

Empty Dwelling Management Orders

Guidance for residential property owners



housing

Contents

Introduction	2
Summary	3
Key facts for property owners	4
Making of Empty Dwelling Management Orders	5
Money Matters	10
Your rights whilst an EDMO is in force	13
Special rules about leasehold property	15
Getting further information	17



Introduction

It is the Government's ambition that no one should have to live in a neighbourhood scarred by the blight which empty properties can cause. A great deal of progress towards meeting this has been made in recent years. Overall, the number of empty residential properties has reduced by 10 per cent since 1997. But still nearly 600,000 privately owned residential properties in England are empty and half of these have been out of use for longer than six months.

There are many reasons why properties fall empty and in most cases they are returned to occupation after a short time. However, properties that are left empty for long periods can have a detrimental effect on the local environment and devalue neighbouring properties. They also represent a lost opportunity in areas where demand for housing is high and housing supply is inadequate. The Government believes that boarding up long-term empty properties to prevent them being broken into by squatters, vandals, drug dealers and arsonists is not a sustainable solution. The only effective answer is to get them back into occupation and in that way help to meet housing need where appropriate.

Bringing empty properties back into use also makes economic sense. Even where owners do not wish to sell their properties, they can rent them out for periods as short as six months at a time. The average yearly rent for a private sector tenancy in England is now over £6,000. Many councils provide services to help owners bring their properties back into use and can advise on the availability of grants and tax incentives. EDMOS are therefore a step forward which can help home owners and neighbourhoods as well as families in need.



Summary

Your right to own and sell your property cannot be taken away by an Empty Dwelling Management Order. What the legislation does allow is for local councils in certain specific circumstances to take over the management of empty residential properties with a view to agreeing with owners a plan to bring them back into occupation. This can only happen where the council has been unable to persuade the owner to bring the property back into use and considers this course of action is necessary as a last resort.

Councils already have powers to bring empty properties back into use but EDMOs differ from existing enforcement powers, such as compulsory purchase and enforced sale, in that they require councils to work with owners to find ways to bring properties back into use rather than forcing their sale. EDMOs are governed by a specific set of rules which regulate how councils must deal with property owners. There are special rules which must be followed in certain circumstances such as where properties become empty following bereavement.

EDMOs also introduce a number of important protections for property owners. In every case, the council *must* get approval to make an interim EDMO (which is the first stage) from an independent Residential Property Tribunal. The Tribunal will only give its approval if it is satisfied that the property has been unoccupied for *at least* the previous six months, that there is no reasonable prospect of it becoming occupied in the near future and that, if an EDMO is made, there is a reasonable prospect the council would be able to get it occupied. The Tribunal must also consider how making the order would impact on the property rights of the owner and is not obliged to grant authorisation if it considers there are good reasons not to do so. The legislation also provides rights for owners to appeal against decisions made by councils, have EDMOs brought to an end early and to sell properties even while an EDMO is in force.



Key Facts for Property Owners

Empty Dwelling Management Orders do not apply, for example, to:

- Any property empty for less than six months (but in practice most cases will involve properties empty for several years).
- A person's only or main home if they are:
 - temporarily living elsewhere (e.g. working away from home);
 - being cared for or caring for someone away from home.
- Second homes and holiday homes.
- Properties that are in the process of being sold or let.
- Properties that are going through probate or where probate was obtained within the previous six months.

A council cannot make an EDMO without first getting approval from an independent property tribunal.

An EDMO can be ended early if the owner decides they want to live in or sell the property.

Councils must fund any works needed to make a property habitable and must normally recoup their costs from rental income.

Councils are responsible for any furniture left in a property after an EDMO has been made and owners have rights to have it removed.

Owners can appeal to the tribunal on a wide range of matters concerning the actions taken by a council.



Making of Empty Dwelling Management Orders

What is an Empty Dwelling Management Order?

An EDMO is an order that, once approved, gives the council the right to possession of your property without affecting your right of ownership. Once an EDMO has been made, the council may do most things 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 to manage it. So, for example, it can prevent you from having access to it while the order is in force.

There are two types of EDMO. An interim EDMO lasts for an initial period of no more than 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 must ask for your permission before it can let the property to someone. If no agreement can be reached with you, the council may 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 end the interim EDMO and hand back possession of the property to you.

Do Empty Dwelling Management Orders affect me?

The power to make Empty Dwelling Management Orders does not concern all unoccupied properties. An 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 empty or there are spare rooms that are 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 an EDMO cannot be made on a property 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 somewhere else;
 - you are absent so that you can be cared for elsewhere;
 - you are absent because you are caring for someone elsewhere;
 - you are a member of 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.
- The property is going through probate following bereavement or probate was obtained less than six months ago.

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 covered by any of the other exceptions, it will continue to be excepted.

What happens if a property is unoccupied following bereavement?

Special rules apply where a property is unoccupied following the death of the owner. Where property is part of a deceased person's estate (and the property was held in the deceased person's sole name) somebody must apply for grant of

representation from the Probate Registry before the property can be sold or transferred. An Empty Dwelling Management Order cannot be made for at least six months after grant of representation has been obtained. It does not matter how long it takes to obtain grant of representation. Where the property remains unoccupied after the grant is obtained the six months runs from the date of the grant. In most cases the property would then continue to be exempt, for example, if the new owner has plans to sell or let the property or to bring it back into occupation either as a main residence or a second home.

What if my property is not exempt?

Even if none of the above exceptions apply, 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.

Even if none of the exceptions apply, it does not mean that the council will consider making an Empty Dwelling Management Order as the appropriate way forward. 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, the best option is to discuss 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. They must also act reasonably. For example, if you have recently suffered a bereavement and are not sure what to do with a property left to you, it is highly unlikely that the council would consider using any enforcement powers. Councils only use enforcement powers such as Empty Dwelling Management Orders when they consider you have been unwilling to co-operate, leaving them with little alternative.

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 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 the 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 let the council 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 for making 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 representations 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.



Money Matters

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 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 property to be let to tenants 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 all of 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 that if you want to sell the property, your buyer will be aware of the restriction and you will probably be asked 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. 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 afterwards. However, it may want 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 intends 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 a notice which 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.

What happens to any furniture in the property?

The council is responsible for any furniture (including things like kitchen and bathroom fittings) left in the property after an EDMO has been made and must ensure it is looked after. If you want to remove any items of furniture after an EDMO has been made you may make a request to the council. The council must comply with your request as long as the property has not already become occupied. However, prior to arranging occupation of the property, it is likely that the council will seek to persuade you to remove any unsuitable furniture and other moveable articles left in the property. If you do not want to remove them yourself, the council must arrange and pay for their safe storage. If the council wants to replace any unsuitable fittings such as those in kitchens and bathrooms prior to making a final EDMO it must include details in the management scheme. You will be able to object to any proposals you do not agree with.

Who is responsible for things like buildings insurance, council tax and other bills?

The council must ensure that the property is adequately insured against damage by fire or other causes. As the owner of the property, you will remain liable to pay council tax while the property is empty but that liability will usually transfer to anyone taking up occupation of the property. Similarly, anyone who occupies the property will be responsible for paying their own bills for gas, electricity, water and other utilities and services.

Am I entitled to any compensation?

You are not entitled to any compensation as a result of an EDMO being made but will receive any rental income left over after the council has deducted its relevant costs. You will also benefit from any improvements made to the property once the order has ended. Someone else with an interest in the property, for example the freeholder, may ask the council to compensate them for any loss resulting from interference with their property rights as a result of an EDMO. If the council refuses to pay compensation, they may appeal to the Tribunal.



Your rights whilst an EDMO is in force

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.



Special rules about 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 as you are the “lessor” 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 granted 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 as 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.



Getting Further Information

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.

This leaflet can also be downloaded from the DCLG website at www.communities.gov.uk/emptyhomes or ordered from:

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