

## **Banning Orders and the Rogue Landlord Database**

**9/04/2019**

### **Purpose**

This policy explains how the Council will use new powers under the Housing and Planning Act 2016 to ban landlords from renting out property in the private rented sector and to record banning order offences in the Government's Rouge Landlord database.

### **Introduction**

The Housing and Planning Act 2016 and The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 introduced Banning Orders for certain types of offences. See appendix 1 for a full list of the relevant offences. These offences include those that are enforced by other statutory agencies such as the Police and the Fire Service.

Local Authorities can apply to the First-Tier Tribunal to ban a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work;

The database is designed to be a tool which will help local housing authorities to keep track of rogue landlords and focus their enforcement action on individuals and organisations who knowingly flout their legal obligations. Local housing authorities must issue the person with a decision notice before making an entry, specifying the period for which the entry will be maintained

Local Authorities have a mandatory duty to register a banning order on the rogue landlord database. In addition local authorities have discretion to record banning order offences that were committed when the person was a residential landlord or property agent; and/or received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent.

Breaching a banning order is a Criminal Offence, the Tribunal can make the order for a minimum of 12 months, and there is no maximum period. The Tribunal determines the length of time of the banning order; the Council can only make recommendations.

In order to make use of banning order powers the Council is required to have in place its own policy on when to pursue a banning order and to decide which option it wishes to pursue on a case-by-case basis in line with that policy.

This policy takes account of the non-statutory guidance issued by the Government which makes clear that banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard, and which also confirms the Government's expectation that banning orders will be used for the most serious offenders.

The Council will reserve Banning Orders for the most serious offences and where a landlord or managing agent continues to commit offences.

Through the use of the Rogue Landlord database the Council will work in partnership with other local authorities to serve banning orders on landlords where they have committed banning order offences in multiple local authority areas.

The process for applying for a banning order is set out in section 15 of the Housing and Planning Act 2016. Prior to making an application the process includes serving a notice of intent on the landlord and provision for consideration of representations made by the landlord.

### **Factors to consider when determining whether to make an entry on the data base and when to apply for a banning order**

As recommended by the Government's guidance, the Council will consider the following factors when deciding:

- Whether to make an entry on the database and for how long that entry should remain
- Whether to apply for a banning order and when recommending the length of any banning order:

<p><b>The seriousness of the offence.</b></p> <p>All banning order offences listed in Appendix 1 are serious</p>	<p>When considering whether to apply for a banning order the Council will consider the sentence imposed by the Court or the Civil Penalty in respect of the banning order offence itself.</p>
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	<p>The more severe the sentence imposed by the Court or the higher the Civil Penalty amount, the more appropriate it will be for a banning order to be made.</p> <p>The more serious the offence, the stronger the justification for including the offender on the database.</p>
<b>Previous convictions/rogue landlord database</b>	<p>Officers should check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences.</p> <p>A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be aware of their legal obligations. For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of noncompliance could also be taken into account.</p> <p>Conversely, where it is a first offence the Council may decide that it is not appropriate to record a person's information on the database.</p>
<b>The harm caused to the tenant</b>	<p>The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud).</p>
<b>Punishment of the offender</b>	<p>A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.</p>

<p><b>Deterring the offender from repeating the offence</b></p>	<p>The ultimate goal is to prevent any further offending. An important part of deterrence is the realisation by the offender that (a) the Council has the tools and is proactive in recording the details of rogue landlord and property agents and (b) that they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities.</p> <p>The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence</p>
<p><b>Deterring others from committing similar offences</b></p>	<p>Knowing that they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlords from committing banning order offences in the first place.</p> <p>An important part of deterrence is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.</p>
<p><b>Mitigating factors.</b></p>	<p>Where there are mitigating factors, the Council may decide not to make an entry on the database or apply for a banning order. Mitigating factors could include personal issues, for example, health problems or a recent bereavement. It is for the Council to decide on a case by case basis whether mitigating factors are strong enough to justify a decision not to record a person's details on the database or make a banning order.</p>

In line with the policy a decision to make a discretionary entry will be confirmed by the Private Sector Housing Manager and a Decision Notice served. The decision notice is subject to appeal to the First Tier Tribunal.

In line with the policy a decision to commence the banning order procedure in any case will be confirmed by the Head of Housing and Development Control.

The Private Sector Housing Manager will be responsible for considering any representations made by a landlord or managing agent served with a notice of intention and in consultation with the Head of Housing and Development Control for the decision to make an application to the Tribunal for a banning order, including the recommended duration of the ban.

The Council must make an entry on the database when a banning order is made by the Tribunal.

### **Publication of the Banning Orders**

Subject to its own legal advice and guidance provided by the Ministry of Justice, the Council will consider publishing details of successful banning orders including the names of individual landlords. The Council will also consider making information on banned landlords available on request by a tenant.

### **Further Information**

MCLG Guidance - Database of rogue landlords and property agents under the Housing and Planning Act 2016

MCLG Guidance - Banning Order Offences under the Housing and Planning Act 2016

## Appendix 1

### Banning Order Offences under Schedule 1 of The Housing and Planning Act 2016

#### (Banning Order Offences) Regulations [2017]

#### Relevant housing offences

Protection from Eviction Act 1977	Section 1(2), (3) and (3A)	Unlawful eviction and harassment of occupier
Criminal Law Act 1977	Section 6(1)	Violence for securing entry
Housing Act 2004	Section 30(1)	Failing to comply with an Improvement Notice
Housing Act 2004 Section	32(1)	Failing to comply with a prohibition order
Housing Act 2004 Section	72(1), (2) and (3)	Offences in relation to licensing of Houses in Multiple Occupation

Housing Act 2004 Section	95(1) and (2)	Offences in relation to licensing of houses under Part 3 of the Act
Housing Act 2004 Section	139(7)	Contravention of an overcrowding notice
Housing Act 2004	Section 234(3)	Failure to comply with management regulations in respect of Houses in Multiple Occupation
Housing Act 2004	Section 238(1)	False or misleading information
Regulatory Reform (Fire Safety) Order 2005	Article 32 paragraphs (1) and (2)	Fire safety offences
Health and Safety at Work Act 1974	Section 33(1)(c)	where a person contravenes Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998

### **Immigration Offences**

Letting to someone disqualified from renting as a result of their immigration status, resulting in an offence under Part 3 of the Immigration Act 2014 (as amended)

Immigration Act 2014	Section 33A(1) and (10)	Residential tenancies – landlord offences
Immigration Act 2014	Section 33B(2) and (4)	Residential tenancies – agent offences

### **Serious Criminal Offences**

These are serious criminal offences for which an offender may have received a custodial sentence upon conviction.

Fraud Act 2006	Section 1(1) Section 6(1) Section 7(1) Section 9(1) Section 11(1) Section 12(2)	Fraud offences
Criminal Justice Act 2003	Schedule 15	Specified violent and sexual offences
Misuse of Drugs Act 1971	Section 8 Section 9 Section 9A(1) and (3) Section 18(1), (2), (3) and (4) Section 19 Section 20 Section 21	Offences involving the misuse of drugs
Proceeds of Crime Act 2002	Section 327	Concealing criminal property
Proceeds of Crime Act 2002	Section 328	Arrangements
Proceeds of Crime Act 2002	Section 239	Acquisition, use and possession
Protection from Harassment Act 1997	Section 2	Offence of harassment
Protection from Harassment Act 1997	Section 2A	Offence of Stalking
Anti-social behaviour,	Section 30	Breach of criminal behaviour

Crime and Policing Act 2014		order
Anti-social behaviour, Crime and Policing Act 2014	Section 48	Failure to comply with Community Protection Notice
Criminal Damage Act 1971	Section 1(1)	Destroying or damaging property
Criminal Damage Act 1971	Section 2	Threats to destroy or damage property
Criminal Damage Act 1971	Section 3	Possessing anything with intent to destroy or damage property
Theft Act 1968	Section 7	Theft
Theft Act 1968	Section 9	Burglary
Theft Act 1968	Section 21	Blackmail
Theft Act 1968	Section 22	Handling stolen goods

