



Department for
Communities and
Local Government

Tackling rogue landlords and improving the private rental sector

Government's Response



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Introduction

The private rented sector is an important part of our housing market, housing 4.4 million households in England. The quality of privately rented housing has improved rapidly over the past decade with surveys showing that 84% of private renters are satisfied with their accommodation, and staying in their homes for an average of 3.5 years.

The government wants to support good landlords who provide decent well maintained homes, and avoid further regulation on them. Unnecessary regulation increases costs and red tape for landlords, and can stifle investment. It also pushes up rents and reduces the choice for tenants.

However, a small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords so that they either improve the service they provide or leave the sector.

The Government published a technical discussion paper on 3 August, *Tackling rogue landlords and improving the private rental sector*. The document invited views on a range of potential measures to crack down on the small minority of criminal landlords who rent out unsafe and overcrowded properties, and exploit their tenants. The paper also invited views on how best to address the problem of abandonment, where a tenant simply disappears, leaving the landlord uncertain over their right to repossess.

We received 615 responses from a range of organisations and individuals across the sector, including landlord associations, housing charities, local authorities, as well as individual landlords and tenants. This document summarises the responses to the key questions raised in the technical discussion paper and describes what will happen next.

Section 1

Tackling the worst offenders

Tenancy Deposit Protection data

The rapid growth of the private rented sector in recent years can make it difficult for local authorities to identify the size and location of rented property in their area, thereby making it more difficult to plan ahead for the types of services that residents are likely to need in the future. One way of helping to resolve this would be to make Tenancy Deposit Protection data available to local authorities. This would not have any impact on the vast majority of landlords who provide a good service and rent out decent accommodation. However, it will make it easier for local authorities to identify and tackle rogue landlords in their area. Views were invited in the discussion paper on whether this data should be made available to local authorities.

| Question | Yes (%) | No (%) |
|--|---------|--------|
| Do you agree that data held by the Tenancy Deposit Protection schemes should be made available to local authorities? | 84 | 16 |

Database of rogue landlords and letting agents

The discussion paper introduced the possibility of a database, or blacklist, of rogue landlords and letting agents. Being on the database would not in itself be an offence, however the database would enable local authorities to keep track of landlords/letting agents who have been convicted of certain offences and help focus their enforcement action where it is most needed. The database would only be accessible by local housing authorities and central Government. This is because the purpose of the database is to help local housing authorities keep track of known rogue landlords and letting agents and focus their enforcement action.

Banning Orders

In addition to a database, views were also invited on the merits of introducing banning orders for particularly prolific or repeat offenders. The effect of a banning order would be that landlords or letting agents would be banned for a specified period of time from being involved in the letting or management of residential property with strong penalties for those who breach such an order.

The discussion paper suggested that a landlord/letting agent could be placed on the database and/or issued with a banning order for the following reasons:

- offender has been convicted (or sentenced) in the Crown Court for any offence involving fraud, violence, drugs or sexual assault which was committed at any

residential premises which the offender (or a person associated with him) owned or was involved in the management of and which neither he, nor the associated person, occupied as their main residence;

- offender has been convicted (or sentenced) in the Crown Court for any offence that was committed against or in conjunction with any person who was residing at the residential premises owned by the offender (other than a person associated with him);
- where an offender has been found guilty on two or more occasions of a relevant housing offence (whether in the magistrates' court or in the Crown Court).

Responses to key questions on a possible database of rogue landlords/letting agents and the introduction of banning orders for serious or repeat offenders were:

| Question | Yes (%) | No (%) |
|--|--------------------|-------------------|
| Do you agree that there should be a blacklist of persistent rogue landlords and letting agents? | 92 | 8 |
| Do you agree with the proposed reasons for placing someone on a blacklist and issuing a ban? | 88 | 12 |
| Do you think it should be at the court's discretion as to whether to include an offender on the blacklist or should this be mandatory? | 38 (discretion) | 62 (mandatory) |
| Should local authorities have the right to place the offender on the blacklist on any of the above grounds? | 69 | 31 |
| Do you agree with the penalties proposed for breaching a banning order? | 85 | 15 |

Fit and proper person test

When deciding whether to issue a licence for a licensable property, such as a large House in Multiple Occupation (HMO), a local authority should be satisfied that the licence holder is a 'fit and proper' person. This test was introduced by the Housing Act 2004 and the purpose of it is to ensure that those responsible for operating the licence and managing the property are of good character and integrity, and are not a risk to the welfare or safety of persons occupying the property. It was suggested that the following additional criteria could be included in the test:

- Undertaking a standard Disclosure and Barring check on each landlord. This would provide information about all previous criminal convictions that are required to be disclosed and the information could be taken into account by the local authority when considering the application;

- Whether the landlord has previously received a civil penalty because they failed to carry out a Right to Rent check;
- Whether the landlord is an illegal immigrant;
- Whether the landlord is bankrupt or insolvent;
- Requiring the landlord or their managing agent to have an office in the UK.

Responses to key questions on this issue were:

| Question | Yes (%) | No (%) |
|--|-----------------------------|-----------------------|
| Is the revised fit and proper person test sufficiently robust or any elements of it too stringent? | 82 (Sufficiently robust) | 18 (Too stringent) |
| Should other criteria be added? | 45 | 57 |

Section 2

Rent Repayment Orders and Civil Penalties

Rent Repayment Orders

Currently, under the Housing Act 2004, local authorities and tenants are able to apply for a Rent Repayment Order where a landlord fails to obtain a license for a licensable property. These Orders have been particularly effective because they provide a financial incentive for landlords to comply with their responsibilities. The discussion paper noted that Government was considering extending Rent Repayment Orders to cover other scenarios, including:

- Where a landlord has been convicted of illegally evicting a tenant; and
- Where a landlord has been convicted of failing to comply with a statutory notice, such as an Improvement Notice or Prohibition Order.

Responses to key questions on this issue were:

| Question | Yes (%) | No (%) |
|--|---------|--------|
| Should we introduce Rent Repayment Orders for situations where a tenant has been illegally evicted? | 85 | 15 |
| Should we introduce Rent Repayment Orders where a landlord has failed to comply with a statutory notice? | 88 | 12 |

Civil Penalties

Prosecution can be time consuming and generally results in criminal landlords receiving fines of approximately £1,500. Many such landlords view these fines as simply the “cost of doing business”. The discussion document invited views on the possibility of giving powers to local authorities to impose a civil penalty of up to £5,000 for certain breaches of housing legislation. This could help reduce costs and the civil penalty would be retained by the local authority and reused for housing purposes. It was suggested that civil penalties could be introduced for the following contraventions:

- overcrowded property;
- breaches of licensing rules;
- hazardous disrepair;
- poor sanitation;

- electrical faults;
- damp; and
- infestation of vermin.

Responses to key questions on this issue were:

| Question | Yes (%) | No (%) |
|--|----------------|---------------|
| Do you agree with the proposed contraventions? | 78 | 21 |
| Are they [civil penalties] likely to be a genuine deterrent? | 80 | 20 |

Section 3

Abandonment

A property is abandoned when the tenant simply disappears. Landlords will suffer from rent arrears as a result and the property might be vulnerable to vandalism. In such circumstances, the only recourse currently open to landlords is to seek a possession order from the courts, a process which is costly and time consuming.

The discussion document set out proposals for a new procedure for dealing with abandoned properties without the need to go to court, while ensuring that adequate safeguards were in place to protect tenants. The suggested process as set out in the discussion document was as follows:

- A landlord would have to give the tenant a written warning notice stating the property is believed to be abandoned;
- The tenant would have four weeks to inform the landlord the property has not been abandoned;
- At the end of the four weeks, if the landlord still believed the premises to be abandoned, the contract can be brought to an end;
- Where a lodger occupied the property, in addition to the tenant, or any other person does so under a sub-occupation contract, the landlord must provide a copy of the notice to that person;
- During the warning period of four weeks, it is the responsibility of the landlord to make such inquiries as are necessary in order to be satisfied the property is abandoned;
- There would be a period of 6 months after the property had been repossessed during which the former tenant could make an application to the courts if they believe that they were wrongly deemed to have abandoned the property and/or the landlord had acted unfairly. If the court found in the tenant's favour, they would be able to award an appropriate amount of damages.

Responses to key questions on this issue were:

| Question | Yes (%) | No (%) |
|---|------------------------|-----------------------|
| How effective would the process described above be in tackling the issue? | 51 (Very effective) | 19 (Not effective) |
| Does the lack of a courts process present too much uncertainty? | 57 | 45 |

Government Response and next steps:

There was very strong support across the sector for the measures proposed in the discussion document to crack down on criminal landlords. Views on the proposals to introduce a procedure for dealing with abandonment were more mixed and concerns were raised that the process could be misused by criminal landlords to harass and illegally evict tenants.

The Government introduced the Housing and Planning Bill in Parliament on 13 October¹. The Bill, which completed 2nd reading on 2 November, covers a wide range of issues, including the following provisions:

- the introduction of a database of landlords and letting agents who have been convicted of certain criminal offences;
- banning landlords and letting agents from renting out property where they have been convicted of particularly serious offences;
- a more stringent 'fit and proper' person test for landlords letting out licensed properties, such as Houses in Multiple Occupation, to help ensure that they have the appropriate skills to manage such properties and do not pose a risk to the health and safety of their tenants;
- enabling local authorities to issue civil penalty notices as an alternative to prosecution for certain breaches of housing legislation, with revenue from penalties to be retained by the local authority;
- extending Rent Repayment Orders to cover situations where a tenant has been illegally evicted, the landlord has breached a banning order or has failed to rectify a serious health and safety hazard in the property. Local authorities would be permitted to retain that money for housing purposes where the rent was paid through Housing Benefit or Universal Credit;
- a data sharing power to require Tenancy Deposit Protection schemes to make available data to local authorities to help them to develop a better picture of the size and scale of the private rented sector in their area and help identify and tackle rogue landlords; and
- a new process for abandoned tenancies which would enable a landlord to recover a property without the need to go to court.

Database of landlords and letting agents convicted of certain offences

Secondary legislation will specify which offences may result in a landlord or letting agent being placed on the Database. It is currently envisaged that someone may be included on the Database where they have been:

- convicted, or sentenced, in the Crown Court for any offence involving: fraud; violence; drugs; or sexual assault;

¹ <http://services.parliament.uk/bills/2015-16/housingandplanning.html>

- convicted of any serious offence committed against or in conjunction with any person who was living at the property owned and rented out by the offender;
- convicted of two or more relevant housing offences.

“Relevant housing offences” will also be defined in secondary legislation. It is envisaged that they will include the following:

- illegally evicting or harassing a residential occupier;
- continuing to let to an illegal immigrant; or
- any offence under the Housing Act 2004.

The minimum period for which someone may be included on the Database will be two years. Local authorities may decide to include someone’s details for a longer period. There will be a right of appeal against being included in the Database. Simply because a landlord or letting agent is on the Database will not mean that they are banned from renting out property – that would require a banning order issued by a First Tier Tribunal. However, it will enable local authorities to keep track of landlords/letting agents that have been convicted of relevant offences and may seek to move to a new area to avoid detection. The Database will only be accessible by central Government and local housing authorities. This is because the purpose of the Database is to help local housing authorities keep track of known rogue landlords and letting agents and focus their enforcement action.

Banning landlords and letting agents from renting out or managing property

Where a landlord or letting agent has been convicted of an offence which could trigger inclusion on the Database, it will be open to a local authority to seek a banning order from a First Tier Tribunal where they believe the offence has been particularly serious and/or where the individual is a repeat or prolific offender. There will be a right of appeal against a banning order. The effect of a banning order will be that the landlord or letting agent is banned from:

- letting housing;
- engaging in letting agency work;
- engaging in property management work; or
- doing two or more of those things.

Penalties for breach of a banning order will include a civil penalty and a Rent Repayment Order. We are currently considering whether there should be additional penalties for breaching a banning order.

More stringent fit and proper person test

Responses to the discussion paper demonstrated that there was a need for a more stringent fit and proper person test for landlords of licensable properties. This will help ensure that the test is rigorous and not open to differing interpretations, enabling local authorities to identify individuals who should be refused a licence. Currently local authorities may refuse a license if the landlord has:

- committed any offence involving fraud, violence, drugs or sexual assault;
- discriminated on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with the carrying on of any business;
- contravened any provision of the law relating to housing or of landlord and tenant law.

In addition, where the property is a HMO, the local authority must consider whether the applicant has breached a condition in any applicable code of practice.

As part of the revised test, local authorities will, in addition to the current requirements, be required to carry out additional checks on applicants for a licence. The exact nature of those additional checks will be set out in secondary legislation. It is envisaged that they will include checking whether the landlord:

- has previous criminal convictions that are required to be disclosed, through a standard Disclosure and Barring Service check;
- has previously received a civil penalty because they failed to carry out a Right to Rent check;
- is an illegal immigrant;
- is bankrupt or insolvent.

Civil Penalty Notices

There was strong support for the suggestion that local authorities should be able to impose a civil penalty for certain breaches of housing legislation. The Government has decided to introduce civil penalties of up to £5,000 with local authorities allowed to reuse the revenue from such penalties for housing purposes. A civil penalty may be imposed as an alternative to prosecution. The legislation will provide that a civil penalty can be imposed for the following offences:

- Failure to comply with an Improvement Notice;
- Licence not obtained for a licensable HMO or failure to comply with licence conditions;
- Licence not obtained for a property subject to selective licensing or failure to comply with licence conditions;
- Allowing a property to be overcrowded (max penalty of £2,000).

Persons upon whom a penalty is imposed will be able to appeal against the penalty to the First Tier Tribunal. The Tribunal will have the power to confirm, cancel or vary the civil penalty.

Extending Rent Repayment Orders

Rent Repayment Orders are currently available where a landlord has failed to obtain a licence for a licensable property. The Government has decided to extend Rent Repayment Orders. In future, they will also be available where:

- a tenant has been illegally evicted or harassed, or the landlord used violence to obtain entry to the property;
- a landlord has failed to comply with a statutory notice, for example, an Improvement Notice; or
- a landlord has breached a banning order.

Local authorities will be required to consider applying to the First Tier Tribunal for a Rent Repayment Order where they become aware a person has been convicted of one of the above offences. Tenants will also be able to make an application for a Rent Repayment Order where they have paid rent to the landlord. The amount of rent that will have to be repaid will be capped at a maximum of 12 months. Where rent has been paid through Housing Benefit/Universal Credit, the money can be retained by the local authority and reused for housing purposes.

Tenancy Deposit Protection Data

There was strong support for the suggestion that Tenancy Deposit Protection data to be made available to local authorities. The Government has decided to legislate to enable this to happen. Local authorities will be able to use the data to carry out their functions under the Housing Act 2004. They include assessing housing conditions, identifying any action which needs to be taken to improve the quality of accommodation in their area, and enforcing housing standards. More generally, the data will help local authorities to more easily identify privately rented housing, so cutting the costs of enforcement. Authorities will be able to combine the data with other datasets (such as council tax data and housing benefit data) to identify properties that are not on the Tenancy Deposit Protection list, and hence those likely to be of interest as potentially belonging to rogue landlords.

Abandonment

Statistics on the actual number of properties that are abandoned each year are not available. However, anecdotal evidence suggests that this is a problem that could be experienced by around 1,500 landlords per year. This results in unnecessary extra costs for landlords which tends to be passed onto other tenants and reduces the short term availability of rented housing. The Government has therefore decided to introduce a procedure which will enable landlords to legally regain possession of abandoned properties without the need to go to court.

Following feedback to the discussion document, safeguards will be put in place to prevent the process being misused. These will include not permitting the abandonment procedure to be used unless the tenant is at least 8 weeks or 2 months in rent arrears (where rent is paid weekly or monthly) and requiring the landlord to have sent the tenant at least two prior warning notices over a period of at least 8 weeks. In addition, where a tenancy has been brought to an end under this procedure, the tenant may apply for an order reinstating the tenancy if they have a good reason for not having replied to the warning notices.

Impact Assessment

The measures outlined above have been assessed in an Impact Assessment which will be made available shortly.