



Department for
Communities and
Local Government

Consultation on Proposed Banning Order Offences under the Housing and Planning Act 2016

Government response



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Introduction

In England, 4.5 million households¹ now rent their home from a private landlord and the sector has more than doubled in size since 2002. Standards in the private rented sector remain below those in the social and owner occupied sectors, but are improving: just 28% of homes are now non-decent compared to 37% in 2010. An increasing number of private tenants (65%) are happy with their tenure, compared to 48% in 2004/05.

The Government will continue to drive up safety and standards in the private rented sector, and drive out the rogue landlords. We are determined to crack down on these landlords and disrupt their business model.

Significant progress has already been made in doing this:

- £12 million provided to a number of local authorities to help tackle acute and complex problems with rogue landlords, including “Beds in Sheds”. More than 70,000 properties have been inspected and over 5,000 landlords are facing further enforcement action or prosecution;
- Introduced protection for tenants against retaliatory eviction where they have a legitimate complaint and stopped landlords from serving an open-ended eviction notice at the start of a tenancy;
- Required landlords to install smoke alarms on every floor of their property, and test them at the start of every tenancy, and to install carbon monoxide alarms in high risk rooms.

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences (came into force on 6 April 2017);
- Database of rogue landlords and property agents convicted of certain offences (scheduled to come into force on 6 April 2018);
- Banning orders for the most serious and prolific offenders (scheduled to come into force on 6 April 2018).

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/595785/2015-16_EHS_Headline_Report.pdf

Consultation on proposed banning order offences under the Housing and Planning Act 2016

The Government published a consultation paper on 13 December 2016 setting out proposals to treat a range of existing criminal offences as banning order offences for the purposes of Part 2 of the Housing and Planning Act 2016.

Where someone is convicted of a banning order offence, their details can be included in the planned database of rogue landlords and property agents. Local authorities will also be able to apply to the First-tier Tribunal for a banning order to be made against them, which has the effect of banning landlords or property agents from operating.

We received 223 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. A breakdown by type of respondent is set out below:

Respondent	Percentage
Local Authority	33.9%
Individual Landlord (i.e. one property)	4.1%
Multiple Landlord (i.e. more than one property)	14.2%
Landlord representative organisation	3.0%
Letting and Management Agent	7.2%
Tenant	17.0%
Tenant Organisation	2.3%
Housing Charity	3.2%
Professional body	3.6%
Other (not specified)	11.5%

This document summarises the responses to the key questions raised in the consultation paper and describes what will happen next.

Section A

Relevant Housing Offences

Respondents were asked whether they agreed that the relevant housing offences described in the consultation document² should be regarded as banning order offences. They were also asked whether any other existing criminal offence, for which the local authority has the power to prosecute, should be treated as banning order offences.

Responses to the key questions are set out below.

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?	84	16

Question	Yes (%)	No (%)
Do you think any of the relevant housing offences described in this document should NOT be regarded as banning order offences?	12	88

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- ² Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977;
 - Any of the following offences under the Housing Act 2004:
 - Failure to comply with an Improvement Notice;
 - Offences in relation to licensing of Houses in Multiple Occupation (HMOs);
 - Offences in relation to licensing of houses under Part 3 of the Act;
 - Allowing a HMO that is not subject to licensing to become overcrowded;
 - Failure to comply with management regulations in respect of HMOs;
 - An offence under the Health and Safety at Work etc. Act 1974 where a person contravenes 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

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?	46	54

There was a high level of support for the proposal to treat the relevant housing offences described in the consultation document as banning order offences. A number of respondents suggested that a range of other offences should also be regarded as banning order offences. Those suggestions were carefully considered and it has been decided to include the following offence to the list of relevant housing offences. Respondents proposed a range of additional offences. In many cases, these were either already covered in the proposals, were not criminal offences, or were not sufficiently serious to warrant a banning order. However, we have included a number of other offences suggested by respondents in the category of “other criminal offences” as described at section D of this response document:

Act	Provision	Description of offence
Housing Act 2004	Section 238	Providing false or misleading information

Section B

Immigration Offences

Respondents were asked whether they agreed that an immigration offence under Part 3 of the Immigration Act 2014 should constitute a banning order offence.

To be liable for a banning order in those circumstances, a landlord would need to have been prosecuted and convicted for letting a property to an illegal immigrant.

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?	68	32

The majority of respondents agreed that it was appropriate for the specified immigration offence to be a banning order offence.

Those respondents who disagreed with this proposal were concerned that making this offence a banning order offence would increase the risk of discrimination against potential tenants. However, the potential impact of the new immigration offences was considered by the Home Office during the passage of the Immigration Act 2014 and they concluded that the impact was considered to be low. By making this offence a banning order offence, we are not introducing a new offence, but simply introducing a new sanction for a pre-existing offence. Where the offence is prosecuted, this would generally be for serious offences that may also be associated with wider exploitation of migrants and so it is appropriate that offenders could be banned.

Section C

Serious Criminal Offences

Respondents were asked whether they agreed that certain serious criminal offences should be regarded as banning order offences provided that the offence was committed at or in relation to a dwelling in England, or in the local area, and the offender owned or was involved in the management of the dwelling.

Responses to the key questions are set out below.

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?	89	11

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?	87	13

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?	90	10

Question	Yes (%)	No (%)
Do you think any of the above serious criminal offences described in this document should not be regarded as banning offences?	18	82

There was a high level of support for the proposals for banning orders for serious criminal offences.

The Government considers that any offence involving fraud, the production, possession or supply of illegal drugs, violent and sexual offences, are appropriate banning order offences subject to there being a link between the property being rented out and/or the tenant/household.

Section D

Other Criminal Offences

Respondents were asked whether they agreed that other offences should be regarded as banning order offences.

Responses to the questions are set out below.

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?	84	16

The majority of respondents agreed that offences for which the offender was sentenced in the Crown Court, where it was committed against, or in conjunction with, any resident of a property owned by the offender, are appropriate offences for banning orders.

Question	Yes	No	It depends
Do you agree that a link should be maintained between the property and the offence when determining what constitutes a banning order offence?	66%	28%	6%

While some respondents were not sure or thought it would depend on circumstances, the majority of respondents agreed that maintaining a link between the property and the offence was important when determining what constitutes a banning order offence. The

Government's view is that it is sensible and proportionate to provide in this category that an offence that has been committed by a landlord is only a banning order offence if there is a link between the offence and the property or tenant. Otherwise, someone could be potentially subject to a banning order following conviction for an offence which had no connection whatsoever to a property they were renting out or to the offender's role as a landlord or property agent.

We have considered whether it is appropriate to put in regulations a general provision to the effect that any criminal offence is a banning order offence where it was committed by the landlord at a property owned by them and against, or in conjunction with, any person living at that property. On balance, we have concluded, in the interests of certainty, that it would be better to specify which particular offences in this category are banning order offences. Therefore, the following offences will also be specified in the regulations as banning order offences. These are offences which are considered to be the most likely to be committed against tenants, taking account of suggestions from respondents to the consultation. This approach makes it clear whether or not an offence is a banning order offence and avoids the risk of inadvertently including other offences which are not relevant.

Act	Provision	Description of offence
Proceeds of Crime Act 2002	Section 327	Concealing criminal property
Proceeds of Crime Act 2002	Section 328	Arrangements
Proceeds of Crime Act 2002	Section 329	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, crime and Policing Act 2014	Section 30	Breach of criminal behaviour 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

Conclusions

Throughout the consultation, there was strong support across the sector for the proposed banning order offences. There was slightly less support for the proposal to make immigration offences banning order offences and the suggestion that there should be a link between the property or tenant and the offence but, in both cases, a clear majority of respondents supported the proposals.

Respondents proposed a range of additional offences. In many cases, these were either already covered in the proposals, were not criminal offences, or were not sufficiently serious to warrant a banning order. However, we have included some of the offences suggested by respondents in the “relevant housing offences” category and the “other criminal offences” category as described above.

Having considered all responses to the consultation, which demonstrated very strong support for our proposals, and in the interest of achieving high standards in the private rented housing sector, and protecting tenants and good landlords, the Government will proceed to make regulations specifying that the offences proposed in the consultation document, together with the further offences referred to in this document, are to be regarded as banning order offences for the purposes of the Housing and Planning Act 2016.

Next steps

Banning orders for rogue landlords and agents are expected to come into force on 6 April 2018.

Guidance for local authorities on banning order offences, and the other new enforcement powers introduced by the Housing and Planning Act 2016 will be published later in 2018.

For more information on the Government's work to improve standards in the private rented sector, visit <https://www.gov.uk/government/policies/rented-housing-sector>