

# HOUSING ACT 2004

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## EXPLANATORY NOTES

### SCHEDULES

#### *Schedule 7: Further Provisions regarding empty dwelling management orders*

##### Paragraph 1 - Operation of interim EDMOs

601. An interim EDMO comes into force as soon as it is made and can normally last for a maximum period of 12 months.
602. [Paragraph 2](#) - General effect of interim EDMOs
603. When an interim EDMO is in force, the LHA takes over most of the rights and responsibilities of the relevant proprietor including (subject to the rights of existing occupiers) the right to possession of the dwelling. It does not, however, become the legal owner of the dwelling. With the consent of the relevant proprietor, the LHA may grant occupation rights. Where the relevant proprietor is a leaseholder, any grant must be for a term that is less than the relevant proprietor's lease.
604. A LHA (or an agent appointed by the authority) is not liable to any person with an estate or interest in the dwelling for any act or omission done in the performance of its duties under an interim EDMO, unless it is due to negligence.
605. An interim EDMO is a local land charge and the LHA may apply to have a restriction entered on the Land Register. This is to prevent any unauthorised dealings and to ensure the Land Register accurately reflects the status of the property.
606. [Paragraph 3](#) - General effect of interim EDMOs: leases and licences granted by authority
607. A tenancy or licence granted by a LHA is to be treated as if it were a legal lease or a licence granted by a legal owner.
608. [Paragraph 4](#) - General effect of interim EDMOs: relevant proprietor, mortgagees etc
609. A relevant proprietor is not entitled to receive any rent or other payments from persons occupying the dwelling and may not exercise any rights to manage the dwelling whilst an interim EDMO is in force. However, the relevant proprietor retains their rights to dispose of their interest in the dwelling (e.g. by selling it).
610. The validity of any mortgage or superior lease of the dwelling and any rights or remedies available to the mortgagor or lessor are unaffected, save where they would prevent the LHA exercising its power to grant a right of occupation.

##### [Paragraph 5](#) - Financial arrangements while order is in force

611. Rent collected by a LHA from persons occupying the dwelling may be used to meet the costs incurred in performing duties in respect of the dwelling or to pay compensation payable to a third party or a dispossessed landlord or tenant. The authority must pay any remaining balance, plus interest (where appropriate), to the relevant proprietor.

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612. The LHA must keep full accounts of income and expenditure and allow the relevant proprietor opportunity to inspect the accounts. The relevant proprietor may apply to a RPT to make an order declaring expenditure to be unreasonable and to require appropriate adjustment of the accounts.
613. [Paragraphs 6, 7 and 8](#) - Variation or revocation of interim EDMOs
614. A relevant proprietor or someone else with an interest in the dwelling is entitled to ask the LHA to vary or revoke an interim EDMO at any time.
615. The terms of an interim EDMO may be varied if the LHA considers it appropriate to do so.
616. A LHA may revoke an interim EDMO if:
- it concludes that there are no steps it can take to secure occupation of the dwelling;
  - it is satisfied that the dwelling will become or continue to be occupied following revocation;
  - it is satisfied that the dwelling is to be sold;
  - a final EDMO has been made to replace the order;
  - it concludes that it should revoke the order so it does not interfere with the rights of a third party; in any other circumstance it considers it appropriate to do so.
617. However, if the dwelling is occupied at the time the revocation is proposed, the LHA may only revoke with the consent of the relevant proprietor (unless the revocation is necessary so that a final EDMO may be made). This restriction is provided so that the relevant proprietor can not be required to manage tenancies he did not enter into. Therefore, if the LHA decides to revoke the order and hand back responsibility for the dwelling to the relevant proprietor, the relevant proprietor may request the LHA to bring to an end any occupation, before the relevant proprietor is willing to consent to the order being revoked..
618. The LHA may make revocation subject to payment of any expenditure incurred by it that has not already been recouped from rental income. It is entitled to refuse to revoke the order on the grounds that the property would be likely to be left unoccupied.
619. [Paragraph 9](#) - Operation of final EDMOs
620. A final EDMO comes into force when the time for appealing against it expires or, if an appeal is made, only when the RPT upholds it. The effect of this is that the relevant proprietor has the opportunity to prevent any final EDMO coming into force until either he accepts all the terms, or they have been considered by a RPT.
621. A final EDMO ceases to have effect after 7 years, unless:
- the order provides for it to cease to have effect earlier; or
  - the order provides for it to cease to have effect later and the relevant proprietor consents;
622. [Paragraphs 10, 11 and 12](#) - General effect of final EDMOs
623. The general effect of a final EDMO is largely the same as for an interim EDMO. The principal difference being that a LHA does not require the consent of the relevant proprietor to grant occupation rights. Any occupation rights granted cannot be for a fixed term expiring after the order is due to expire or terminable by notice of more than 4 weeks, without the consent of the relevant proprietor. But consent to create a tenancy equivalent to an assured shorthold tenancy is not needed, provided it is created more than 6 months before the expiry of the order.

624. [Paragraphs 13 and 14](#) - Management scheme and accounts
625. A final EDMO must contain a management scheme setting out how the LHA intends to carry out its duties and how it will account for monies expended and collected whilst it is operative. The LHA must keep full accounts of income and expenditure and provide anyone with a relevant interest in the dwelling reasonable access to inspect them.
626. The management scheme must include details of the following:
- Work the LHA intends to carry out to the dwelling and an estimate of expenditure;
  - The rent the dwelling might be expected to fetch on the open market and the rent the LHA will seek to obtain;
  - Any compensation payable to third parties;
  - Where the amount of rent payable is less than the open market rent, the management scheme must account for the difference. For example, the LHA is permitted to charge a sub market rent, but it must make up any shortfall out of its own resources.
627. The management scheme must also include details of how the LHA intends to pay the relevant proprietor any surplus remaining after deduction of its relevant expenditure and any compensation payable. The management scheme may also state if the LHA intends to carry over any surplus to a subsequent final EDMO or, where there is a deficit, how it intends to recover the deficit under a subsequent final EDMO.
628. A person affected by a management scheme who considers the LHA is not managing the dwelling in accordance with the management scheme may apply to a RPT for an order requiring the LHA to do so.
629. [Paragraphs 15, 16 and 17](#): Variation or revocation of final EDMOs
630. The rules on variation and revocation of final EDMOs are similar to those for interim EDMOs (see explanatory note on paragraphs 6, 7 and 8).
631. [Paragraph 18](#): Effect of EDMOs: persons occupying or having a right to occupy the dwelling.
632. [Paragraph 18](#) provides that a person who, prior to the making of an EDMO, had the right to occupy the dwelling retains the same legal status once the order is made.
633. [Paragraph 19](#): Effect of EDMOs: agreements and legal proceedings.
634. [Paragraph 19](#) provides for agreements relating to the management of the dwelling or the provision of services or facilities to it, in force at the time the EDMO is made and to which the relevant proprietor was a party, transfer to the LHA if it serves notice to that effect. The LHA can also take over certain legal proceedings commenced against the relevant proprietor on the service of notice to that effect.
635. [Paragraphs 20](#): Effect of EDMOs: furniture
636. [Paragraph 20](#) provides that any right to possession of furniture in the dwelling vests in the LHA whilst the EDMO is in force.
637. [Paragraph 21](#): EDMOs: power to supply furniture
638. A LHA may supply furniture to a dwelling subject to an EDMO and can recover the cost of it as relevant expenditure.
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**Paragraph 22: Power of a residential property tribunal to determine certain leases and licences**

640. A RPT may, on application from a LHA, make an order determining a lease or licence in respect of a dwelling if it is satisfied that the dwelling is not being occupied and the local authority requires possession to secure occupation of it. In making an order determining a lease or licence, a RPT may require the LHA to pay compensation.
641. [Paragraph 23](#): Termination of EDMOs: financial arrangements
642. On termination of an interim EDMO, the LHA must pay to the relevant proprietor any balance of rent left after deduction of its relevant expenditure and any compensation payable to a third party or a dispossessed landlord or tenant. However, it is not required to pay any balance to the relevant proprietor where the order is followed by a final EDMO and the final EDMO provides for this.
643. On termination of a final EDMO, the LHA must pay any balance owed to the relevant proprietor, a third party or a dispossessed landlord or tenant in accordance with the management scheme.
644. If, on termination of an EDMO, there is a deficit after deduction of relevant expenditure, the LHA may be required to meet the deficit out of its own resources (unless it subsequently recovers the deficit under a final EDMO). The LHA may only recover the deficit from the relevant proprietor if:
- the relevant proprietor has agreed to pay it;
  - it relates to a service charge paid by the local authority;
  - in the case of an interim EDMO, if the relevant proprietor unreasonably refused to consent to the grant of occupation rights;
645. Any sum recoverable is, until recovered, a charge on the dwelling.
646. [Paragraph 24](#); Termination of EDMOs: leases, agreements and proceedings
647. When an EDMO ceases to have effect the LHA ceases to be a party to a lease or licence to which it became a party under the order. The relevant proprietor takes over the LHA rights and obligations. The LHA may cease to have rights and liabilities under any other agreement or legal proceeding by serving a notice on the other party.
648. [Paragraph 25](#): EDMOs: power of entry to carry out work
649. A LHA has the right to enter a dwelling subject to an EDMO to survey its condition or to carry out works. Any occupier who prevents an officer, employee, agent or contractor of a LHA from carrying out their duties may be ordered to stop by a magistrate's court. Failure to comply with an order of the court is an offence. A LHA may apply to a court for a warrant to authorise entry to a dwelling subject to an EDMO.
650. [Paragraphs 26 to 37](#); Appeals
651. A person who is affected by an EDMO may appeal to a RPT against:
- a decision of a LHA to make a final EDMO;
  - the terms of a final EDMO (including the terms of a management scheme);
  - the terms of an interim EDMO on the grounds that they do not make provision regarding the interest or on the intervals at which surplus monies received by the LHA under the order are to be paid to the relevant proprietor;
  - a decision of the LHA to vary or revoke an interim or final EDMO or its refusal to vary or revoke an interim or final EDMO.

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- a decision of the LHA as to whether compensation should be paid to a third party in respect of interference with his rights in consequence of a final EDMO.