



Department for
Communities and
Local Government

Proposed banning order offences under the Housing and Planning Act 2016

A consultation paper



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Scope of the consultation

Topic of this consultation:	This consultation seeks views on which offences should be regarded as banning order offences under the Housing and Planning Act 2016.
Geographical scope:	These proposals relate to England only.
Impact Assessment:	See the overall impact assessment for the Housing and Planning Bill http://www.parliament.uk/documents/impact-assessments/IA15-010.pdf

Basic Information

Duration:	This consultation will last for 8 weeks from 13 December 2016 until Friday 10 February 2017
Enquiries:	For any enquiries about the consultation please email prsreview@communities.gsi.gov.uk
How to respond:	<p>You may respond by completing an online survey at: https://www.surveymonkey.co.uk/r/L7TJRDW This is the preferred method for responding to this consultation.</p> <p>Alternatively you can email your response to the questions in this consultation to prsreview@communities.gsi.gov.uk</p> <p>If you are responding in writing, please make it clear which questions you are responding to.</p> <p>Written responses should be sent to: Housing Standards Team, Better Rented and Leasehold Sector Division, 3rd Floor, Fry Building, 2 Marsham Street, London SW1P 4DF</p> <p>When you reply please indicate whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> - your name, - your position (if applicable), - the name of organisation (if applicable), - an address (including post-code), - an email address, and - a contact telephone number

Introduction

1. The Housing and Planning Act 2016 (the Act) introduced a power for the First-tier tribunal to serve a banning order on a landlord or property agent¹. The purpose of this consultation paper is to invite views and comments on which offences should constitute ‘banning order offences’ as defined by section 14 of the Act.
2. The private rented sector is an important part of our housing market, housing 4.3 million households in England. The quality of privately rented housing has improved rapidly over the past decade with surveys showing that 82% of private renters are satisfied with their accommodation, and staying in their homes for an average of 4 years².
3. The government wants to support the vast majority of good landlords who provide decent well maintained homes, and avoid unnecessary regulation which increases costs and red tape for landlords, whilst pushing up rents and reducing choice for tenants. However, we are determined to crack down on the small minority of rogue landlords and property agents who knowingly rent out unsafe and substandard accommodation. We want to force those landlords and property agents to either drastically improve the standard of any accommodation they rent out and to fully comply with their obligations, or to leave the sector entirely.
4. Through the Act, we have introduced a package of measures which will enable local authorities to effectively tackle these rogue or criminal landlords and property agents. The package comprises a national database of rogue landlords/property agents convicted of certain offences (or who have received multiple civil penalties as an alternative to prosecution in relation to certain offences). In addition, banning orders are being introduced for the most serious and prolific offenders. We are also introducing civil penalties of up to £30,000 as an alternative to prosecution and extending Rent Repayment Orders to cover illegal eviction, breach of a banning order or failure to comply with certain statutory notices.

Banning order offences

5. The Act enables the Secretary of State to make regulations defining what is a ‘banning order offence’. Where someone has been convicted of a banning order offence, the

¹ Property agent includes both a letting agent and a property manager as defined at sections 54 and 55 of the Housing and Planning Act 2016

² English Housing Survey 2014/5

local authority can apply to a First-tier Tribunal for an order banning that landlord or property agent from being involved in the letting and/or management of property. In addition, someone who has been convicted of a banning order offence, or has received two or more civil penalties as an alternative to prosecution for banning order offences within a 12 month period, can be included in the database of rogue landlords and property agents. If they have also had a banning order made against them, their details must be included in the database. A banning order can only be made against someone who has been convicted of a banning order offence. Someone who has received two or more civil penalties can be included on the database but a banning order cannot be made against them.

6. The power to apply for a banning order against a rogue landlord or property agent was introduced to help local authorities take robust and effective action against rogue landlords and property agents who have been convicted of particularly serious offences or are prolific offenders. Banning orders are intended to be punitive and to protect tenants from such landlords or property agents. Where someone is subject to a banning order, they will not be able to earn income from renting out housing or engaging in letting agency or property management work (the First-tier Tribunal will specify in any banning order the precise activities that the person or body corporate is banned from doing). The length of a banning order must be at least 12 months. There is no upper limit on the potential length of a banning order.
7. In addition, where a landlord is subject to a banning order, their property may be made the subject of a management order by the local authority, thereby allowing the local authority to rent out the property. Where that happens, the local authority will receive all of the rental income from the property and can reuse it for housing related purposes. The owner of the property would still be liable for any mortgage or other repayments that may be due on the property.
8. The likelihood is that banning orders will be used as a last resort where other types of enforcement action have failed. However, this does not mean that local authorities will have to exhaust other options before seeking a banning order. It will be for local authorities to decide on a case by case basis whether or not a banning order would be an appropriate sanction and there may be cases where it is decided to apply for a banning order, following conviction for a banning order offence, even where the landlord or property agent has no previous convictions or has not received a civil penalty as an alternative to prosecution under the Housing Act 2004.

Case studies

9. Two recent examples of rogue landlord behaviour where a banning order may, in future, be considered appropriate are set out below. These are examples of extremely poor property conditions which were discovered by local authorities as part of the 2015/16 rogue landlord programme. They are included here for illustrative purposes only as the type of offences for which a local authority may, in future, wish to consider seeking a banning order following conviction for a banning order offence:

Case study 1

The local authority targeted an illegal outbuilding in the rear alleyway of flats and shops, identified using street surveys and aerial photography. It was found that a make-shift timber roof, with no insulation, had been constructed from the back of the shop premises, covering the entire court yard to connect to the garage in the rear alleyway. Internally, the outbuilding had been partitioned to form 4 small rooms for bed spaces, a shared kitchen and toilet/shower room.

In each bedroom there were 3 to 4 single beds/bunk beds crammed together, causing severe overcrowding. One of the bedrooms was situated off the kitchen area, creating no means of escape in the event of a fire. None of the rooms had any fixed heating or ventilation and all had evidence of damp on walls.

Electrical wiring was exposed and excessive use of extension leads was apparent, with wire flex running across and under the main entrance door leading onto the public footpath. The entrance to the outbuilding was a wood panel door which led to a hallway that was exposed to excessive cold.

There was no adequate security to the premises. The outbuilding had serious category 1 hazards; no fire protection; no planning permission and did not comply with building or fire safety regulations.

Case study 2

Four adjoining properties, in a terrace within a residential area, were found to be houses in multiple occupation let on a 'per bed' basis. Almost 50 people were living in the four properties with some of the bedrooms having three bunk beds occupied at the time of the inspection.

Conditions in the four properties were very poor. All were overcrowded (in terms of

room size (at least two to a room), numbers of rooms and sanitary and kitchen facilities available. Three of the four had no form of central heating, the boilers having been removed and there was no hot water.

Occupants were relying on electric heaters plugged into the over-loaded electric sockets, some of which were scorched, along with fridges, toasters, phone chargers and in many cases, chargers for power tools for use during the working day. The resulting increased fire and tripping hazards were compounded by the lack of any fire precautions or working detection systems.

Kitchen and bathroom facilities were woeful: defective, unsanitary and over-used.

Timescale

10. The measures will be introduced on a phased basis. We are currently planning to bring into force the provisions on civil penalties and extended rent repayment orders on 6 April 2017 and to bring into force the database, banning order provisions and management orders on 1 October 2017. However, these dates are subject to change.

Consultation

11. The online consultation period will run from 13 December 2016 to 10 February 2017. We welcome comments on these proposals and a list of questions is at Annex A. If you wish to submit a response to the questions, please do so using the following link to Survey Monkey - <https://www.surveymonkey.co.uk/r/L7TJRDW>. Survey Monkey will close at 23:59 on 10 February 2017. If you are unable to access the online survey, please email your response to: prsreview@communities.gsi.gov.uk. If you do not have internet access, please send your response to DCLG, Housing Standards Team, Better Rented & Leasehold Division, 2 Marsham St, London, SW1P 4DF. Please only use one method of responding. We regret that late responses will not be considered.

Legislative framework - banning order offences

12. The Act introduced a power enabling a First-tier Tribunal, following an application by a local authority, to ban a person or body corporate³ who has committed a banning order offence from:
- a. letting housing in England;
 - b. engaging in English letting agency work;
 - c. engaging in English property management work;
 - d. doing two or more of those things; or
 - e. being involved in any body corporate that carries out an activity that the person is banned by the order from carrying out.
13. Section 14 of the Act provides that 'banning order offences' are offences of a description specified in regulations made by the Secretary of State. Those regulations may, in particular, describe an offence by reference to the:
- a. nature of the offence;
 - b. characteristics of the offender;
 - c. place where the offence is committed;
 - d. circumstances in which it is committed;
 - e. court sentencing a person for the offence, or
 - f. sentence imposed.

³ See sections 14 – 16 of the Housing and Planning Act 2016

14. The regulations are subject to the affirmative procedure. This means that the regulations require the formal approval of both Houses of Parliament. The definition of a banning order offence will **not** be retrospective and will only relate to offences that are committed after the regulations have come into force.

Process for obtaining a banning order

15. The process for obtaining a banning order is described in the Act and is also set out here. If a person or body corporate is convicted of an offence which meets the definition of a banning order offence, the local housing authority may serve them with a notice stating that the authority intends to apply to the First-tier Tribunal for a banning order to be made against them. In deciding whether to apply for a banning order, the local authority may require a person to provide certain specified information (e.g. information about the properties that a person rents out) within a reasonable period of time. It is an offence to fail to provide such information or to provide false or misleading information. The local authority will need to serve any notice of its intention to apply for a banning order within 6 months of the date on which the person was convicted of a banning order offence. The Notice must explain why the banning order is being sought, state the length of the proposed ban and invite the person to make representations within a period of at least 28 days.

16. The local authority will need to consider any representations and wait until the notice period has ended before applying for a banning order. Following an application by the local authority, the First-tier Tribunal will consider the following factors before deciding whether to make a banning order:

- The seriousness of the offence for which the person has been convicted;
- Any previous convictions that the person has for a banning order offence (provided that the offence was committed after the coming into force of the banning order provisions in Part 2, chapter 2 of the Act);
- Whether the person is or has at any time been included in the database of rogue landlords and property agents; and
- The likely effect of the banning order on the person and anyone else who may be affected by the order.

17. If the First-tier Tribunal decides to make a banning order, it must specify the length of the ban, which must be at least 12 months. A banning order may contain exceptions to a ban for some or all of the period to which the ban relates, for example, to deal with cases where there are existing tenancies or to allow a property agent to wind down their business. Any exceptions may be subject to conditions (e.g. that a particular property can continue to be rented out for a period of time if certain works are carried

out to it). A banning order may include provisions banning the persons against whom it is made from being involved in any body corporate that carries out an activity that the person is banned by the order from carrying out. It will be an offence to breach a banning order.

18. A person against whom a banning order is made may apply to the First-tier Tribunal for an order revoking or varying the banning order. The First-tier Tribunal must revoke a banning order if it was made on the basis of one or more convictions, all of which were subsequently overturned on appeal. The First-tier Tribunal may vary or revoke a banning order where the banning order was made on the basis of one or more convictions and some of them have been overturned on appeal, or the banning order was made on the basis of one or more convictions that have become spent⁴.
19. The power to vary a banning order in this way may be used to add new exceptions to a ban or to vary the banned activities, the length of a ban or existing exceptions to a ban. Following the making of a banning order, the local authority can make an interim or final management order enabling it to take over the management of the property. The local authority will be permitted to retain all of the rental income it receives under any such management order, to use for housing purposes. Section 27 of the Act sets out a range of prohibitions on the disposal of land and property owned by a person who is subject to a banning order. The purpose of the prohibitions is to prevent such a person from avoiding the impact of a banning order, by transferring their property to a family member or business associate.

Definition of banning order offences

20. The Government published a discussion document in August last year (*Tackling rogue landlords and improving the private rented sector*⁵) and set out the offences that we were minded to regard as being banning order offences. There was strong support for the suggested list with 88% of respondents in favour. In view of this high level of support, we propose that the offences listed in that document should be the starting point for further development of a list of banning order offences.

⁴ "Spent" in relation to a conviction means spent for the purposes of the Rehabilitation of Offenders Act 1974.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450862/Discussion_paper_FL_NAL.pdf

Proposed banning order offences

21. The following paragraphs (21 – 27) describe the range of offences which it is proposed would constitute banning order offences for the purposes of the Housing and Planning Act 2016

A. Relevant housing offences

B. Immigration offences

C. Serious criminal offences

D. Other criminal offences

Proposed banning order offences (*relevant housing offences*):

A. An offender has been convicted of a ‘relevant housing offence’, (regardless of whether that was in the Crown Court or Magistrates Court). For the majority of landlords or property agents convicted of a banning order offence, it is very likely that the offence will be in relation to the condition and/or management of the properties that they are renting out. Therefore, it is very important to ensure that a banning order is a potential sanction following conviction for a relevant housing offence. Initially, it was proposed that someone would have to be found guilty of at least two relevant housing offences, but the Act was amended during its passage through Parliament. As a result, conviction of a single ‘relevant housing offence’ would be sufficient for someone to be put on the database and, if the local authority considered it appropriate and obtained a banning order, banned from being involved in letting out or managing property.

22. We want to specify a range of housing offences that should also be regarded as banning order offences. In our discussion document published last year, it was suggested that a ‘relevant housing offence’ could include a conviction for any of the following offences:

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977 or;
- Any of the following offences under the Housing Act 2004⁶:
 - Failure to comply with an Improvement Notice (section 30);

⁶ Specifically, any offence involving a breach of sections 30, 72, 95, 139 or 234.

- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Allowing a HMO that is not subject to licensing to become overcrowded (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234).

23. In addition to those offences, we propose that a ‘relevant housing offence’ should include the following:

- An offence under section 36 of the Gas Safety (Installation and Use) Regulations 1998;
- Failure to comply with a Prohibition or Emergency Prohibition Order under sections 20, 21 and 43 of the Housing Act 2004;
- An offence under section 32 of the Regulatory Reform (Fire Safety) Order 2005 provided it relates to a property that is being rented out or managed by a landlord or property agent.

Relevant housing offences - taking the sentence into account

24. In our view, it would be disproportionate to treat someone as having committed a banning order offence where they have been found guilty of a relevant housing offence but received a very minimal sanction. We propose therefore that an offence should not be treated as a ‘banning order’ offence where the offender has received an absolute or conditional discharge.

Proposed banning order offences (*Immigration offences*):

- B. Letting to someone disqualified from renting because of their immigration status, resulting in an offence under Part 3 of the Immigration Act 2014⁷.

⁷ As amended by the Immigration Act 2016. The relevant provisions came into force on 1 December 2016.

Proposed banning order offences (*serious criminal offences*)

C. Any offence, whether committed by an individual or a body corporate, for which they have been sentenced in the Crown Court (regardless of whether they were originally convicted in the Crown Court or Magistrates Court) involving:

- fraud under the Fraud Act 2006;
 - the production, possession or supply of all classes of illegal drugs (including poisons) and/or managing premises where drug dealing and/or production takes place; or
 - any offence under Schedule 15 of the Criminal Justice Act 2003 (specified violent and sexual offences).
- The offence must have been committed:
 - at any residential premises⁸ in England, or in the local area⁹ of those premises; or
 - in relation to such residential premises.
 - In either case, the offender, or a person associated¹⁰ with him, must have owned or been involved in the management of the residential premises concerned at the time the offence was committed;
 - In addition, neither the offender nor the associated person must occupy the residential premises as their main residence and the offence must relate to the occupier of the residential premises.

25. It will be for local authorities to decide whether they should apply for a banning order against a landlord or property agent convicted of such offences. However, these are serious criminal offences for which an offender may well receive a lengthy custodial sentence upon conviction. Therefore, it is likely that local authorities will want to consider seeking a banning order against a landlord or property agent convicted of any of those offences.

26. Examples of the types of offences described at paragraph 24 (C) could include (but are not limited to):

⁸ For the purposes of this consultation, “residential premises” has the same meaning as “housing” as defined at section 56 of the Housing and Planning Act 2016.

⁹ For the purposes of this consultation, “local area” means within a 5 mile radius of the premises.

¹⁰ Associated person is defined at section 178 of the Housing Act 1996

- A landlord using violence, or threatening violence, against one of the occupiers. This does not necessarily need to have been committed in or very near the property. It could also have occurred in the local¹¹ area;
- A property agent, including a body corporate, committing fraud in relation to the occupier of a property, for example, by making fraudulent applications for housing benefit, or committing identity theft;
- A person associated with the landlord or property agent using the property to cultivate cannabis (provided that the associated person did not live at the residential premises).

Proposed banning order offences (*other criminal offences*):

D. Any offence, whether committed by an individual or a body corporate, for which the offender has been sentenced in the Crown Court (regardless of whether they were originally convicted in the Crown Court or Magistrates Court). The offence must have been committed against, or in conjunction with, any person who was residing at the property owned by the offender, other than a person associated with the offender.

27. Sentencing in the Crown Court is generally reserved for more serious offences. As such, we think it is appropriate to regard any offence described above, and for which the offender was sentenced in the Crown Court, to be regarded as being banning order offences. Examples of the types of offences described at paragraph 24 (D) could include, but are not limited to:

- Theft or criminal damage committed by the property agent (including a body corporate);
- A landlord colluding with the occupier to commit a criminal offence, for example, tax evasion or the supply of illegal drugs.

¹¹ As defined above

Link between an offence and the property

28. The offences proposed in the discussion document are ones that could be linked to a property owned or rented out by a landlord or property agent. In our opinion, this approach is sensible and proportionate and was strongly supported by respondents to the discussion document. Therefore, we intend to continue to maintain a link between the property and the offence when determining what should constitute a 'banning order offence'.

Developing links with other enforcement agencies

29. While the list of proposed banning order offences is potentially quite wide, it is recognised that in the vast majority of cases offences recorded on the database will be offences for which the local authority has secured a successful conviction itself in the courts. This will be frequently because the local authority will simply not be aware of prosecutions carried out by other organisations. Nonetheless, local authorities are encouraged to develop links with the local police and other relevant bodies as this may help them become aware of other offences committed by landlords and property agents which, due to their circumstances, may constitute 'banning order offences' and could, therefore, be recorded in the database.

The database of rogue landlords and property agents

30. In addition to banning orders, section 28 of the Act also provides for a national database of rogue landlords and property agents to be set up and maintained. Where someone has been convicted of a banning order offence and has subsequently had a banning order made against them, the local authority that sought the order **must** include the person's details on the database (section 29).

31. Where a local authority applies for a banning order against a body corporate that has been convicted of a banning order offence, it **must** also apply for a banning order against any officer¹² of the organisation who has been convicted of the same offence in respect of the same conduct.

¹² "Officer" is defined at section 56 of the Housing and Planning Act 2016

32. Where a person has been convicted of a banning order offence but has not had a banning order made against them, the local authority **may** decide to include that person's details on the database.
33. In addition, section 30 of the Act specifies that a local housing authority **may** make an entry in the database in respect of any person who has received at least two financial penalties in the previous 12 months for committing a banning order offence.
34. There may be other scenarios where, for example, two or more local authorities make a joint application for a banning order, with one local authority taking the lead. Other possibilities include a situation where a local authority includes someone on the database following their conviction for a banning order offence and, then, where the person is subsequently convicted of a further offence in a different part of the country, the local authority where the subsequent offence was committed, makes an application for a banning order.
35. Guidance will be issued in due course setting out the factors that a local authority must have regard to when considering whether to include someone's details on the database. The database is currently being developed and we expect to bring into force the database and banning order provisions on 1 October 2017. The database will be accessible to DCLG and local housing authorities and will enable local authorities to keep track of, and focus their enforcement activity against, those landlords and property agents on the database. In addition, HMRC will be able to access information on the database.

Next steps

36. Thank you for taking the time to read this consultation paper and submit your response. All responses will be carefully considered and the Government will publish a response in due course which will include a description of the offences that it has been decided should constitute banning order offences.
37. We are planning to lay regulations in Parliament in 2017. Subject to parliamentary approval, it is planned that the regulations would come into force on 1 October 2017. Guidance for local authorities on the database and banning orders will be published in due course.

QUESTIONS

A. Relevant housing offences

Question 1

Question	Yes/No
Do you agree that the relevant housing offences described in this document should be regarded as banning order offences unless the offender received an absolute or conditional discharge?	

Question 2

Question	Yes/No
Do you think any of the relevant housing offences described in this document should NOT be regarded as banning order offences?	

Question 3

Question	Answer
If you answered YES to the previous question, please specify and give reasons	

Question 4

Question	Yes/No
Do you think any other type of offences for which a local authority has powers to prosecute should be treated as banning order offences?	

Question 5

Question	Answer
If you answered YES to the previous question, please specify which other offences should be treated as banning order offences and give reasons	

B. Immigration offences

Question 6

Question	Yes/No
Do you agree that letting to someone disqualified from renting because of their immigration status, resulting in an offence under Part 3 of the Immigration Act, should be	

regarded as a banning order offence?	
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C. Serious criminal offences

Question 7

Question	Yes/No
Do you agree that any offence involving fraud under the Fraud Act 2006, and for which the offender was sentenced in the Crown Court, should be regarded as a banning order offence?	

Question 8

Question	Yes/No
Do you agree that an offence for which the offender was sentenced in the Crown Court and which involves the production, possession or supply of all classes of illegal drugs (including poisons) and/or managing premises where drug dealing and/or production takes place, should be regarded as a banning order offence?	

Question 9

Question	Yes/No
Do you agree that any offence under Schedule 15 of the Criminal Justice Act 2003 (specified violent and sexual offences) should be regarded as a banning order offence?	

Question 10

Question	Yes/No
Do you think any of the serious criminal offences described in this document should <u>not</u> be regarded as banning offences?	

Question 11

Question	Answer
If you answered YES to the previous question, please specify which offences should not be regarded as banning order offences and give reasons	

D. Other criminal offences

Question 12

Question	Yes/No
Do you agree that an offence for which the offender was sentenced in the Crown Court should be regarded as a banning order offence where it was committed against, or in conjunction with, any person who was residing at the	

property owned by the offender, other than a person associated with the offender?	
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Question 13

Question	Yes/No
Do you agree that a link should be maintained between the property and the offence when determining what should constitute a banning order offence?	

Question 14

Question	Answer
Do you have any further comments about banning order offences?	

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).