scheme contained in a final EDMO made in respect of the dwelling.

(2) On such an application the tribunal may, if it considers it appropriate to do so, make an order—

(a) requiring the authority to manage the dwelling in accordance with the management scheme, or

(b) revoking the final EDMO as from a date specified in the tribunal's order.

(3) An order under sub-paragraph (2) may—

(a) set out the steps which the authority are to take to manage the dwelling in accordance with the management scheme,

(b) include provision varying the final EDMO, and

(c) require the payment of money to an affected person by way of damages.

(4) In this paragraph "affected person" means—

(a) the relevant proprietor, and

(b) any third party to whom compensation is payable by virtue of an order under section 134(4) or 138(2) or a decision of the authority under section 136(4) or 138(3) or who was a lessor, lessee, licensor or licensee under a lease or licence determined by an order of the residential property tribunal under paragraph 22 and to whom compensation is payable by virtue of an order under sub-paragraph (5) of that paragraph.

Variation or revocation of final EDMOs

15 (1) The local housing authority may vary a final EDMO if they consider it appropriate to do so.

(2) A variation does not come into force until such time, if any, as is the operative time for the purposes of this sub-paragraph under paragraph 33 (time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).

(3) The power to vary an order under this paragraph is exercisable by the authority either—

(a) on an application made by a relevant person, or

(b) on the authority's own initiative.

(4) In this paragraph "relevant person" means any person who has an estate or interest in the dwelling (other than a person who is a tenant under a lease granted under paragraph 2(3)(c) or 10(3)(c)).

16 (1) The local housing authority may revoke a final EDMO in the following cases—

(a) where the authority conclude that there are no steps which they could appropriately take as mentioned in section 137(4)(b) or that keeping the order in force is not necessary as mentioned in section 137(4)(c);

(b) where the authority are satisfied that—

(i) the dwelling will either become or continue to be occupied, despite the order being revoked, or

(ii) that the dwelling is to be sold;

(c) where a further final EDMO has been made by the authority in respect of the dwelling so as to replace the order;

(d) where the authority conclude that it would be appropriate to revoke the order in order to prevent or stop interference with the rights of a third party in consequence of the order; and

(e) where in any other circumstances the authority consider it appropriate to revoke the order.

(2) But, in a case where the dwelling is occupied, the local housing authority may not revoke a final EDMO under sub-paragraph (1)(b), (d) or (e) unless the relevant proprietor consents.

(3) A revocation does not come into force until such time, if any, as is the operative time for the purposes of this sub-paragraph under paragraph 33 (time when period for appealing expires without an appeal being made or when decision to revoke is confirmed on appeal).

(4) The power to revoke an order under this paragraph is exercisable by the authority either—

(a) on an application made by a relevant person, or

(b) on the authority's own initiative.

(5) Where a relevant person applies to the authority for the revocation of an order under this paragraph, the authority may refuse to revoke the order unless the relevant proprietor (or some other person) agrees to pay to the authority any deficit such as is mentioned in paragraph 23(4).

(6) In this paragraph "relevant person" means any person who has an estate or interest in the dwelling (other than a person who is a tenant under a lease granted under paragraph 2(3)(c) or 10(3)(c)).

17 (1) Part 2 of Schedule 6 applies in relation to the variation or revocation of a final EDMO as it applies in relation to the variation or revocation of a final management order.

(2) But Part 2 of that Schedule so applies as if—

(a) references to the right of appeal under Part 3 of the Schedule and to paragraph 29(2) were to the right of appeal under Part 4 of this Schedule and to paragraph 31(2) of this Schedule, and

(b) paragraph 23(4) defined "relevant person" as any person who, to the knowledge of the local housing authority, is a person having an estate or

interest in the dwelling (other than a person who is a tenant under a lease granted under paragraph 2(3)(c) or 10(3)(c) of this Schedule).