

Empty Dwelling Management Orders

Guidance for residential property owners
on new powers available to local councils



housing

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Some facts about empty properties

- There are over half a million empty privately owned residential properties in England and half of these have been out of use for longer than 6 months.
- They are vulnerable to break-ins by squatters, vandals, drug dealers and arsonists; and insurance premiums will reflect this.
- Empty properties adversely affect the value of neighbouring properties.
- On average, you may be losing £8,000 per year by keeping a property empty; and you could rent it out for a short period.
- Councils can now double the council tax on empty properties and have new legal powers to take over the management of some properties left empty for more than six months.
- You may be able to get advice and help to bring an empty property back into use, and you could qualify for tax breaks.



New powers for local councils to manage empty homes

New powers, known as Empty Dwelling Management Orders, introduced in England from April 2006 allow councils with housing responsibilities to take over the management of some residential properties that have been empty for more than six months. The property does not have to be run down or uninhabitable. The fact that it has not been lived in for more than 6 months may be enough to allow an Empty Dwelling Management Order to be made.

An Empty Dwelling Management Order could mean you lose your right to decide how your property is managed and who lives in it. The only sure way to prevent this happening is to get your property back into use.

Does this affect me?

An Empty Dwelling Management Order cannot be made on a property where one or more of the following statements are true:

- ✦ It is not a dwelling e.g. it is a building or part of a building used for non-residential purposes.
- ✦ It is *not* wholly unoccupied e.g. only part of your house or flat is unoccupied or there are spare rooms not in use.
- ✦ It has been lived in at any time within the previous six months.

The six month exception period applies to all empty dwellings regardless of the reason they are unoccupied. However, even after six months a lot of unoccupied dwellings will continue to be excepted as long as one or more of the following statements are true:

- ✦ The property is normally your only or main residence, but:
 - you are temporarily residing elsewhere;
 - you are absent so that you can be cared for elsewhere;
 - you are absent because you are caring for someone elsewhere;
 - you are in the armed forces and are away from home on service.
- ✦ The property is occupied occasionally by you or your guests as a second home or a holiday home.
- ✦ The property is genuinely on the market for sale or to be let.
- ✦ You are expecting to inherit the property but have not yet obtained grant of representation (probate) following the death of the previous owner. In this case, the property will continue to be excepted for six months after you obtain grant of representation.

In all there are ten such excepted categories, some of which apply only in specific circumstances such as where occupation

of the dwelling is normally linked to a job or agricultural use, or where the dwelling cannot be occupied because of civil or criminal proceedings. Further information is available in guidance on the DCLG website at www.communities.gov.uk/emptyhomes.

It is possible for one exception to apply after another one has ended. For example, if you decide to sell a property that was previously used as a second home or the owner died following a period living in a nursing home, it will continue to be excepted.

What if my property is not excepted?

Even if none of the above statements applies, before taking the matter further the council must ask if you have any plans to bring your property back into use. If you can demonstrate that you are actively pursuing plans to bring the property back into occupation in the near future the council will not be able to get the approval it needs to make an Empty Dwelling Management Order.

If none of these statements applies, the council may consider making an Empty Dwelling Management Order, although it does not have to. Whether it does will depend on a number of factors, including the priority the council gives to taking action to deal with empty property. Most councils publish a strategy about this which should set out the general approach they will take, what enforcement powers they may use and in what circumstances.

If you are in doubt, you might consider discussing the matter with the council. Most employ an empty property officer who specialises in finding solutions to bring empty properties back into use. If the council knows your circumstances it is likely they will try to work with you to find a way to overcome any problems. A council will only consider using enforcement powers such as Empty Dwelling Management Orders when they consider you have been unwilling to co-operate, leaving them with little alternative.



What is an Empty Dwelling Management Order?

An Empty Dwelling Management Order (EDMO) gives the council the right to possession of the property. Once an EDMO has been made, the council may do anything you would normally be entitled to do with the property, such as entering it to inspect its condition. The council does not take over ownership of the property but is entitled to possession of it and can prevent you from using it or letting someone else use it whilst the order is in force.

There are two types of EDMO. An interim EDMO lasts for an initial period of 12 months, during which time the council must try to work with you to agree a way of getting your property back into use. It may ask you for permission to let the property to someone. If no agreement can be reached with you, the council may seek to make a final EDMO, which can last for up to seven years. You will have fewer rights to decide how the property is brought back into use under a final EDMO. If the council cannot reach an agreement with you and decides not to make a final EDMO, it must hand back possession of the property to you.



How will I know if the council wants to make an Empty Dwelling Management Order?

If the council considers it has grounds to make an EDMO, it must notify you first and ask if you have any plans of your own to bring the property back into use. You do not have to discuss the matter with the council but explaining your situation and any plans you may have in the future will help them to decide whether or not to pursue the matter. They may be able to assist you with your plans to bring the property back into use.



Who decides if an Empty Dwelling Management Order should be made?

A council *cannot* make an interim EDMO without getting approval from the independent Residential Property Tribunal. The Tribunal will decide if the order should be allowed, and in doing so will make sure the council has followed the correct procedures. The Tribunal does not have to approve the order if it considers there are good reasons not to do so. It must be satisfied:

- ◆ That the property has been unoccupied for at least six months and is unlikely to be occupied in the near future.
- ◆ That the council would be able to find someone to occupy it.
- ◆ That the property is not covered by one of the exceptions.

The Tribunal must also consider the effect the order would have on your rights. Ultimately, it is up to the tribunal to decide if the order should be made. It is not under any obligation to do so and will have regard to all the relevant facts in making its decision.

The Tribunal must deal with the case in a way that is fair to you. For example, it can assist you to present your case but cannot tell you what course you should take. It will provide you with any documents that are relevant to the case, for example any information supplied by council. It may also require you to supply any documents or information in your possession that may be relevant.

The Tribunal may decide to determine the case without arranging a hearing. If this happens, it will write to you. However, if you or the council request a hearing, one will be arranged. You do not have to attend a hearing and may arrange for someone else to act as your representative.



What happens once an interim Empty Dwelling Management Order has been approved?

If the Tribunal is satisfied that an interim EDMO should be made, it will approve the order provided by the council. The council must, within 7 days, serve you with a copy of the order, along with a notice setting out the reasons why the order was made and its general effect. The notice must also say when the order will end, which must be on a date within 12 months.

The council becomes responsible for the day to day management of the property and must consider the best way to get it occupied. It must obtain your consent in writing before the property can be occupied. If you are willing to let the council put a tenant in the property, it may decide to end the order if you are also prepared to lease the property to them on a voluntary basis or agree some other way to get it brought back into use. This will give you an opportunity to agree the terms of the lease with the council. If you do not agree to allow the council to put a tenant in the property, it must either make a final EDMO to replace the interim order or end it without taking further action.



How is a final Empty Dwelling Management Order made?

In deciding whether to make a final EDMO the council must take into account the interests of the community and the effect the order will have on you and other people with an interest in the property. If the council decides to make a final EDMO, it must first serve a copy of the proposed order on you, along with a notice setting out the reasons why it wants to make the order and its proposed terms. It must give you at least 14 days to respond and must decide whether to alter its proposals in the light of any representation you may make.

If the council decides to go ahead and make a final EDMO it does not need to get any further approval from the Residential Property Tribunal. However, within 7 days of making the order it must serve a copy of it on you, along with a further notice setting out the reasons for making it, the date the order ends and your rights of appeal. If you object to the making of the Final EDMO or some of the terms on which it is made and the council has not accepted your representations you will be able to appeal to the Tribunal.



What happens once a final Empty Dwelling Management Order is made?

Once a final EDMO is made, the council has the right to possession of the property for a fixed period of time up to seven years. It must take whatever steps it considers appropriate to get the property occupied or to keep it occupied and ensure that it is properly managed. Importantly, it can put a tenant in the property without seeking your consent. The council must regularly review the situation and if it concludes that it cannot get the property occupied, it must hand back possession of it to you.



Who pays for any costs incurred under an EDMO?

The council will incur costs in managing your property. For example, it may have to pay an agent, such as a housing association or a private management company, to look after the property on its behalf. It may also decide the property needs some work done to it to get it into a fit state to be lived in. You will not normally have to pay any money towards these costs. The council will pay them and seek to recover its expenditure from any rental income it receives from tenants whilst the order is in force. The council *must* pay you any money that is left over after it has deducted its expenditure and may pay you interest on this money.



What happens if the council does not cover its costs?

During an interim EDMO, because the council cannot let the property without your permission, any costs it incurs may be recovered from you if you refused to allow the council to let the property, and it considers that you did this unreasonably. However, if the council makes a final EDMO to replace the interim order, it may decide to carry these costs forward and seek to recover them from any subsequent rental income it receives. In all other case, if the council cannot generate enough income from rental payments to cover its costs it cannot ask you to pay the shortfall unless you agree to do so, for example, as a condition to allow the order to be brought to an end before the council had recovered its costs from rental income.



How would the council recover money from me?

There are numerous methods a council can use to recover debts owed to it. An EDMO is a local land charge and will be registered in the local land charges register held by the council. The council may also apply for it to be entered in the register of title for the property held at the Land Registry. This means if you want to sell the property, your buyer will be aware of the charge and you will need to assist in its removal. The council will not normally remove the charge unless any money owed to it has been paid.



Are there restrictions on what works a council can undertake to my property?

When either an interim or final EDMO is in force the council is under a duty to take steps to get your property occupied. If it is not in a decent condition the council may decide it must

undertake some work to make it suitable to be lived in. It has the right to enter the property at any time to inspect its condition or to undertake works. The amount of works the council decides to undertake will depend on a number of factors, including how much money it thinks it will recover from rental income.

During an interim EDMO, the council will only be able to recover money it has spent with your agreement, or any other expenditure it reasonably incurs to ensure that the property becomes occupied and properly managed, including insurance costs. Because the council cannot let the property without your consent, it may decide not to undertake any significant work without your agreement to allow tenants to move in. However, it is more likely to deal with any immediate problems such as clearing rubbish away from gardens or dealing with potential health hazards.

Prior to making a final EDMO, the council must draw up a management scheme which will set out in detail how the council intends to manage the property. The management scheme must include details of any works the council intend to carry out to the property and how much it estimates this will cost. The management scheme must also state how much rent the council will seek to charge tenants. The council will include details of the proposed management scheme in the notice they must serve on you before the order is made. You will be able to make representations to the council about the proposed terms of the management scheme (including any proposed work to the property) and, if these are not taken on board, you will be able to appeal to the Tribunal against the terms of the management scheme.



Am I entitled to any compensation?

You will not be entitled to any compensation but will benefit from any improvements made to the property once the order has ended. However, someone else with an interest in the

property, for example the freeholder, may ask the council to pay compensation for any loss resulting from the interference with their property rights as a result of the EDMO. If the council refuses to pay compensation, they may appeal to the Tribunal.



Would an Empty Dwelling Management Order prevent me from selling the property?

As the legal owner of the property, you have the right to sell your property at any time whilst an EDMO is in force. However, because the council can have its interest noted on the title of the property at the Land Registry, you may want to have the order ended early to enable you to sell without this restriction.



How can I get an Empty Dwelling Management Order ended early?

You may at any time ask the council to end an EDMO early. This is called a *revocation*. For example, you may decide that you want to live in the property yourself or sell it. The council *may* revoke the order early if it is satisfied that you will ensure the property is occupied or put up for sale. If the council refuses your request to revoke the order you can appeal to the Tribunal.

The council *must* revoke the order and hand back possession of the property to you if it concludes it is unable to get it occupied under an EDMO.

If the property is occupied by tenants placed by the council, the council *cannot* revoke the order (unless it will simply replace it with a final EDMO) without your agreement. This ensures that you are not left to manage tenancies set up by the council. If the council wishes to revoke the order in these circumstances, it must first move the occupants out or agree with you an arrangement to allow them to stay.

The council *may* refuse to revoke the order early if doing so would leave it in debt. However, it may be persuaded to do so if you agree to pay the outstanding amount.



Do I have any rights of appeal?

You can appeal to the Residential Property Tribunal against the actions of the council on a number of matters. These are:

- A decision to make a final EDMO.
- The terms of a final EDMO (including the terms of the management scheme).
- The terms of an interim EDMO relating to payment of surplus rental income and any interest paid.
- A decision to vary or revoke, or refuse to vary or revoke, an interim or final EDMO.

If you want to appeal, you must normally do so within 28 days of the date specified in the relevant notice. The Tribunal 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.

If you appeal and are dissatisfied with the decision of the Residential Property Tribunal you may make a further appeal to the Lands Tribunal. However, to do this you will need to have the permission of the Residential Property Tribunal itself or the Lands Tribunal.



Who is responsible for insuring the property?

The council must ensure that the property is adequately secured and insured whilst a EDMO is in force.

Leasehold property



My property is leasehold. How will Empty Dwelling Management Orders affect me?

An EDMO can be made on a leasehold property such as a flat provided the council follows the correct procedures.

If you lease your property from someone and your lease still has more than 7 years to run, the order will be made against you.

If you lease your property but in turn grant a sub-lease to someone else:

- If the lease has less than 7 years to run, the order will still be made against you.
- If the lease has more than 7 years to run, the order will be made against the person you leased the property to, but you will still have an interest in what happens.



How will the terms of my lease be affected?

Once an EDMO is made, the council will be treated as if it is a leaseholder. However, this does not affect your ownership rights under the lease which will continue to apply. The council will have to abide by all the lease terms, except any that might prevent the property from being occupied. If the council lets the property to someone, it cannot grant a tenancy that would run for longer than the lease and not longer than 7 years.



Who will be responsible for paying the ground rent and service charge?

During an EDMO, the council is responsible for paying any charges payable under the terms of the lease such as ground rent, insurance contributions, service charges and maintenance charges, provided the charges relate to the period after the order came into force. The council may pay any outstanding ground rent or charges that relate to a period before the order came into force, but do not have to do so.

The council will have the same rights as you to obtain information about service charges and other charges demanded under the lease and to dispute these charges.



Will the person who granted my lease know that the council is responsible for paying these charges?

As soon as the order is made, the council must serve a notice on the person who gave you the lease (the “lessor”) setting out:

- The type of order made (e.g. an interim EDMO).
- The date the order came into force.
- A summary of the effect the order has on the validity of the lease.
- The name and address of a representative authorised to act on behalf of the council.

Once the notice has been served on the lessor, neither the council nor you will be liable to pay ground rent, service charges or other charges demanded that are due for payment unless the payment demand is served on the council's representative.



What information am I entitled to get from the council?

The council must send you copies of any payment demands for ground rent or charges, as well as any other notice or document it has received, within 10 days of their receipt. If you want to dispute anything within a demand or notice that was served on the council it must provide any information and assistance you may reasonably require. However, you may not require the council to delay payment of any ground rent or charges that it considers are outstanding under the terms of the lease, even if you want to dispute the matter yourself.



Do the council have the right to bring my lease to an end?

If you granted a lease to someone else and the property is not being occupied, the council may apply to the Tribunal for an order to terminate the lease. The Tribunal may make such an order if it is satisfied that the council has made an EDMO and need to have possession of the property in order to get it occupied. The Tribunal may require the council to pay compensation to you or the person to whom the property is leased for any loss suffered as a result.



Where can I get further information?

Further information about Empty Dwelling Management Orders and other empty property issues is available on the DCLG website at www.communities.gov.uk/emptyhomes. You can also contact your local council for advice on your options. Alternatively, the Empty Homes Agency produces a range of useful information on their website at www.emptyhomes.com.

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