

## **Empty Dwelling Management Orders: Consultation on Secondary Legislation**

### **Response by the Building and Social Housing Foundation**

#### **General comments**

The exception classes detailed in the consultation could be open to abuse as a method of avoiding an EDMO through contrived circumstances. ODPM should consider the provision of more detailed definitions to assist Residential Property Tribunals in their determinations.

It should also be noted, Empty Property Officers often identify properties that are unoccupied in the long term but where council tax is paid. Council tax information is a useful tool but is insufficient as a guide to identify empty properties that are suitable for an EDMO. Residential Property Tribunals (RPTs) must take a common sense approach and have the discretion to consider other information gathered through Local Housing Authority (LHA) investigations.

Local authority officers are concerned at the level of resources that will be required in order to provide sufficient evidence to support an application for an EDMO. Local authority officers advise that ambiguous definitions of exemption classes are likely to lead to judgements by an RPT that would favour a proprietor in order to protect his rights. This could be the case if it cannot be proved beyond all doubt that a property is not covered by one of the exemption classes.

In cases where a proprietor wishes to claim exemption from an EDMO under a particular exemption class, the duty of providing satisfactory evidence to support the assertion should rest with the proprietor to avoid unnecessary strain on local authority resources. A proprietor should be able to provide utility bills or other evidence without too much difficulty.

Local authority officers have also expressed concern that a lack of understanding with regard to data protection hinders information sharing between departments within local authorities. There is also concern that the obligations on local authorities as a result of an EDMO could have a serious impact on the resources of smaller authorities.

The ODPM should encourage local authorities to share resources through cross-boundary partnerships similar to the EMPRO scheme and give clear guidance on how to provide the widest possible access to empty property information with due consideration for legal concerns.

#### **Comments on consultation questions:**

**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?

Yes.

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

Not applicable.

**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?

The aim of an order is to bring property back into use that is not being used to meet housing need. In cases of **genuine** temporary absence it is inappropriate to use an EDMO.

ODPM could consider a more detailed definition of what constitutes sole or main residence to counter the assertion of temporary absence as method of avoiding an EDMO.

BSHF suggests similar criteria to that employed in the administration of housing benefit claims. Occupation of a property as sole residence is a requirement for continued receipt of housing benefit and in some cases Housing Benefit Fraud Investigators discover attempts to contrive occupation to conceal long term absence.

To address this issue housing benefit can be paid during temporary absence for up to 13 weeks in certain circumstances e.g. if a claimant is on remand or in hospital. This period can be extended up to a maximum of 52 weeks for prescribed circumstances.

ODPM should consider a modified version of these criteria to assist in the determination of EDMO applications in cases of contrived temporary absence.

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

No. Council tax information is a useful tool to identify possible empty properties but payment of council tax is not a confirmation of occupation. Local Authority officers have advised BSHF of cases where a proprietor is absent but continues to pay council tax on an empty property. In one particular case in the East Midlands, a proprietor has multiple empty properties but registers council tax liability with various family members, thereby frustrating Empty Property Officer attempts to bring the properties back into use.

It is suggested that a test of residence for EDMO purposes could imitate welfare benefits administration, which uses information such as utility bills, electoral registers and home visits to confirm residence.

**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?

Yes. Local authority Empty Property Officers can use a range of methods to establish the validity of a claim under an exemption class. Property visits should be recognised as a valuable source of evidence e.g. a small amount of furniture in a property which would not support regular occupation, mail piled up behind the door and interviews with neighbours can help to establish whether a property is genuinely occupied.

**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. In **genuine** cases where a property is a second home or holiday home.

Properties that are occupied infrequently can be a grey area for Empty Property Officers. Colleagues have described occasions when a proprietor claims a council tax discount for a second home where investigations have found the property to be dilapidated and causing a nuisance to surrounding households. A second home council tax reduction should not automatically confer exemption from an EDMO and should be considered along with other evidence.

A business that holds property assets for speculative purposes could contrive the use of properties as holiday homes as an opportunity to evade an EDMO. The frequency of occupation should be considered, for example, is it feasible that a business could sustain itself if a holiday home was only occupied once every six months as per the general exception period?

**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?

If a property is **genuinely** used as a second home exemption is reasonable. Evidence from local authority officers does suggest that in many cases a proprietor of an empty property will contrive use on an infrequent basis and sparsely furnish the property as an attempt to evade requests to bring the property back into use.

**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.

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

Exemption is reasonable in **genuine** cases where business use is legitimate. However, local authorities should have the discretion to investigate properties where business rates are paid if there is doubt as to the validity of the stated use. The duty to provide evidence should rest with the proprietor if they wish to claim exemption from an EDMO due to use as a holiday home. For the purposes of an RPT, a clearer definition of how often a holiday home would reasonably be expected to be occupied would assist in determination of EDMO applications. An RPT should consider whether or not it is feasible that a business could sustain itself if a holiday home was only let out once every six months as per the general exception period?

**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?

Yes.

**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. EDMO exemption should be subject to regular review as to the progress of renovation. Many properties sit empty for long periods purporting to be awaiting renovation when a real intention to carry out the necessary remedial work is not evident.

**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.

**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?

Yes.

**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.

**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. Any dealings with a family that has lost a close relative can be emotive. Family members often regard contact by a representative of an authority as an intrusion to the grieving process, but it should be recognised that bereavement should not necessitate an indefinite cessation of contact regarding the future of a property but should be handled with sensitivity.

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

It would be reasonable for a local authority to begin gentle enquiries as to the future of a property after it has stood empty for 6 months. It would be insensitive to request an EDMO before 12 months has expired.

**Question 18:** Do you consider there ought to be an additional exception class or classes? If so, please specify.

It would be sensible to provide an exemption for properties which are currently the subject of a legal dispute.

**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.

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

Not applicable.

**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.

**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. The rights of the displaced lessee or any other party with an interest in the property should be protected.

**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. At the discretion of the LHA which should ensure that the provision does not affect the operation of the management order.

**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?

Each case should be considered on its merits rather than as a mandatory duty. Displaced lessees interests should be considered but should not create a means to obstruct the operation of the management order.