



**PRIVATE SECTOR HOUSING CONDITIONS AND
EMPTY HOMES ENFORCEMENT PROTOCOL**

HOUSING ACT 2004

PARTS 1 AND 4

**Private Housing Team
December 2006**

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Introduction

The Housing Act 2004 introduced a new system for assessing housing conditions, known as the Housing Health and Safety Rating System (HHSRS), which is used in the enforcement of housing standards in all types of residential accommodation. This new system replaced the fitness for human habitation standard as contained within section 604 of the Housing Act 1985.

The new system is structured around an evidence based risk assessment procedure, which considers those hazards that may be present in a dwelling from a list of 29 classified hazards. The risks that any such hazards may present to the most vulnerable potential occupant of that dwelling are then used to generate a hazard score. That score is, on the basis of its numerical value, then classified as a category 1 hazard or a category 2 hazard. Category 1 hazards can further be subdivided into those banded A-C and category 2 hazards can be subdivided into those falling within bands D-J reflecting decreasing levels of risk.

Under the Housing Act 2004 Charnwood Borough Council has a duty to take appropriate enforcement action where there is a category 1 hazard, and a discretionary power to take appropriate enforcement action where there is a category 2 hazard. Therefore, to ensure a consistent approach to housing standards enforcement by inspectors, this Enforcement Protocol has been produced for enforcement of Parts 1 and 4 of the Act. This protocol complies with the principles of the Enforcement Concordat, which the Council has signed up to.

The Act also provides new powers, known as Empty Dwelling Management Orders (EDMOs) that allow the Council to take over the management of some residential properties that have been empty for more than six months.

Where an owner of an empty property has failed, despite informal or voluntary interventions, to bring the property back into use the Council is able to use the home to meet housing need without the owner's permission for a temporary period.

There are two types of EDMO. An interim EDMO lasts for an initial period of twelve months, during which time the Council cannot put tenants in the property unless the owner agrees.

Only if the owner still wants the property to remain empty will the Council consider serving the final EDMO. This lasts for up to seven years and gives the Council management control over the property.

Further details on the procedure for EDMOs is contained in paragraphs 15 – 25 of this document.

When applying this protocol, officers will have regard to the principles contained in the Environmental Health Enforcement Policy that was approved by Cabinet in March 2006. The Policy can be accessed using the hyperlink below:

<http://www.charnwood.gov.uk/uploads/environmentalhealthenforcementpo.pdf>

I. General Statement of Intention

- I.0 It is the policy of Charnwood Borough Council:
- I.1 To strive to ensure good quality, healthy housing for all residents of Charnwood and to prioritise action to those properties which present the greatest risks to health and safety.
- I.2 To review the housing conditions in the district to maintain an awareness of the condition of the housing stock in order to come to well informed judgements.
- I.3 To act on any duly made request by sending a suitably qualified officer to inspect the dwelling and to categorise each specified hazard.
- I.4 To not investigate anonymous requests for service unless other sources of information indicate the likelihood of a Category I hazard within the dwelling.
- I.5 To undertake enforcement action that is:
 - a. proportionate to the risk to health and safety;
 - b. applied consistently by all authorised officers;
 - c. targeted; and
 - d. transparent in its application.
- I.6 To support and act upon technical guidance and enforcement guidance issued by the Department for Communities and Local Government (DCLG).
- I.7 To consult the Leicestershire Fire and Rescue Service in respect of the terms of the Service Procedures Fire Safety Protocol before taking enforcement action in respect of a prescribed fire hazard in a house in multiple occupation (HMO) or in the common parts of a building containing flats.
- I.8 To ensure that inspectors abide by the Enforcement Protocol when making enforcement decisions and that any departure from the protocol is justifiable in terms of the risk to health and safety and is taken after full consultation with the Private Housing Group Manager.
- I.9 To ensure that all inspectors are kept up to date with the requirements of the protocol.
- I.10 To maintain a documented policy on enforcement. The policy will be reviewed at regular intervals and when there are relevant changes to the legislation or guidance. Any review will be considered in accordance with the Council's procedure for reviewing its policies and will include consultation with the relevant stakeholders.
- I.11 To ensure that all inspectors have received suitable training and are competent to carry out their duties.
- I.12 To make the Housing Enforcement Protocol or a summary of the protocol available to any interested parties.
- I.13 To produce procedures promoting consistency of enforcement amongst its officers.

- 1.14 To produce procedures to enable people aggrieved by an officer's action to make representations to the Council.

2. Authority To Take Action

- 2.0 Charnwood Borough Council has authorised those inspectors who have successfully completed training courses accredited by the Department for Communities and Local Government to carry out inspections of dwellings and houses in multiple occupation (HMOs) using the Housing Health and Safety Rating System. All such officers may act on behalf of the Council where they consider housing conditions to be unacceptable, on the basis of the impact of hazards on the health and safety of occupants and/or visitors. The authorised environmental health officers are authorised to sign and serve improvement notices and hazard awareness notices which will be issued subject to 2.1.

Where mention is made in this document to action by the Council, the Council will act through its Inspectors.

- 2.1 All hazard awareness notices and improvement notices shall be reviewed by the Private Housing Group Manager before they are issued.
- 2.2 The Private Housing Group Manager is in addition to 2.0 also authorised to sign and serve prohibition notices and emergency prohibition notices.
- 2.3 The Environmental Health Services Manager is, in addition to 2.0 and 2.2, able to authorise emergency remedial action, demolition orders, and the declaration of clearance areas.

3 Enforcement Options

- 3.0 It is the policy of this Council to ensure that enforcement action is always taken in a fair and consistent manner proportionate to the risks to health and safety.
- 3.1 To help achieve this, the Council will make reference to guidance from the Department for Communities and Local Government.
- 3.2 The Council shall define the categories as they are specified in Section 2 of the Act.
- 3.3 When deciding which level of enforcement action to take the Council will consider the following criteria:
- a. The risk to health and safety.
 - b. The current occupant and their views.
 - c. The turnover rate of tenancies.
 - d. Likelihood that the property will become occupied by a member of a 'vulnerable group' or a group who could be at particular risk.
 - e. The relevant person's attitude towards the hazards identified.
 - f. The consequences of non-compliance.
 - g. The cost of compliance.
 - h. The likely effectiveness of the enforcement options under consideration.
 - i. The history of past compliance.

Note: For the purposes of this Enforcement Protocol the 'relevant person' can be taken to refer to the individual or company who could be the subject of enforcement action. This would be determined by the nature of the residential premises in question.

- 3.4 The enforcement options available to the Council are:
- a. To issue Hazard Awareness Notices
 - b. To serve Improvement Notices
 - c. To serve Prohibition Orders
 - d. To take Emergency Remedial Action (not available for Cat 2 hazards)
 - e. To serve Emergency Prohibition Orders (not available for Cat 2 hazards)
 - f. To make a Demolition Order (not available for Cat 2 hazards)
 - g. To declare a Clearance Area (not available for Cat 2 hazards)

The above actions are mutually exclusive when dealing with the same hazard in the same premises. However, the Council can take a different course of action, or the same course of action again, if the initial action has not proved satisfactory. Emergency measures are the exception to the above rule. For example, where emergency remedial action is followed by an improvement notice or a prohibition order it is considered to be a single course of action.

- 3.5 When taking enforcement action the Council will prepare and serve with any notice or order under Part I of the Act, or any copy of a Part I notice or order, a statement of reasons for the decision to take enforcement action. The statement will include an explanation as to why a particular course of action was taken in preference to the other forms of available action. Where the relevant enforcement action is the declaration of a clearance area, the statement of reasons must be published as soon as possible after the resolution declaring that the area be defined as a clearance area under section 289 of the Housing Act 1985, is passed.
- 3.6 Where reasonably practicable, any proposed enforcement action will be discussed with the relevant person prior to the service of any notice or order under Part I of the Act, and their representations sought.

4. Hazard Awareness Notices (Sections 28 and 29).

- 4.0 A hazard awareness notice under section 29 (notice relating to a Cat 2 hazard) may be a reasonable response to a less serious hazard, where the authority wishes to draw attention to the desirability of remedial action.
- 4.1 A hazard awareness notice under section 28 (notice relating to a Cat 1 hazard, where no management order is in place under Part 4) may be an appropriate course of action as a means of advising the relevant person that a category 1 hazard exists on the residential premises. This would be appropriate in circumstances where remedial action or prohibition is unreasonable or impractical.
- 4.2 A hazard awareness notice may be the preferred course of action, as opposed to issuing an improvement notice, where the relevant person has agreed to take remedial action and the Council is satisfied that the work will be done within a reasonable timescale. When taking informal action of any nature, inspectors will clearly differentiate to the alleged offender what is legally required and what is recommended as good practice.
- 4.3 In summary, it is the Council's policy that hazard awareness notices will be the preferred course of action on residential premises where:
- a. the hazard(s) present are all of category two; or,
 - b. in the case of category one hazards the Council is fully satisfied that the relevant person will take suitable remedial action within a suitable timescale; or,
 - c. the circumstances are such that improvement or prohibition is unreasonable or impractical.
- 4.4 The service of a hazard awareness notice does not preclude further formal action, should an unacceptable hazard remain.
- 4.5 All notices and accompanying documents will be sent as soon as possible.
- 4.6 Hazard awareness notices will be drafted in accordance with the relevant section of the Housing Act 2004, as determined by the category of hazard.

5. Improvement Notices (Sections 11 and 12).

- 5.0 An improvement notice under section 11 will be an appropriate course of action where a category 1 hazard exists on residential premises, where no management order is in place under Part 4 of the Act. An improvement notice served under this section must, as a minimum, remove the category 1 hazard, however, it may also extend beyond this. For example, this may be appropriate where a remaining category 2 hazard would still present an unacceptable risk to health and safety or where the duty on the authority may arise again should conditions deteriorate.
- 5.1 An improvement notice under section 12 may be an appropriate course of action where a category 2 hazard exists on residential premises, where no management order is in place under Part 4 of the Act. A notice served under section 12 would require the relevant person to take suitable remedial action in respect of the hazard(s) concerned.
- 5.2 Improvement notices will be the preferred course of action on residential premises where:
- a. there is a category one hazard(s) present, and
 - b. there is limited confidence that the relevant person will respond to a hazard awareness notice within a reasonable time.
- 5.3 Improvement notices may be the preferred course of action on residential premises where:
- a. there is a category two hazard(s) present, and
 - b. that hazard(s) would present an unacceptable risk if allowed to remain and
 - c. the relevant person will not confirm in writing their intention to undertake the necessary remedial action.
- 5.4 When the notice becomes operative it will be a local land charge on the premises to which it relates. This means that it will be recorded in the register of local land charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. Purchasers will normally search this register.
- 5.5 Inspectors will not issue improvement notices unless they are confident that they have sufficient evidence to defend an appeal against the notice.
- 5.6 All notices will be drafted in accordance with section 13 of the Housing Act 2004 and will be accompanied by information on the appeal procedure and the time limits for such an appeal.

5.7 Suspension of Improvement Notices (Section 14).

An improvement notice may, for the operation of the notice, be suspended until a time or the occurrence of an event specified in the notice. The purpose of suspension will normally be to allow the Council to prioritise action. Suspension of an improvement notice may be the preferred course of action where:

- a. it is appropriate to wait until a person of a particular description begins, or ceases to occupy the premises: or,
- b. in the case of an event, where a person, upon whom a notice was served, has not complied with an undertaking given to the Council.

5.8 Revocation and Variation of Improvement Notices (Section 16).

Where the Council is satisfied that an improvement notice has been complied with any such notice will be revoked. The Council may also, at its discretion, revoke an improvement notice where it is deemed that there are special circumstances (in respect of a Cat 1 hazard), or where (in the case of a Cat 2 hazard) it is considered appropriate.

5.9 In the case of a notice that applies to more than one hazard, the requirement of the preceding paragraph will apply to each of the hazards individually.

5.10 The Council may also vary improvement notices in the following circumstances:

- a. Where part of a notice, which relates to more than one hazard, has been revoked the remainder of the notice may also be varied as considered appropriate; or,
- b. with the agreement of the person on whom the notice was served; or,
- c. in the case of a suspended improvement notice, so as to alter the time or event specified that triggers the end of suspension.

5.11 Review of Suspended Improvement Notices (Section 17).

Suspended improvement notices will be reviewed in accordance with section 17 of the Housing Act 2004.

6. Prohibition Orders (Sections 21 and 22).

- 6.0 A prohibition order made under section 21 may be an appropriate course of action where a category 1 hazard exists on residential premises, where no management order is in place under Part 4 of the Act. An order made under this section may prohibit use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.
- 6.1 Section 22 makes an equivalent provision for a prohibition order to be made where a category 2 hazard exists on residential premises, where no management order is in place under Part 4 of the Act.
- 6.2 Prohibition Orders will be the preferred course of action on residential premises where:
- a. there may be a serious threat to health and safety and remedial action is considered unreasonable or impractical for cost or other reasons i.e. where the work cannot be carried out with the tenant in residence; or,
 - b. a dwelling is overcrowded as regards space and/ or amenities for the numbers in occupation; or,
 - c. where a dwelling presents a serious threat to the health and safety to a specific group of persons, but is relatively safe for occupation by any others; or
 - d. there is little confidence in an unprompted offer by the relevant person to prohibit an activity associated with that risk (Cat 2 hazards only); or
 - e. the relevant person will not confirm in writing their unprompted offer of voluntary prohibition (Cat 2 hazards only).
- 6.3 Where a prohibition order has been served the Council will consider, in the context of the Private Sector Housing Assistance Policy, whether it is appropriate to offer financial assistance or advice to the owner, landlord or tenant.
- 6.4 Prohibition orders will be drafted in accordance with section 22 of the Housing Act 2004.
- 6.5 When the Notice becomes operative it will be a local land charge on the premises to which it relates. This means that it will be recorded in the register or local land charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. Purchasers will normally search this register.
- 6.6 Inspectors will not issue prohibition orders unless they are confident that they have sufficient evidence to defend an appeal against the Notice
- 6.7 **Suspension of Prohibition Orders (Section 23).**

A prohibition order may, for the operation of the order, be suspended until a time or the occurrence of an event specified in the order. Suspension of a prohibition order is at the discretion of the Council and it may be the preferred course of action when:

- a. it is appropriate to wait until a person of a particular description begins, or ceases to occupy the premises: or,
- b. in the case of an event, where a person, upon whom a notice was served, has not complied with an undertaking given to the Council.

6.8 Revocation and Variation of Prohibition Orders (Section 25).

- 6.9 Where the Council is satisfied that a hazard, in respect of which a prohibition order was made, no longer exists, then any such order will be revoked. The Council may also, at its discretion, revoke a prohibition order where it is deemed that there are special circumstances (in respect of a Cat 1 hazard), or where (in the case of a Cat 2 hazard) it is considered appropriate.
- 6.10 In the case of an order that applies to more than one hazard, the requirement of the preceding paragraph will apply to each of the hazards individually.
- 6.11 The Council may also vary prohibition orders in the following circumstances:
- a. where part of an order, which relates to more than one hazard, has been revoked the remainder of the order may also be varied as considered appropriate; or,
 - b. with the agreement of every person on whom the order, or copies of the order, were required to be served; or,
 - c. in the case of a suspended prohibition order, so as to alter the time or event specified that triggers the end of suspension.

6.12 Review of Suspended Prohibition Orders (Section 26).

Suspended prohibition orders will be reviewed in accordance with section 26 of the Housing Act 2004.

7. Emergency Remedial Action (Section 40).

- 7.0 Emergency remedial action taken under section 40 may be an appropriate course of action where a category I hazard exists on residential premises, where no management order is in place under Part 4 of the Act. Action taken under this section is that action which the Council considers necessary to remove an imminent risk of serious harm to the occupiers of any residential premises. Emergency remedial action taken under this section may be taken in relation to one or more Category I hazards in the same premises.
- 7.1 Emergency remedial action will be the preferred course of action on residential premises where:
- a. A category I hazard exists and,
 - b. there is an imminent risk of serious harm to the health and safety of any occupiers and,
 - c. where remedial action, by way of an improvement notice made under section 11, could potentially be taken.
- 7.2 The Council will serve an emergency remedial action notice upon the relevant person within 7 days, beginning on the day the remedial action starts.
- 7.3 Emergency remedial action notices will be drafted in accordance with section 41 of the Housing Act 2004.
- 7.4 Inspectors will not take emergency remedial action unless they are confident that they have sufficient evidence to defend an appeal against the notice.

8. Emergency Prohibition Orders (Section 43).

- 8.0 An emergency prohibition order made under section 43 may be an appropriate course of action where a category I hazard exists on residential premises, where no management order is in place under Part 4 of the Act and where a hazard involves an imminent risk of serious harm to the health or safety of any occupiers of residential premises. An order made under this section may prohibit use of part or all of the premises as is necessary and, unlike a prohibition order, is effective immediately. An emergency prohibition order made under this section may relate to one or more Category I hazards in the same premises.
- 8.1 The aforementioned provisions of section 25, which relate to revocation and variation of a prohibition order, also apply to emergency prohibition orders .
- 8.2 Emergency prohibition orders will be drafted in accordance with section 43 of the Housing Act 2004.
- 8.3 Inspectors will not make emergency prohibition orders unless they are confident that they have sufficient evidence to defend an appeal against the order.

9. Demolition Orders (Section 46).

- 9.0 A demolition order made under section 46 may be an appropriate course of action where a category 1 hazard exists on residential premises, where no management order is in place under Part 4 of the Act and the property in question is not a listed building.
- 9.1 In determining whether to make a demolition order the Council will;
- a. take into account the availability of local accommodation for re-housing the occupants,
 - b. take into account the demand for, and sustainability of, the accommodation if the hazard(s) were remedied.
 - c. consider the prospective use of the cleared site,
 - d. consider the local environment, the suitability of the area for continued residential occupation and the impact of the cleared site on the appearance and character of the neighbourhood.

10. Clearance Areas (Section 47).

- 10.0 The Council may decide to declare a clearance area where it is satisfied that:
- a. each of the residential buildings in the area contains a category 1 hazard, and
 - b. the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, or
 - c. the residential buildings in the area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the streets; and
 - d. the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.
- 10.1 The Council may decide to declare a clearance area where it is satisfied that:
- a. each of the residential buildings in the area contains a category 2 hazard,
 - b. the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, and
 - c. the circumstances of the case are circumstances specified or described in an order made by the Secretary of State.

11. Prosecution (Section 30 & 32).

- 11.0 Prosecution will be considered as a course of action where there has been a failure to comply, 'without reasonable excuse', with the requirements of an operative improvement notice or prohibition order. In addition, the decision to prosecute may also be influenced by the presence of one or more of the following criteria;
- a. where there is a history of similar offences;
 - b. where, as a result of a failure to comply, there has been , or there is, a risk of an accident or a case of ill health;
 - c. where there appears to have been a reckless disregard for the health and safety of occupants and/or others;
 - d. where false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to serious risk;
 - e. where inspectors have been intentionally obstructed in the lawful course of their duties
- 11.1 All evidence will be gathered in accordance with the Police and Criminal Evidence Act 1984 and associated codes of practice.
- 11.2 Before a decision to prosecute is taken the officer, together with their line manager, Lead Officer and where necessary the Solicitor and Monitoring Officer, must be satisfied that both the 'Evidential Test' and the 'Public Interest Test', as contained within the Code for Crown Prosecutors, is in general terms satisfied .
- 11.3 When a prosecution is proposed the case file will be submitted to the Solicitor and Monitoring Officer as soon as possible for consideration.

12. Works in Default (Section 31, Schedule 3).

- 12.0 The Council may in certain circumstances carry out works detailed in an improvement notice. Such action may be taken with or without the agreement of the person on whom an improvement notice was served.
- 12.1 When taking action with the agreement of the person on whom an improvement notice has been served, the Council may take any action which that person is required to take in relation to the notice. However taking action by agreement will only generally be considered where it is felt that the relevant person is for whatever reason incapable of organising, executing and overseeing the necessary works. Any such work undertaken will be at the expense of the person on whom the improvement notice was served.
- 12.2 Taking action without the agreement of the person on whom an improvement notice has been served, will be considered as a course of action in any of the following circumstances;
- a. where a person has failed without 'reasonable excuse' to comply with the requirements of an improvement notice,
 - b. where reasonable progress, in relation to the requirements of the notice, is not being made.

13. Power to Charge for Enforcement Action (Section 49).

13.0 It will be the policy of the Council to make a reasonable charge for taking enforcement action in the following circumstances:

- serving an improvement notice under section 11 or 12
- making a prohibition order under section 20 or 21
- serving a hazard awareness notice under section 28 or 29
- taking emergency remedial action under section 40
- making an emergency prohibition order under section 43 or
- making a demolition order under section 265 of the Housing Act 1985
- carrying out a review under section 17 (review of suspended improvement notices) or section 26 (review of suspended prohibition orders) or
- serving copies of the Council's decision on such a review

13.1 Where expenses are to be charged they will be made relating to all stages of enforcement as detailed in Section 49 of the Housing Act 2004 and will be charged at the current (with on-costs) hourly officer rate. An administration cost equal to 15% of the officer cost will be added in all cases.

13.2 Expenses will be recovered in accordance with Section 50 of the Housing Act 2004, via a demand for payment of the charge. As from the time that the demand becomes operative, the sum recoverable, until recovered will be registered as a local land charge on the premises concerned.

14. Power to Recover Certain Expenses (Schedule 3).

14.0 Where the Council undertakes works in default as detailed in section 12 above, or exercises its power to take emergency remedial action, see section 7 above, it will seek to recover the expenses reasonably incurred in so doing from the relevant person. It should be noted that such charges are in addition to the administrative and other costs to be recovered, as laid out in section 13 above.

14.1 Expenses will be recovered via a demand for payment of the charge. As from the time that the demand becomes operative, the sum recoverable together with interest accrued on them, until recovered, is a local land charge on the premises concerned.

EMPTY DWELLING MANAGEMENT ORDERS

15. Circumstances under which an EDMO may not be made

- 15.1 An Empty Dwelling Management Order cannot be made on a property where one or more of the following statements are true:
- a. It is not used as a dwelling e.g. it is a building or part of a building used for non-residential purposes
 - b. It is not wholly unoccupied e.g. only part of the house or flat is unoccupied or there are spare rooms not in use
 - c. It has been lived in at any time within the previous six months
- 15.2 The six month exception period applies to all empty dwellings regardless of the reason they are unoccupied. However, even after six months a lot of unoccupied dwellings will continue to be excepted as long as one or more of the following statements are true:
- The property is normally a person's only or main residence, but:
 - a. The owner is temporarily residing elsewhere
 - b. The owner is absent so that they can be cared for elsewhere
 - c. The owner is absent because they are caring for someone elsewhere
 - d. The owner is in the armed forces and is away from home on service
 - The property is occupied occasionally by the owner or their guests as a second home or a holiday home
 - The property is genuinely on the market for sale or to be let
 - A person is expecting to inherit the property but has not yet obtained grant of representation (probate) following the death of the previous owner. In this case the property will continue to be excepted for six months after the person obtains grant of representation
- 15.3 It is possible for one exception to apply after another one has ended.
- 15.4 Further information is available at www.communities.gov.uk/emptyhomes or www.emptyhomes.com

16. Circumstances under which an EDMO might be appropriate

Even if none of the above statements applies, before taking the matter further it must be established if the owner has any plans to bring their property back into use. If the owner can demonstrate they are actively pursuing plans to bring the property back into occupation in the near future the Council will not be able to get the approval it needs to make an Empty Dwelling Management Order. The Council will only consider using its EDMO enforcement powers when it is apparent that the owner has been unwilling to co-operate, leaving the Council with little alternative.

17. Procedure for making an Empty Dwelling Management Order

Interim EDMO

If the Council considers it has grounds to make an EDMO it must

- Notify the owner first to determine if they have any plans of their own to bring the property back into use, and if this is not the case
- Apply to the Residential Property Tribunal for approval of an interim EDMO subject to satisfying the Tribunal that:
 - a. The property has been unoccupied for at least six months and is unlikely to be occupied in the near future
 - b. The Council would be able to find somebody to occupy it
 - c. The property is not covered by one of the exceptions

If the Tribunal is satisfied that an interim EDMO should be made it will approve the order provided by the Council. The Council must, within 7 days

- Serve the owner with a copy of the order along with a notice setting out the reasons why the order was made and its general effect
- State within the notice when the order will end, which must be on a date within 12 months

The Council becomes responsible for the day to day management of the property and must consider the best way to get it occupied

- The Council must obtain the owner's consent in writing before the property can be occupied
- If the owner is willing to let the Council put a tenant in the property, it may decide to end the order if the owner is also prepared to lease the property back to the Council on a voluntary basis, or agree some other way to get it brought back into use
- If the owner does not agree to allow the Council to put a tenant in the property it must either make a final EDMO to replace the interim order or end it without taking further action

Final EDMO

In deciding to make a final EDMO the Council must take into account the interests of the community and the effect the order will have on the owner and other people with an interest in the property. If the Council decides to make a final EDMO it must:

- Serve a copy of the proposed order on the owner, along with a notice setting out the reasons why it wants to make the order and its proposed terms
- Give the owner at least 14 days to respond and decide whether to alter any of its proposals in the light of any representation the owner may make
- If it is decided to proceed with the final EDMO the Council does not need to get any further approval from the Residential Property Tribunal
- However, within 7 days of making the order the Council must serve a copy of it on the owner, along with a further notice setting out the reasons for making it, the date the order ends, and the owner's rights of appeal

- If the owner objects to the making of the final EDMO or some of the terms on which it is made and the Council has not accepted the owner's representations they will be able to appeal to the Tribunal

After the final EDMO is made

Once the final EDMO is made the Council has the right to possession of the property for a fixed period of time up to 7 years

- The Council must take whatever steps it considers appropriate to get the property occupied or to keep it occupied and ensure that it is properly managed
- The Council can put a tenant in the property without seeking the owner's consent
- The Council must regularly review the situation and if it concludes that it cannot get the property occupied, it must hand back possession to the owner

18. Payment of any costs incurred under an EDMO

The Council will incur costs in managing a property

- It may have to pay an agent, such as a Housing Association or a private management company to look after the property
- It may decide that the property needs some work done to it to bring it to a lettable standard
- The Council will pay these costs and seek to recover its expenditure from any rental income it receives from tenants whilst the order is in force
- The Council must pay the owner any money that is left over after it has deducted its expenditure and may pay the owner interest on this money

During an interim EDMO, because the Council cannot let the property without the owner's permission, any costs it incurs may be recovered from the owner if they refuse to allow the Council to let the property, and it considers that this was unreasonable.

However, if the Council makes a final EDMO to replace the interim order it may decide to carry these costs forward and seek to recover them from any subsequent rental income it receives.

In all other cases, if the Council does not recover its costs because it cannot generate enough income from rental income it cannot ask the owner to pay the shortfall unless they agree to do so, for example, as a condition to allow the order to be brought to an end before the Council had recovered its costs from rental income.

Recovering debt from the owner

There are numerous ways the Council can recover debts owed to it

- An EDMO is a local land charge and will be registered in the Council's local charges register
- An application can be made by the Council for the debt to be entered in the register of title for the property held at the Land Registry

19. Repairs and Improvements to the property

Whether either an interim or a final EDMO is in force the Council is under a duty to take steps to get the property occupied. If it is not in a decent condition the Council may decide it must undertake some work to make it suitable to be lived in. It has the right to enter the property at any time to inspect its condition or to undertake works.

- During an interim EDMO the Council will only be able to recover money it has spent with the owner's agreement
- Prior to making a final EDMO the Council must draw up a management scheme which will set out in detail how it intends to manage the property. This must include details of any works the Council intends to carry out to the property, and estimates of the cost. The management scheme must also state how much rent the Council will seek to charge tenants
- Details of the proposed management scheme will be included with the notice the Council must serve on the owner before the order is made
- The owner may make representations to the Council about the proposed terms of the management scheme, and appeal to the Tribunal if these are not taken on board

20. Entitlement to compensation

The owner of the property will not be entitled to compensation but will benefit from any improvements made to it once the order has ended. However, someone else with an interest in the property, e.g. the freeholder may ask the Council to pay compensation for any loss resulting from the interference with their property rights as a result of the EDMO. If the Council refuses to pay compensation, they may appeal to the Tribunal.

21. Selling the property

The owner has the right to sell their property at any time whilst an EDMO is in force, but may want to have the order ended early to enable sale without the restriction noted on the title of the property at the Land Registry.

22. Getting an EDMO ended early

The owner may ask the Council at any time to end an EDMO early (a revocation).

- If he decides to live in the property himself
- If he decides to sell the property

The Council may revoke the order early if it is satisfied of the above, and the owner can appeal to the Tribunal if the Council refuses his request

- The Council must revoke the order and hand back possession of the property to the owner if it is unable to get it occupied under an EDMO
- If the property is occupied by tenants placed by the Council, the Council cannot revoke the order (unless it simply replaces it with a final EDMO) without the owner's agreement
- The Council may refuse to revoke the order early if doing so would leave it in debt

23. Rights of Appeal

An owner can appeal to the Residential Property Tribunal against the actions of the Council on the following matters:

- A decision to make a final EDMO
- The terms of a final EDMO (including the terms of the management scheme)
- The terms of an interim EDMO relating to payment of surplus rental income and any interest paid
- A decision to vary or revoke, or refuse to vary or revoke, an interim or final EDMO

An owner must appeal within 28 days of the date specified in the relevant notice, and may make a further appeal to the Lands Tribunal if dissatisfied with the decision of the Residential Property Tribunal.

24. Insuring the property

The Council must ensure that the property is adequately secured and insured whilst an EDMO is in force.

25. Leasehold property

An EDMO can be made on a leasehold property subject to the following:

- The order will be made against the lessee if they lease their property from someone and their lease still has more than 7 years to run
- If the lessee has granted a sub-lease to someone else
 - a) If the lease has less than 7 years to run, the order will still be made against the lessee
 - b) If the lease has more than 7 years to run, the order will be made on the sub-lessee, but the lessee will still have an interest in what happens

Once an EDMO is made the Council will be treated as if it is a leaseholder and will have to abide by all the lease terms, except any that might prevent the property from being occupied. If the Council lets the property to someone, it cannot grant a tenancy that would run longer than the lease and not longer than 7 years.

During an EDMO, the Council is responsible for paying any charges payable under the terms of the lease such as ground rent, insurance contributions, service charges and maintenance charges relating to the period after the order came into force.

The Council will have the same rights as the lessee to obtain information about service charges demanded under the lease and to dispute these charges.

As soon as the order is made the Council must serve a notice on the lessor setting out:

- The type of order made
- The date the order came into force
- A summary of the effect the order has on the validity of the lease
- The name and address of the Council's authorised representative

Once the notice has been served on the lessor, neither the Council, nor the lessee will be liable to pay ground rent, service charges or other charges demanded that are due for payment unless the payment demand is served on the Council's representative.

The Council must send the lessee copies of any payment demands for ground rent or charges, as well as any other notice or document it has received, within 10 days of their receipt.

If you granted a lease to someone else and the property is not being occupied, the Council may apply to the Tribunal for an order to terminate the lease. The Tribunal may make such an order if it is satisfied that the Council has made an EDMO and needs to have possession of the property in order to get it occupied. The Tribunal may require the Council to pay compensation to the lessor, or the lessee for any loss suffered as a result.

If you wish to discuss any aspect of this protocol further, please do not hesitate to contact the Private Housing Team on (01509) 634651 or email us at private.housing@charnwood.gov.uk