

## Banning Order Policy

### **Banning Order Policy**

**This policy explains how the Council will use the powers under the Housing and Planning Act 2016 to ban landlords from renting out property or engaging in property management work in the private rented sector.**

#### **1.0 Introduction**

- 1.1 Chapter 2 of the Housing and Planning Act 2016 enables Local Authorities to apply to the First-Tier Tribunal to impose a banning order on a landlord following conviction for a banning order offence<sup>1</sup>. To make use of banning order powers the Council is expected to have its own policy in place which sets out when to pursue a banning order and to decide support the option it wishes to pursue to deal with particular issues on a case-by-case basis.
- 1.2 This policy takes account of the non-statutory guidance issued by the Government<sup>2</sup> which makes clear that banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard. It also confirms the Government's expectation that banning orders will be used for the most serious offenders.
- 1.3 In this policy the term 'landlords' also includes property agents, letting agents and property managers defined under Chapter 6 of Part 2 of the Housing and Planning Act 2016.

#### **2.0 Effect of a banning order**

- 2.1 A landlord subject to a banning order is prevented from acting as below in England;
  - renting out residential accommodation
  - engaging in letting agency work
  - engaging in property management work
  - A banning order prohibits a person from holding a HMO licence or a licence granted under a selective licensing scheme. Local authorities must revoke a licence when it has been granted to a person who subsequently becomes subject a banning order.

<sup>1</sup> [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2017](#)

<sup>2</sup> [Guidance for Local Authorities for Banning Order Offences under the Housing and Planning Act 2016](#)

- 2.2 It is a Criminal Offence to breach a banning order. A person found guilty of such a breach is liable to a penalty of imprisonment for a period not exceeding 51 weeks or to a fine or to both.
- 2.3 A local authority must put anyone subject to a banning order on the national database of rogue landlords and agents.

### **3.0 A banning order offence**

- 3.1 A 'banning order offence' is a conviction for any of the following offences on or after 6 April 2018:

<u>Protection from Eviction Act 1977(1)</u>	Section 1(2), (3) and (3A)	Unlawful eviction and harassment of occupier
<u>Housing Act 2004(3)</u>	Section 30(1)	Failing to comply with an improvement notice
	Section 32(1)	Failing to comply with a prohibition order
	Section 72(1), (2) and (3)	Offences in relation to licensing of Houses in Multiple Occupation
	Section 95(1) and (2)	Offences in relation to licensing of houses under Part 3
	Section 139(7)	Contravention of an overcrowding notice
	Section 234(3)	Failure to comply with management regulations in respect of Houses in Multiple Occupation
	Section 238(1)	False or misleading information
<u>Regulatory Reform (Fire Safety) Order 2005(4)</u>	Article 32(1) and (2)	Fire safety offences
<u>Health and Safety at Work etc. Act 1974(5)</u>	Section 33(1)(c) where a person contravenes any requirement specified in regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(6)	Gas safety offences - duties on landlords
<u>Immigration Act 2014(7)</u>	Section 33A(1) and (10)	Residential tenancies – landlord offences
	Section 33B(2) and (4)	Residential tenancies – agent offences

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<u>Fraud Act 2006(8)</u>	Section 1(1)	Fraud
	Section 6(1)	Possession etc. of articles for use in frauds
	Section 7(1)	Making or supplying articles for use in frauds
	Section 9(1)	Participating in fraudulent business carried on by sole trader etc.
	Section 11(1)	Obtaining services dishonestly
	Section 12(2)	Liability of company officers for offences by company
Criminal Justice Act 2003(9)	Schedule 15	Specified violent and sexual offences
Misuse of Drugs Act 1971(10)	Section 8	Occupiers etc. of premises to be punishable for permitting certain activities to take place there
	Section 9	Prohibition of certain activities relating to opium
	Section 9A(1) and (3)	Prohibition of supply etc. of articles for administering or preparing controlled drugs
	Section 18(1), (2), (3) and (4)	Miscellaneous offences
	Section 19	Attempts etc. to commit offences
	Section 20	Assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law
	Section 21	Offences by corporations
<u>Proceeds of Crime Act 2002(11)</u>	Section 327	Concealing etc. criminal property
	Section 328	Arrangements
	Section 329	Acquisition, use and possession

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<u>Anti-social Behaviour, Crime and Policing Act 2014(13)</u>	Section 30	Breach of criminal behaviour order
	Section 48	Failure to comply with a community protection notice

- 3.2 If a person has committed a serious criminal offence they must have been sentenced in the Crown court to be regarded as a banning order offence.
- 3.3 Spent Convictions should not be taken into account.
- 3.4 If a landlord receives an absolute/conditional discharge for a relevant housing offence then that offence cannot be regarded as a banning order offence.
- 3.5 Where a fixed penalty notice or a civil penalty have been applied in lieu of a prosecution, a banning order cannot be considered.

#### **4.0 Length of a banning order**

- 4.1 The Council is not able to determine the length of a banning order but can make a recommendation to the First-tier Tribunal as to the length of the banning order.
- 4.2 A banning order must be for a minimum period of 12 months.
- 4.3 There is no statutory maximum period.

#### **5.0 Decision making**

- 5.1 As recommended by the Government's guidance, the Council will consider the following factors when deciding whether to apply for a banning order and when recommending the length of any banning order:

- The Seriousness of the offence
- Previous convictions/rogue landlord database
- Harm caused to the tenant
- Punishment of the offender
- Deterrence to the offender from repeating the offence
- Deterrence to others from committing similar offences

#### **5.2 The Seriousness of the Offence**

All banning order offences are serious. When considering whether to apply for a banning order the local housing authority should consider the sentence imposed by the Court in respect of the banning order offence itself.

#### **5.3 Previous convictions/rogue landlord database**

A local authority should check the rogue landlord database to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. 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.

- 5.4 The Council will also consider the likely effect of the banning order on the person and anyone else that may be affected by the order and will consider the following:

<sup>1</sup> [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2017](#)

<sup>2</sup> [Guidance for Local Authorities for Banning Order Offences under the Housing and Planning Act 2016](#)

- **The harm caused to the tenant**

This is a very important factor when determining whether to apply for a banning order. 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).

- **Punishment of the offender**

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.

- **Deterring the offender from repeating the offence**

The ultimate goal is to prevent any further offending. 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 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

- **Deterring others from committing similar offences**

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.

- 5.5 Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Assistant Director, Community Safety and Street Scene who will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a banning order, including the recommended duration of the ban.

## **6.0 Banning Order application process**

- 6.1 The process for applying for a banning order is set out in section 15 of the Housing and Planning Act 2016.
- 6.2 Prior to making an application the Council must give the landlord a notice of its proposal to apply for a banning order. This is called a 'notice of intent'.
- 6.3 The notice of intent must be served within 6 months of the landlord being convicted of the offence.
- 6.4 The landlord has a right to make representations to the Council during the notice period. A landlord must be given a minimum of 28 days from the date of the notice to make representations.
- 6.5 The Council must consider any representations made by the landlord and will not apply for a banning order until the 28 day period has expired.

<sup>1</sup> [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2017](#)

<sup>2</sup> [Guidance for Local Authorities for Banning Order Offences under the Housing and Planning Act 2016](#)

6.6 If, after the 28 days has expired, the Council decides to proceed with a banning order then they must make their application to the First-Tier Tribunal.

## **7.0 Requests for Information**

7.1 Section 19 of the Housing and Planning Act 2016 provides that a local authority (the Council) can require a landlord to provide information for the purpose of enabling the Council to decide whether to apply for a banning order. This can include requiring the landlord to provide information on all of the properties that they own.

7.2 It is an offence to ignore a request for further information unless the landlord can provide a reasonable excuse.

7.3 It is also an offence to provide false and misleading information

7.4 Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine

## **8.0 Publicity following a banning order**

8.1 Subject to the Government's guidance and guidance provided by the Ministry of Justice details of all banning order offences will be published and held on a national register. Also subject to legal advice, the Council will consider publishing details of successful banning orders including the names of individual landlords/ any business (managing or lettings agency).

## **9.0 Enforcement**

9.1 The impact of making a banning order is limited to England and prevents a banned individual from:

- renting out residential accommodation
- engaging in letting agency work
- engaging in property management work
- A banning order prohibits a person from holding a HMO licence or a licence granted under a selective licensing scheme. Local authorities must revoke a licence when it has been granted to a person who subsequently becomes subject to a banning order.

9.2 A landlord is prevented from transferring the property to certain persons whilst the banning order is in force. A prohibited person is:

- a person associated with the landlord (including family members, spouses and civil partners)
- a business partner of the landlord;
- a person associated with the business partner of the landlord;
- a business partner of a person associated with the landlord;
- a body corporate of which the landlord or a person mentioned above is an officer;
- a body corporate in which the landlord has a shareholding or other financial interest;
- in the case where a landlord is a body corporate, any body corporate that has an officer in common with the landlord. Where a landlord does dispose of the property to a prohibited person without the consent of the First-tier Tribunal, that disposal will be regarded as void.

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9.3 A banning order does not invalidate any tenancy agreement held by occupiers in the property, regardless of whether the agreement was issued before or after the banning order was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement. There may be circumstances where, following a banning order, the management of the property is taken over by the local housing authority (see Section 11). In such circumstances the tenant would pay their rent to the local housing authority.

## **10.0 Management Orders**

- 10.1 A management order enables a local housing authority to take over the management of a privately rented property in place of the landlord. The aim is to ensure that the health and safety of occupiers of the property and persons living or owning property nearby are protected, and also to ensure that a property is still available to rent, particularly in areas of high demand.
- 10.2 An interim management order can last for a period of up to 12 months from the date on which it is made. A local housing authority could make a final management order if they are not satisfied that the health and safety of occupiers of the property at the end of the 12 months. A final management order can last for a period of up to five years. The duties of a local housing authority are similar to those under an interim management order, although the local housing authority will also have the ability to create certain tenancies without the immediate consent of the landlord in certain scenarios
- 10.3 Part 4 of the Housing Act 2004 enables local housing authorities to take over the management of privately rented property through a management order in certain circumstances (where a privately rented property is unlicensed/no suitable licence holder can be found). Section 26 and Schedule 3 of the Housing and Planning Act 2016 provides that a local housing authority can also make a management order in circumstances where a banning order has been made and where a privately rented property is being let in breach of a banning order.
- 10.4 A management order places a number of obligations on a local housing authority in respect of the management of the property. These are outlined in 11.4 below.
- 10.5 When an interim management order comes into force a local housing authority must ensure the health and safety of occupiers of the property and persons living or owning property nearby are protected and that the property is properly managed. There are a number of rights which the local housing authority will have in respect of the property including:
- A right to possession of the property (subject to the rights of existing occupiers of the property).
  - Having all the rights a landlord would have had including collecting rent, setting rent levels, making repairs and managing tenancies.
  - A right to grant new tenancies or licences (subject to the consent of the landlord). A local housing authority would not be able to sell the property.
- 10.6 Following the management order being made, the local housing authority will receive any rent paid by occupiers of the property, rather than the landlord. A local housing authority may use the rental income to help cover its costs in managing the property.

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In addition, where an interim management order is in place following a banning order, they may also keep any surplus acquired during this period. Regulations specifying how any surplus is to be used will be made in due course.

- 10.7 A management order does not place a duty on the local housing authority to pay mortgage instalments. It is the responsibility of the owner of the property to make any payments on any loans that are secured on the property. The management order does not affect any other legal interest in the property such as a mortgage. For example, it does not prevent the mortgage company from exercising any of its rights in respect of the property, including re-possession.

## 11.0 Appeals

- 11.1 A landlord may make representations against a 'notice of intent' prior to a banning order coming into force. This is set out in section 15 of the Housing and Planning Act 2016 (See Q4.5 of the Banning Order Guidance)
- 11.2 A landlord may appeal to the Upper Tribunal against the decision of the First-tier Tribunal to make the banning order under Section 53 of the Housing and Planning Act 2016. An appeal cannot be made unless permission is granted by either the First-tier Tribunal or the Upper Tribunal.
- 11.3 A landlord may also apply to the First-tier Tribunal to revoke or vary a banning order in certain circumstances. (See banning Order Guidance Q.5.8)
- 11.4 A landlord has the right to appeal to the First-tier Tribunal against a decision to impose a management order or a final management order. An appeal must be made within 28 days of the date the management order or final management order was made.

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