

REGULATORY APPRAISAL HOUSING, WALES

THE HOUSING (MANAGEMENT ORDERS AND EMPTY DWELLING MANAGEMENT ORDERS) (SUPPLEMENTAL PROVISIONS) (WALES) REGULATIONS 2006

Purpose and intended effect of the measure

1. The purpose of these Regulations is to make supplementary provisions where the local housing authority are to be treated as lessee under a lease of premises that are subject to an interim or final management order made under Chapter 1 of Part 4 of the Housing Act 2004 or an interim or final empty dwelling management order (EDMO) made under Chapter 2 of Part 4 of the Act.
2. An interim management order is an order made by a local authority in respect of a house in multiple occupation (HMO) as defined in sections 254 to 259 of the Act or a house to which Part 3 of the Act covering selective licensing of non-HMO properties applies. It is made to protect the health and safety of occupiers of a house or neighbouring premises and promote the house's property management. A final management order is an order (expiring not more than five years after it is made), which is made by a local housing authority for the purpose of securing the proper management of the house on a long term basis in accordance with a management scheme contained in the order.
3. An interim EDMO is an order made by a local housing authority to enable it to take steps for the purpose of securing that a dwelling becomes and continues to be occupied. An authority must make reasonable efforts to notify the relevant proprietor that they are considering making such an order and to ascertain what steps they are taking, or are intending to take, to secure that the property is occupied. A final EDMO is made in succession to an interim EDMO for the purpose of securing that the property is occupied.
4. The Regulations specify that once an interim or final management order or EDMO is in force the local housing authority can obtain rights in relation to the premises under Parts 1 and 2 of Part 4 of the Act. These may include the right to the possession of the house subject to the rights of the homeowners, a right to carry out works to the house if appropriate, a right to set up management arrangements for the house, a right to create a leasehold interest in the house and a right in the nature of a licence to occupy part of the house. The authority does not, however, acquire any estate of interest in the premises and so have no powers of disposal. Where the immediate landlord of the premises is a lessee under a lease on the premises (or part) the authority is to be treated as if they were the lessee instead.
5. The Regulations describe the circumstances under which a local authority is to be treated as lessee of a premises instead of another person (the

relevant person). This requires the local authority to give notice to the immediate lessor of that person that a management order or empty dwelling management order (EDMO) has been made and explain the consequences of the order. It provides for the authority to be liable for the payment of ground rent, service charges and other charges due as the lessee, from the date the order comes into force, but requires the lessee to be sent any copies of any notices served on the authority.

6. These Regulations are an essential element of the powers that local authorities will have to introduce interim management orders and EDMOs. They put in place the final detailed arrangements that local authorities will need to introduce both types of order.
7. These Regulations are part of a package of four Statutory Instruments, which are proposed to come into force on 26 October 2006.

Risk Assessment

8. These Regulations are an integral part of the Housing Act 2004 and are inexorably linked to other Regulations and Orders relating to licensing of Houses in Multiple Occupation (HMO), which have been in place since the end of June 2006. If these Regulations are not brought into force as soon as possible then the full set of measures contained in the Act to regulate and improve standards of management and property condition in the private rented sector will not be in place in Wales. The power for local authorities to introduce EDMOs for problem empty properties in the private sector would also not be available to authorities in Wales if these Regulations are not introduced.

Options

Option 1: Do Nothing

9. If these Regulations are not made local authorities will be unable to use management orders to control problem properties in the private rented sector and EDMOs to deal with problem empty properties in the private sector. Implications such as unpaid council tax, health hazards from dangerous buildings, derelict buildings used for drug abuse and bringing down the tone of neighbourhoods. It could also result in wasted resources when there are people in the area in housing need. The introduction of EDMOs will enable local authorities to bring properties that have been empty for more than 6 months back into use.

Option 2: Make the Legislation

10. The private rented sector plays an important role in accommodating the young and the socially disadvantaged who have no other housing choice. It also helps to alleviate homelessness. Interim management orders will enable local authorities to take management control of problem rented properties thereby ensuring that they are better managed and in a suitable condition for the safety and comfort of the occupiers. This will promote strategic coherence and higher standards in what is a diffuse but significant sector of the housing market. The introduction of EDMOs will

add to the current powers (Housing Act 1985) that local authorities have to deal with problem empty properties in the private sector. Authorities will, once they have made every possible effort to contact the owner of the property, be able to apply for an EDMO to the Residential Property Tribunal (RPT). As such EDMOs are a last resort measure but their availability could have the effect of increasing the availability of housing for rent once they are introduced.

Benefits

11. Tenants in the private rented sector should benefit from the introduction of these Regulations as they will assist local authorities in improving the standards of management and property condition in this sector thereby safeguarding the comfort and safety of some of the most vulnerable in Welsh society. The introduction of EDMOs will also assist local authorities in dealing with problem empty properties in the private sector that have been vacant for more than six months. This will enable authorities to increase the supply of rented accommodation where there is additional housing need.

Costs

12. Any financial implications associated with the implementation of these Regulations will be expenditure incurred by local housing authorities. These costs will be met out of existing provision as resources for housing purposes are unencumbered and are contained within General Capital Funding (GCF). Any additional financial implications for the Assembly are in terms of supplying copies of this SI to local authorities. These costs are minimal and will be met out of existing budgets held by the Housing Directorate. It is not possible to quantify the costs to local authorities as a result of the introduction of EDMOs as (a) we do not know how many local authorities will apply for them to be made, and consequently, (b) we cannot establish at this stage how many EDMOs in total there will be in Wales.
13. Local authorities currently have powers to deal with empty properties in the private sector (Housing Act 1985) and the introduction of EDMOs merely adds a further power to what authorities currently do in terms of enforcement. If an EDMO is made and an authority finds that remedial works need to be done to it an authority will be able to recoup the costs of the works out of future rental income.

Consultation

With Stakeholders

14. Formal consultation on the policy behind the introduction of EDMOs took place in July 2003 with a closing date for responses of 22 September 2003. A list of consultees is attached at Annex A to the Regulatory Appraisal. A total of 15 responses were received to the consultation exercise the majority of which were in favour of the introduction of EDMOs as a valuable additional tool for local authorities to bring problem empty

properties back into use. The original policy behind this SI has not changed, therefore, further consultation was not considered necessary.

With Subject Committee

15. These Regulations were notified to the Social Justice and Regeneration Committee on 3 May 2006, via the list of forthcoming legislation (SJR)(2)07-6 Paper 4: Annex 1) and have remained on the list ever since. They were not identified for detailed scrutiny. Progress on the provisions of the Housing Act 2004 has been regularly reported to the Social Justice and Regeneration Committee.

Review

16. The Welsh Assembly Government will review the operation and implementation of interim management orders and empty dwelling management orders (EDMOs) within three years of their being introduced. This will give the new powers time to bed-in so that meaningful information and results can be gleaned from the review. There are no formal arrangements in place for reviewing the enforcement. It will be in the light of experience and discussions with relevant parties when interim management orders and EDMOs have been in place for three years. England will be following the same approach. The legislation does not apply to Scotland or Northern Ireland.

Summary

17. These Regulations are an essential element of the measures contained in the Housing Act 2004 to improve standards of management and property condition in the private rented sector and deal with problem empty properties in the private sector that have been vacant for more than six months. The Regulations, when implemented, will be a valuable tool for local authorities to safeguard the wellbeing of tenants in the private sector and increase housing supply where there is additional need.

Annex A

List of Consultees

All Local Authorities in Wales
All Police & Fire Authorities in Wales
All Wales Chief Housing Officers Group
Caer Las
Cardiff Bond Board
Cardiff Law Centre
Care and Repair Cymru
Chartered Institute of Housing Cymru
Commission for Local Administration in Wales
Council of Mortgage Lenders
Federation of Small Business
Health & Safety Executive in Wales
National Federation of Builders (Wales Area)
National Union of Students Wales
Pembrokeshire Action for Single Homeless
Royal Institution of Chartered Surveyors
Salvation Army
Shelter Cymru
Society of Architects in Wales
Society of Directors of Public Protection in Wales
Thomas George Residential Property management
Wales Council for Voluntary Action
Wales Tourist Board
Welsh Federation of Housing Associations
Welsh Local Government Association