



Chartered
Institute of
Environmental
Health

Empty Dwelling Management Orders: Consultation on Secondary Legislation

**Response to Consultation Paper
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THE CHARTERED INSTITUTE OF ENVIRONMENTAL HEALTH

Founded in 1883, the Chartered Institute of Environmental Health (CIEH) is a professional and education body, dedicated to the promotion of environmental health and to encouraging the highest possible standards in the training and the work of environmental health professionals.

The Chartered Institute has approximately 10,000 members, most of whom work for local authorities in England, Wales and Northern Ireland. As well as providing services and information to its members, the Chartered Institute provides information to government departments and evidence to them on proposed legislation relevant to environmental health.

In 1993 the Chartered Institute became the World Health Organisation (EURO) Collaborating Centre for Environmental Health Management in Europe.

Environmental Health Officers (EHOs) employed by local housing authorities are well placed, by virtue of their qualifications, training and experience to address the day to day problems raised by poor housing standards; they can bring an holistic approach to enforcement using the following qualities:

- experience in risk assessment procedures and ability to take an holistic view of the health, safety and welfare of occupiers alongside traditional building and means of escape defects
- skills in tenant liaison (in addition to dealing with the problems of bricks and mortar) which is vital to achieve the goals in privately rented premises where the inevitable disruption can cause severe problems for occupiers many of whom are the most disadvantaged members of the community
- experience and training in administering prosecutions including Court appearances when litigation becomes necessary
- control of a broad range of functions with consequent ability to resolve conflicts between them when they arise
- ability to provide a central unitary point of contact for all involved including local authority housing/rehousing officers, rent officers, social services, housing benefits, tenancy relations and voluntary agencies

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General comment

The CIEH notes that the key points of its response to the primary consultation have been ignored; the legislation is weighted in favour of the owner of the empty dwelling who is entitled to a market rent. In contrast, all the financial risks are borne by LHAs.

Answers to questions set out in the consultation paper:

Question 1: *Do you agree that all dwellings should be excepted from Empty Dwelling Management Orders for a period of six months from the time they become unoccupied, as provided for in section 134(2)(a) of the Housing Act 2004?*

The six month period of exception from EDMOs is appropriate whilst this remains a power and not a duty. Local Housing Authorities (LHAs) should be allowed to use discretion as properties can become a problem before this time (often due to anti-social behaviour).

In practice, the CIEH believes few LHAs will intervene less than twelve months after a property becomes vacant. It is usually difficult, within six months of a property becoming vacant, to establish that it is likely to become a long term problem.

Question 2: *If not, what longer period of time do you consider should be prescribed?*

Question 3: *Do you agree that it is inappropriate for an EDMO to be made where a dwelling is unoccupied for more than 6 months due to the absence of the relevant proprietor - provided that dwelling is regarded as their sole or main residence for the whole duration of the absence?*

This is appropriate but LHAs should have an option to apply for an EDMO if it has evidence there is no intention on the part of the proprietor to return and occupy the property within the expected period of an EDMO. The power should also be available if the condition of the property is deteriorating, thereby causing a nuisance.

Question 4: *Do you agree that a test of residence for the purposes of EDMOs should be based on council tax information?*

A test of residence should include council tax information; however such information is not always accurate. Additional information should also be used.

A property's occupation status for Council Tax purposes may be misleading for various reasons:

1. Even before the Local Government Act 2003, owners did not always claim available discounts/exemptions for vacant dwellings.
2. Since that Act, owners have no incentive to notify the LHA of vacancy if that LHA has abolished the council tax discount for vacant dwellings and if no exemption is available.
3. Sections 75 and 85 of the 2003 Act mean that only substantially unfurnished dwellings can be treated as empty dwellings for council tax purposes; furnished dwellings have to be treated as second homes.

Question 5: *Do you agree that Residential Property Tribunals should have discretion to consider other evidence that may have a bearing on residence in reaching a decision on whether to authorise an application for an interim EDMO?*

Council tax information may provide a starting point in many cases but should not be the definitive test of residence.

In many LHAs, empty properties are not subject to any discount (after an initial period) on council tax payments, whereas singly occupied properties are. There is therefore an incentive for owners to claim a single occupancy where in fact the property is empty.

Residential Property Tribunals (RPTs) should be able to consider other evidence held by the LHA including, for example, records of consumption from utility providers and appropriate evidence from fire authorities, neighbours, community support officers, health trusts etc.

Question 6: *Do you agree that it is inappropriate for an EDMO to be made where a dwelling is unoccupied for more than 6 months but its use is as a second home or holiday home?*

Yes provided it is used as such in any twelve months. The guidance uses the term from “time to time” [22(b)] which needs further clarification. This could be abused by owners. Owners should be required to prove they regularly use the property for at least six weeks of the year.

LHAs should have the option of applying to an RPT for an EDMO in such cases if the property in question is causing problems by virtue of its condition or it becomes clear that an owner has abandoned the furniture within the house or has furnished the property simply to reclassify it as a second home.

Question 7: *Do you agree that in principle chargeable dwellings that receive a council tax discount on the grounds that they are no one's sole or main residence and furnished should be excepted?*

No. Homes inherited from deceased relatives often lie furnished and empty and sometimes neglected for considerable periods. This could create an additional incentive for owners to furnish vacant dwellings to avoid an EDMO.

Question 8: *Do you agree that Residential Property Tribunals should be allowed to use discretion in considering evidence regarding use that conflicts with council tax information?*

Yes; all information that has a bearing on the case should be made available.

Question 9: *Do you agree that a dwelling that attracts business rates should be excepted?*

No; EDMOs should remain an option if the property is not being used to prevent, for example, developers using the exception to allow a property to deteriorate to facilitate demolition and redevelopment that may not have otherwise been permitted.

If the dwelling part of the building is a separate entity, it should not be excepted (unless there is no separate access to the dwelling). Owners should not be able to change a property to business use in order to avoid an EDMO.

Question 10: *Do you agree in principle that it is inappropriate for an EDMO to be made where a dwelling is unoccupied for more than 6 months and is undergoing repair or renovation?*

This would be appropriate in principle provided that the works progress in accordance with a plan, agreed between the owner and the LHA, which sets out agreed timescales for completion and reoccupation. If the works, once started, do not proceed to a satisfactory conclusion within a reasonable timescale, LHAs should be empowered to apply to an RPT for an EDMO.

Question 11: *Do you agree that Residential Property Tribunals should have discretion to authorise or refuse to authorise applications for interim EDMOs where work has been commenced but in the opinion of the local authority is unlikely to be completed?*

Yes; this discretion should also be available if satisfactory progress is not being maintained (see answer to question 10).

Question 12: *Do you agree in principle that it is inappropriate for an EDMO to be made where a dwelling is awaiting planning or building regulations approval?*

Yes, subject to the caveats set out in question 13.

Question 13: *Do you agree that Residential Property Tribunals should have discretion to consider applications for interim EDMOs where in the opinion of the local authority the application for planning or building regulations approval is designed simply to prevent an EDMO from being made?*

Yes.

Question 14: *Do you agree in principle that it is inappropriate for an EDMO to be made where a dwelling is on the market either for sale or letting?*

This would be appropriate in most situations. However, owners may market a property to prevent intervention by the LHA as they are under no obligation to accept any offer made for the property or to accept a tenant. They could also avoid incurring any costs by marketing the property.

There is some evidence of estate agents advising owners that if the property is for sale the LHA cannot intervene. They prepare particulars and place a board at a property for a small fee but do not actively marketing the property. Additional avoidance tactics can include overpricing or poor presentation.

LHAs should be able, in such situations, to apply to an RPT for an EDMO; the LHA will need to be able to satisfy the Tribunal that such marketing is deliberately ineffective.

Question 15: *Do you agree that Residential Property Tribunals should have discretion to consider applications for interim EDMOs where in the opinion of the local authority the dwelling is not being actively marketed and the relevant proprietor has no intention of selling or letting it?*

Yes (see Q14 response).

Question 16: *Do you agree that in the case of a dwelling where the relevant proprietor has died, the dwelling should be excepted from an EDMO for longer than 6 months?*

Yes.

Question 17: *If so, what period of time would you propose for the Class F exception?*

An exception period of 12 months would appropriate in such situations.

Question 18: *Do you consider there ought to be an additional exception class or classes?*

No.

Question 19: *Do you agree that it is not necessary to prescribe requirements for the purpose of s.134(2)(e) at this time?*

Yes; this option should though be reviewed twelve months after the legislation comes into effect.

Question 20: *If you disagree, please state what requirements you would like to have prescribed?*

Question 21: *Do you agree that where a lessor of a dwelling subject to a management order seeks to exercise a right or responsibility relating to the lease of the dwelling, there should be a requirement on the lessor to serve the requisite notice or information on the LHA?*

Yes, provided this is in addition to copies served on the displaced lessee.

Question 22: *Do you agree that, in determining how to respond to the actions of the lessor, the LHA should act in accordance with the wishes of the displaced lessee, unless doing so would unduly affect the operation of the management order?*

Yes, provided the displaced lessee makes such wishes known within a reasonable time.

Question 23: *Do you agree that where a displaced lessee of a dwelling subject to a management order seeks to exercise a right or responsibility relating to the lease of the dwelling, there should be provision for the LHA to grant a dispensation to allow them to act as lessee for that particular purpose?*

Yes provided it is at the discretion of the LHA.

Question 24: *Do you agree that a LHA should be under a duty to grant such a dispensation unless it considers doing so would unduly affect the operation of the management order?*

No; management orders will be imposed because the owner has demonstrably failed to manage the property effectively and responsibly. Effectively allowing an extension of a long lease or buying the freehold would have the result of, in the long-term, increasing the control of the owner.

Lessees should however be entitled to appeal to an RPT against a decision of an LHA to refuse a dispensation.