

EXPLANATORY MEMORANDUM TO
THE HOUSING (EMPTY DWELLING MANAGEMENT ORDERS)
(PRESCRIBED PERIOD OF TIME AND ADDITIONAL PRESCRIBED
REQUIREMENTS) (ENGLAND) (AMENDMENT) ORDER 2012

2012 No. 2625

1 This explanatory memorandum has been prepared by the Department for Communities and Local Government (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument prescribes a period of time for which a property must be wholly unoccupied before a residential property tribunal may authorise a local housing authority to make an interim empty dwelling management order . The new prescribed period of 2 years replaces the current period of 6 months which is set down in section 134(2)(a) of the Housing Act 2004 (“the Act”).

2.2 The instrument also amends the list of requirements prescribed in article 4 of the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006, SI 2006/367 (“the 2006 Order”), which the local housing authority must comply with before a residential property tribunal may authorise a local housing authority to make an interim empty dwelling management order.

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

3.1 None

4. Legislative Context

4.1 Under section 134 of the Act a residential property tribunal may authorise a local housing authority to make an interim empty dwelling management order 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 empty dwelling management order is made, there is a reasonable prospect that it will become occupied; that the authority have complied with section 133(3) of the Act (which concerns contact with the relevant proprietor); 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 a 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 empty dwelling management order may be authorised. The Secretary of State is empowered to make such an order in relation to England. The 2006 Order prescribed exceptions and additional requirements that the authority must comply with before making an interim empty dwelling management order but it did not prescribe a period of time longer than 6 months.

4.3 The additional requirements prescribed by the 2006 Order, with which the local housing authority must comply, include making reasonable efforts to establish whether any of the prescribed exceptions apply and providing the residential property tribunal with details as to the effort they have made to notify the relevant proprietor of the intention to seek an interim empty dwelling management order.

4.4 Once an interim empty dwelling management order 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 empty dwelling management order may be revoked and replaced with a final empty dwelling management order made by the local housing authority. The making of a final empty dwelling management order does not require the approval of a residential property tribunal. Once in force, a final empty dwelling management order lasts for a fixed period of no more than seven years. The local housing authority does not require consent of the owner to grant occupation rights to the dwelling during a final empty dwelling management order.

5. Territorial Extent and Application

5.1 This instrument applies in relation to England only.

6. European Convention on Human Rights

6.1 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 Coalition Agreement commits the Government to exploring a range of measures to bring empty homes back into use. The Department has worked with local authorities, housing associations and practitioners to develop a package of measures to tackle empty homes. The aim has been

to create financial incentives for both local authorities and housing associations to give greater priority to this work.

- 7.2 The Government has introduced a number of measures to incentivise local housing authorities to bring empty homes back into use. This includes the New Homes Bonus which means that an authority will receive additional funding for empty homes brought back into use within the local authority boundary. Local authorities earn the same financial reward for bringing an empty home back into use as building a new one – so over £8,500 for a band D property.
- 7.3 The Department also announced £160million funding specifically for bringing empty homes back into use. £100million will bring empty homes back into use as affordable housing and a further £60million will tackle clusters of empty homes. Together with match funding this will mean £220 million will be invested to bring empty homes back into use. We also intend to extend these programmes to bring an additional 5,000 existing empty homes back into use.
- 7.4 Huge areas of previously developed public land are left vacant or under-used in England. The Department has made it easier to bring that land back into use as part of the Community Right to Reclaim land to ensure that public sector bodies do not unnecessarily sit on this underused land. We have made it easier to find out who owns what. The Department has combined information from many sources into a single public sector land ownership data set. The Department has also made it easier to bring land back into use by reforming the Public Request to Order Disposal process (referred to by many in the past as PROD) and increasing the numbers of organisations covered by it.
- 7.5 The housing market renewal pathfinder programme created large-scale Whitehall targets for demolition and clearance. This top-down approach often resulted in blighted areas where large-scale demolitions were stopped in their tracks, leaving some families isolated in abandoned streets. Demolition is environmentally, economically, and socially wasteful - it can be cheaper and quicker to refurbish empty homes than to build from scratch. The Government therefore wants local authorities to consider how to reduce proposed demolitions, and instead refurbish houses at reasonable cost.
- 7.6 Finally, the Government have appointed Mr George Clarke, the architect and Channel 4 presenter of the Great British Property Scandal, as an Independent Empty Homes Advisor to provide on the ground feedback and advice on tackling these issues
- 7.7 It is expected that all these measures will create increased activity by local authorities and others in tackling the problem of empty homes. The Department therefore regards it as important to put the right checks and balances in place to ensure that local housing authorities focus their efforts

on the worst long term empty homes – that is, those that have been empty for a significant period of time and are a nuisance to the community.

7.8 Since chapter 2 of Part 4 of the Act came into force in 2006, 50 interim empty dwelling management orders have been authorised. The Department does not collect information on the number of final empty dwelling management orders made as they do not require the authorisation of a residential property tribunal. It is thought that the small number of empty dwelling management orders authorised is because the process is often time-consuming (particularly the obligation to make reasonable efforts to contact the owner of the property and to ascertain their intentions in relation to the occupation of the property) and can be expensive in the short term because the authority must bring the property up to an appropriate standard for occupation. (In the longer term, provided the authority is able to grant a tenancy or licence of the property, they should be in a position to recoup their costs.)

7.9 In some cases, applications for interim empty dwelling management orders have been refused by the residential property tribunal. These include instances where local authorities have applied for the interim empty dwelling management order to instigate action against homeowners that is inappropriate, including against people in vulnerable situations. These new measures aim to ensure that responsible homeowners do not face having their properties seized.

7.10 The amendments made by this Order will:

- limit the authorisation of interim empty dwelling management orders to those properties empty for at least two years;
- require local housing authorities to give property owners a minimum notice period of 3 months before applying to a residential property tribunal for an interim empty dwelling management order;
- require the local housing authority to provide all information they have that the empty property has been causing a nuisance to the community and that there is community support of the proposal of the local housing authority to take control of it.

7.11 The increase in the period that a property has to be empty before an interim empty dwelling management order can be authorised, from six months to two years, is considered necessary to strike a balance between respecting the civil liberties of responsible home owners and the need to tackle the harm caused to the local amenity when homes are left empty. At two years it is considered more likely that an empty property will blight a neighbourhood and therefore be a nuisance for the community, which could include the property being a focus for anti social behaviour. This is to ensure that only real long-term empty properties are dealt with by this procedure.

7.12 The amendment made by this Order requiring the local housing authority to show the residential property tribunal that it has made all

reasonable efforts to notify the owner of its decision to apply for authorisation for an interim empty dwelling management order, at least 3 months before doing so, will ensure that property owners have adequate notice and a last chance to bring their property back into use before the local housing authority apply for an interim empty dwelling management order.

7.13 When applying to a residential property tribunal for authorisation of an interim empty dwelling management order, in addition to the usual information provided on application, the local housing authority will also be required to provide details showing how the empty property has caused a nuisance to the community. This could be in the form of evidence from the local authority or representations made by neighbours, the community more generally or housing officers.

7.14 The local housing authority will also, where appropriate, demonstrate to the tribunal that bringing the home back into use it has the support of the community. This could be in the form of a letter to the local residents association informing them of their intention to bring the property back into use and their reasons why and seeking their views on the proposal; together with the responses to such a letter, or a summary of those responses. Another possible example would be a letter from those in the local community urging the authority to take action. All information that the local housing authority has regarding community support will need to be provided to the tribunal to support the application for authorisation.

8. Consultation outcome

8.1 There has been no formal consultation on these changes. Interested parties were invited to comment on the proposals and are broadly content with them. Changing the minimum period to 2 years will ensure that local authorities tackle those properties that are difficult to deal with and long term empty. The introduction of the 3 month notification to the owner will give owners a further opportunity to bring their property back into use before the local authority takes action.

9. Guidance

9.1 The Department will be writing to all local housing authorities to advise them of this change and to explain its effect.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The Order would apply to small businesses if they held the most relevant interest in a dwelling (known as being a relevant proprietor); however the Order manifestly does not increase the impact on them.

12. Monitoring & review

12.1 The Department does not intend actively to monitor this change but it will be evident from the number of interim empty dwelling management orders authorised and any reduction in the overall number of empty homes as to whether the changes taken as a whole have been successful.

13. Contact

Sally Turner at the Department for Communities and Local Government Tel: 0303 444 3707 or email: Sally.turner@communities.gsi.gov.uk can answer any queries regarding the instrument.