



BRIEFING PAPER

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Empty Dwelling Management Orders (EDMOs)

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Summary

Chapter 2 of Part 4 of the *Housing Act 2004* made provision for local authorities to take over management of certain residential premises that had been empty for at least six months by seeking an Empty Dwelling Management Order (EDMO). Residential Property Tribunals (now First-Tier Tribunals) gained the power to issue EDMOs on 6 July 2006.

The aim of EDMOs is to bring empty private sector property back into use. The expectation was that the introduction of EDMOs would persuade owners to bring properties back into use and encourage constructive dialogue between owners and empty property officers around the range of options available. EDMOs were seen as a back-up power to be used as a last resort.

On introduction they attracted a good deal of negative media attention; there were reports that local authorities were seizing properties for seven years and that owners had no right of appeal. DCLG issued a statement to refute these claims.

On 7 January 2011 the Secretary of State for Communities and Local Government, Eric Pickles, announced an intention to restrict the use of EDMOs in order to “protect civil liberties.” Regulations providing that EDMOs can only be sought where a property has been empty for two years (as opposed to six months) and requiring an authority to give the owner at least three months’ notice of the intention to apply for an order, came into force on 15 November 2012.

Critics of EDMOs argue that they are used very rarely, however they were always envisaged as a last resort. Local authorities will normally engage with owners of empty properties and persuade them to bring properties back into use before using formal powers.

Data published by the Department for Communities and Local Government (DCLG) shows that, as of October 2015, there were 600,179 empty homes in England. The number is a slight (1.6%) decrease on the previous year's total and a 17% decrease on the total for 2005 (723,509 empty homes).

Information on wider local authority powers to tackle empty private sector dwellings can be found in Library Briefing Paper 03012, [Empty Housing \(England\)](#).

1. Background

1.1 Calls for reform

The [Empty Homes Agency](#) (now called Empty Homes) had long campaigned for the introduction of compulsory leasing powers for local authorities to tackle empty housing:

What is compulsory leasing?

Where an owner of an empty property has turned down council or housing association offers of help to bring the property back into use, and can offer no good reason why the property should remain empty, and the property is in decline the council should be able to lease the home to meet housing need without the owner's permission. Empty homes affect communities by lowering neighbouring property prices and attracting crime and vandalism.

The council would facilitate the capital works needed to allow the property to be leased and use the house, possibly in conjunction with a housing association, to accommodate people in housing need (eg: homeless people or key workers). The rent income would pay for the cost of the improvements to the property.

When the full amount had been recovered, the property would revert back to the owner in a fit state to continue to allow the property to be rented out. During the intervening period the council would offer the owner training on becoming a landlord or advice on lettings agencies to allow the property to stay in use.

To make the scheme more attractive to landlords, a council might offer a longer lease but during that period the owner of the property would also receive some small rental income. This might make the scheme easier to promote and ensures that the owner's property is improved. And the council has the nomination rights for the property for a longer period. This is a win-win for all parties.

The History

This idea was initially promoted by the London Borough of Hammersmith and Fulham (LBHF). This London Borough estimates that there are approximately 1,000 empty properties for which compulsory leasing may be the only viable option. In addition to long-term empty homes, there is also a particular issue of empty flats above shops with the owners having no reason to bring these flats into residential use.

This idea is also supported by the Local Government Association who appeared with the LBHF to give evidence to the select committee in 2002.

The Empty Homes Agency raised the issue of compulsory leasing with Lord Falconer, the Housing Minister, at their meeting in March 2002 and with Lord Rooker at a meeting in September 2002.

The DTLR Select Committee report into empty homes (20th March 2002) recommended that compulsory leasing should be undertaken on a pilot basis.

in its response to the Select Committee report (May 2002), the Government admitted that it "is attracted by the Committee's recommendation for a compulsory leasing scheme for long term empty properties where the owner has refused all approaches by

the local authority to bring the property back into occupation voluntarily."

The Government has expressed interest in using new control orders to allow for the appointment of alternative management arrangements for such empty homes. It also recognises that primary legislation would be required to introduce such orders.

A number of councils have already expressed an interest in this scheme including Hammersmith and Fulham, Harrow, Gateshead, Middlesbrough, Salford, Sheffield, South Oxfordshire, and Southampton.

Compulsory leasing is also supported by CHAS, Crisis, Homeless Link, and Shelter.¹

The Department of Transport, Local Government and the Regions Select Committee's 2001-02 inquiry into the problem of empty homes recommended that a pilot programme of local authority compulsory leasing schemes should be developed:

The Local Government Association advocated the use of compulsory leasing, a scheme used in the Netherlands, as an additional way to bring long-term, empty properties back into use:

"This is understood to involve the local authority seeking permission to force a lease on an empty property and undertaking refurbishment costs to make the property fit and ready for letting. The property can then be used as social housing and the fair rent which would be paid to the local authority, to pay off the cost of refurbishment. This cost would therefore dictate the term of the compulsory lease."

Such a scheme might have an advantage over compulsory purchase order as the owner retains the freehold of the property and the local authority could provide guidance to the owner to encourage re-use of the property in the long term. A compulsory leasing scheme does not yet appear to have been tried in this country but councils such as London Borough of Hammersmith and Fulham are keen to pilot it. **We recommend that the DTLR sponsor a pilot programme of local authority compulsory leasing schemes for long-term vacant properties.**²

The Labour Government's response to the Select Committee's recommendations included the following passage on compulsory leasing:

The Government is attracted by the Committee's recommendation for a compulsory leasing scheme for long-term empty properties where the owner has refused all approaches by the local authority to bring the property back into occupation voluntarily. The imperative to make best use of existing housing will often outweigh any justification for keeping properties empty for long periods of time, especially where the owner has refused reasonable approaches to bring the property back into use and has no proposals of their own. The Government will give careful consideration to the Committee's recommendation. However, this proposal would require primary legislation and it would be

¹ Empty Homes Agency website – now deleted.

² [HC 240-I of Session 2001-02](#), para 24

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necessary to undertake a careful assessment of the costs and benefits likely to accrue.

The Government's objective in considering the proposal is that any scheme must be simpler and quicker than existing arrangements for compulsory purchase of empty homes. The recommendation has much in common with proposals DTLR is considering in connection with the selective licensing of private landlords and Houses in Multiple Occupation for the appointment of alternative management arrangements. The proposal here is to provide a simpler alternative to the current procedure for using Control Orders. Control Orders relate to Houses in Multiple Occupation and, like CPOs, involve a transfer of possession with compensation. The objective is to enable local authorities to apply for an Order appointing a manager of the property, subject to a right of appeal for the owner. The power might include a right for the manager to:

- grant tenancies and licences to occupy;
- collect and hold rent and other charges;
- carry out repairs and maintenance, using those monies;
- enforce contracts relating to management to which the owner or his agent are party;
- pursue occupants for rent arrears or other breaches of contract.

The power to manage would be broadly that which might be conferred by a landlord who wishes to treat his ownership purely as an investment, or for other reasons wishes to take no active part in management. The advantage of alternative management arrangements over existing provisions such as Compulsory Purchase Orders and Control Orders is that the owner would retain ownership of the property. The impact would be to deny them management control where their management is defective. This should obviate the need for compensation arrangements. It also minimises the risk of conflict with the European Convention on Human Rights.

We see many attractions in extending these proposals to include long-term empty homes, subject to the satisfactory outcome of consultation on the costs and benefits. Given that primary legislation would be required, it would not be possible to pilot arrangements on empty homes prior to enactment of any legislation. However, careful consideration would always be given to how the proposal might be rolled out to local authorities, including whether this might be on the basis of pilots in a number of areas.³

1.2 Consultation on compulsory leasing

In [Sustainable Communities: Building for the Future](#) (February 2003) the Labour Government announced an intention to consult on the issue of compulsory leasing powers. May 2003 saw the publication of [Empty Homes: Temporary Management, Lasting Solutions](#) by the Office of the Deputy Prime Minister. The consultation period ended on 22 August 2003 and the then Government subsequently published a [response](#) in which it said its preferred approach was to give local

³ [Cm 5514](#), May 2002

authorities powers to take temporary management control of empty homes through an instrument described as a 'Management Order':

A power to make 'Empty Homes Management Orders' should work in the interests of both owners and the local community, recognising that often owners are unable to manage the task of bringing a dilapidated property back into use but may be unwilling to sell.⁴

1.3 The Housing Act 2004

The *Housing Bill* was presented on 8 December 2003 and received Royal Assent on 18 November 2004. Although measures were not included in the Bill as originally published, the Government said that amendments would be made to allow councils to apply for Empty Homes Management Orders on long-term empty properties "where there is a strong case for doing so."⁵

Lord Rooker explained the purpose of EDMOs when moving amendments to the Bill during its Committee Stage in the Lords. He made it clear that tackling empty properties would not necessarily require a change in ownership but said that where owners were unwilling to take action "we should not be afraid to consider compulsion."⁶ He said:

- EDMOs would not completely solve the problem of empty homes as "there will always be a certain proportion of housing stock that is vacant at any given time."
- EDMOs were not an attempt to penalise people for leaving a home vacant for "valid and reasonable reasons" such as when caring for someone, seeking a job elsewhere or living in a care home.⁷

Lord Rooker drew a distinction between leaving a property vacant for good reasons and vacant properties which "are not the principal homes of absent owners, second homes or holiday homes; nor are they homes that are undergoing repair or alteration or are subject to a process that will, in time, lead them to being reoccupied."⁸ He said that the human rights implications of EDMOs had been considered carefully but that "the rights of owners to do as they choose with their property must be balanced against the rights of other property owners and the wider community in which they reside."⁹ The expectation was that the introduction of EDMOs would persuade owners to bring properties back into use and encourage constructive dialogue between owners and empty property officers around the range of options available. EDMOs were seen as a back-up power to be used as a last resort.

⁴ [DCLG, Empty Homes: temporary management, Lasting solutions – summary of responses, 2003](#)

⁵ [HC Deb 19 May 2004 c51-2WS](#)

⁶ [HL Deb 13 September 2004 cc905-911](#)

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

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Lord Rooker provided a detailed explanation of the amendments tabled to enable the introduction of EDMOs:

...Amendment No. 171A describes interim and final empty dwelling management orders. It provides for a local housing authority to secure occupation of an unoccupied dwelling. A "dwelling" is defined as a building intended to be occupied as a separate dwelling, such as a house, or a part of a building so intended, such as a flat. It introduces the concept of "relevant proprietor"—that is, the person who the empty dwelling management order is made against. In most cases, this will be the freeholder of the dwelling, but where there is a leasehold interest of more than seven years, it is the person with the shortest unexpired term of more than seven years.

Amendment No. 171B requires a local authority to apply to a residential property tribunal for authorisation to make an interim empty dwelling management order. Prior to seeking authorisation, the local authority must attempt to notify the relevant proprietor of the fact, and ascertain if he has any intention to bring the dwelling back into occupation.

Amendment No. 171C requires that the residential property tribunal must be satisfied that various tests are met, and that the case does not fall within any category of exception prescribed by the appropriate national authority before authorising the making of an interim empty dwelling management order.

Amendment No. 171D requires the local authority to take any steps it considers appropriate to secure occupation and proper management of the dwelling, pending either a final empty dwelling management order or revocation of the interim empty dwelling management order. It cannot grant rights of occupation without the consent of the relevant proprietor.

Amendment No. 171E provides that the local authority may make a final empty dwelling management order either to replace an interim order or a previous final order if it considers the dwelling is likely to become or remain unoccupied. It does not require authorisation from the residential property tribunal.

Amendment No. 171F requires a local authority to take steps to secure occupation and proper management of the dwelling. The local housing authority does not require the consent of the relevant proprietor to grant rights of occupation. A final empty dwelling management order must contain a management scheme for setting out how the local authority intends to carry out its duties and how it will account for the moneys expended and collected.

Amendment No. 171G provides for a third party to apply to a residential property tribunal for compensation for any interference with his rights as a result of the making of an interim empty dwelling management order or to request the local authority to pay compensation for interference with his rights as a result of making a final empty dwelling management order.

Amendments Nos. 171H and 174A to 174D are consequential amendments. Amendment No. 210A covers a wide range of matters relating to the operation and effect of empty dwelling management orders and financial arrangements. It is a long and detailed schedule, and is fairly self-explanatory.

The general effect of an interim empty dwelling management order is very similar to that of the interim management orders

under Chapter 1 of Part 4 of the Bill, and can last for up to 12 months. While it is in force, the local authority takes over most of the rights and responsibilities of the relevant proprietor but does not become the legal owner of the dwelling. Rent collected while the order is in force must be used to meet relevant expenditure, or to pay compensation. Any balance must be paid to the relevant proprietor.

A local housing authority may vary or revoke an interim empty dwelling management order at any time, on its own initiative or at the request of someone with an interest in the dwelling. However, if the local authority has secured occupation of the dwelling, it may only revoke the order with the consent of the relevant proprietor. It may also refuse to revoke the order unless any expenditure it has incurred up to that point that has not been met by rental income is paid to it either by the relevant proprietor or someone else.

A final empty dwelling management order may last for a maximum of seven years. The general effect is the same as for an interim order. The only significant difference is that the local authority does not require the consent of the relevant proprietor to grant occupation rights. The procedure for varying or revoking a final order is similar to that for an interim order.

A local authority has a right to possession of any furniture in the dwelling while the empty dwelling management order is in force, but the relevant proprietor may request possession of it. The local authority may also supply furniture to the dwelling.

A property tribunal may terminate a lease of a dwelling on which an empty dwelling management order is made, if it considers the dwelling is not being occupied and the local authority requires possession to arrange for it to be occupied. This provision is necessary in order to prevent any sham arrangements being put in place to defeat the objective of the empty dwelling management orders. However, we recognise this could deprive someone of property rights, so the schedule provides for the property tribunal to order payment of compensation by local authorities to the person whose interest is determined.

On the termination of an empty dwelling management order, the local authority must pay to the relevant proprietor any balance of rent left after deduction of its relevant expenditure, and any compensation it has been required to pay. If, on termination, the balance is in deficit, the local authority may seek to recover the deficit from the relevant proprietor if he has agreed to pay it, if it relates to a service charge paid by the local authority and, in the case of an interim empty dwelling management order, if the relevant proprietor unreasonably refused consent to the grant of occupation rights.

If none of these provisions apply, the local authority must meet the deficit itself. However, if a subsequent final empty dwelling management order is made, the local authority may instead seek to recover the deficit from any surplus made under that subsequent order.

There are a wide range of rights to appeal to a residential property tribunal against matters that affect a person with an interest in a dwelling on which an empty dwelling management order is made. A relevant person may appeal to the residential property tribunal against a decision of a local authority to make a final empty dwelling management order, or the terms of it; the

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terms of an interim order, including any terms regarding compensation payable to a third party or a dispossessed landlord or tenant; or a decision of a local authority to vary or revoke, or its refusal to vary or revoke, both an interim or final empty dwelling management order. A third party may also appeal to a residential property tribunal against a decision by a local authority not to pay compensation to him, or a decision relating to the amount of compensation payable.

In conclusion, we consider that these arrangements strike a fair balance between the right of property owners to determine how their property is used and the duty of local housing authorities to secure occupation of that property in the wider public interest. That should come as no surprise to noble Lords since we consulted on this over a very long period.¹⁰

At Report Stage a Government amendment was agreed to require a property to have been empty for a minimum period of six months before an interim EDMO could be approved.¹¹

In August 2005 the Office of the Deputy Prime Minister published *Empty Dwelling Management Orders: consultation on secondary legislation*. This document provided further background information on EDMOs and set out options for secondary legislation to support measures in the *Housing Act 2004*. The consultation period ended on 14 October 2005.

The Regulations relating to EDMOs, *The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006* (SI 2006/367) and *The Housing (Management Orders and Empty Dwelling Management Orders) (Supplemental Provisions) (England) Regulations 2006* (SI 2006/386), came into force on 6 April 2006. The power in section 134 of the 2004 Act, allowing First-Tier Tribunals (previously Residential Property Tribunals) to authorise the making of interim EDMOs, came into force on 6 July 2006.

¹⁰ [HL Deb 13 September 2004 cc905-911](#)

¹¹ [HL Deb 13 October 2004 c355](#)

2. An overview of EDMOs as introduced

EDMOs are a discretionary power of local authorities. Where a residential property had been vacant for a minimum of six months¹² one option at the disposal of an authority was to seek an interim EDMO to allow the authority to let out the dwelling with the proprietor's consent. The guidance issued by the Department for Communities and Local Government (DCLG) to local authorities said:

LHAs should always attempt to secure the occupation of empty dwellings with the consent and co-operation of the owner and only resort to the exercise of their formal enforcement powers, including the use of EDMOs, where occupation cannot be achieved through voluntary means.¹³

Under Section 134 of the 2004 Act a First-Tier Tribunal (FTT) could authorise an authority to make an interim EDMO in respect of a dwelling that was unoccupied (except where the relevant proprietor is a public body) if:

- satisfied that the dwelling had been wholly unoccupied for at least six months (or such longer period as may be prescribed);¹⁴
- there was no reasonable prospect of it becoming occupied in the near future;
- that, if an interim EDMO was made, there was a reasonable prospect that it would become occupied;
- that the authority had complied with section 133(3) of the Act;
- that any prescribed requirements had been complied with; and
- that it was not satisfied that the case fell within a prescribed exception.

EDMOs could not be sought in respect of:

- a property that was a building or part of a building used for non-residential purposes; or
- it was *not* wholly unoccupied e.g. only part of the house or flat was unoccupied or there were spare rooms not in use; or
- it had been lived in at any time within the previous six months.¹⁵

Circumstances in which other properties were exempt from the service of an EDMO, despite being empty for six months or more, were:

- The property was normally the owner's only or main residence, but:
 - they were temporarily residing elsewhere;

¹² This was initially six months but was extended to two years after 15 November 2012 (see section 4)

¹³ DCLG, [Guidance Note on Empty Dwelling Management Orders](#), July 2006, para 2.1

¹⁴ See footnote 12.

¹⁵ See footnote 12.

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- they were absent so that they could be cared for elsewhere;
- they were absent because they were caring for someone elsewhere;
- they were in the armed forces and were away from home on service.
- The property was occupied occasionally by the owner or their guests as a second home or a holiday home.
- The property was genuinely on the market for sale or to be let.
- The owner was expecting to inherit the property but had not obtained grant of representation (probate) following the death of the previous owner. In this case, the property would continue to be excepted for six months after a grant of representation was obtained.
- It was comprised in an agricultural holding within the meaning of the Agricultural Holdings Act 1986 or a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995.
- It was usually occupied by an employee of the relevant proprietor in connection with the performance of his duties under the terms of his contract of employment.
- It was available for occupation by a minister of religion as a residence from which to perform the duties of his office.
- It was subject to a court order freezing the property of the relevant proprietor;
- it was prevented from being occupied as a result of a criminal investigation or criminal proceedings.
- It was mortgaged, where the mortgagee, in right of the mortgage, had entered into and was in possession of the dwelling.¹⁶

Ultimately a FTT would decide whether or not a particular exemption applied and whether or not to grant an interim EDMO. Once an interim EDMO is granted it will normally last for twelve months. Where consent to letting the dwelling cannot be obtained from the proprietor, the interim order may be revoked and replaced with a final EDMO; this does not require the consent of a FTT. Final EDMOs remain in force for a fixed period of no longer than seven years. Where a final order is in place authorities do not need the proprietor's consent to letting out the dwelling.

Full information on the operation and implications of EDMOs can be found in the Department for Communities and Local Government's (DCLG) [guidance for local authorities](#). The Empty Homes Agency produced its own [guidance](#) in 2009.

The Department also [issued guidance on EDMOs for residential property owners](#).¹⁷

¹⁶ *The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 (SI 2006/367)*, as amended

¹⁷ Now archived.

On 1 February 2011 information on the number of EDMOs issued was provided in response to a PQ:

Jim Fitzpatrick: To ask the Secretary of State for Communities and Local Government how many empty dwelling management orders were (a) applied for by local authorities and (b) authorised by Residential Property Tribunals in each year since 2006.

Andrew Stunell: A list of empty dwelling management orders (a) applied for by local authorities and (b) authorised by the Residential Property Tribunal Service in each year since 2006 is given as follows:¹⁸

	<i>EDMO applied for</i>	<i>EDMO authorised by RPTS</i>
2006	2	0
2007	14	12
2008	15	10
2009	10	8
2010	22	13
2011	1	0

¹⁸ [HC Deb 1 February 2011 c746W](#)

3. DCLG statement refuting media claims: 13 July 2006

On the introduction of EDMOs they attracted a good deal of negative media attention. This led DCLG to issue a statement on 13 July 2006 in which various claims about the impact of EDMOs were refuted. The statement is reproduced in full below:

Accusation - Furniture snatched: The state has the right to possess furniture, fixtures and fittings, when the home is seized, including if the property is grabbed because the owner is dead.

Answer:

The provisions in the Housing Act 2004 provide that where an EDMO is made on a dwelling that contains furniture (including fittings and other articles), the local authority has the right to possession of the furniture whilst the order is in force but does not at any stage own the furniture.

The provisions enable a local authority to deal with furniture that has been left in a property subject to an EDMO. Rather than risk old furniture being removed and disposed of, the provisions require that it is either:

- kept at the property under the possession of the local authority;
- handed over to the owner at their request;
- stored at the local authority's expense following adequate notice to the owner.

In practice, we expect local authorities would want to renounce possession of any furniture left in the property as they would not want to risk it being damaged whilst under their control. The local authority must arrange safe storage of any furniture renounced and must hand back possession of any furniture if requested by the owner.

A property inherited following the death of the previous owner is exempt from an EDMO for at least 6 months after probate is settled. There is absolutely no question of a local authority seizing the possessions of a dead person as a result of making an EDMO. We have written to local authorities stressing the importance of proceeding with the utmost sensitivity where a property is empty following bereavement.

Accusation - 'Threatening' owners: The Government admits the purpose of the new laws is to provide "a credible threat" and "is intended to put pressure on the owner". Yet empty public sector properties are unaffected.

Answer

Eight out of every ten empty homes are privately owned. In recent years central government has encouraged local authorities to include measures to bring privately owned empty homes back into use as part of their strategic housing approach. This has necessitated policies and procedures to encourage private property owners to work with public agencies to find solutions. Incentives such as grant and leasing schemes are a useful way of cajoling owners to take action. But incentive schemes are wholly

dependent on good will and co-operation. Without it the only alternative for local authorities is to take enforcement action.

Some local authorities are prepared to use existing enforcement powers, such as compulsory purchase procedures, where it is evident owners are unwilling or unable to participate in voluntary measures. But many local authorities take the view that such procedures are not practical in the context of empty homes because the approach requires a change in ownership before the issue of reuse can be addressed. The process can be drawn out and complicated, particularly if the proposed action is opposed.

The intention of Empty Dwelling Management Orders is to bridge the gap between voluntary measures and existing enforcement procedures. The legislation is intended to operate alongside measures such as voluntary leasing schemes run by local authorities and Registered Social Landlords. It will provide an effective back-up to such arrangements where owners turn down offers of assistance and do not have plans of their own to bring the property back into use.

A decision whether to pursue an Empty Dwelling Management Order would be entirely at the discretion of a local authority. As the consultation document on the secondary legislation for Empty Dwelling Management Orders (published in August 2005), made clear, the 'threat' of an EDMO is intended to put pressure on the owner to enter into constructive dialogue with the local authority where voluntary initiatives failed to have that same impact. The intention is nevertheless to still reach an agreement as to the best course of action to secure occupation, and thereby avoiding the need for an order to be made.

We recognise that vacancy rates in some public sector bodies are still too high though there have been major improvements in recent years – e.g. MoD has reduced its vacancy rates significantly through a series of initiatives. However, it would not be appropriate for a local authority to take enforcement action against itself or other public sector bodies.

We are using other policy levers to drive improvements in public sector stock management - e.g. Comprehensive Performance Assessment and Best Value. However, it is important to get empty homes into perspective. For every local authority owned dwelling empty for more than 6 months there are 14 in private ownership.

Accusation - Seized for seven years: Under the Orders a private home can be seized for up to seven years; 28 days after an Order is granted, there is no right of appeal.

Answer

A local authority can apply to the Residential Property for approval to make an interim Empty Dwelling Management Order (EDMO) where the dwelling has been vacant for at least 6 months.

If approved, the interim EDMO lasts for up to twelve months. It can be revoked at any time before, either because the local authority cannot find occupants for the property by its own efforts, or at the request of the owner or another relevant party.

Prior to applying to the RPT to make an interim EDMO, the local authority must seek to make contact with the owner and ascertain their intentions with regard to the property. A residential property tribunal will not approve an order where the local authority cannot show that it has sought to make contact

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with the owner with a view to bringing the property back into occupation through voluntary means.

There is no appeal against the decision of the local authority to apply to the residential property tribunal order for an interim EDMO. This is because the residential property tribunal, in approving the order, has to ensure that the council has followed the procedures correctly. Although the owner does have the right of appeal against the terms of an interim EDMO relating to payment of surplus rental income and any interest paid; and a decision to vary or revoke, or refuse to vary or revoke, an interim EDM.

The final EDMO, which can last up to seven years, replaces the interim EDMO where a local authority concludes that the dwelling would otherwise become or remain unoccupied. The owner may appeal to the residential property tribunal against a council's decision to make the final EDMO (this is because the local authority does not need the further approval of the RPT to make a final EDMO); the terms of a final EDMO (including the terms of the management scheme); and a decision to vary or revoke, or refuse to vary or revoke a final EDMO.

Also, under section 231 of the Housing Act 2004, a party to proceedings before a Residential Property Tribunal may appeal to the Lands Tribunal, against a decision of the Residential Property Tribunal either with the permission of the Tribunal itself or the Lands Tribunal [within the time specified by rules under Section 3(6) of the Lands Tribunal Act 1949].

The issue regarding the rights of owners to appeal has already been the subject of a Parliamentary Question put forward by Geoffrey Clifton-Brown, a Conservative Party MP and answered by this Department.

Accusation - Homes in good condition seized: A home does not have to be blighted or boarded up to be seized, merely empty for six months – including homes of the recently deceased.

Answer

The initial consultation paper on the measures sought views on a link with property condition. However this was unworkable and did not feature as part of the legislation. The condition of a property may well be a driving factor in a local authority's decision process. But equally, an empty property does not have to be severely dilapidated to be broken into and vandalised. However, a property has to be vacant for at least 6 months before the local authority can apply to the RPT for an interim EDMO to be made. The date from which this the 6 months is counted is the date when the local authority first knew that the property was empty and therefore, it is likely that the property will have been vacant for much longer. However, in all cases, the local authority is expected to have made, or sought to have made, contact with the owner to establish their intentions with regards to the property and offered assistance where this was appropriate.

We have put in place special rules in cases where property is empty following the death of the previous owner. We are particularly concerned that families should have plenty of time to make the right decisions for them. A local authority would not be able to make an Order whilst the property is going through probate, however long this process takes to complete, nor for at least six months after probate is granted. Even then, the local authority would not be able to make an order if the new owner

had plans to bring the property back into use or sell it. Indeed, property owners would be entitled to sell at any time whilst an EDMO is in force and would receive rental income and benefit from any increase in the value of their properties as a result of repairs or improvements funded by the local authority.

Accusation - Confiscated for asking too much: Homes already on the property market can be seized if a council thinks the asking price is 'unrealistic'.

Answer

Where a property is genuinely on the market for sale or letting, it is exempt from the legislation - however, where a local authority believes that the owner has put their property on the market for the sole purpose of circumventing an EDMO, rather than because they want to sell or rent their property, they can still apply to a residential property tribunal to make an interim EDMO.

The decision to approve an interim EDMO will be made by the RPT, based on the evidence presented by the local authority and the owner, if that exists. The local authority's evidence might be its judgement that a property is being marketed at an unrealistic price which, in its view, would almost certainly prevent a sale from taking place and the property remaining empty.

If the local authority were to consider applying for an interim EDMO where they believed the owner was marketing his property at an unrealistic price, the LHA would still be expected to engage with the owner and where appropriate, offer help if it transpired, for example, that the owner was genuinely having difficulties selling the property.

Where a case goes to a residential property tribunal, and an oral hearing was held, one member of that tribunal will almost certainly be a qualified surveyor, who would have the expertise with regards to whether or not an authority was being fair in alleging that the property was being marketed at an unrealistic price.

Accusation - Powers of entry: Councils have forcible powers of entry once an Order is made, and people can be taken to court and charged with a criminal offence if they obstruct officials.

Answer

The purpose of an EDMO is to ensure occupation of a vacant dwelling. Once an EDMO has been made, the council becomes responsible for the day to day management of the property and must consider the best way to get it occupied, including making the property safe and habitable, for example, through making the necessary repairs, and removing waste and other hazards that have arisen as a result of the vacancy. It is only reasonable, therefore, that the council would have powers of entry once the order is made and should not be obstructed in their course of duty.

Accusation - Owners can be charged for having their home seized: Once seized, there is no obligation to obtain a market rent, and social tenants can be housed in the property. The owner can even be charged and billed *for their property being seized*, if service/standing charges are greater than the rent, after the council deducts its "expenses".

Answer

Local authorities do not have to charge the market rent for a property subject to an EDMO. Important to bear in mind,

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however, that unoccupied dwellings generate no income at all but are liable to council tax and higher insurance premiums. Whilst local authorities will not be required to charge a market rent they must pass any income remaining after deduction of their expenditure (which may include expenditure on repairs to the dwelling) to the owner.

Where the local authority has not sought to collect the market rent, it must reduce by an equal amount, the amount it takes from the rent to cover relevant expenditure and compensation, and show this in the management scheme - therefore, the owner will not be disadvantaged by the council's decision not to charge the market rent.

Under a final EDMO, the management scheme set by the local authority must show the amount of rent the dwelling might reasonably fetch on the open market and the amount of rent the local authority will seek to obtain. The owner may appeal to the tribunal if he considers the rent to be collected is too low.

If a local authority fails to generate sufficient income (from rental and other payments) to meet its relevant expenditure **plus** any compensation that may be payable, it **cannot** recover the difference from the relevant proprietor, **unless**:

- he/she has agreed to meet the difference, pay the shortfall unless you agree to do so, for example, as a condition to allow the order to be brought to an end before the council had recovered its costs from rental income; or
- in the case of an interim EDMO, he/she refused consent to allow the property to be occupied.

A local authority must therefore be confident that it can generate sufficient rental income under the EDMO or it may have to bear the risk of meeting a deficit. We consider this strikes a reasonable balance. Our objective is that the cost of any works should be met from rental income. So there is an incentive on local authorities to ensure that the level of expenditure is commensurate with the income they expect to achieve.¹⁹

The Empty Homes Agency also produced [Empty Dwelling Management Orders – The Facts](#) (2006)

¹⁹ DCLG Statement on EDMOs, 13 July 2006

4. Coalition Government: EDMO amendments 2012

On 7 January 2011 the Secretary of State for Communities and Local Government, Eric Pickles, announced an intention to restrict the use of EDMOs:

- they will be limited to empty properties that have become magnets for vandalism, squatters and other forms of anti-social behaviour - blighting the local neighbourhood
- a property will have to stand empty for at least two years before an Empty Dwelling Management Order can be obtained, and property owners will have to be given at least three months' notice before the order can be issued.²⁰

The rationale for the restrictions was to “protect civil liberties”:

There is a case for action to put boarded-up and blighted properties back into use. But these draconian and heavy-handed state powers have allowed councils to seize private homes in perfect condition, including their fixtures and fittings, just because the homes have been empty for a short while.

The Coalition Government is standing up for the civil liberties of law-abiding citizens. Fundamental human rights include the right to property. People suffering the loss of a loved one should not have to endure the added indignity of having their home seized because of a delay in them deciding what to do with it.

That's why the new Government is introducing new safeguards that mean the rights of responsible homeowners will be protected, while allowing action to be taken against genuine derelict buildings which blight neighbourhoods.²¹

In [Laying the Foundations: A Housing Strategy for England](#) (November 2011) the Government enlarged on what changes were intended in relation to EDMOs:

The proposed changes mean that in applying for an EDMO, the local housing authority will need to provide to the Residential Property Tribunal all the information they have regarding whether the empty property has been causing a nuisance to the community, and whether there is community support of the proposal for the local housing authority to take control of the empty home. The property will also need to have been empty for over two years (rather than six months) and the local housing authority will need to have given property owners a minimum notice period of three months. The intention is to make the changes by the end of 2011 or early 2012.²²

[*The Housing \(Empty Dwelling Management Orders\) \(Prescribed Period of Time and Additional Prescribed Requirements\) \(England\) \(Amendment\) Order 2012* \(SI2012/2625\)](#) came into force on 15 November 2012. This Order increased the period for which the property needs to have been empty before an EDMO can be applied for

²⁰ DCLG Press Notice, Pickles acts to protect the rights of home owners, 7 January 2011

²¹ Ibid.

²² [Laying the Foundations: A Housing Strategy for England](#), p41

from six months to two years. The Order also provided that an authority must give the owner at least three months' notice of their intention to apply for an order.

The Minister, Andrew Stunell, was questioned about the consultation process that had taken place prior to the announcement of on 7 January 2011:

Jim Fitzpatrick: To ask the Secretary of State for Communities and Local Government what consultation his Department undertook with (a) local authorities and (b) other stakeholders before announcing his planned reforms to empty dwelling management orders.

Andrew Stunell: Over the summer the Department gathered evidence from local authorities, housing associations and others on what further steps could be taken to bring empty homes back into use through a series of events held in London and Manchester. The Minister for Housing and Local Government, my right hon. Friend the Member for Welwyn Hatfield (Grant Shapps), also took part in the Homes and Communities Agency's online debate on maximising the use of empty homes. The online debate was visited 7,221 times and 138 comments were posted. 40% of participants were from the public sector, 25% were from the civic sector, 21% from the private sector.²³

In terms of responses, the Empty Homes Agency welcomed the decision to retain EDMOs but questioned whether there was a need for the changes proposed:

We are pleased that the power has been retained. It has proved useful as a tool of last resort for councils. The amended regulations will not affect many cases as the power is generally only used in extreme cases which already meet the new amendments.

He [David Ireland] expressed concern that 'an effect of the changes would be to limit council's ability to deal with certain cases such as new blocks of empty speculatively built flats', but added that 'the main purpose of the legislation has been retained and we welcome that'.²⁴

Respondents pointed out that some of the cases cited by the Secretary of State in support of case for reform would have been exempt from the EDMO process as introduced.²⁵

²³ [HC Deb 1 February 2011 c746W](#)

²⁴ *Inside Housing*, "Councils face tougher empty homes rules," 7 January 2011

²⁵ *Inside Housing*, "[Empty promises](#)," 12 January 2011

5. A review of EDMOs?

During consideration of the *Housing and Planning Bill 2015-16* in the House of Lords, Lord Greaves sought to introduce a new clause which would have placed a duty on the Secretary of State to commission a review of the operation and effectiveness of EDMOs within six months of Royal Assent. The clause would have required the findings of the review to be published and laid before Parliament.²⁶ In speaking to the new clause Lord Greaves referred to the problem of old abandoned housing and said:

So we have a situation where we have rotten-tooth houses which we were, like many councils, brilliant at dealing with, thereby saving streets. However, CPOs and EDMOs do not add up any more, housing associations are not interested anymore and the councils have no resources to fill the gap. This is a plea to the Government: please, what can we do to tackle these very real local problems?²⁷

Baroness Evans of Bowes Park responded for the Government:

We welcome noble Lords' interest in seeing properties being brought back into use to increase the housing supply, which is certainly an aim that the Government share, but we do not believe that this amendment is necessary because the range of measures we already have in place to tackle the issue of empty homes is working.

The Government have achieved a year-on-year reduction in long-term empty homes, with the number of homes that stand empty for more than six months now at the lowest level since records began. In London, as highlighted by the noble Lord, Lord Campbell-Savours, empty homes are at an all-time low of 2%.

[...]

The threat of issuing an empty dwelling management order is often enough to encourage an owner to bring a property back into use, so the number of orders issued is not necessarily a guide to how effective they are. Of course, local authorities have a range of powers at their disposal when seeking to tackle a property that has fallen into disrepair—for instance, through improvement notices under the Housing Act, or powers under the Building Act 1984 to deal with dangerous buildings. They can also tackle nuisances caused by properties using the Environmental Protection Act.²⁸

The new clause was withdrawn.

²⁶ [HL Deb 1 March 2016 c735](#)

²⁷ *Ibid.*, c737

²⁸ *Ibid.*, cc739-40

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