

Guidance Note on  
Empty Dwelling  
Management  
Orders

housing

# Guidance Note on Empty Dwelling Management Orders

July 2006

With effect from 5th May 2006 the responsibilities of the ODPM were passed to the Department for Communities and Local Government (DCLG).

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# Contents

<b>Foreword</b>	<b>5</b>
<b>Chapter 1: Background and Summary</b>	<b>7</b>
1.1 Policy Background	7
1.2 Legislative background	8
1.3 Summary of provisions in the Housing Act 2004	9
<b>Chapter 2: Prior Action</b>	<b>11</b>
2.1 Empty Property Strategies	11
2.2 Incentive Packages	11
2.3 Leasing and Management Arrangements	11
2.4 Marketing initiatives	12
2.5 The Enforcement Concordat	12
<b>Chapter 3: Effect of EDMOs</b>	<b>14</b>
3.1 Interest created by local housing authority	14
3.2 Effect on relevant proprietors (owners)	14
3.4 Effect on mortgages	15
<b>Chapter 4: Making of Interim Empty Dwelling Management Orders</b>	<b>16</b>
4.1 Purpose of interim EDMO	16
4.2 General exception period	16
4.3 Dwellings excepted from EDMOs	16
4.4 Procedural requirements	18
<b>Chapter 5: Role of the RPT in authorising interim EDMOs</b>	<b>19</b>
5.1 Constitution of RPTs	19
5.2 Authorisation of interim EDMOs	19
5.3 Matters on which Tribunal must be satisfied	19
5.4 Other matters RPT must take into account	21
5.5 Power to order compensation	21
5.6 Powers to give directions or vary the terms of the draft order	21
<b>Chapter 6: Powers and Duties once interim EDMO in force</b>	<b>23</b>
6.1 Service of order	23
6.2 Operative dates	23
6.3 Duty to secure occupation and proper management	24
6.4 Securing consent to create occupation rights	24
6.5 Insuring the dwelling	24
6.6 Financial arrangements during interim EDMO	25
6.7 Financial arrangements on termination of interim EDMO	26
<b>Chapter 7: Making of Final Empty Dwelling Management Orders</b>	<b>27</b>
7.1 Purpose of making final EDMO	27
7.2 When final EDMO is made	27
7.3 Differences with Interim EDMO	27
7.4 Procedural requirements	27
7.5 Requirements before making final EDMO	28

<b>Chapter 8: Powers and duties once final EDMO in force</b>	<b>29</b>
8.1 Requirements following making of final EDMO	29
8.2 Operative period	29
8.3 Duty to secure occupation and proper management	30
8.4 Financial arrangements during final EDMO	31
8.5 Breach of management scheme	32
8.6 Financial arrangements on termination of final EDMO	33
<b>Chapter 9: Variation, revocation and appeals</b>	<b>34</b>
9.1 Variation of EDMOs	34
9.2 Revocation of EDMOs	35
9.3 Appeals	37
<b>Chapter 10: Leases and Licences</b>	<b>38</b>
10.1 Treatment of leases	38
10.2 Power of RPTs to determine leases and licences	39
10.3 Supplementary provisions on leases	39
10.4 Additional guidance on leasehold matters	40
<b>Chapter 11: Miscellaneous Procedures on EDMOs</b>	<b>41</b>
11.1 Register of Management Orders	41
11.2 Land charges	41
11.3 Furniture	42
<b>Chapter 12: General Powers and Duties relating to EDMOs in the Housing Act 2004</b>	<b>43</b>
12.1 Service of documents	43
12.2 Additional notice requirements for protection of owners	43
12.3 Power to require documents	43
12.4 Use of information obtained for council tax purposes	43
12.5 Power of entry to carry out survey or examination	44
12.6 Power of entry to carry out works	44

# Foreword

I attach great importance to this guidance to local authorities and residential property owners on the new Empty Dwelling Management Orders. This complements a booklet we have published for property owners and separate guidance published by the Empty Homes Agency that gives local authorities wider advice on empty homes strategies.

We recognise that at a time when there is significant demand for housing that empty dwellings can represent a lost opportunity to secure a home for someone who is in need. This is why we have put in place provisions to enable local authorities to help those with empty properties bring them back in to use.

It is vitally important that we do not ignore the human dimension in this drive for securing use for empty dwellings. The Guidance therefore puts local authority action on empty dwellings in the context of empty property strategies, incentive packages, marketing initiatives and voluntary leasing and management arrangements. In relation to EDMOs we have to be sure that the individual property owner understands that the ownership of their property is not threatened and that they are not being dispossessed of a valuable asset and that the aim is better management of property deliberately left vacant. Property owners need to know, at every stage from initial enquiries by an empty property officer through such procedures that may follow, that their rights and interests are respected and that local authorities are intent on helping to find the best way forward for them. Importantly, local authorities must ensure that property owners understand what their rights are and the process for appeal against action proposed by the authority.

Initial correspondence and contacts with a presumed owner of an empty property needs to explain clearly who is contacting them and explain why the local authority believes that a particular property has been vacant for some time. Rather than embarking on a detailed statement of empty homes policy the approach should reflect that of a concerned neighbour – not least, someone who is anxious about the risks an empty property represents – from squatters, vandals, drug dealers or arsonists.

Such an approach also needs to indicate an understanding of the reasons why an empty home might be vacant and the range of exemptions which are available – for example, for people whose property may genuinely be on the market for sale or where, the owner may be away from home being cared for. Particular care and sensitivity must be shown to those instances where the property may be part of the estate of someone who has died. In these special cases where special rules apply, I am particularly concerned that the family is approached in as careful a manner as possible, particularly given the fact that the property is exempt at least until six months after probate is settled. If a local authority contacts the family in these cases, the local authority should show maximum respect and make it clear that they are prepared to offer appropriate help at an appropriate time as the family so desire.

This guidance sets out in detail for both local authorities and stakeholders the application of Empty Dwelling Management Orders. It should ensure that the right procedures are correctly applied, and that there is transparency for all stakeholders.

BARONESS ANDREWS

# CHAPTER 1:

## Background and Summary

### Introduction

This guidance note is intended to assist local housing authorities (“LHAs”) in understanding the powers contained in the Housing Act 2004 (“the Act”) relating to Empty Dwelling Management Orders (“EDMOs”). It is not intended to be an authoritative interpretation of the legislation and readers must not rely on it as an authoritative source. Where there are any doubts about the interpretation of the legislation readers are strongly advised to seek their own independent legal advice.

This guidance note is intended to apply to England.

#### 1.1 Policy Background

The Government is committed to finding solutions to the problems posed by empty homes. As well as restricting housing supply, empty homes represent waste and missed opportunity. They blight communities, attract vandals and squatters and tie up the resources of LHAs and the emergency services. A dwelling that is left unoccupied and not maintained will, over time, begin to impact on its surroundings and is at risk from being broken into by vandals and squatters. Neighbouring properties can be affected by the physical decline of a poorly maintained property. The only effective way to reduce the negative impact of an empty dwelling is to secure its occupation. It is therefore of public interest that empty homes are brought back into use.

Eight out of every ten empty homes are privately owned<sup>1</sup>. In recent years central government has encouraged LHAs 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 and marketing advice are useful ways of persuading owners to take action. But incentive schemes are wholly dependent on good will and co-operation. Without it the only alternative for LHAs is to take enforcement action.

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<sup>1</sup> Housing Strategy Statistical Appendix 2004/5, section A – [www.communities.gov.uk/index.asp?id=1156546](http://www.communities.gov.uk/index.asp?id=1156546).

Voluntary initiatives are not entirely effective without a credible threat of compulsion to back them up. Some LHAs are prepared to use their compulsory purchase and other enforcement powers where it is evident owners are unwilling or unable to participate in voluntary measures. But many LHAs 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 EDMOs is to bridge the gap between voluntary measures and existing compulsory purchase powers. A decision whether to pursue an EDMO is entirely at the discretion of a LHA. The threat of an EDMO is intended to put pressure on the owner to enter into constructive dialogue with the authority with the object of agreeing the best course of action to secure occupation of the dwelling, thereby avoiding the need for an interim EDMO or, as the case may be, a final EDMO, to be made.

EDMOs are not intended to replace existing enforcement options such as compulsory purchase. Instead they offer an alternative course of action where LHAs determine that acquisition is not the most appropriate course of action to pursue.

The legislation is intended to operate alongside existing measures such as voluntary leasing schemes run by LHAs 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.

## 1.2 Legislative background

In March 2002, the Transport, Local Government and Regions Select Committee recommended in a report on empty homes<sup>2</sup>, the introduction of a pilot programme of LHA compulsory leasing schemes for long-term vacant properties. The Government in its response<sup>3</sup> said it was attracted by the recommendation and would give it careful consideration.

The Government published a consultation paper<sup>4</sup> which sought views on the case for extending the concept of management orders (a measure relating to the property licensing provisions in the draft Housing Bill published in 2002) to tackle the problems posed by long-term private sector empty homes.

Provisions on EDMOs were introduced into the Housing Bill during the Bill's passage through the House of Lords in September 2004. The Housing Bill subsequently received Royal Assent on 18 November 2004 and became the Housing Act 2004<sup>5</sup>.

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2 TLGR Select Committee Sixth report, session 2001-02 – see [www.publications.parliament.uk/pa/cm200102/cmselect/cmtlgr/240/24002.htm](http://www.publications.parliament.uk/pa/cm200102/cmselect/cmtlgr/240/24002.htm).

3 Government Response to the Transport, Local Government and the Regions Select Committee's Sixth Report on Empty Homes, Command paper 5514, The Stationery Office, May 2002.

4 Empty Homes: Temporary management, Lasting Solutions, DCLG May 2003 – [www.communitie.gov.uk/emptyhomes](http://www.communitie.gov.uk/emptyhomes).

5 Housing Act 2004, see [www.opsi.gov.uk/acts/acts2004/20040034.htm](http://www.opsi.gov.uk/acts/acts2004/20040034.htm).

The Government published a subsequent consultation paper<sup>6</sup> which sought views on prescribing exceptions to the making of interim EDMOs, including setting a general time period and prescribing procedures for LHAs to follow in consideration of making an application to a residential property tribunal (“RPT”) for approval to make an interim EDMO.

## 1.3 Summary of provisions in the Housing Act 2004

The Act introduces two types of management order in relation to empty dwellings – “interim EDMOs” and “final EDMOs”. The purpose of an interim EDMO is to enable a LHA to take steps to secure occupation of an empty dwelling with the consent of the owner. A final EDMO is made in succession to an interim EDMO (or a previous final EDMO) for the purpose of securing that a dwelling becomes and remains occupied, whether or not the owner of the dwelling consents. An interim EDMO does not have to be followed by a final EDMO. However, a final EDMO can only be made following an interim EDMO or a previous final EDMO.

Under Section 134 of the Act a RPT may authorise a LHA to make an interim EDMO in respect of a dwelling that is unoccupied (except where the relevant proprietor is a public body) if:

- it is satisfied that the dwelling has been wholly unoccupied for at least 6 months (or such longer period as may be prescribed);
- there is no reasonable prospect of it becoming occupied in the near future;
- that, if an interim EDMO is made, there is a reasonable prospect that it will become occupied;
- that the authority have complied with section 133(3) of the Act;
- that any prescribed requirements have been complied with; and
- that it is not satisfied that the case falls within a prescribed exception.

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6 Empty Dwelling Management Orders: Consultation on Secondary Legislation, DCLG August 2005 – see [www.communities.gov.uk/emptyhomes](http://www.communities.gov.uk/emptyhomes).

7 “Relevant proprietor” is defined in section 132(4)(c) of the Act. If the dwelling is let under one or more leases with an unexpired term of 7 years or more the relevant proprietor is the lessee under whichever of those leases has the shortest unexpired term. In any other case the relevant proprietor is the freeholder of the dwelling.

8 Public bodies are defined in section 137(7) as being the bodies that are listed in sub-paragraphs (a) to (f) of paragraph 2(1) of Schedule 14.

9 The 6 month period has been extended only in relation to dwellings where the owner has died so that the six month period runs from the date that grant of representation has been obtained. See S.I. 2006/367.

Under section 134(5) of the Act the “appropriate national authority” may by order prescribe the exceptions that the case may fall into, prescribe a longer time period that the dwelling must be unoccupied, and prescribe any other requirements that need to be complied with before an order may be authorised. The Secretary of State is empowered to make such an order in relation to England. The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 (SI 2006/367) has been made under these powers.

Once an interim EDMO is approved by a RPT, it will usually last for a maximum period of 12 months. A LHA cannot arrange occupation of the dwelling without obtaining written consent from the owner. Where such consent cannot be obtained, the interim EDMO may be revoked and replaced with a final EDMO made by the LHA. The making of a final EDMO does not require the approval of a RPT. Once in force, it lasts for a fixed period of no more than seven years. The LHA does not require consent of the owner to grant occupation rights to the dwelling during the existence of a final EDMO.

# CHAPTER 2:

## Prior Action

### 2.1 Empty Property Strategies

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. The way in which a LHA sets out to achieve its objectives should be clearly stated in a corporate strategy statement. An empty property strategy may be published either as a free-standing document or as part of a wider strategic statement on housing or regeneration. For further information on developing an empty property strategy, see DCLG's guidance – 'Empty property, Unlocking the Potential – an implementation handbook'<sup>10</sup> and the Empty Homes Agency's guidance – 'A Cure for Empty Homes'<sup>11</sup>.

### 2.2 Incentive Packages

In seeking to secure the co-operation of owners to bring empty dwellings back into use, LHAs may consider offering a range of services that seek to incentivise owners. The availability of grants and loans, legal or tax advice, help with property marketing, leasing services, advice on becoming a landlord or joining a landlord accreditation scheme, and assistance with planning or building control applications, can all help to demonstrate that the LHA is actively promoting voluntary reuse of empty dwellings. It will be important for LHAs to have considered providing such incentives, and to record their decisions, should it later become necessary to take enforcement action. In particular, a RPT will need to be satisfied that an EDMO is necessary and may look to see whether other ways of securing occupation of the dwelling have been considered by the LHA.

### 2.3 Leasing and Management Arrangements

EDMOs are designed to operate along similar principles to private sector leasing arrangements. However, it is not the Government's intention that EDMOs should replace such arrangements. Indeed, it is expected that the availability of the power to make EDMOs will assist in procuring additional dwellings for leasing. Leasing arrangements are important in that they provide many of the necessary administrative structures that a LHA would have to establish in order to manage a dwelling under an EDMO. It is therefore recommended that prior to considering using EDMOs, LHAs set up leasing arrangements. LHAs may seek partner arrangements with Registered Social Landlords or private sector managing agents to facilitate leasing schemes. These same arrangements may be used in the management of dwellings under EDMOs.

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<sup>10</sup> See [www.communities.gov.uk/emptyhomes](http://www.communities.gov.uk/emptyhomes).

<sup>11</sup> See [www.emptyhomes.com](http://www.emptyhomes.com)

## 2.4 Marketing initiatives

An empty dwelling that is genuinely on the market for sale or letting will be excepted from the making of a EDMO<sup>12</sup>. It is for the LHA to judge whether a person is making genuine efforts to sell or let the property. For example the LHA may conclude that a house is not genuinely for sale if it has purportedly been up for sale for several months but is being marketed at an unrealistically high price, or with conditions attached to the sale which effectively mean the owner intends that no-one will be interested in it. The Government is keen to ensure that LHAs are aware of the opportunities this gives rise to in terms of persuading owners that selling or letting empty dwellings may be in their best interests. LHAs can help to facilitate the sale of empty homes by joining marketing initiatives such as the empty property website [Empro.co.uk](http://Empro.co.uk) or similar services.

## 2.5 The Enforcement Concordat

The Enforcement Concordat<sup>13</sup> is a non-statutory code that describes for businesses and others what they can expect from enforcement officers. Central and local enforcement bodies commit themselves voluntarily to its principles and procedures.

The Enforcement Concordat was signed in 1998 by local and national enforcers. Most central and local government organisations with an enforcement function have adopted the Enforcement Concordat. The Concordat articulates the Principles of Good Enforcement that help businesses to comply with regulations, and help enforcers to achieve higher levels of voluntary compliance.

The Principles are:

- setting and publishing clear standards on the level of service and performance the public and business people can expect to receive;
- clear and open provision of information;
- helping business by advising on and assisting with compliance;
- having a clear complaints procedure;
- ensuring that enforcement action is proportionate to the risks involved;
- ensuring fair, equitable and consistent enforcement practice.

The Concordat also sets out procedures, including that:

- a business will be told what is good advice and what is a legal requirement;
- clear time scales should be set within which required action should be taken;

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<sup>12</sup> S.I. 2006/367, article 3(c).

<sup>13</sup> See [www.cabinetoffice.gov.uk/regulation/public\\_services/concordat/enforcecon.asp](http://www.cabinetoffice.gov.uk/regulation/public_services/concordat/enforcecon.asp).

- as far as possible in the circumstances, there will be discussion before formal action is taken;
- if immediate action is required for urgent reasons, this will be followed by a prompt written explanation of the reasons; and
- any appeal mechanisms will be clearly set out in writing at the time the action is taken.

A LHA that is a signatory to the Enforcement Concordat has committed itself to following these principles and will provide information to show that they are observing them. The LHA must therefore have regard to these principles in consideration of the use of its powers to make EDMOs.

# CHAPTER 3:

## Effect of EDMOs

### 3.1 Interest created by local housing authority

Whilst an EDMO is in force the LHA have the right to possession of the dwelling (subject to the rights of existing occupiers) and may do, or authorise a manager to do, anything the relevant proprietor would otherwise be entitled to do. However, the LHA does not acquire an estate or interest in the dwelling and cannot therefore sell or otherwise dispose of any interest<sup>14</sup>. The LHA (or its manager) are not liable to anyone with an estate or interest in the dwelling for any action or omission in connection with its performance in managing the dwelling, unless this is due to negligence<sup>15</sup>.

The LHA may create an interest in the dwelling which, as far as possible, has all the incidents of a lease, or a right in the nature of a licence to occupy part of the dwelling (i.e. a right of occupation)<sup>16</sup>. While an interim EDMO is in force, the LHA cannot create a right of occupation without obtaining written consent from the relevant proprietor<sup>17</sup>.

Where a LHA creates occupation rights it is not treated as the owner of the dwelling for the purposes of section 80 of the Housing Act 1985 (secure tenancies) or section 124 of the Housing Act 1996 (introductory tenancies)<sup>18</sup>.

### 3.2 Effect on relevant proprietors (owners)

The relevant proprietor is not entitled to receive rent or exercise management rights in relation to the dwelling whilst an EDMO is in force. However, they may dispose of their estate or interest in the dwelling, except by creating a new leasehold interest (other than a reversionary interest) or by granting a licence or other right to occupy the dwelling<sup>19</sup>.

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14 Schedule 7, paragraph 2(5).

15 Schedule 7, paragraph 2(8).

16 Schedule 7, paragraph 2(3).

17 Schedule 7, paragraph 2(4).

18 Schedule 7, paragraph 4(4) and (5).

19 Schedule 7, paragraph 4(7).

The ‘relevant proprietor’<sup>20</sup> of a dwelling that is the subject of an EDMO is the person with the most immediate relevant interest in the dwelling. Where the dwelling is held on a freehold this would be the freeholder. Where the dwelling is subject to a lease, the relevant proprietor would be the leaseholder with the shortest unexpired term, provided it still has more than 7 years to run. Where the dwelling is subject to a lease that has less than 7 years left to run, the relevant proprietor would be the next person up in the chain of ownership with a lease of more than 7 years or, if there is no such superior lease, the freeholder. Any other person with an interest in the dwelling is treated as a *third party*<sup>21</sup> to an EDMO.

An interim EDMO cannot be made if the relevant proprietor is a public sector body<sup>22</sup>.

### 3.4 Effect on mortgages

The validity of any mortgage on the dwelling and any rights or remedies available to the mortgagee continue unless it would prevent the LHA from creating occupation rights to the dwelling<sup>23</sup>. LHAs will therefore need to ascertain if the dwelling is subject to a mortgage and inform the lender.

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20 Section 132 (4)(c).

21 Section 132(4)(d).

22 Section 133 2(b) and Schedule 14, paragraph 2(1).

23 Schedule 7, paragraph 4(9).

# CHAPTER 4:

## Making of Interim Empty Dwelling Management Orders

### 4.1 Purpose of interim EDMO

An interim EDMO is made to enable a LHA, with the consent of the relevant proprietor, to take steps to secure that a dwelling becomes and continues to be occupied<sup>24</sup>. Once an interim EDMO is in force the LHA has the right to possession of the dwelling<sup>25</sup> subject to the rights of existing occupiers under a lease or licence under which he has the right to occupy the dwelling at the commencement date of the EDMO. The LHA is under a duty to take steps to secure occupation of the dwelling<sup>26</sup> and with a view to the proper management of it<sup>27</sup>. However, the LHA may not create occupation rights without written consent from the relevant proprietor<sup>28</sup>.

### 4.2 General exception period

An interim EDMO cannot be made without the specific authorisation of a RPT<sup>29</sup>. A RPT cannot authorise a LHA to make an interim EDMO unless the tribunal is satisfied that the dwelling has been wholly unoccupied for at least 6 months<sup>30</sup>.

### 4.3 Dwellings excepted from EDMOs

A RPT may authorise a LHA to make an interim EDMO if the tribunal is not satisfied that the case falls within one of the prescribed exceptions<sup>31</sup>. The prescribed exceptions that apply in England are set out in The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements (England) Order 2006<sup>32</sup>. A dwelling is excepted if:

- (a) it has been occupied solely or principally by the relevant proprietor and is wholly unoccupied because –

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<sup>24</sup> Section 132 (2).

<sup>25</sup> Schedule 7, paragraph 2(3).

<sup>26</sup> Section 135(2).

<sup>27</sup> Section 135(3).

<sup>28</sup> Schedule 7, paragraph 2(4).

<sup>29</sup> Section 133(1).

<sup>30</sup> Section 134(2)(a).

<sup>31</sup> Section 134(1)(b).

<sup>32</sup> S.I. 2006 No.367, article 3.

- (i) he is temporarily resident elsewhere;
  - (ii) he is absent from the dwelling for the purpose of receiving personal care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder;
  - (iii) he is absent from the dwelling for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder; or
  - (iv) he is a serving member of the armed forces and he is absent from the dwelling as a result of such service;
- (b) it is used as a holiday home (whether or not it is let as such on a commercial basis) or is otherwise occupied by the relevant proprietor or his guests on a temporary basis from time to time;
- (c) it is genuinely on the market for sale or letting;
- (d) it is 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;
- (e) it is 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;
- (f) it is available for occupation by a minister of religion as a residence from which to perform the duties of his office;
- (g) it is subject to a court order freezing the property of the relevant proprietor;
- (h) it is prevented from being occupied as a result of a criminal investigation or criminal proceedings;
- (i) it is mortgaged, where the mortgagee, in right of the mortgage, has entered into and is in possession of the dwelling; or
- (j) the relevant proprietor of it has died and six months has not elapsed since the grant of representation was obtained in respect of such person.

## 4.4 Procedural requirements

Ultimately it is for the RPT to decide whether or not a dwelling falls within one of the prescribed exceptions, and if not, whether to authorise the EDMO. The LHA must make reasonable efforts to establish from the relevant proprietor whether he considers that any of the prescribed exceptions apply to the dwelling<sup>33</sup> and must provide the RPT with any information they have that suggests this may be the case (whether from their own enquiries or from representations made to it by the relevant proprietor)<sup>34</sup>.

Before determining whether to make an application to a RPT for authorisation to make an interim EDMO, the LHA must make reasonable efforts to notify the relevant proprietor that they are considering making an order and to ascertain what steps (if any) he is taking or intending to take, to secure occupation of the dwelling<sup>35</sup>.

Failure to locate the whereabouts of the relevant proprietor after reasonable efforts on the part of the LHA to locate him does not preclude the making of an application to a RPT (see chapter 12.1 Service of Documents).

Before deciding to make an application to a RPT the LHA must take into account the rights of the relevant proprietor and the interests of the wider community<sup>36</sup>. In effect the LHA needs to undertake a balancing exercise between competing interests. They should consider how, on the one hand, the making of the EDMO would affect the wider community in terms of reducing crime and anti-social behaviour and generally improving quality of life as well as possible improvements in market values and desirability to live in the area near the dwelling. They should consider the cost of making the dwelling fit for occupation and the cost of maintaining the dwelling once the EDMO is made. On the other, they should consider whether interference with the owner's right to quiet enjoyment of the property by making an EDMO is proportionate to the benefits to be obtained.

In support of their application, the LHA must provide to the RPT<sup>37</sup>:

- (i) details of the efforts they have made to notify the relevant proprietor they are considering making an interim EDMO;
- (ii) details of the enquiries they have made to ascertain what steps (if any) the relevant proprietor is taking, or is intending to take, to secure that the dwelling is occupied;
- (iii) details of any advice and assistance they have provided to the relevant proprietor with a view to the relevant proprietor securing that the dwelling is occupied;

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<sup>33</sup> S.I. 2006/367, article 4(1)(a).

<sup>34</sup> S.I. 2006/367, article 4(1)(b)(iv).

<sup>35</sup> Section 133 (3) (a) and (b).

<sup>36</sup> Section 133(4).

<sup>37</sup> S.I. 2006/367.

- (iv) all information they have that suggests that the dwelling may fall within one of the prescribed exceptions, whether available from the authority's own enquiries or from representations made to them by the relevant proprietor; and
- (v) the classification of the dwelling for council tax purposes under the Local Government Finance Act 1992.

Where the relevant proprietor has undertaken or is undertaking repairs, maintenance or improvement works; or has applied for permission to make structural alterations or additions to the dwelling and is awaiting a decision of a relevant authority on the application, the LHA must give reasons to the tribunal why they consider an EDMO is necessary to secure occupation of the dwelling.

## CHAPTER 5:

# Role of the RPT in authorising interim EDMOs

## 5.1 Constitution of RPTs

RPTs were created by the Act to exercise a wide range of jurisdictions created by the Act relating to residential premises. Any jurisdiction conferred on a RPT<sup>38</sup> is exercisable by a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977. RPTs are organised by the five regional Rent Assessment Panels in England. Each panel has a president who decides which of the panel members should hear and decide a particular case. There are two types of members appointed to the Rent Assessment Panels; Chairmen and other members. Chairmen are appointed by the Lord Chancellor. A Chairman will normally be a lawyer or a surveyor. Other members are appointed by the Department for Communities and Local Government. They may be lawyers, surveyors or lay people.

From amongst these members, presidents decide who will sit on Rent Assessment Committees<sup>39</sup>. Rent Assessment Committees may be constituted as leasehold valuation tribunals (LVTs) when dealing with leasehold cases or RPTs when dealing with cases under the Act<sup>40</sup>.

## 5.2 Authorisation of interim EDMOs

On application by a LHA, a RPT may authorise them to make an interim EDMO either on the terms of the draft order submitted by the LHA or on terms as varied by the tribunal<sup>41</sup>.

## 5.3 Matters on which Tribunal must be satisfied

A RPT *may* authorise an interim EDMO if –

- It is satisfied;
  - that the dwelling has been wholly unoccupied<sup>42</sup> (i.e. no part is occupied, whether lawfully or unlawfully) for at least 6 months;

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38 Section 229.

39 Rent Act 1977, Schedule 10.

40 Section 229(1).

41 Section 133(1).

42 Section 134(7).

- that there is no reasonable prospect that the dwelling will become occupied in the near future;
  - that, if an interim EDMO is made, there is a reasonable prospect that the dwelling will become occupied;
  - that the LHA have complied with section 133(3) and any prescribed requirements. See section 4.5 – Procedural requirements.
- It is not satisfied that the case falls within one of the prescribed exceptions set out in the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order<sup>43</sup> (see Chapter 4.4).

## 5.4 Other matters RPT must take into account

The RPT must also take into account the interests of the community and the effect that the order will have on the rights of the relevant proprietor and may have on the rights of third parties<sup>44</sup>. This is similar to the balancing exercise the LHA makes before deciding to seek authorisation for an EDMO. The LHA is required to give information to the RPT so that the tribunal is able to have regard to all circumstances that may be relevant to the case.

## 5.5 Power to order compensation

The RPT may make an order requiring the LHA, if they make the interim EDMO, to pay compensation to a third party for any interference with their rights as a result of the order<sup>45</sup>. The Act does not give a general power to pay compensation to the relevant proprietor. However, where the RPT make an order determining a lease or licence and the relevant proprietor is the lessor it may include provision in the order requiring the LHA to pay an amount of compensation to him in respect of the determination of the lease<sup>46</sup>.

## 5.6 Powers to give directions or vary the terms of the draft order.

In exercising its powers in relation to EDMOs, a RPT has a general power to give such directions as it considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings<sup>47</sup>. Specifically, the RPT may give directions requiring either an interim or final EDMO to contain such terms as specified by the tribunal<sup>48</sup>. This may be done whether or not a party to the proceedings sought such directions<sup>49</sup>.

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<sup>43</sup> S.I 2006 No. 367.

<sup>44</sup> Section 134 (3).

<sup>45</sup> Section 134(4).

<sup>46</sup> Schedule 7. paragraph 22.

<sup>47</sup> Section 230(2).

<sup>48</sup> Section 230(5)(d).

<sup>49</sup> Section 230(4).

When authorising a LHA to make an order the RPT may order them to make it either on the terms of the draft submitted by it or in such terms as varied by the tribunal<sup>50</sup>. It follows therefore that if after a LHA gets authorisation to make an EDMO they want to make the order on different terms then they must seek a fresh authorisation from the RPT, or alternatively, make the order on the terms authorised by the tribunal and then apply for a variation of the order.

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<sup>50</sup> Section 133(1)(b).

# CHAPTER 6:

## Powers and Duties once interim EDMO in force

### 6.1 Service of order

The LHA must, within 7 days of the order being made, serve on relevant persons a copy of the order and a notice<sup>51</sup> setting out:

- the reason for making the order and the date on which it was made;
- the general effect of the order;
- the date on which the order ceases to have effect;
- the right of appeal against the order.

The relevant persons on whom these documents must be served are any person having an estate or interest in the house or part of it (except a tenant under a lease with an unexpired term of 3 years or less) or any other person who but for the order would be a person managing or having control of the house<sup>52</sup>.

### 6.2 Operative dates

An interim EDMO comes into force when it is made<sup>53</sup> and ceases to have effect after 12 months or an earlier date if one is specified in the order<sup>54</sup>. An interim EDMO may continue in force after the date it is due to cease if a final EDMO has been made to replace it but has not come into force due to an appeal against it<sup>55</sup>.

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51 Schedule 6, paragraph 7.

52 Schedule 6, paragraph 8(4).

53 Schedule 7, paragraph 1(2).

54 Schedule 7, paragraph 1(3).

55 Schedule 7, paragraph 1(5), (6) and (7).

## 6.3 Duty to secure occupation and proper management

Once an interim EDMO is in force the LHA must take such steps as they consider appropriate to secure that the dwelling becomes and continues to be occupied<sup>56</sup> and must take such other steps they consider appropriate with a view to proper management of the dwelling (including insuring it against the risk of destruction or damage by fire or other causes) pending either the making of a final EDMO or the revocation of the interim EDMO<sup>57</sup>.

## 6.4 Securing consent to create occupation rights

Before a LHA can grant occupation rights to the dwelling, they must obtain written consent from the relevant proprietor<sup>58</sup>. If the relevant proprietor does not give written consent, the LHA may wish to establish what intentions the owner has. However, they may conclude that there are no steps they can take to secure occupation of the dwelling. In that case, the LHA must either make a final EDMO or revoke the interim EDMO without taking any further action<sup>59</sup>. The decision to revoke the EDMO would not prevent the LHA from taking enforcement action under other powers if it was appropriate to do so. Indeed, throughout the whole process LHAs may continue to look to alternative measures. For example, by making an interim EDMO and gaining full access to the property, the LHA may establish that it could not be brought back to a habitable condition and might therefore decide that a permanent solution should be achieved through the making of a compulsory purchase order.

Where the relevant proprietor gives written consent, the LHA may arrange occupation of the dwelling<sup>60</sup>. Where this is the case, there is nothing to prevent the LHA from revoking the order<sup>61</sup> (see Section 9) and, with the further agreement of the relevant proprietor, replacing it with a voluntarily arranged lease or other agreement.

## 6.5 Insuring the dwelling

The LHA must take steps to ensure that the dwelling is adequately insured whilst the order is in force<sup>62</sup>.

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<sup>56</sup> Section 135(2).

<sup>57</sup> Section 135(3) and (5).

<sup>58</sup> Schedule 7, paragraph 2(4).

<sup>59</sup> Section 135(4).

<sup>60</sup> Schedule 7, paragraph 2(3)(c).

<sup>61</sup> Schedule 7, paragraph 6(1).

<sup>62</sup> Section 135(5).

## 6.6 Financial arrangements during interim EDMO

During an interim EDMO, a LHA may use rent or other payments collected from persons occupying the dwelling to meet their relevant expenditure and any compensation payable to a third party<sup>63</sup>.

Relevant expenditure<sup>64</sup> is expenditure incurred by the LHA (with the consent of the relevant proprietor), including their administrative costs<sup>65</sup>, or any other expenditure incurred for the purpose of securing occupation or proper management of the dwelling, including the cost of insuring it.

The LHA must pay to the relevant proprietor:

- any balance of rent or other payments collected remaining after deduction of relevant expenditure and compensation<sup>66</sup>;
- where appropriate, interest on that amount at a reasonable rate fixed by the LHA<sup>67</sup>.

The interim EDMO may provide for:

- the rate of interest which is to apply to any payments to the relevant proprietor<sup>68</sup>;
- the intervals at which payments are to be made to the relevant proprietor<sup>69</sup>.

The LHA must keep full accounts of their income and expenditure on the dwelling and make reasonable facilities for inspection, verification and copying of those accounts by the relevant proprietor or any other person with an interest or estate in the dwelling<sup>70</sup>.

The relevant proprietor may apply to the RPT for an order:

- declaring that an amount shown in the accounts does not constitute relevant expenditure;
- requiring the LHA to make financial adjustments necessary to reflect the declaration of the RPT<sup>71</sup>.

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63 Schedule 7, paragraph 5(3).

64 Schedule 7, paragraph 5(2).

65 Schedule 7, paragraph 5(8).

66 Schedule 7, paragraph 5(4)(a).

67 Schedule 7, paragraph 5(4)(b).

68 Schedule 7, paragraph 5(5)(a).

69 Schedule 7, paragraph 5(5)(b).

70 Schedule 7, paragraph 5(6).

71 Schedule 7, paragraph 5(7).

## 6.7 Financial arrangements on termination of interim EDMO

If, on the termination date for an interim EDMO, the amount of rent or other payments collected by the LHA exceeds their relevant expenditure and any compensation payable to third parties, the LHA must, as soon as possible, pay the balance to the relevant proprietor<sup>72</sup>.

However, if on the termination date the amount of rent or other payments collected is less than the relevant expenditure incurred by the LHA (plus any compensation paid to third parties), the LHA may recover from the relevant proprietor:

- an amount (not exceeding the deficit) which the relevant proprietor has agreed in writing to pay as a condition for revoking the order (e.g. early revocation);
- in the case of a dwelling where the relevant proprietor is a tenant under a lease, an amount equal to any outstanding service charges payable under the lease<sup>73</sup>.

Where, in the opinion of the LHA, the relevant proprietor unreasonably refused to give consent to allow the LHA to grant a right to occupy the dwelling, the LHA may recover an amount not exceeding the deficit from the relevant proprietor<sup>74</sup>.

If the interim EDMO is replaced with a final EDMO, any surplus or deficit can be carried over, provided the management scheme under the final EDMO makes provision for this<sup>75</sup>.

Any sum recoverable by the LHA is, until recovered, a charge on the dwelling and takes effect on termination of the order as a legal charge which is a local land charge<sup>76</sup>. See Section 11.2 – Land charges.

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72 Schedule 7, paragraph 23(2).

73 Schedule 7, paragraph 23(5).

74 Schedule 7, paragraph 23(6).

75 Schedule 7, paragraph 23(7).

76 Schedule 7, paragraph 23(8) and (9).

## CHAPTER 7:

# Making of Final Empty Dwelling Management Orders

## 7.1 Purpose of making final EDMO

A final EDMO is an order made, in succession to an interim EDMO or a previous final EDMO, for the purpose of securing that a dwelling is occupied<sup>77</sup>.

## 7.2 When final EDMO is made

A final EDMO is made either to replace an interim EDMO or an existing final EDMO where the LHA consider that otherwise the dwelling is likely to become or continue to be unoccupied. Before making a final EDMO the LHA must have taken appropriate steps under the interim EDMO with a view to securing occupation of the dwelling<sup>78</sup>.

## 7.3 Differences with Interim EDMO

A LHA does not require the approval of a RPT to make a final EDMO but a relevant person may appeal against the decision to the RPT (see Section 6 – Appeals). A LHA does not require consent (written or otherwise) from the relevant proprietor to create a right of occupation under a final EDMO.

## 7.4 Procedural requirements

In deciding whether to make a final EDMO, a LHA must take into account the interests of the community and the effect the order will have on the rights of the relevant proprietor and may have on the rights of third parties<sup>79</sup>. The LHA should undertake a similar balancing exercise as it did before applying for an interim EDMO (see paragraph 4.5 above) and in particular consider whether matters have arisen or been brought to their attention that might cause them to reach a different conclusion. In addition the LHA will need to consider how the final EDMO might affect third parties and how any compensation payable to such parties might mitigate the impact.

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<sup>77</sup> Section 132(3).

<sup>78</sup> Section 136 (1) and (2).

<sup>79</sup> Section 136 (3).

## 7.5 Requirements before making final EDMO

Before making a final EDMO, a LHA must serve a copy of the proposed order and a notice on each relevant person and must consider any representations made<sup>80</sup>. The notice must state that the LHA are proposing to make a final EDMO and set out<sup>81</sup>:

- the reasons for making the order;
- the main terms of the proposed order (including the terms of the management scheme (see Chapter 8.4 – Financial arrangements during final EDMO); and
- the end of the consultation period.

The consultation period must be at least 14 days after the date the notice is served<sup>82</sup>.

Where the LHA modifies the terms of the order having regard to any representations made, they must serve a further notice setting out the details referred to above, the proposed modifications, the reasons for them and the end of the consultation period<sup>83</sup>. The requirement to serve a notice containing the modifications can be dispensed with if the LHA is satisfied that the modifications now being proposed are not material in any respect<sup>84</sup>.

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80 Schedule 6, paragraph 1(1). See also Chapter 6.1 for meaning of “relevant person”.

81 Schedule 6, paragraph 2.

82 Schedule 6, paragraph 8(2)(a).

83 Schedule 6, paragraphs 3 and 4.

84 Schedule 7, paragraphs 5 and 6.

# CHAPTER 8:

## Powers and duties once final EDMO in force

### 8.1 Requirements following making of final EDMO

The LHA must, within 7 days beginning on the day on which the order is made<sup>85</sup>, serve on relevant persons a copy of the order and a notice<sup>86</sup> setting out:

- the reason for making the order and the date on which it was made;
- the general effect of the order;
- the date on which the order ceases to have effect;
- the right of appeal against the order and the period within which any appeal must be made<sup>87</sup>;
- a general description of the way in which the dwelling is to be managed by the LHA in accordance with the management scheme<sup>88</sup>.

### 8.2 Operative period

A final EDMO does not come into force until the time period for appeals has ended. The time period is 28 days from the date the order is made unless an appeal is made to the RPT<sup>89</sup>. The order ceases to have effect after 7 years, unless it ceases to have effect on a specified date earlier than 7 years or (with the consent of the relevant proprietor) a specified date later than 7 years<sup>90</sup>.

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85 Schedule 6, paragraph 7.

86 Schedule 6, paragraph 7.

87 Schedule 6, paragraph 7(6).

88 Schedule 6, paragraph 7(4).

89 Schedule 6, paragraph 25(1). See also time limits for appeals and operative dates under Schedule 6, paragraphs 25 and 27.

90 Schedule 7, paragraph 9(3), (4) and (5).

Where a new final EDMO is made to replace an existing final EDMO that has expired, if the date on which the new order is due to come into force is later than the date on which the existing order expires, the existing order continues in force until that later date<sup>91</sup>. Where a new final EDMO is proposed but an appeal is made against it, if, on application from the LHA, the RPT makes an order providing for the existing final EDMO to continue in force until a later date than it would have ceased to have effect, the order continues in force until that later date<sup>92</sup>.

## 8.3 Duty to secure occupation and proper management

Once a final EDMO is in force the LHA must take such steps as they consider appropriate<sup>93</sup>:

- to secure occupation of the dwelling<sup>94</sup>; and
- with a view to the proper management of the dwelling in accordance with the management scheme contained in the order, including insuring the property against the risk of destruction or damage by fire or other causes<sup>95</sup>.

The LHA must from time to time review:

- the operation of the order and in particular the management scheme<sup>96</sup>;
- whether, if the dwelling is unoccupied, there are any steps they could take to secure occupation of it<sup>97</sup>;
- whether keeping the order in force is necessary to secure that the dwelling becomes or remains occupied<sup>98</sup>.

If, having conducted a review, the LHA consider that the order should be varied, they must make those variations.

Where the dwelling is unoccupied and, having conducted a review, the LHA conclude that there are no steps it would be appropriate to take to secure occupation of the dwelling or that keeping the order in force is not necessary, they must revoke the order<sup>99</sup>.

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91 Schedule 7, paragraph 9(6) and (7).

92 Schedule 7, paragraph 9(6) and (8).

93 Section 137.

94 Section 137(2).

95 Section 137(3).

96 Section 137(4)(a).

97 Section 137(4)(c).

98 Section 137(5).

99 Section 137(6).

## 8.4 Financial arrangements during final EDMO

A final EDMO must contain a management scheme<sup>100</sup>. The proposed terms of the management scheme must be served on relevant persons at the time the LHA is considering making a final EDMO<sup>101</sup>.

The management scheme is a plan setting out how the LHA will carry out their duties to secure that the dwelling is occupied and properly managed<sup>102</sup>. In particular it must include<sup>103</sup>:

- details of any works the LHA intend to carry out in connection with the dwelling;
- an estimate of the capital and other expenditure to be incurred by the LHA in respect of the dwelling while the order is in force;
- the amount of rent which, in the opinion of the LHA, the dwelling might reasonably be expected to fetch on the open market at the time the management scheme is made;
- the amount of rent or other payments that the LHA will seek to obtain;
- the amount of any compensation the LHA has agreed to pay to either a third party (for interference with their rights), or to a person whose lease has been determined on application to the RPT<sup>104</sup>, and how such compensation will be paid;
- provision as to the payment of the balance of monies due to the relevant proprietor after the deduction of relevant expenditure and compensation;
- provision as to the payment of any surplus at the end of the order;
- provision as to payment of any outstanding compensation at the end of the order.

Where the rent charged for the dwelling is less than the open market rent, the management scheme must show:

- the deduction from the difference (between the market rent and the rent to be sought) of relevant expenditure and compensation payments<sup>105</sup> (e.g. if the rent charged is less than the market rent the LHA must reduce by an equal amount how much they take from the rent to cover relevant expenditure and compensation, and show this in the management scheme);

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100 Schedule 7, paragraph 13.

101 Schedule 6, paragraphs 1 and 2.

102 Schedule 7, paragraph 13(2).

103 For a fuller description of what must be included in the management scheme see Schedule 7, paragraph 13(3).

104 Sections 136(4), 138(3) and Schedule 7 Paragraph 22(5).

105 Schedule 7, paragraph 13(3)(g).

- the payment of any remaining amount to the relevant proprietor;
- the deduction, from time to time, of any remaining amount from any amount the LHA are entitled to recover from the relevant proprietor<sup>106</sup>.

The management scheme may also state<sup>107</sup>:

- how the LHA intends to use rent or other payments to meet their relevant expenditure;
- how the LHA intends to pay interest (where appropriate) on rent or compensation payments;
- whether any surplus or deficit from the interim EDMO or previous final EDMO is to be carried forward;
- the LHA's intentions regarding recovery from the relevant proprietor of any relevant expenditure incurred under a previous interim EDMO or final EDMO that they are entitled to recover.

The LHA must keep full accounts of their income and expenditure on the dwelling and make reasonable facilities for inspection, verification and copying of those accounts by the relevant proprietor or any other person with an interest or estate in the dwelling.

## 8.5 Breach of management scheme

An 'affected person', i.e. the relevant proprietor or any person to whom compensation is payable<sup>108</sup>, may apply to a RPT for an order requiring the LHA to manage the dwelling in accordance with the management scheme<sup>109</sup>.

Where such an application is made, the RPT may make an order:

- requiring the LHA to manage the dwelling in accordance with the management scheme (and setting out the steps the LHA are to take to do so)<sup>110</sup>;
- varying the final EDMO<sup>111</sup>;
- requiring payment to an affected person by way of damages<sup>112</sup>;
- revoking the final EDMO from a date specified by the RPT in its order<sup>113</sup>.

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106 See Schedule 7, paragraph 23(5) and (6).

107 Schedule 7, paragraph 13(4).

108 Schedule 7, paragraph 14 (4).

109 Schedule 7, paragraph 14(1).

110 Schedule 7, paragraph 15(2) and (3).

111 Schedule 7, paragraph 14(3)(b).

112 Schedule 7, paragraph 14 (3)(c).

113 Schedule 7, paragraph 14(2)(b).

## 8.6 Financial arrangements on termination of final EDMO

If, on the termination date of a final EDMO, any balance is payable under the terms of the management scheme to the relevant proprietor, a third party or a dispossessed landlord or tenant, the LHA must arrange to make the payment in the manner set out in the management scheme<sup>114</sup>.

However, if on the termination date, the amount of rent or other payments collected is less than the amount of relevant expenditure incurred by the LHA (plus any compensation paid to third parties), the LHA may only recover from the relevant proprietor:

- an amount (not exceeding the deficit) which the relevant proprietor has agreed in writing to pay as a condition for revoking the order (e.g. early revocation) or otherwise;
- in the case of a dwelling which is subject to a lease, the amount of any outstanding service charges payable under the lease.

If the final EDMO is replaced with a subsequent final EDMO, any surplus or deficit can be carried forward, provided the management scheme under the subsequent final EDMO makes provision for this<sup>115</sup>.

Any sum recoverable by the LHA is, until recovered, a charge on the dwelling and takes effect on termination of the order as a legal charge which is a local land charge<sup>116</sup> (see Chapter 11.2 Land Charges).

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114 Schedule 7, paragraph 23(3).

115 Schedule 7, paragraph 23(7).

116 Schedule 7, paragraph 23(8).

# CHAPTER 9:

## Variation, revocation and appeals

### 9.1 Variation of EDMOs

A LHA may vary the terms of an interim or final EDMO if they consider it appropriate to do so<sup>117</sup>. This may be done either on their own initiative or on application by a relevant person (e.g. the relevant proprietor or someone else with an estate or interest in the dwelling but not including an occupant placed in the dwelling by the LHA)<sup>118</sup>.

Before varying an interim or final EDMO, the LHA must serve notice<sup>119</sup> on each relevant person stating:

- the effect of the variation;
- the reasons for the variation; and
- the end of the consultation period.

The LHA must consider any representation made within the consultation period, which must end at least 14 days after the date on which the notice is served<sup>120</sup>.

The requirement to serve notice may be dispensed with if the LHA consider that the variation is either not material or a notice has already been served and the variation proposed is not materially different from the previous proposed variation<sup>121</sup>.

If the LHA subsequently decides to vary the order it must, within 7 days of making the decision, serve on each relevant person<sup>122</sup>:

- a copy of the decision to vary the order; and
- a notice setting out:
  - the reasons for the decision and the date on which it was made;
  - the right of appeal against the decision; and
  - the time period for appealing.

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117 Schedule 7, paragraphs 6(1) and 15(1).

118 Schedule 7, paragraphs 6(3) and (4) and 15(3) and 4.

119 Schedule 6, paragraph 10.

120 Schedule 6, paragraph 23.

121 Schedule 6, paragraphs 12 and 13.

122 Schedule 6, paragraph 11.

If, on application from a relevant person, the LHA is minded to refuse to vary the terms of an interim or final EDMO, before refusing to do so it must serve a notice<sup>123</sup> on each relevant person stating:

- that the LHA are proposing to refuse to make the variation and setting out:
  - the reasons for refusing to make the variation; and
  - the end of the consultation period.

The LHA must consider any representation made within the consultation period, which must end at least 14 days after the date on which the notice is served.

Where the LHA refuses to vary an interim or final EDMO, it must within 7 days of making the decision, serve on each relevant person a notice setting out:

- the LHAs decision not to vary the order;
- the reason for the decision and the date on which it was made;
- the right of appeal against the decision; and
- the time period for appealing.

## 9.2 Revocation of EDMOs

A LHA may revoke an interim or final EDMO either on their own initiative or by virtue of an application by a relevant person<sup>124</sup> in the following circumstances<sup>125</sup>:

- *in the case of an interim EDMO*:
  - they conclude that there are no steps which they could appropriately take to secure occupation of the dwelling<sup>126</sup>;
  - a final EDMO has been made to replace it<sup>127</sup>;
- *in the case of a final EDMO*:
  - they conclude that there are no steps which they could appropriately take to secure occupation of the dwelling<sup>128</sup>;
  - they conclude that keeping the order in force is not necessary<sup>129</sup>;

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123 Schedule 6, paragraphs 14 and 15.

124 Schedule 7, paragraph 6(3).

125 Schedule 7, paragraphs 6 (7) and 16.

126 Section 135(4) and schedule 7, paragraph 7(1)(a).

127 Schedule 7, paragraph 7(1)(c).

128 Schedule 7, paragraph 16(1)(a) as read with Section 137(4)(b) and 137(6)(a).

129 Schedule 7, paragraph 16(1)(a) as read with Section 137(4)(c) and 137(6)(b).

- a further final EDMO has been made to replace it<sup>130</sup>;
- *in the case of either an interim or final EDMO:*
  - they are satisfied that the dwelling will either become or continue to be occupied, despite the revocation<sup>131</sup>;
  - they are satisfied that the dwelling is to be sold<sup>132</sup>;
  - they conclude that it would be appropriate to revoke the order to prevent or stop interference with the rights of a third party<sup>133</sup>;
  - in any other circumstances they consider it would be appropriate to revoke the order<sup>134</sup>.

If the dwelling is occupied at the time the revocation is proposed, the order may not be revoked (unless it is to be replaced with a final or subsequent final EDMO) without the consent of the relevant proprietor. Therefore, if the relevant proprietor does not wish to manage the occupancy himself, the LHA must first end the occupation before revoking the order.

Where the revocation is requested by a relevant person, the LHA may refuse to revoke the order unless they or someone else agrees to pay any relevant expenditure they have incurred that has not already been recouped from rental income<sup>135</sup>.

Before revoking an interim or final EDMO, the LHA must<sup>136</sup>:

- serve a notice on each relevant person stating:
  - the reasons for the revocation;
  - the end of the consultation period;
- consider any representation made and not withdrawn.

Where the LHA subsequently decides to revoke the order they must, within 7 days, serve<sup>137</sup> on each relevant person:

- a copy of their decision to revoke the order; and

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130 Schedule 7, paragraph 16(1)(c).

131 Schedule 7, paragraph 7(1)(b)(i) and 16(1)(b)(i).

132 Schedule 7m paragraph 7(1)(b)(ii) and 16(1)(b)(ii).

133 Schedule 7, paragraph 7(1)(d) and 16(1)(d).

134 Schedule 7, paragraph 7(1)(e) and 17(1)(e).

135 Schedule 7, paragraph 16(5). The relevant person in this case is any person who has an estate or interest in the dwelling (other than a person who is a tenant under a lease granted by the LHA following the making of an EDMO – schedule 7, paragraph 16(6)).

136 Schedule 6, paragraphs 17 and 18.

137 Schedule 6, paragraph 19.

- a notice setting out:
  - the reasons for the decision and the date on which it was made;
  - the right to appeal against the decision; and
  - the time period within which an appeal may be made.

## 9.3 Appeals

Relevant persons (that is, both a relevant proprietor and a person with an estate or interest in the dwelling) have rights of appeal against decisions made by LHAs on EDMOs. These relate to:

- a decision to make a final EDMO<sup>138</sup>;
- the terms of a final EDMO (including the terms of the management scheme<sup>139</sup>);
- the terms of an interim EDMO relating to payment of surplus rental income and any interest paid<sup>140</sup>;
- a decision to vary or revoke, or refuse to vary or revoke, an interim or final EDMO<sup>141</sup>;
- a decision not to pay compensation to a third party or with respect to the amount of compensation offered<sup>142</sup>.

There is no right to appeal against the making of an interim EDMO<sup>143</sup>, as the matter is in any case determined by a RPT.

An appeal must be made within 28 days of the date specified in the relevant notice. An RPT may allow an appeal to be made after this time if it is satisfied that there is good reason why the appeal was not made in time.

A party to proceedings before a RPT may appeal to the Lands Tribunal against the decision of the RPT<sup>144</sup>. However, the appeal may only be made with the permission of the RPT or the Lands Tribunal, and must be made within specified time limits<sup>145</sup>.

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138 Schedule 6, paragraph 24(1)(a).

139 Schedule 6, paragraph 24(1)(b).

140 Schedule 6, paragraph 24(3).

141 Schedule 7, paragraphs 8(1) and (2) and 30 for interim EDMOs, and paragraphs 17(1) and (2) and 30 for final EDMOs.

142 Schedule 7, paragraph 34.

143 Schedule 6, paragraph 24(2). However, under section 231 of the Act a party to proceedings before a RPT may appeal to the Lands Tribunal from any decision of the RPT with the permission of the RPT or the Lands Tribunal within the time specified by rules under section 3(6) of the Lands Tribunal Act 1949. That right of appeal therefore applies in relation to the decision of an RPT to make an interim EDMO.

144 Section 231.

145 See Lands Tribunal Act 1949, section 3(6) for time limits.

# CHAPTER 10:

## Leases and Licences

### 10.1 Treatment of leases

The fact that a dwelling is leased does not preclude an EDMO being made against it. This applies equally to dwellings subject to long and short leases. However, as set out in Chapter 3.2, the length of the lease will determine who is treated as the relevant proprietor. The relevant proprietor is the person with the shortest unexpired lease of 7 years or more. Where a lease has less than 7 years unexpired the relevant proprietor will be the person who granted the lease (the lessor) rather than the leaseholder (lessee).

When an EDMO is made on a dwelling subject to a lease, the LHA is treated as a lessee of the dwelling. It does not acquire an estate or interest in the dwelling<sup>146</sup> but is treated as if it were the legal leaseholder of the dwelling for the purposes of certain provisions under landlord and tenant law<sup>147</sup>.

The validity of the lease, or any superior lease, continues except that any provisions that would prevent the LHA from creating a right of occupation have no effect<sup>148</sup>. In effect, where an interim or final EDMO is in force the LHA becomes a de facto lessee of the dwelling and will be subject to all the terms of the lease except any that would prevent the LHA from exercising its duties under the Act.

The LHA becomes responsible for payment of any relevant charges under the terms of the lease (such as ground rent, insurance contributions, service charges and maintenance costs) whilst the EDMO is in force. The LHA has the right, as a lessee of the dwelling, to obtain information from the immediate lessor about service charges and other charges demanded under the lease and to dispute such charges.

Any right of occupation created by the LHA must be for a term that is less than the remaining term of the lease<sup>149</sup>.

In the case of a lease that has an unexpired term of less than 7 years (in which case the relevant proprietor will be the lessor) the lease or licence continues to have effect while the order is in force as if the LHA were substituted for the lessor. Again, the LHA do not obtain an estate in law in the dwelling<sup>150</sup>.

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146 Sections 107(5) and 116(5), Schedule 7, paragraphs 2(6) and 10(6).

147 Sections 107(6) and 116(6), Schedule 7, paragraphs 2(7) and Paragraph 10(7).

148 Sections 109(4) and 118(4), Schedule 7, paragraphs 4(9) and 12(9).

149 Schedule 7, paragraphs 2(4)(b) and 10(4).

150 Schedule 7, paragraphs 4(2) and (3) and 12(2) and (3).

Where the lease is an assured or assured shorthold tenancy or a regulated tenancy, exclusions within the Housing Act 1988 and the Rent Act 1977 which prevent LHAs from entering into such leases do not apply<sup>151</sup>.

## 10.2 Power of RPTs to determine leases and licences

A RPT may, on application from a LHA, make an order determining a lease or licence under which the relevant proprietor is a lessee or licensee of the dwelling that is not occupied, where the tribunal is satisfied that the dwelling is not in fact occupied and the LHA, having made an EDMO, require possession of it in order to secure its occupation.

The RPT may order the LHA to pay compensation to the lessor, lessee, licensor or licensee of the dwelling. In the case of a final EDMO, the tribunal must make an order varying the management scheme to provide for payment of such compensation.

## 10.3 Supplementary provisions on leases

Supplementary provisions are contained in the Housing (Management Orders and Empty Dwelling Management Orders) (Supplemental Provisions (England) Order 2006<sup>152</sup>. Where a LHA has made an EDMO in respect of a leasehold dwelling, as soon as the order is made, they must serve notice<sup>153</sup> on the lessor setting out:

- the type of order made (e.g. an interim EDMO under section 132(1)(a) of the Act);
- the date the order comes into force;
- a summary of the effect the order has on the validity of the lease (e.g. Paragraph 2(6) of Schedule 7 in respect of an interim EDMO);
- the name and address of the LHA or a person authorised to receive on their behalf any future demand for ground rent, service charges, or any notices or other documents in respect of the premises.

Once the notice has been served on the lessor, neither the LHA nor the relevant proprietor is liable to pay ground rent, service charges or other charges demanded that are due for payment under the terms of the lease, whether due before or after the date of the order unless the payment demand is served on the LHA in accordance with the above notice<sup>154</sup>.

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151 Schedule 7, paragraphs 4(5) and 12(5).

152 S.I. 2006/368, article 3(2).

153 S.I. 2006/368.

154 S.I. 2006/368, article 3(3).

From the date the order come into force, the LHA are liable to pay any ground rent, service charge or other charges demanded of them, provided they relate to the period after the order came into force. The LHA may in addition pay any outstanding ground rent, service charge or other charges that relate to a period before the order came into force, but are not required to do so<sup>155</sup>. It is recommended that a LHA should check whether there are any outstanding payments prior to making an EDMO by seeking a statement from the lessor.

The LHA may challenge the reasonableness of any payment demanded by the lessor either on their own behalf or that of the relevant proprietor<sup>156</sup>.

The LHA must send copies of any demands for payment of ground rent, service charge or other charges, plus any other notice or document received from the lessor, to the relevant proprietor within 10 days of receipt. If the relevant proprietor wishes to dispute any matter contained within a demand or notice that was served on the LHA, the LHA must provide such information and assistance as they may reasonably require<sup>157</sup>.

The relevant proprietor may not require the LHA to delay payment of any ground rent, service charge or other charges that the LHA consider are outstanding under the terms of the lease, whether or not the relevant proprietor wishes to dispute the demand<sup>158</sup>.

## 10.4 Additional guidance on leasehold matters

A LHA should check that they have the correct address for serving the notice on the lessor as required under Chapter 10.3. The lessor will have notified the lessee of the correct address as required under s.48 of the Landlord and Tenant Act 1987.

Many leases contain conditions requiring prior consent of the lessor to sub-let the dwelling or requirement to notify the lessor following the grant of a sub-letting. Whilst such conditions cannot prevent a LHA from pursuing its duties under an EDMO, it is recommended that LHAs seek to explain to lessors in advance their intentions so as to avoid disputes.

A LHA should have regard to the suitability or otherwise of placing occupants in leasehold dwellings that are part of an estate or block. Some leasehold properties are specifically reserved for certain types of resident e.g. retirement communities.

It is recommended that LHAs make enquiries of lessors prior to making an EDMO in respect of any proposed major works that could lead to future charges under the lease. Likewise, LHAs should make enquires about existing management arrangements such as whether the dwelling is part of a block of flats managed by, or on behalf of, the residents.

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155 S.I. 2006/368, article 3(4)(b).

156 S.I. 2006/368, article 3(4)(c).

157 S.I. 2006/368, articles 3(4)(d) and (5).

158 S.I. 2006/368, article 3(6).

# CHAPTER 11:

## Miscellaneous Procedures on EDMOs

### 11.1 Register of Management Orders

The LHA must establish and maintain a register of all interim and final EDMOs made by them which are in force<sup>159</sup>.

The register must contain:

- the address of the dwelling to which the order relates and any reference number allocated to it by the LHA;
- a short description of the dwelling;
- the date on which the order comes into force;
- a summary of the reasons for making the order;
- a summary of the terms of the order;
- summary information of any applications concerning the dwelling made to a RPT or to the Lands Tribunal;
- summary information of any decision of the tribunal relating to the dwelling, together with the reference number allocated to the case by the tribunal.

The LHA must ensure that the contents of the register are available at the authority's head office for inspection by members of the public at all reasonable times and, if requested to do so, must supply a person with a certified copy of the register or an extract from it.

### 11.2 Land charges

An interim EDMO is a local land charge and the LHA may apply for a restriction to be entered in the register of title held at the Land Registry<sup>160</sup>.

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159 Section 232 and regulation 13 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions (England) Regulations 2006 ( S.I. 2006/373).

160 Schedule 7, paragraphs 2(9) and (10) and 10(9) and (10).

Any sum of money recoverable by a LHA on termination of an interim or final EDMO is, until recovered, a legal charge on the dwelling<sup>161</sup>. The LHA may enforce the charge in the same way as a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver<sup>162</sup>.

## 11.3 Furniture

Where there is furniture (including any fittings and other articles) in a dwelling on which an interim or final EDMO is made, the LHA has the right to possession of it, subject to any other person's right to possession on the date the order comes into force<sup>163</sup>. If the LHA have not granted a right to occupy the dwelling, they must, if requested by the relevant proprietor, give up possession of the furniture to him.

The LHA may renounce the right to possession of any furniture by serving notice on the relevant proprietor not less than two weeks before the renunciation is to have effect. Where this is done, the LHA must make arrangements to store the furniture at their own cost.

The LHA may supply furniture, fittings and other articles to a dwelling on which an interim or final EDMO is made. Any expenditure incurred in doing so is regarded as relevant expenditure<sup>164</sup>.

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161 Schedule 7, paragraph 23(8) and (9).

162 Schedule 7, paragraph 23(10). See also Law of Property Act 1925.

163 Schedule 7, paragraph 20.

164 Schedule 7, paragraph 21.

## CHAPTER 12:

# General Powers and Duties relating to EDMOs in the Housing Act 2004

### 12.1 Service of documents

If it is not practicable after reasonable enquiry to ascertain either the name or the address of a person on whom the LHA is under a duty to serve a document in connection with an EDMO, that document is served if it is addressed to the person (either by name or by describing his connection with the premises) and by fixing it to a conspicuous part of the premises<sup>165</sup>.

### 12.2 Additional notice requirements for protection of owners

Where the owner of premises gives a notice to the LHA informing them of his interest in the premises, the LHA must enter the notice in its records and must give that person notice of any action taken by them under the powers in Parts 1 to 4 of the Act (including any powers relating to EDMOs)<sup>166</sup>.

### 12.3 Power to require documents

A person authorised in writing by a LHA may give notice to a person with an estate or interest in a dwelling, or otherwise involved in the management of the premises, requiring that person to produce specified documents in his custody or control which are reasonably required by the LHA in connection with the exercise of their functions under EDMOs<sup>167</sup>.

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165 Section 246.

166 Section 246.

167 See Section 235 for full details.

## 12.4 Use of information obtained for council tax purposes

A LHA may use any information obtained by it in the exercise of its council tax and housing benefit functions for any purpose connected with the exercise of its functions under EDMOs<sup>168</sup>.

## 12.5 Power of entry to carry out survey or examination

Where an EDMO is in force, a person authorised by the LHA may, on giving at least 24 hours notice to the relevant proprietor (if known), enter the premises at any reasonable time for the purpose of carrying out a survey or examination<sup>169</sup>.

A LHA may also undertake a survey or examination if it considers it is necessary to determine whether to exercise any functions under Parts 1 to 4 of the Act in relation to the premises.

If the premises are unoccupied, the person authorised to enter must, when leaving, adequately secure the premises against trespass.

A LHA may apply to a justice of the peace for a warrant authorising entry where the Justice is satisfied that admission to the premises has been sought and refused or that the premises are unoccupied.

## 12.6 Power of entry to carry out works

At any time when an EDMO is in force, the LHA or any person authorised in writing by them, has the right at all reasonable times to enter the dwelling to carry out works. Any occupier who, having received reasonable notice of the intended action, prevents any officer, employee, agent or contractor of the LHA from carrying out that work, may be ordered to permit to be done on the premises anything that the authority considers to be necessary. A person who fails to comply with such a court order commits an offence<sup>170</sup>.

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168 See Section 237 for full details.

169 See Section 239 for full details

170 Schedule 7, paragraph 25