

# Briefing Housing and Planning Bill



# Briefing

## The Housing and Planning Bill

### This briefing only applies in England

The [Housing and Planning Bill](#) received its first reading in Parliament on the 13 October. The Second Reading took place on 2 November and it is expected, that the bill will reach committee during the week beginning 16 November, report stage in early January 2016 and the Lords in late January 2016.

Many of the proposals set out in the Department for Communities and Local Government (DCLG) [discussion paper](#) in August 2015 reappear in the bill and many reflect our [Settled and Safe campaign calls](#).

## Banning orders

We have been calling for a comprehensive list of private landlords: the provisions in the bill to keep a record of 'rogue' landlords and letting agents, accessible by all local authorities, is a move in this direction. Government are proposing the introduction of banning orders that local authorities can seek from the [First Tier Tribunal](#) (FTT), where a private landlord or letting agent has committed a 'banning order offence'. What will constitute a 'banning order offence' is yet to be determined and will be set out in regulations. However, it is probable that 'banning order offences' will be any offence that a person has been convicted of or sentenced for in the [Crown Court](#). The Crown Court deals with serious criminal cases and cases passed from a magistrates' court for trial or sentencing.

Where they have committed a 'banning order offence', landlords and letting agents can be banned from:

- letting housing in England
- engaging in English letting agency work
- engaging in English property management work
- any combination of the above

The FTT can issue a banning order against a person who has been convicted of a banning order offence and was a residential landlord or a letting agent at the time the offence was committed.

Banning orders would last at least six months.

If a person breaches a banning order, the local authority would be able to impose a financial penalty of up to £5000.

## Database of banned persons

Government will create a database of people, be they former landlords and/or letting agents, who are subject to a banning order. Once a banning order has come to an end, the former landlord or letting agent, who had been subject to the order, must be removed from the database. Local authorities could also add a person who had committed a 'banning order offence' and was a landlord or letting agent at the time of the offence, even if there is no banning order in place.

Local authorities will have a duty to keep the database up to date. The database will be shared across local authority borders, but will not be public.

## What does Citizens Advice think?

A step towards freezing irresponsible and rogue landlords out of the private rented sector is welcome, although the severity of the expected 'banning order offences' sets a very high bar to be reached before a local authority can apply to the FTT for a banning order. And, if prosecutions under the Housing Act 2004 (which are tried in the County Court), do not constitute 'banning order offences', it may be that landlords who do not commit criminal offences, but who do force tenants to live in poor quality or dangerous housing, could not be subject to a banning order.

## Rent Repayment Orders (RRO)

Where a landlord has been convicted of

- violence for securing entry (s6 (1) Criminal Law Act 1977)
- eviction or harassment of occupiers (s 1 (2), (3) or (3A))

and/or has been prosecuted by the local authority for

- failure to comply with an improvement notice (s30 (1) Housing Act 2004)
- failure to comply with prohibition order (s32 (1) Housing Act 2004)
- contrail or management of an unlicensed house in multiple occupation (HMO) (s72 (1) Housing Act 2004)
- control or management of an unlicensed house (s95 (1) Housing Act 2004)

or has

- breached a banning order

a local authority or a tenant can apply to the First Tier Tribunal (FTT) for a RRO up to a maximum of 12 months' worth of rent.

Where the application for a RRO is made on grounds of breach of banning order, the FTT must be satisfied 'beyond reasonable doubt' that the landlord has let housing in breach of a banning order.

Although local authorities will have the power to support tenants in their applications for a RRO, they will be under no obligation to either pursue the RRO on behalf of the tenant or provide substantive support to the tenant seeking a RRO. It is not clear whether or not tenants would have to pay a fee to apply to the FTT for a RRO. If a RRO is granted, the tenant will have to pursue their (former) landlord for payment via standard debt recovery processes.

## **What does Citizens Advice think?**

Private renters are one of the few consumer groups who currently are not entitled to a refund for poor quality products they pay for, so a provision to introduce RROs is a positive step. However, it is unclear why the much higher criminal law test of proof, 'beyond reasonable doubt' is being proposed in a civil law provision. This may make it more difficult for tenants or local authorities to successfully apply for RROs on the basis of a banning order breach.

Local authorities may choose not to provide tenants with any substantive support in their pursuit of a RRO and so the tenant may not, in reality, have the wherewithal to pursue the RRO. Additionally, any fee charged by the FTT may render the option of pursuing a RRO unaffordable to some tenants, as might the costs involved in pursuing recovery of the RRO debt from the landlord.

## **Reasonable notice - abandonment**

Government are proposing a new process for landlords to evict tenants where they believe those tenants have abandoned their home. This new process would not involve the courts.

If a tenant is in four weeks/one month's rent arrears, their landlord can issue a written warning notice stating that they believe the property to be abandoned. In that notice, the landlord should ask the tenant to contact them in writing if they have not abandoned the property. The tenant has eight weeks to respond to that notice. If the tenant does not respond to the notice and is in eight weeks or two

months' of rent arrears, the landlord can issue a second notice and take possession of the property on a specified date without having to gain a court order. As things stand, the landlord could take possession even where the tenant is, in fact, still occupying the property, but has been unable to respond to the warning notices.

Where a property is wrongly repossessed on the ground of abandonment, the (former) tenant would have to apply to the court to re-gain entry, thereby incurring costs and having to engage in a lengthy legal process at a time when they are homeless. Where the (former) tenant shows good cause for not having responded to the warning notices, the court can order reinstatement. It's not clear what happens if the property has already been re-let.

Applications to re-gain entry cannot be made more than six months after the tenancy was brought to an end.

## **What does Citizens Advice think?**

The proposed abandonment process will take more or less the same length of time as the current eviction process takes, ie twelve weeks, so the need for new provision is unclear. The requirement that (former) tenant use the expensive and time-consuming process of going through courts to regain access, at a time when they are homeless, is too onerous. It is not clear whether or not the (former) tenant would be deemed intentionally homeless, were they to apply to their local authority as a homeless person.

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