

SCHEDULES

SCHEDULE 7

FURTHER PROVISIONS REGARDING EMPTY DWELLING MANAGEMENT ORDERS

PART 1

INTERIM EDMOS

Operation of interim EDMOs

- 1 (1) This paragraph deals with the time when an interim EDMO comes into force or ceases to have effect.
- (2) The order comes into force when it is made.
- (3) The order ceases to have effect at the end of the period of 12 months beginning with the date on which it is made, unless it ceases to have effect at some other time as mentioned below.
- (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) Sub-paragraphs (6) and (7) apply where—
 - (a) a final EDMO (“the final EDMO”) has been made under section 136 so as to replace the order (“the interim EDMO”), but
 - (b) the final EDMO has not come into force because of an appeal to a residential property tribunal under paragraph 26 against the making of the final EDMO.
- (6) If the date on which the final EDMO comes into force in relation to the dwelling following the disposal of the appeal is later than the date on which the interim EDMO would cease to have effect apart from this sub-paragraph, the interim EDMO continues in force until that later date.
- (7) If, on the application of the authority, the tribunal makes an order providing for the interim EDMO to continue in force, pending the disposal of the appeal, until a date later than that on which the interim EDMO would cease to have effect apart from this sub-paragraph, the interim EDMO accordingly continues in force until that later date.
- (8) This paragraph has effect subject to paragraphs 6 and 7 (variation or revocation of orders by authority) and to the power of revocation exercisable by a residential property tribunal on an appeal made under paragraph 30.

General effect of interim EDMOs

- 2 (1) This paragraph applies while an interim EDMO is in force in relation to a dwelling.

Status: This is the original version (as it was originally enacted).

- (2) The rights and powers conferred by sub-paragraph (3) are exercisable by the authority in performing their duties under section 135(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 occupiers preserved by paragraph 18(3));
 - (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) But the authority may not under sub-paragraph (3)(c) create any interest or right in the nature of a lease or licence unless—
- (a) consent in writing has been given by the relevant proprietor of the dwelling, and
 - (b) where the relevant proprietor is a lessee under a lease of the dwelling, the interest or right is created for a term that is less than the term of that lease.
- (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 4(2),
- as if the authority were the legal owner of the premises (but this is subject to paragraph 4(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 135(1) to (3) unless the act or omission is due to negligence of the authority or any such person.
- (9) An interim EDMO which has come into force is a local land charge.

Status: This is the original version (as it was originally enacted).

- (10) The authority may apply to the Chief Land Registrar for the entry of an appropriate restriction in the register of title in respect of such an order.
- (11) In this paragraph “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

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

- 3 (1) This paragraph applies in relation to any interest or right created by the authority under paragraph 2(3)(c).
- (2) For the purposes of any enactment or rule of law—
 - (a) any interest created by the authority under paragraph 2(3)(c)(i) is to be treated as if it were a legal lease, and
 - (b) any right created by the authority under paragraph 2(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 2(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 2(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 2(3)(c).
- (5) The preceding provisions of this paragraph have effect subject to—
 - (a) paragraph 4(4) to (6), and
 - (b) any provision to the contrary contained in an order made by the appropriate national authority.
- (6) In paragraph 2(5)(b) the reference to leasing does not include the creation of interests under paragraph 2(3)(c)(i).
- (7) In this paragraph—

“enactment” has the meaning given by paragraph 2(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 interim EDMOs: relevant proprietor, mortgagees etc.

- 4 (1) This paragraph applies in relation to—
 - (a) the relevant proprietor, and
 - (b) other persons with an estate or interest in the dwelling,while an interim 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.

Status: This is the original version (as it was originally enacted).

- (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 2 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 2 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 2(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 2(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 interim EDMO (including an order quashing it).

Financial arrangements while order is in force

- 5 (1) This paragraph applies to relevant expenditure of a local housing authority who have made an interim EDMO.
- (2) “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) in respect of the dwelling (including any premiums paid for insurance of the premises).
- (3) Rent or other payments which the authority have collected or recovered, by virtue of this Chapter, from persons occupying or having the right to occupy the dwelling may be used by the authority to meet—
- (a) relevant expenditure, and
 - (b) any amounts of compensation payable to a third party by virtue of an order under section 134(4) or 138(2) or to a dispossessed landlord or tenant by virtue of an order under paragraph 22(5).
- (4) The authority must pay to the relevant proprietor—
- (a) any amount of rent or other payments collected or recovered as mentioned in sub-paragraph (3) that remains after deductions to meet relevant expenditure and any amounts of compensation payable as mentioned in that sub-paragraph, and
 - (b) (where appropriate) interest on that amount at a reasonable rate fixed by the authority,
- and such payments are to be made at such intervals as the authority consider appropriate.
- (5) The interim EDMO may provide for—
- (a) the rate of interest which is to apply for the purposes of paragraph (b) of sub-paragraph (4); and
 - (b) the intervals at which payments are to be made under that sub-paragraph.
- Paragraph 26(1)(c) enables an appeal to be brought where the order does not provide for both of those matters.
- (6) The authority must—
- (a) keep full accounts of their income and expenditure in respect of the 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.
- (7) The relevant proprietor may apply to a residential property tribunal for an order—
- (a) declaring that an amount shown in the accounts as expenditure of the authority does not constitute relevant expenditure (see sub-paragraph (2));
 - (b) requiring the authority to make such financial adjustments (in the accounts and otherwise) as are necessary to reflect the tribunal’s declaration.
- (8) In this paragraph—

Status: This is the original version (as it was originally enacted).

“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;

“expenditure” includes administrative costs.

Variation or revocation of interim EDMOs

- 6 (1) The local housing authority may vary an interim 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)).
- 7 (1) The local housing authority may revoke an interim EDMO in the following cases—
- (a) where the authority conclude that there are no steps which they could appropriately take for the purpose of securing that the dwelling is occupied (see section 135(4));
 - (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 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 an interim 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)).
- 8 (1) Part 2 of Schedule 6 applies in relation to the variation or revocation of an interim EDMO as it applies in relation to the variation or revocation of an interim 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) of this Schedule).