

# HOUSING ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 - Additional Control Provisions in Relation to Residential Accommodation**

#### *Chapter 2: Interim and Final Empty Dwelling Management Orders*

#### *Section 132: Empty dwelling management orders: introductory*

278. **Section 132** explains what interim and final empty dwelling management orders ("interim EDMOs" and "final EDMOs") are. EDMOs are similar to management orders under Chapter 1 of Part 4. They enable a local housing authority to step into the shoes of owners of unoccupied dwellings to secure the dwellings' occupation. The most significant difference in practice between interim and final EDMOs (apart from the period of time for which they may be made) is that under an interim EDMO, the local housing authority must obtain the consent of the owner before it can grant anyone a right to occupy the dwelling, whereas under a final EDMO, such consent is not required.
279. A "dwelling" is defined as a building intended to be occupied as a separate dwelling (such as a house) or a part of a building intended to be occupied as a separate dwelling (such as a flat) - provided it can be directly accessed without having to enter any non-residential accommodation in the building. For example, a flat above a shop would have to have its own access.
280. An EDMO is made against the person with the most relevant interest in the dwelling (the "relevant proprietor"). Where the dwelling is not subject to any lease, the relevant proprietor is the freehold owner. 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 seven years to run. Where the dwelling is subject to a lease that has less than seven years left to run, the relevant proprietor would be the next person up in the chain of ownership with a lease of more than seven 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" to an EDMO.

#### *Section 133: Making of interim EDMOs*

281. A LHA must apply to a RPT for authorisation to make an interim EDMO. An RPT may authorise it on the terms requested or may vary those terms. The dwelling must be wholly unoccupied (e.g. not occupied either lawfully or unlawfully) and not owned or controlled by a public body (see paragraphs (a) to (f) of paragraph 2(1) of Schedule 14). Prior to seeking such authorisation, a LHA must make reasonable efforts to notify the relevant proprietor and ascertain if he intends to take steps to bring the dwelling back into occupation and must take into account the rights of the relevant proprietor and the interests of the wider community.
282. When applying for authorisation to make an interim EDMO, a LHA may also ask the RPT to make an order to terminate an existing lease or licence of the dwelling. This

*These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004*

allows for termination of a lease or licence where the dwelling is not being occupied. For example, if the relevant proprietor has granted a right of possession of the dwelling to someone who has no intention of occupying it as a device to avoid an EDMO being made.

283. The procedure for making an interim EDMO is equivalent to that for making a discretionary IMO (see explanatory notes for Chapter 1 of Part 4), with some minor modifications.

#### ***Section 134: Authorisation to make interim EDMOs***

284. This sets out the matters which a RPT must consider in deciding whether to authorise an application by a LHA to make an interim EDMO. It must be satisfied that:

- the dwelling has been unoccupied for at least six months or such longer period of time as may be prescribed by an order made by the appropriate national authority;
- if the order is not made there would be no prospect of the dwelling becoming occupied in the near future;
- if the order is made the dwelling is likely to become occupied;
- the local authority has complied with its duties under section 133 in seeking to make an interim EDMO; and
- any requirements which may be prescribed by a further order made by the appropriate national authority have been complied with.

285. The RPT must also take into account the effect that making the order is likely to have on the community and the rights of the relevant proprietor and third parties. The LHA must consider if it should pay compensation to any third party for interference with their rights.

286. The RPT must be satisfied that the case does not fall within any category of exception as may be prescribed in regulations. The appropriate national authority may prescribe exemptions for a range of circumstances but in particular for the following description of dwellings: the principal homes of absent owners;

- the principal homes of absent owners;
- second homes and holiday homes;
- homes undergoing repairs or renovation or awaiting planning or building regulations approval;
- homes on the market for sale or letting; and
- homes where the relevant proprietor died less than a specified period of time before the application for an order was made.

#### ***Section 135: Local authority's duties once interim EDMO in force***

287. Once an interim EDMO has been authorised, the LHA is required to take any steps it considers appropriate to secure occupation and proper management of the dwelling pending either the making of a final EDMO or the revocation of the interim EDMO. If it concludes that there are no steps it could take, it must either make a final EDMO or revoke the interim EDMO without taking further action. For example, if the LHA was unable to secure occupation of the dwelling because the relevant proprietor refused to give consent to allow the dwelling to be occupied, it might conclude that the only reasonable course of action open to it would be to revoke the interim EDMO and make a final EDMO. However, if the relevant proprietor gave consent but the LHA concluded that the cost of works to make the dwelling habitable would be prohibitive, it might

conclude that the only reasonable course of action would be to revoke the interim EDMO and take no further action.

### ***Section 136: Making of final EDMOs***

288. A LHA may make a final EDMO either to replace an interim EDMO or to replace a previous final EDMO that has expired if it considers the dwelling is likely to become or remain unoccupied if it did not do so. But it cannot do so if the dwelling is unoccupied, unless it has taken reasonable steps to secure its occupation whilst the previous EDMO was in force.
289. The LHA must take into account the effects that making the order is likely to have on the community and the rights of the relevant proprietor and third parties. The LHA must consider if it should pay compensation to any third party for interference with their rights.
290. The procedure for making a final EDMO is equivalent to that for making an FMO (see explanatory notes for Chapter 1 of Part 4) with some minor modifications - principally to ensure that third parties are served with relevant notices.

### ***Section 137: Local housing authority's duties once final EDMO in force***

291. Once a LHA has made a final EDMO it must take steps to secure that the dwelling is occupied and properly managed in accordance with the management scheme contained in the order. However, unlike an interim EDMO, it does not require the consent of the relevant proprietor to grant rights of occupation.
292. A final EDMO must contain a management scheme (see paragraph 13 of Schedule 7).
293. A LHA must from time to time review:
  - the operation of the order and the management scheme;
  - if the dwelling is unoccupied, whether there are any steps it could take to secure that it becomes occupied; and
  - whether it is necessary to keep the order in force.
294. If it considers there are grounds to vary the order it must do so.
295. Where a dwelling subject to a final EDMO is unoccupied and the authority concludes on a review that there are no steps it could take to secure that it becomes occupied or it concludes that keeping the order in force is not necessary, it must revoke the order.

### ***Section 138: Compensation payable to third parties***

296. This sets out the rights of third parties to apply to a RPT for an order requiring the LHA to pay compensation for interference with their rights in respect of the dwelling on which an interim EDMO is made. In addition, third parties may also request a LHA pays compensation for interference with their rights in respect of the dwelling on which a final EDMO is made. For example, compensation might be paid to a mortgage lender whose right to restrict letting of a dwelling subject to a mortgage is overridden.