

EXPLANATORY MEMORANDUM TO
THE HOUSING (EMPTY DWELLING MANAGEMENT ORDERS) (PRESCRIBED
EXCEPTIONS AND REQUIREMENTS) (ENGLAND) ORDER 2006

2006 No. 367

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument sets out the circumstances when a local housing authority will be prevented from making an interim empty dwelling management order (“interim EDMO”) in relation to a dwelling that has been left unoccupied by its owner. It also sets out the information that the local housing authority must provide to the residential property tribunal that is considering the application to authorise the making of an interim EDMO.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1. Under Section 134 of the Housing Act 2004 (“the Act”) a residential property tribunal may authorise a local housing authority to make an interim EDMO in respect of a dwelling that is wholly unoccupied (except where the relevant proprietor is a public body) if it is satisfied that the dwelling has been wholly unoccupied for at least 6 months or such longer period as may be prescribed; there is no reasonable prospect of it becoming occupied in the near future; that, if an interim EDMO is made, there is a reasonable prospect that it will become occupied; that the authority have complied with section 133(3) of the Act; that any additional prescribed requirements have been complied with; and that it is not satisfied that the case falls within a prescribed exception.

4.2. Under section 134(5) of the Act the “appropriate national authority” may by order prescribe the exceptions that the case may fall into, prescribe the period of time longer than six months for which a dwelling must be unoccupied before an order may be made; and prescribe any other requirements that need to be complied with before an interim EDMO may be authorised. The Secretary of State is empowered to make such an order in relation to England. This is the first time the power in section 134(5) has been exercised in relation to England. This Order prescribes exceptions and additional requirements that the authority must comply with before it may make an interim EDMO.

4.3. Once an interim EDMO is approved by a residential property tribunal, it will usually last for a maximum period of 12 months. A local housing authority cannot arrange occupation of the dwelling without obtaining written consent from the owner. Where such consent cannot be obtained, the interim EDMO may be revoked and replaced with a final Empty dwelling management order “final EDMO” made by the local housing authority. The making of a final EDMO does not require the approval of a Residential Property Tribunal. Once in force, it lasts for a fixed period of no more than seven years. The LHA does not require consent of the owner to grant occupation rights to the dwelling during a final EDMO.

4.4. This Order is being made simultaneously with The Housing (Management Orders and Empty Dwelling Management Orders (Supplemental Provisions) (England) Regulations 2006 (SI 2006/368), which has its own Explanatory Memorandum.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government is committed to finding solutions to the problems posed by empty homes. As well as restricting housing supply, empty homes represent waste and missed opportunity. They blight communities, attract vandals and squatters and tie up the resources of local authorities and the emergency services. A dwelling that is left unoccupied and not maintained will, over time, begin to impact on its surroundings and is at risk from being broken into by vandals and squatters. Neighbouring properties can be affected by the physical decline of a poorly maintained property. The only effective way to reduce the negative impact of an empty dwelling is to occupy it. It is therefore of public interest that empty homes are brought back into use.

7.2 Eight out of every ten empty homes are privately owned. In recent years central government has encouraged local authorities to include measures to bring privately owned empty homes back into use as part of their strategic housing approach. This has necessitated policies and procedures to encourage private property owners to work with public agencies to find solutions. Incentives such as grant and leasing schemes are a useful way of persuading owners to take action. But incentive schemes are wholly dependent on good will and co-operation. Without it the only alternative for local authorities is to take enforcement action.

7.3 Some local authorities are prepared to use enforcement powers, such as compulsory purchase procedures, where it is evident owners are unwilling or unable to participate in voluntary measures. But many local authorities take the view that such procedures are not practical in the context of empty homes because the approach requires a change in ownership before the issue of reuse can be addressed. The process can be drawn out and complicated, particularly if the proposed action is opposed.

- 7.4 Therein lies the dilemma. Voluntary initiatives are not entirely effective without a credible threat of compulsion to back them up. But existing enforcement procedures were not designed with the objective of bringing empty homes back into use quickly without disturbing ownership.
- 7.5 The intention of Empty Dwelling Management Orders is to bridge the gap between voluntary measures and existing enforcement procedures. The legislation is intended to operate alongside measures such as voluntary leasing schemes run by local authorities and Registered Social Landlords. It will provide an effective back-up to such arrangements where owners turn down offers of assistance and do not have plans of their own to bring the property back into use.
- 7.6 In March 2002, the Transport, Local Government and Regions Select Committee recommended, in its Sixth report of session 2001-02 on Empty Homes, the introduction of a pilot programme of local authority compulsory leasing schemes for long-term vacant properties. The Government's response, published in May 2002, said it was attracted by the recommendation and would give it careful consideration.
- 7.7 The consultation paper "Empty Homes: Temporary Management, Lasting Solutions", published by ODPM in May 2003, sought views on the case for extending the concept of management orders (a measure relating to the licensing provisions in the draft Housing Bill published for pre-legislative scrutiny in March that year) to tackle the problems posed by long-term private sector empty homes. 134 responses were received. Respondent characteristics were as follows: Local authorities 85; Housing organisations 12; Other organisations 19; Empty homes forums 8; Individuals 10.
- 7.8 78% of respondents agreed that, in principle, the use of management orders is an effective way of dealing with housing management problems. 4% of respondents disagreed and 17% did not respond to the question. Of the options put forward for implementing a system of management orders to apply to empty dwellings, only 1% of respondents agreed with the do nothing option (e.g. that leasing should remain a voluntary measure) and 14% did not respond to the question.
- 7.9 Provisions on Empty Dwelling Management Orders were introduced into the Housing Bill during second reading of the Bill in the House of Lords in September 2004. The Housing Bill received Royal Assent on 18 November 2004. The consultation paper "Empty Dwelling Management Orders: Consultation on Secondary Legislation", published by ODPM in August 2005, sought views on prescribing exceptions to the making of interim EDMOs, including setting a general time period and prescribing procedures for local authorities to follow in advance of making an application to a residential property tribunal for approval to make an interim EDMO.
- 7.10 116 responses were received. Respondent characteristics were as follows: Local authorities 58; Housing organisations 17; Other organisations 24; Housing forums 6; Individuals 11. The exception categories proposed in the consultation paper were as follows:

- Six month general exception period (Consultees who disagreed were asked what longer period they considered should be set);
- Dwellings where the owner is temporarily resident elsewhere;
- Second homes and holiday homes;
- Dwellings undergoing repairs or renovation;
- Dwellings awaiting planning permission or building regulations approval;
- Dwellings on the market for sale or letting;
- Dwellings where the owner has died.

7.11 Approximately two thirds of the respondents agreed with each of the proposed general exceptions. 49% of respondents considered that no additional exception class (beyond those proposed) should be created. Of the 40% of respondents that did suggest additional exceptions, the majority (46%) mentioned clergy housing or dwellings left unoccupied as a result of care arrangements.

7.12 Exceptions have been prescribed in the regulations for all of the above categories (plus some others identified either from responses or further discussions with consultees), except for dwellings undergoing repairs or renovation and dwellings awaiting planning or building regulations approval. Instead of providing a blanket exception for these categories, the regulations require local authorities to give reasons why they consider an order is required to secure occupation of the dwelling.

7.13 A decision whether to pursue an Empty Dwelling Management Order will be entirely at the discretion of a local authority. The threat of an EDMO is intended to put pressure on the owner to enter into constructive dialogue with the local authority with the object of agreeing the best course of action to secure occupation, and thereby avoiding the need for an interim EDMO or, as the case may be, a final EDMO, to be made.

7.14 Empty Dwelling Management Orders are not intended to replace existing enforcement options such as compulsory purchase. Instead they offer an alternative course of action where local authorities determine that acquisition is not the most appropriate course of action to pursue.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The regulatory impact on the public sector is likely to be minimal. As set out in the Regulatory Impact Assessment, it is expected that about 1,000 Empty Dwelling Management Orders would be made per year (an average of about 3 per local authority in England). Of these, it is likely that the majority would not progress to a final EDMO. However, it is expected that the availability of the power will have a positive impact in terms of persuading more owners to enter into constructive

dialogue with local authorities with a view to securing agreement about reuse of their dwellings.

8.3 The power to make EDMOs is discretionary. A local authority may seek to make an order where it considers there are grounds to do so to secure occupation of an unoccupied dwelling. There is no statutory duty to act in such cases. This is a matter for authorities to determine as part of their strategic approach to housing. Where an interim or final EDMO is made, the local authority is responsible for any costs associated with repairs, maintenance, insurance and management as well as its own administrative costs. However, the authority has a duty to take reasonable steps to secure occupation of the dwelling. Any rental income secured would be used to off-set these costs with any surplus paid to the owner.

9. Contact

Rob Miles at the Office of the Deputy Prime Minister Tel: 020 7944 3554 or e-mail: rob.miles@odpm.gsi.gov.uk can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT: SECONDARY LEGISLATION TO IMPLEMENT HOUSING ACT 2004 PROVISIONS ON EMPTY DWELLING MANAGEMENT ORDERS AND MAKE SUPPLEMENTARY PROVISIONS IN RELATION TO A LOCAL HOUSING AUTHORITY'S MANAGEMENT OF LEASEHOLD PROPERTIES

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Title of Proposal

This Final Regulatory Impact Assessment (RIA) relates to the enactment of secondary legislation on Empty Dwelling Management Orders and supplementary provisions for leasehold dwellings under Part 4 of the Housing Act 2004. A separate RIA was completed with respect to introduction of primary legislation on Empty Dwelling Management Orders. A partial RIA was published alongside consultation on the secondary legislation.

Purpose and Intended Effect of Measure

Objective

Part 4 of the Housing Act 2004 introduces Empty Dwelling Management Orders. The objective of Empty Dwelling Management Orders (EDMOs) is to give Local Housing Authorities (LHAs) discretionary powers to bring back into occupation private sector dwellings where owners are unwilling or unable to do so either of their own volition or with the assistance of the LHA.

The original consultation paper on the proposals set out two specific objectives which remain relevant:

- To provide a mechanism for bringing empty homes back into use that complements voluntary leasing arrangements and is not as protracted and over-prescriptive as existing enforcement powers.
- To provide a mechanism for bringing dilapidated empty homes back into use that does not require owners to fund renovation from their own resources.

Background

Empty homes represent wasted resources for owners who could otherwise make financial gains by letting or selling them. They restrict housing supply, deny opportunities to those in housing need and can have strong negative impacts both on residents living in the neighbouring vicinity and the wider community.

Many local authorities seek to address the problem through empty property strategies where officers seek to identify empty properties and broker reuse with owners. The starting point is to work with owners to persuade them that bringing their empty dwellings back into use is in their best interests. Local authorities may offer assistance to owners to achieve this. Types of assistance include grants, leasing services, advice on loans or letting issues and referral to other agencies that might offer a suitable use for the property.

Voluntary private sector leasing schemes are currently operated by some local authorities and Registered Social landlords (RSLs). These schemes procure accommodation for temporary social housing in return for grant-aid and/or rental income. Such schemes are a useful way of incentivising owners into action. But incentives are wholly dependent on good will and co-operation. Without it the alternative for local authorities is to take enforcement action such as compulsory purchase. Compulsory purchase can be drawn out and complicated, particularly if the case is opposed. Many local authorities take the view that such procedures are not practical for empty homes because the approach focuses on ownership of the dwelling rather than its use.

In many respects the objectives of voluntary leasing and existing enforcement procedures are incompatible. On the one hand, the local authority attempts to persuade the owner to lease the dwelling. If this fails, it cannot then pursue this approach through enforcement. Instead, it must force the sale of the dwelling. This view lends support to a new enforcement option as a back-up to voluntary leasing of empty homes.

Rationale for government intervention

A not insignificant percentage of the housing stock in England is unoccupied at any one time. In April 2004, there were a total of 693,800 empty homes in England (3.2% of the housing stock). The vast majority (84%) were privately owned.

Table 1: Vacant Dwellings in England 2004

	Total number of vacant dwellings at 1 April 2004 (% of dwelling stock)				
	LA	RSL	Other Public	Private	Total
North East	6,800 (3.6%)	3,500 (3.2%)	400 (13.5%)	29,300 (3.5%)	40,000 (3.5%)
Yorkshire & the Humber	9,800 (3.0%)	4,300 (3.4%)	200 (4.3%)	70,400 (4.0%)	84,700 (3.8%)
East Midlands	5,000 (2.3%)	2,500 (2.5%)	1,100 (16.8%)	50,000 (3.3%)	58,500 (3.2%)
East of England	4,200 (1.9%)	2,100 (1.3%)	1,000 (7.2%)	52,300 (2.6%)	59,700 (2.5%)
London	9,000 (1.9%)	6,800 (2.2%)	900 (9.3%)	83,200 (3.5%)	99,900 (3.2%)
South East	3,000 (1.5%)	4,000 (1.5%)	1,600 (7.7%)	75,300 (2.5%)	83,900 (2.4%)
South West	2,300 (1.6%)	2,400 (1.4%)	500 (4.2%)	57,600 (3.0%)	62,800 (2.8%)
West Midlands	6,900 (2.9%)	6,000 (2.6%)	200 (2.7%)	62,900 (3.5%)	75,900 (3.3%)
North West	10,600 (3.5%)	11,800 (3.8%)	1,500 (32.2%)	104,500 (4.3%)	128,400 (4.2%)
England	57,500 (2.5%)	43,300 (2.4%)	7,400 (8.9%)	585,600 (3.3%)	693,800 (3.2%)

Table 2: Vacant Dwellings in England 1993 - 2004

	LA	RSL	Other Public	Private	Total
1993	70,900	17,100	16,000	764,600	868,600
1994	70,300	20,700	17,000	737,500	845,500
1995	71,800	20,900	20,000	689,900	802,600
1996	79,600	23,600	20,000	667,200	790,600
1997	81,200	26,800	19,000	640,200	767,200
1998	81,700	29,300	19,000	623,300	753,300
1999	83,900	32,600	13,500	637,100	772,600
2000	87,200	37,500	12,600	623,200	760,500
2001	80,300	41,300	10,900	622,600	755,100
2002	78,100	39,700	8,600	605,400	731,900
2003	62,000	43,700	9,700	603,300	718,700
2004	57,500	43,300	7,400	585,600	693,800

Table 2 shows the trend in vacancy rates since 1993. Since 1997, the total percentage of vacant dwellings reduced by 10%. It is difficult to explain with any precision the reasons for this reduction. The number of vacant dwellings in the private sector, which accounts for the vast majority, is likely to decrease when the housing market is functioning well. However, these estimates have to be interpreted with caution as they rely on the accuracy of the data supplied. Given this, it is difficult to predict to what extent the fall in the number of vacant dwellings since the peak in 1993 reflects a real drop rather than an improvement in the reliability of estimates. In any case, the total number of empty homes provides a misleading picture as it covers both transactional and non-transactional dwellings. The housing market requires a certain proportion of the housing stock to be vacant at any one time for transactional reasons. It is essential for some dwellings to be vacant for relatively short periods of time whilst they are being sold, let or repaired. Most transactional vacant dwellings come back into occupation without the need for intervention. It is the more difficult to deal with non-transactional empty homes that are the main focus of government intervention.

A common characteristic that distinguishes non-transactional vacant dwellings is that they are not being actively marketed or prepared for such. A general way of making a distinction is by the length of time a dwelling is vacant. Table 3 shows that in April 2004, nearly 298,000 privately owned dwellings had been vacant for more than 6 months. This is roughly half the total number of private sector vacant dwellings.

Table 3: Private sector dwellings vacant for more than 6 months (% of private stock): 2000 - 2004

	2004	2003	2002	2001	2000
North East	14,700 (1.7%)	18,000 (2.2%)	15,000 (1.8%)	19,500 (2.4%)	19,000 (2.4%)
North West	62,700 (2.6%)	64,300 (2.7%)	63,500 (2.7%)	54,800 (2.4%)	46,100 (2.0%)
Yorks & Humber	39,300 (2.2%)	34,500 (2.0%)	38,000 (2.2%)	40,300 (2.4%)	47,200 (2.9%)
East Midlands	23,800 (1.6%)	26,800 (1.8%)	26,200 (1.8%)	26,500 (1.8%)	22,500 (1.6%)
West Midlands	38,300 (2.1%)	32,900 (1.9%)	36,500 (2.1%)	32,200 (1.9%)	30,100 (1.8%)
Eastern Region	25,400 (1.3%)	29,200 (1.5%)	29,100 (1.5%)	26,700 (1.4%)	21,600 (1.1%)
London	36,600 (1.5%)	43,400 (1.9%)	41,000 (1.8%)	45,700 (2.0%)	40,300 (1.8%)
South East	34,900 (1.2%)	31,800 (1.1%)	30,500 (1%)	33,500 (1.2%)	29,600 (1.0%)
South West	22,200 (1.2%)	27,300 (1.4%)	27,900 (3.2%)	31,000 (1.7%)	22,400 (1.2%)
England	297,900 (1.7%)	308,500 (1.8%)	307,900 (1.8%)	310,200 (1.8%)	278,800 (1.7%)

The Government recognises that in considering the scope for public intervention, the rights of property owners need to be carefully balanced against the rights of others in the community in which the property is located. Property owners should generally be free to decide how their property is used. However, a property that is left empty for an extended period of time may begin to impact on its surroundings and hence the interests of other property owners. In areas where there are housing shortages, it may also deny housing opportunities to others.

Owners who acquire empty homes, particularly through inheritance, are often faced with the prospect of expensive repairs before the property can be brought back into use. Owners may decide, with good intent, to keep the property empty until they are in a position to carry out those repairs. However, the longer a property is empty, the greater the likelihood that its physical condition will deteriorate, making it more difficult to bring back into occupation at a later date.

An empty home may pose a direct risk of damage to adjoining properties through damp and other infestations. But other problems often associated with empty homes such as boarded up windows and doors, overgrown gardens and rubbish dumping can cause blight which indirectly affects the value and marketability of neighbouring properties.

As an empty home deteriorates it may attract petty crime and anti-social activity ranging from squatting and fly-tipping to graffiti and other public health problems that may require the attention of local authority environmental health departments. The longer it is left empty and unattended, the more difficult it may be to guard against break-ins. One solution is to secure the property by boarding it up. But this may simply help to identify that it is unoccupied.

In some cases empty homes may attract more serious criminal activity, ranging from vandalism to drug-dealing and arson. Dealing with these problems can tie up the resources of local authorities and the fire and police services.

Consultation

ODPM has published two public consultation papers on the policy. "Empty Homes: Temporary Management, Lasting Solutions" published in May 2003 set out proposals for new primary legislation. "Empty Dwelling Management Orders: Consultation on Secondary Legislation" published in August 2005 set out specific proposals for implementing the provisions in the Housing Act in secondary legislation. Summaries of responses to both consultations are available to download from www.odpm.gov.uk/emptyhomes.

Options identified

The options examined in this RIA are governed by what is permissible under the Housing Act 2004 which sets out the framework for the operation of Empty Dwelling Management Orders. In that regard, this RIA can only consider options for which the Act makes provision in secondary legislation. Those options relate to setting exceptions to the making of EDMOs and to prescribing procedures that local authorities must comply with in making such orders.

Secondary legislation relating to Section 134

Section 134 of the Act sets out the matters a Residential Property Tribunal (RPT) must consider before it may authorise an application from a local authority to make an interim EDMO. The RPT may authorise the making of an interim EDMO if it is not satisfied that the case falls within one of the prescribed exceptions and is satisfied:

- that the dwelling has been wholly unoccupied for at least 6 months or such longer period as may be prescribed;
- that there is no reasonable prospect of it becoming occupied in the near future;
- that if an interim EDMO is made, there is a reasonable prospect that the dwelling will become occupied;
- that the authority have made reasonable efforts to notify the relevant proprietor that they are considering making an order and to ascertain from him what steps (if any) he is taking, or is intending to take, to secure that the dwelling is occupied and;
- that any prescribed requirements have been complied with.

The following options have been identified with regard to section 134:

- Option 1) Prescribe no exceptions;

- Option 2) Prescribe exceptions to prevent EDMOs being made on particular categories of dwelling.
- Option 3) Prescribe a minimum time period of 6 months.
- Option 4) Prescribe a minimum time period of 12 months.
- Option 5) Prescribe a minimum time period of 36 months.

Secondary legislation relating to Section 145

Section 145 of the Act provides that regulations may be made to supplement the provisions that enable a local housing authority to make a management order or an empty dwelling management order (under Chapter 1 or 2 of Part 4 of the Act) in relation to leasehold premises, where the result is that the local housing authority is treated as a lessee under the lease. Provision may be made as respects the rights and liabilities of the authority, the person against whom the management order is made and any other person having an estate or interest in the property.

The following options have been identified in respect of regulations under s.145:

- Option 6) Prescribe no regulations with respect to dwellings held on leases;
- Option 7) Prescribe regulations requiring lessors seeking to exercise a right or responsibility under the terms of a lease to serve notice on the LHA;
- Option 8) Prescribe regulations requiring LHAs in responding to a proposed exercise of a right or responsibility by the lessor to act in accordance with the wishes of the displaced lessee;
- Option 9) Prescribe regulations to allow a displaced lessee to seek dispensation from a LHA to exercise a right or responsibility under the terms of a lease.

Option 1- Prescribe no exceptions

The advantage of prescribing no exceptions is that LHAs would be free to decide whether to pursue EDMOs in a wide range of circumstances against a wide range of dwellings. Effectively, an EDMO could be pursued against any dwelling unoccupied for more than the prescribed time period. This would minimise the burden on local authorities in building a case to make an EDMO. Essentially, the only matter of relevance would be the length of time the dwelling was unoccupied.

By not prescribing exceptions LHAs would rely on their own discretion or a voluntary code in deciding whether or not to pursue an EDMO. Whilst this may be advantageous in some respects in others it may lead to a lack of certainty and give rise to the possibility of legal challenges about the appropriate use of the power.

In passing the primary legislation, it is unlikely Parliament intended for EDMOs to apply to all unoccupied dwellings. That is why the legislation provides for exceptions to be prescribed. In addition to prescribing exceptions, the legislation provides that, in authorising an application for an interim EDMO, the RPT must be satisfied that (unless an EDMO is made) there is no reasonable prospect that the dwelling will become occupied in the near future. The thrust of the legislation is therefore aimed at dwellings that are unlikely to be brought back into use by the owner within a reasonable time period.

The advantage of prescribing exceptions is that intervention is targeted on dwellings not held back from occupation for specified reasons. Each of the options identified below relate to situations where the owner may have a perfectly valid reason for the dwelling being unoccupied.

Option 2 - Prescribe exceptions to prevent EDMOs being made on particular categories of dwelling.

The following possible exceptions were identified:

Except dwellings where the owner is temporarily resident elsewhere.

There is a clear case for excepting the principle home of an absent owner provided the dwelling remains their principle home for the duration of the absence. Not providing such an exception would result in a significant regulatory impact that is not justified by the resulting benefit from such dwellings being brought back into occupation.

Except Second homes and holiday homes

There is a clear case for excepting holiday homes and second homes. Where property is occupied from time to time (e.g. during summer months) or is available to let on a commercial basis, the intervention of an EDMO would amount to an unnecessary interference. In the case of second homes, the intervention might heavily disrupt the plans of the owner to make use of the dwelling themselves. Relying solely on a prescribed time based exception might not be sufficient to cater for seasonal occupation where absences can extend across winter months. Holiday homes are, by their nature, available for letting on a commercial basis. The intervention of a LHA through an EDMO would amount to a significant regulatory impact on small businesses.

Except dwellings undergoing repairs or renovation

Many repairs and renovations cannot be undertaken whilst a dwelling is occupied. Therefore, a vacancy arising can provide a useful opportunity to undertake long-overdue work. Similarly, a developer who has purchased a dwelling with vacant possession may need to carry out significant works before selling or letting it. A specific exception would ensure that a dwelling could not be subject to an EDMO simply because the time taken to complete the work extended beyond the prescribed period. This would be particularly unfair if the work did not commence immediately the vacancy arose. Developers and investment landlords can be expected to bring dwellings they purchase back into occupation as soon as practicable. However, there is a danger that providing a blanket exception could provide a loophole for exploitation by owners who do not genuinely intend to bring dwellings back into use or who stand little chance of completing repairs within a realistic timescale.

Except dwellings awaiting planning permission or building regulations approval

An owner may apply for permission to adapt or extend a dwelling as part of a plan to bring it up to a reasonable condition to live in, sell or let. Refusal of permission is subject to a right of appeal but this might delay the dwelling being occupied. The intervention of a local authority through an EDMO whilst permission is being sought would disrupt the existing plans of the owner and amount to an unwarranted intervention. However, again it is possible that providing a blanket exception could provide a loophole for exploitation.

Except dwellings on the market for sale or letting

A dwelling may be on the market for a significant period of time before it is sold or let. The fact that the owner is actively marketing it should make intervention of a LHA through an EDMO unnecessary. A specific exception might encourage reluctant owners to consider selling dwellings that they have no intention of occupying in the near future.

Except dwellings where the owner has died

Where the owner of a dwelling has died, it is likely to be some time before their affairs are sorted out and ownership of the dwelling transferred along with their estate. The intervention of a LHA through an EDMO, particularly in the early stages, would be unwarranted and insensitive. However, there is a danger that an exception that is not time limited could lead to dwellings becoming dilapidated through lack of maintenance.

Option 3 - Prescribe a time period of 6 months

Approximately half of all private sector dwelling identified as vacant in 2004 had been so for more than 6 months (see table 3). Setting a time period of 6 months (subject to any further specific exceptions that are set) would result in a maximum of 300,000 dwellings being susceptible to EDMOs.

Option 4 - Prescribe a time period of 12 months

It is estimated that approximately a third of all private sector empty homes are vacant for more than one year (based on Housing Investment Programme Data, 2000). Setting a time period of 12 months would (again, subject to any further specific exceptions that are set) result in a maximum of 200,000 dwellings being susceptible to EDMOs.

Option 5 - Prescribe a time period of 36 months

There are no reliable data sources to establish the proportion of private sector dwellings vacant for more than 36 months. However, for the purposes of this RIA it is assumed that the proportion of empty homes reduces on a relatively straight basis over time. On this assumption, the net result would be that approximately one seventh of all private sector empty dwellings are vacant for more than 36 months. Setting a time period of 36 months would (subject to further specific exceptions) result in a maximum of 85,000 dwellings being susceptible to EDMOs.

Option 6 - Prescribe no regulations regarding leases

Prescribing no regulations under s.145 would reduce the regulatory burden on LHAs making management orders where the dwelling is subject to a lease. However, in the absence of any regulation, local authorities might be reluctant to make EDMOs on leasehold dwellings or would seek to devise their own procedures, obtain guidance or establish a voluntary code on how they should approach such matters. It is clear that contractual and statutory rights and responsibilities that stem from leases would add to the complexity of making EDMOs. However, the absence of any prescription of the procedure to follow could risk a general climate of uncertainty and the risk of litigation which would not be in the interests of any of the parties involved.

In addition, it is possible that lessees and lessors would be uncertain about the effect of a management order on their rights and responsibilities under the terms of the lease. The effect could be to deter them from exercising matters they would be entitled to exercise. The impact could be particularly felt in terms of matters with a financial bearing on the value of the leasehold interest. For example, extending the lease or exercising the right to purchase the freehold. The net result of not making regulations could be an unforeseen impact on the business interests of lessees and lessors.

Option 7 - Prescribe regulations requiring lessors seeking to exercise a right or responsibility under the terms of a lease to serve notice on the LHA.

In seeking to exercise a right or responsibility under the terms of a lease, the lessor is generally obliged to serve notice on the lessee. Where the dwelling is subject to a management order, the LHA may have an interest in the effect of the notice. For example, the effect of provisions in the Housing Act 2004 is that during the operation of a management order, the local authority would be responsible for payment of any service charges payable under the terms of the lease. Whilst the lessor ought to be aware of the presence of a management order by virtue of the LHA having served notice, it is nevertheless possible that the lessor may fail to notify the LHA. A requirement that relevant notices are served on the LHA would not amount to a significant additional regulatory burden as such notices would in any case have to be prepared. However, it would clarify on whom such notices should be served.

Option 8 - Prescribe regulations requiring LHAs to act in accordance with the wishes of the displaced lessee.

Although a lessee will be "displaced" by the local authority with regard to certain responsibilities under the terms of the lease whilst a management order is in operation, they may nevertheless retain an interest in determining how to respond to the exercise by the lessor of other rights or responsibilities. Indeed, the matter in question may be one that does not impact on the LHAs interest under the management order but may have a bearing on the lessee's financial interests. The main interest of the LHA would be to ensure that the action proposed by the lessor did not have any undue impact on the operation of the management order. If the LHA concluded there would be no impact but then failed to act in accordance with the wishes of the lessee, this could directly impact on the lessee's financial interests. Requiring the LHA to consult with the lessee would ensure an even-handed approach. Whilst this might place an additional burden on the LHA, not consulting with the lessee could cause significant problems later on if, for example, the lessee sought legal action resulting from loss.

Option 9 - Prescribe regulations to allow a displaced lessee to seek dispensation from a LHA to exercise a right or responsibility under the terms of a lease

Prescribing regulations as outlined above to require LHAs to act in accordance with the intentions of displaced lessees could increase the regulatory burden on LHAs. This burden would be reduced or even eliminated by prescribing further regulations to allow LHAs to give displaced lessees consent to exercise the matter in question. The LHA will only be interested in matters that have a direct effect on the operation of the management order, and hence these regulations would allow the displaced lessee, with the consent of the LHA, to exercise certain matters under the terms of a lease. Not prescribing such regulations could increase the regulatory burden on LHAs as they would be required to act in accordance with the displaced lessee's intentions even if the matter in question did not have a bearing on their interests in the management order.

Outcome of Consultation

The approach favoured by most consultation respondents, which Government has decided to adopt in secondary legislation, is as follows:

Option 2 - Prescribe exceptions to prevent EDMOs being made on particular categories of dwelling.

This will apply to:

Dwellings where the owner is temporarily resident elsewhere

There are many valid reasons why a person may reside away from their main home for more than 6 months. They should be able to do so without the threat of an EDMO being made.

Second homes and holiday homes

There are strong economic arguments for excepting second homes and holiday homes. If a property is someone's second home, there needs to be a degree of discretion over when they choose to occupy that property. Holiday homes are normally run as a commercial enterprise and not excepting them would create a significant regulatory burden on small businesses.

Dwellings on the market for sale or letting

It is likely that in the vast majority of cases a local authority would not wish to pursue an EDMO against a dwelling that is on the market for sale or letting. However, it is logical to prescribe a specific exception to reinforce the distinction between transactional and non-transactional vacant dwellings and encourage reluctant owners that the best way of avoiding enforcement action would be to put the dwelling on the market. It would be left to the discretion of local authorities and residential property tribunals to determine whether a dwelling is genuinely on the market.

Dwellings where the owner has died

Where a dwelling becomes unoccupied following the death of the owner sufficient time must be allowed to resolve inheritance issues. The family of a deceased person should not be rushed into making decisions about possessions until they are ready. However, it is notable that vacancy following death is a significant contributing factor in the deterioration of property. A specific exception is warranted in such circumstances but it should be time limited. An exception period of 6 months from the date on which probate is granted would be in keeping with the intention of the legislation whilst enabling the relatives of a deceased person to exert some control over timing.

The following additional exception categories have been identified from analysis of responses to the consultation and discussions with business representative organisations.

- *Dwellings that are comprised in an agricultural holding or a farm business tenancy;*
- *Dwellings normally occupied by an employee in order to perform the duties required under the terms of an employment contract;*
- *Dwellings that are mortgaged, where the mortgagee has entered into possession of the dwelling;*
- *Dwellings normally occupied by a minister of religion as a residence from which to perform his duties.*

Specific exceptions will *not* be made in respect of :

- *Dwellings undergoing repairs or renovation*

Dwellings that are unoccupied as a result of repairs or improvements would generally fall outside the scope of EDMOs as the owner is likely to be trying to improve the condition of the dwelling either for their own occupation or to raise its value on the market for sale or letting. Such properties stand a reasonable chance of being occupied in the near future. Local authorities will have regard to this in determining whether or not to pursue an EDMO. However, a blanket exception would prevent a local authority from pursuing an interim EDMO where it considers a dwelling is not genuinely undergoing repair, being renovated or improved. By leaving the matter to the judgement of local authorities and residential property tribunals in this way, there is sufficient scope to deal with non-genuine cases whilst ensuring that genuine cases are not pursued.

- *Dwellings awaiting planning permission or building regulations approval*

Constructing a blanket exception covering unresolved planning and building regulations applications is both impractical and unnecessary. That does not mean to say that a dwelling awaiting permission for development would necessarily be subject to an EDMO. These are matters that would form part of both the local authority's and residential property tribunal's considerations. If the authority or the tribunal conclude there is a reasonable prospect that the dwelling will become occupied in the near future, an EDMO could not be approved.

Option 3 - Prescribe a time period of 6 months

It is considered that setting a general exception period of more than 6 months would encourage owners to put off decisions about reuse for longer than necessary. In any case, the 6 month exception period would count from the date on which the local authority first establishes that the dwelling is unoccupied. This might be several months after the vacancy arose. 6 months would represent the minimum time period before an application for an interim EDMO could be made to a residential property tribunal. The procedural requirements a local authority must comply with prior to considering making an EDMO would ensure that it could not do so until it had properly considered other non-statutory measures to secure occupation of the dwelling.

Option 7 - Prescribe regulations requiring lessors seeking to exercise a right or responsibility under the terms of a lease to serve notice on the LHA.

Where a local authority has made a management order on a dwelling subject to a lease it is responsible for payment of relevant charges under the lease e.g. service charges, repairs, maintenance, improvements, insurance and management charges. In order that a local authority can pay these charges, it has to be properly notified. Prescribing a provision that a local authority may serve notice requiring any information relating to service and other charges under the lease to be served on it would enable the authority to act in the same way as the lessee in regard to obtaining information relating to the charge, being consulted about major works and challenging the reasonableness of the charge or of the standard of works or services.

It is considered that no additional regulations are required with regard to leases. The terms of the lease between lessor and lessee will continue to apply despite the existence of a management order. Therefore, the parties to the lease should be allowed to exercise their rights and responsibilities without recourse to the local authority.

Costs and Benefits

Sectors and Groups Affected

The introduction of Empty Dwelling Management Orders will impact primarily on owners of formerly owner-occupied housing which has fallen into disuse. The effect of the procedures local authorities must follow in seeking to make EDMOs and the specific exceptions in secondary legislation mean that in large part the measures will not impact on persons undertaking business activities such as residential landlords, people letting holiday homes, farm owners and companies letting accommodation to their employees.

Race equality assessment

In general, people from ethnic minority backgrounds are more likely to be disproportionately affected by the presence of empty homes compared to the general population. This is largely due to the fact that people from ethnic minority backgrounds tend to live in areas with the highest numbers of empty properties. According to the Census 2001, 45% of people from ethnic minority backgrounds live in London, which is the English region with the second highest number of private sector dwellings empty for more than 6 months (after the North West). It is likely therefore that measures to reduce the number of long-term private sector empty homes would not have a negative impact on communities with high proportions of ethnic minority residents.

Overall, EDMOs and the secondary legislation proposed to implement them are unlikely to have a disproportionate impact on different racial groups. They will not hinder equality of opportunity and will not damage race relations. There is a small risk that the secondary legislation proposed will have a greater impact on some people from ethnic minorities than might be expected within the general population. This is due to differences in the way property is sometimes occupied or held back for future occupation by extended family members within some ethnic minority groups. The proposed exceptions for owners who are absent from their principal home and for second homes will cover many such instances. However, where a dwelling is kept back for future use and is not occupied from time to time no specific exception will apply. Nevertheless, the discretionary nature of EDMOs means that LHAs must have regard to the circumstances of the owner in determining whether or not to pursue the case. It must have regard to the reasons why a dwelling is unoccupied and the owners' intentions with regard to future occupation. Where a LHA considers that there is a valid reason for a dwelling to be unoccupied it can determine not to intervene.

Health impact assessment

It is not considered that the introduction of EDMOs or the secondary legislation to support them will have any significant positive or negative health impacts. However, the reuse of empty dwellings does help to reduce the spread of vermin such as rats by removing places where they can live and breed without disturbance.

Environmental impact assessment

Empty homes constitute an environmental cost. Current household projections suggest an average household formation rate of at least 190,000 per year in England up to 2021. Yet annual net new housebuilding in England is at around 150,000 dwellings per year. In order to accommodate significant numbers of newly formed households it is necessary to build new houses. However, it makes environmental sense to ensure that at the same time better use is made of the existing housing stock.

New build often entails encroaching on previously undeveloped land. The Government's target is for 60 percent of new housing development to be on previously developed (or "brownfield") land and buildings. Empty homes count towards the brownfield target. Reusing empty homes therefore has a positive impact on the environment.

Rural impact assessment

Rural areas tend to be disproportionately affected by empty homes as a result of a general shortage of affordable housing for local people. Rural areas are therefore likely to benefit from maximising the use of empty homes. However, the rural economy requires some dwellings to be unoccupied from time to time. The secondary legislation provides exceptions for dwellings that are normally occupied as a condition of employment and dwellings that form part of an agricultural holding or farm business tenancy. This will minimise the potential impact of the regulations within agriculture. Second homes ownership, for which there is also an exception, is more prevalent in rural than in urban areas. Whilst second home ownership can contribute to the rural economy through tourism, they also restrict the supply of housing available to local people.

Breakdown of costs and benefits

Economic benefits

Benefits to owners

Keeping a property empty imposes an opportunity cost on the owner, either through loss of potential rental income, or via receipts foregone from the sale of the property. An empty home may also impose direct costs on the owner such as security costs (to protect the property from break-ins and vandalism), on-going repair or dilapidation costs and council tax. Table 4 details the likely average annual cost to an owner of keeping a property empty.

Table 4: Average annual cost to owner of keeping a dwelling vacant

Council tax ¹ (levied at 100%)	£967
Dilapidation costs ²	£500
Security	£250
Rent loss ³	£6344
TOTAL	£8,061

Owners stand to benefit from reuse of empty dwellings whether it is secured through EDMOs or other means. Council tax becomes payable by the person occupying the property, security costs are reduced and the rental income generated from letting funds the cost of dilapidations as well as insurance and other on-going costs.

It is difficult to establish with any precision the benefit to owners of each of the identified options. As outlined above, where an EDMO is made the owner will receive a direct benefit from reduced outgoings in terms of maintenance, security and council tax costs and may also receive the benefit of any surplus rental income after deduction of the local authority's costs.

Option 1 would entail the widest possible application of EDMOs to unoccupied dwellings. As this would cover dwellings that are unoccupied only temporarily and dwellings that are being held back from occupation for a specific reason, it is likely that this option would achieve the least overall benefit to owners.

By excepting dwellings that are unoccupied for specific reasons, option 2 would ensure that EDMOs are focussed on dwellings that are the most problematic. This option would achieve the greatest overall benefit to owners in terms of ensuring that the power is appropriately targeted and not used inappropriately to interfere with plans owners may already have to secure use of their dwellings.

Options 3, 4 and 5 would determine how many dwellings (that are not subject to the exception categories described in option 2) would be susceptible to EDMOs. However, the actual benefit to owners is dependent more on the number of EDMOs made rather than the potential number of dwellings that are susceptible. Therefore, it is considered that there is no particular distinction between the benefit derived under options 3, 4 and 5.

¹ Average council tax in England per area dwelling N.B. The Local Government Act 2003 enables local authorities to charge full council tax on long-term vacant dwellings

² Dilapidation costs relate to on-going repairs and maintenance. Based on Empty Homes Agency data.

³ Average annual rent for assured shorthold tenancy in England, Survey of English Housing 2002/03.

Of options 6 to 9, it is considered that option 6 would accrue the most benefit to owners as it would not restrict lessors and lessees from exercising their rights under leasehold legislation.

Benefits to local authorities

Local authorities incur costs in dealing with the problems associated with empty homes. For example, they may have to serve enforcement notices requiring steps to secure a property (by boarding it up etc.) or to require the removal of waste and other hazards that adversely affect the amenity of an area. Where it proves difficult to trace the owner, or the owner refuses to deal with the problem, authorities may have to undertake works in default but may experience difficulty recovering their costs. EDMOs would benefit local authorities by providing a specific tool to address the root cause of problem associated with empty homes, the absence of occupiers.

In areas of housing need, the presence of empty homes contributes to housing shortages. A lack of suitable temporary accommodation available to local authorities to meet their housing duties may force them to use unsuitable emergency accommodation, such as Bed and Breakfast hostels. Bed and Breakfast tends to be the most expensive form of temporary accommodation to procure. Local authorities are under a duty to ensure that families placed in B&B stay there for no more than 6 weeks. Therefore, local authorities have to procure a supply of private sector accommodation to house people in need of temporary accommodation. The use of EDMOs would provide a valuable source of temporary accommodation to local authorities to house people in need.

Option 1 would be to the benefit of local authorities in the sense that it would apply EDMOs to the widest range of properties. Option 2 would be more restrictive by setting a narrower definition. Similarly, option 3 would ensure that EDMOs can be pursued against more dwellings than options 4 and 5. However, the actual benefit to local authorities is dependent more on the number of EDMOs they have capacity to make rather than the potential number of dwellings that are susceptible. Therefore, it is considered that there would be no particular distinction between the benefit derived under options 1 to 5.

It is considered that option 6 would derive more benefit to local authorities than options 7, 8 and 9. This is because it would minimise the involvement of the local authority in matters between the lessor and lessee. The local authority's interest will be in the operation of the management order rather than in brokering matters that would not have a particular impact on its operation.

Social and environmental benefits

Bringing empty homes back into use has a positive social impact on communities. An empty home may pose a direct risk of damage to adjoining properties through damp and other infestations. Other problems often associated with empty homes such as boarded up windows and doors, overgrown gardens and rubbish dumping can indirectly affect the value and marketability of neighbouring properties. The Empty Homes Agency estimates that living next door to an empty property can devalue a home by as much as 18%.

As an empty home deteriorates it may attract petty crime and anti-social activity ranging from fly-tipping to graffiti and other public health problems that may require the attention of local authority environmental health departments. The longer it is left empty and unattended, the more difficult it may be to guard against break-ins. One solution is to secure the property by boarding it up. But this may simply help to identify that it is empty.

In some cases empty homes may attract more serious criminal activity, ranging from vandalism to drug-dealing and even arson. Dealing with these problems can tie up the resources of local authorities and the fire and police services.

The downward spiral of a single property left empty and unattended for a long period of time without adequate maintenance is one thing. But the presence of significant numbers of such properties in an area can contribute to destabilisation. This is most apparent in areas where demand for housing is already weak. A small cluster of derelict empty homes in an area can quickly begin to establish a culture of under-investment and a spiral of decline as confidence is lost. A significant drop in property values can result in negative equity. In extreme cases, this can trigger abandonment by owners, accelerating the decline of an area.

Disrepair is a significant problem within long-term vacant stock. The 2001 English House Condition Survey provides a useful indication of the proportion of empty homes that are subject to disrepair. The Survey found that around 3% of the private stock was vacant, which is broadly in line with local authority estimates. Of these, EHCS found that half (about 300,000 dwellings) were considered 'problematic' - defined as either requiring significant work before they could be re-occupied or vacant for more than 6 months. Of these, 165,000 would require some repair or improvement work to bring them up to decent standards.

For the purposes of this RIA, it is assumed that a typical empty dwelling would require some repairs to make it habitable. Research undertaken in 1996 estimated the average cost of renovating a problematic vacant dwelling at £5,000⁷ (equivalent to about £5,800 now). It is recognised that renovation costs vary widely depending on the condition of an individual property, but this figure is assumed as typical.

It is considered that the social and environmental benefit derived would not vary widely between each of the options identified. This is because the benefit derived is linked to the actual number of empty dwellings brought back into use. Whilst different options will dictate the total number of dwellings that are susceptible to EDMOs, they are not expected to vary the actual number of EDMOs made, which would be dictated by the resources available to local authorities.

Economic costs

Costs to owners

There would be no direct costs of making an Empty Dwelling Management Order payable by the owner. All relevant costs, including repair costs, would be paid by the local authority and recovered from subsequent rental income. This is in line with the objective that owners should not be required to contribute up-front to the cost of renovation.

Option 1 would entail the biggest overall economic cost to owners as it would potentially cover dwellings that are unoccupied only temporarily and dwellings that are being held back from occupation for a specific reason. This could entail a heavy impact on small businesses which rely on their dwellings for an income. Option 2 would reduce, or even eliminate, the potential for impact on businesses.

Options 3, 4 and 5 are cost neutral to owners. Of options 6 to 9, it is considered that option 6 would produce lower costs to owners because the local authority would have the least involvement in the relationship between lessors and lessees.

Costs to local authorities

Local authorities would incur expenditure in making EDMOs ranging from administration costs, management fees, repair and renovation costs, costs of insurance and interest fees. However, because of the discretionary nature of EDMOs, it is considered that all such costs would be incurred at the will of the local authority itself. A local authority would only pursue an EDMO if it considered the costs of doing so would be justified by the benefit derived from reuse of the dwelling. Nevertheless, the objective is that all costs would be met from rental income generated from letting the dwelling. As such, the costs would amount to an investment that would be paid back over the course of the order. Any surplus once these costs have been recovered would be paid to the owner. If, at the end of the management order, instead of a surplus there were costs outstanding they would not be recoverable from the owner unless he or she consented to meeting them or unreasonably refused to give their consent to a letting under an interim EDMO.

It is not expected that the costs to local authorities would vary between options 1 and 2. Again, this is because resources would dictate the number of EDMOs that they can make rather than the number of dwellings to which the power might apply. This is also true as between options 3, 4 and 5. Of options 6 to 9, it is considered that option 6 would produce lower costs to local authorities because they would have the least involvement in the relationship between lessors and lessees

As discussed, under the terms of an EDMO, the local authority would become responsible for management of the dwelling and would have to fund the cost of insurance, management and administration as well as any costs necessary to bring the dwelling up to a suitable standard for letting. The typical costs to a local authority are illustrated in table 5.

Table5: Estimated costs of making an EDMO

Owner:	Nil
Local authority:	
Renovation costs	£5,800
Management & maintenance ⁴	£952
Administration costs ⁵	£317
Interest ⁶	£261
TOTAL COSTS	£7,330

As touched on previously, local authorities would not have the resources to make EDMOs in every case where the power would be available. Given these resource constraints, they would have to target their intervention and prioritise potential cases according to resources. For the purposes of the RIA, it is assumed that the effective capacity of a typical local authority would be to make no more than 3 EDMOs in one year (this is equivalent to 1,062 in total for all local housing authorities in England). It is also assumed that there is a ratio between the number of empty homes brought back into use directly as a result of EDMOs and the number brought back into use indirectly. This is in recognition of the fact that the availability of EDMOs is likely to have an effect on behaviour resulting in owners being more inclined to bring properties back into use of their own volition (either with or without the assistance of their local authority) rather than risk having a management order made.

⁴ Assumes management & maintenance fees of 15% of rent - derived from average annual rent for assured shorthold tenancy, Survey of English Housing 2002/03

⁵ Assumes administration costs of 5% of rent

⁶ Assumes an interest rate of 4.5% of costs to local authority, except administration costs.

For the purposes of the RIA, it was assumed that the ratio of EDMOs to voluntary resolution is 1:1.5. Given capacity to make 1,062 EDMOs per year the annual rate of return would be in the order of 2,655 properties. This assumption enables a central cost/benefit assumption to be made.

Table 6: Total cost/benefit of EDMOs

Total cost per annum	Total benefit per annum	Net benefit per annum
£18.955 million	£21.402 million	£2.447 million

Social and environmental costs

It is considered that the social and environmental costs would not vary widely between each of the options. This is because costs are linked to the actual number of empty dwellings brought back into use. Whilst different options will dictate the total number of dwellings that are susceptible to EDMOs, they are not expected to vary the actual number of EDMOs made, which would be dictated by the resources available to local authorities.

Small Firms' Impact Test

The potential impact of EDMOs on small businesses was a key consideration during the consultation process that included discussions with representatives of small businesses, particularly involving agriculture and rural business interests as well as various landlord representative organisations.

Those discussions helped identify legitimate business interests for which exceptions are justified, including:

- Second and holiday homes;
- Dwellings on the market to let or for sale;
- Dwellings that are comprised in an agricultural holding or a farm business tenancy;
- Dwellings normally occupied by an employee in order to perform the duties required under the terms of an employment contract;
- Dwellings that are mortgaged, where the mortgagee has entered into possession of the dwelling;
- Dwellings normally occupied by a minister of religion as a residence from which to perform his duties.

Discussion with the Country Land and Business Association were helpful in identifying the potential for unforeseen impact on rural businesses. Specific exceptions to cater for farming and employment uses were subsequently added.

Representatives of residential managing agents pointed out the potential disruption to the relationship between freeholders and their leaseholders that might accrue from prescribing procedures for dealing with dwellings subject to leases. Rather than proposing a specific exception for leasehold dwellings which would not be justified on policy grounds, the regulations were subsequently revised to minimise any potential impact on the business interests of property freeholders.

In considering the case for exceptions for dwellings under repair, renovation or awaiting approval prior to redevelopment, a specific requirement is to be prescribed requiring a local authority to give reasons to the residential property tribunal why it considers it would be appropriate to make an EDMO. This will assist people undertaking property development work, whilst not opening up a potential loophole to be exploited.

It is considered that EDMOs should not target such business activities, particularly as the potential regulation would have a significant impact on businesses which is often conducted as a sideline activity by someone who is not a full time landlord or developer. The combined effect of the procedures local authorities must go through and the exceptions to be prescribed mean that the vast majority of dwellings that could potentially be subject to EDMOs would be previously owner-occupied dwellings that have fallen into disuse. The majority of property owners who might be affected would not generally regard their property as a potential asset (otherwise they would have sought to bring it back into use). The measures are not therefore expected to have a significant or disproportionate impact on small businesses. The Small Business Service has been consulted and is content with this approach.

Competition Assessment

The Office of Fair Trading competition filter has been completed in respect of the proposals. This requires that policy makers consider the market that will be affected, i.e. the firms that compete against one another to sell the same or similar products or services. It is considered that the regulations will not have an adverse effect on competition in any markets. The proposed exceptions in secondary legislation with respect to dwellings that are subject to business uses will ensure no adverse impact on competition in these sectors. As there is unlikely to be a negative competitive impact from the proposed measures no detailed assessment has been undertaken.

Enforcement and Sanctions

The Housing Act 2004 sets out procedures with regard to enforcement and compliance. EDMOs are a discretionary power for LHAs to pursue, having regard to exceptions and procedural requirements set out in regulations. In all cases, the making of an interim EDMO would be subject to approval by a Residential Property Tribunal. The tribunal would have the final decision as to whether to approve the making of an interim EDMO, having regard to those procedures and exceptions. There are also procedures for owners to appeal against decisions made with regard to the management of dwellings under EDMOs and to seek early revocation. There are no sanctions for non-compliance.

Implementation and delivery plan

On 6th April 2006 the provisions in Part 4 of the Housing Act 2004 on Empty Dwelling Management Orders, and the regulations to support the primary legislation, are expected to come into force. A local authority would not be able to make an application to a residential property tribunal for approval to make an interim EDMO until the dwelling had been unoccupied for a period of at least 6 months. Transitional arrangements will apply for dwellings that are unoccupied prior to the coming into force date. These arrangements will prevent the making of interim EDMOs for a period of 3 months following commencement.

A programme of training and guidance associated with the powers and the strategic role of local authorities in securing the reuse of empty dwellings will be undertaken in the run-up to commencement by the Local Government Association and the Empty Homes Agency. The Office of the Deputy Prime Minister intends to publish separate technical guidance to explain the effect of the provisions in primary and secondary legislation.

Post-Implementation Review

There will be a formal monitoring process of the implementation of EDMOs in the form of an evaluation within a three-year period after commencement. This will enable assessment of the impact and effectiveness of the provisions and, if necessary, recommend options for amendment to or revision of the secondary legislation.

Summary and Recommendation

In all, 9 options were considered to give effect to secondary legislation on Empty Dwelling Management Orders. The purpose of secondary legislation is to supplement the powers in the Housing Act 2004, not to amend or retract those powers. Under section 134, the power is to prescribe exceptions to the making of EDMOs (in effect to curtail their coverage) and to ensure local authorities adopt adequate procedures in their consideration of the powers. Under section 145, the power is to supplement the procedures local authorities must adopt when making EDMOs on dwellings that are held on leases.

Of the options considered in consultation, it was decided to implement the following:

Option 2 - To prescribe exceptions to prevent EDMOs being made on particular categories of dwelling, namely:

- *Dwellings where the owner is temporarily resident elsewhere;*
- *Second homes and holiday homes;*
- *Dwellings on the market for sale or letting;*
- *Dwellings where the owner has died;*
- *Dwellings that are comprised in an agricultural holding or a farm business tenancy;*
- *Dwellings normally occupied by an employee in order to perform the duties required under the terms of an employment contract;*
- *Dwellings that are mortgaged, where the mortgagee has entered into possession of the dwelling;*
- *Dwellings normally occupied by a minister of religion as a residence from which to perform his duties.*

In all of the above cases, it was considered dwellings would be used for legitimate purposes that may necessitate that they are unoccupied for periods of time. The main point is that their use, or intended use, is one that ultimately will ensure that they are brought back into occupation. Therefore, it would be inappropriate for a local authority to intervene in the process by enforcing occupation via an EDMO.

Option 3 -Prescribe a time period of 6 months

It is important to set an overall time period during which all unoccupied dwellings are excepted from the power to make EDMOs. Without this, the power would potentially apply to all dwellings, even if they are unoccupied for just a few days. Section 134 of the Housing Act 2004 sets a minimum period of 6 months. The power to set a time period in regulations cannot be used to set a period of less than 6 months.

6 months was chosen as it constitutes a minimum period of time before an interim EDMO can be made. However, the various procedural requirements that a local authority must adhere to prior to making an application to a residential property tribunal would, in practice, extend this period in the majority of cases. It is considered that setting a longer time period would risk unnecessarily delaying action by local authorities.

Option 7 - Prescribe regulations requiring lessors seeking to exercise a right or responsibility under the terms of a lease to serve notice on the LHA

The objective of prescribing regulations for dwellings subject to leases is to minimise the potential interference of management orders in the legitimate operation of leasehold rights and responsibilities. Option 7 allows a local authority to obtain information that it requires in order to perform its duties under the terms of the lease (e.g, payment of relevant service and other charges) but does not prevent lessors and lessees from exercising their rights and responsibilities under the terms of the lease.

Costs and benefits

The benefits of bringing empty homes back into use are varied and wide ranging. An empty dwelling is a wasting asset. Reusing it can secure an income to cover any costs associated with repairs, insurance, management and maintenance. It also removes the owner's liability to pay council tax. EDMOs will not involve owners in any financial costs. This will be the responsibility of the local authority to be recouped from subsequent rental income. Any surplus income following recovery of relevant expenditure by the authority would be paid to the owner in the form of rental income.

It is not considered that the options identified for secondary legislation would result in significant differences in the overall costs and benefits of the introduction of EDMOs. This is because resource constraints will determine the number of EDMOs a local authority can pursue in any one year rather than the number of dwellings which could potentially be pursued under the different options. Of the options identified, it is considered that Options 2 (prescribe exceptions to prevent EDMOs being made on particular categories of dwelling), 3 (prescribe a time period of 6 months) and 7 (prescribe regulations requiring lessors seeking to exercise a right or responsibility under the terms of the lease to serve notice on the local authority) present the best balance of costs and benefits.

In summary, the average cost of making an EDMO will be outweighed by the average benefit (see tables 4, 5 and 6). The estimated net annual benefit associated with EDMOs is £2.4 million.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

SignedKay Andrews.....

Date 15th February 2006
Kay Andrews, Parliamentary Under Secretary of State, ODPM
Minister's name, title and department

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