



Department for
Communities and
Local Government

Tackling rogue landlords and improving the private rental sector

A technical discussion paper



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Tackling Rogue Landlords

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. We have already made significant progress in doing this:

- £6.7 million was made available to a number of local authorities to help tackle the acute and complex problems with rogue landlords in their area, including “Beds in Sheds”. So far nearly 40,000 properties have been inspected and over 3,000 landlords are now facing further enforcement action or prosecution;
- We have introduced protection for tenants against “retaliatory eviction” where they have a legitimate complaint, which will come into effect in October 2015;
- We have introduced measures to ensure fairness for landlords, making the eviction process more straightforward in appropriate circumstances such as the persistent non-payment of rent. These changes will also come into effect in October 2015;
- Subject to Parliamentary approval from October 2015, landlords will also be required 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 government is determined to go further and drive rogue landlords out of business. This discussion paper sets out our proposals, which include a blacklist of rogue landlords and letting agents, tougher penalties for the worst offenders, extending Rent Repayment Orders and introducing civil penalties.

We also want to support good landlords and this document invites views on tackling the problem of abandonment in the sector, where a tenant simply disappears, leaving the landlord uncertain over their right to repossess.

We are keen to engage with local authorities, landlords, letting agents and tenant groups on all of these issues. We want to understand how best to implement our proposals and avoid any adverse outcomes.

We will publish a separate discussion document in due course about the proposed extension of mandatory licensing for Houses in Multiple Occupation.

The measures proposed in this paper would apply to England only.

The closing date for comments is Thursday 27 August 2015 which should be submitted via our preferred online form <https://www.surveymonkey.com/r/CLR9WGX>.

You can also respond by email to prsreview@communities.gsi.gov.uk but these should be submitted by Thursday 20 August 2015 to ensure they are taken into consideration.

Section 1– Tackling the worst offenders

A small number of rogue or criminal landlords in England deliberately exploit vulnerable tenants by knowingly renting out unsafe or overcrowded accommodation. When landlords are convicted of housing offences the only real sentencing options available to the courts are a fine or a conditional discharge, even where they have previous convictions and/or multiple convictions for similar offences.

Recent examples of this include:

- A fine of less than £1,500 for operating an unlicensed HMO which was severely overcrowded and in extremely poor condition;
- A £350 fine for failure to comply with an Improvement Notice to a property which contained a range of hazards, including electrical faults, lack of hot water or heating facilities and an infestation of vermin.

The reason that fines are set at these levels is because the courts must take account of an offender's ability to pay when determining an appropriate fine. It would appear that some rogue landlords have recognised this and simply built into their business models an assumption that they will occasionally be prosecuted for offences and the rents they charge take that into account.

We are determined that rogue landlords should not be able to profit from renting out poor quality and unsafe housing and not complying with the law. We want to ensure these landlords face appropriate penalties when they continue to offend and those who still do not comply with the law are banned from operating in the sector. We have set out proposals later in this document to do just that by extending Rent Repayment Orders and introducing civil penalties. Rent Repayment Orders involve requiring a landlord to repay rent, including any rent paid through Housing Benefit. They are currently only available in limited circumstances

We want to target rogue landlords who wilfully flout the law. Good landlords who seek to comply with their obligations would not be adversely affected by any of the proposals set out in this document. Cracking down on rogue landlords will benefit the vast majority of good landlords who obey the law and rent out good quality and well managed housing but can be undercut by rogue landlords who evade their responsibilities and so incur less costs.

Aggravating factors in housing offences

Until March 2015 the maximum fine for a housing offence dealt with in the magistrates' courts was £20,000. In March that cap was lifted, so that magistrates' courts could impose unlimited fines. Whilst the lifting of the cap is a significant step, in practice, since fines must take account of the means (including any assets) of the offender, it seems unlikely it will lead to a significant change in the average levels of fines which are typically around £1,500.

The courts already aggravate sentencing where there have been previous convictions - we are interested in views on whether more needs to be done to ensure the courts do this. Whilst the court would be able to impose an unlimited fine, we would welcome views on the merits of specifying a minimum fine on repeat offenders, including whether the minimum fine level should be increased for subsequent offences.

Views are also invited on whether more should be done where the offence was committed by a company and the offence was the result of a deliberate act or omission, by an officer or officers of that company (including a director or secretary). The reason for treating an offence as aggravated in such circumstances would be that it is generally characterised by a deliberate act or omission, rather than an accidental error. We want to ensure that such persons should also be regarded as guilty of the offence and punished accordingly.

It is suggested that the following could be “relevant housing offences”:

- Providing a local authority with false or misleading information following a statutory enquiry;
- Permitting or causing overcrowding;
- Illegally evicting or harassing a residential occupier;
- Continuing to let to an illegal immigrant; or
- Any offence under the Housing Act 2004.

Questions:

- Do you think that current fines for housing offences generally reflect the gravity of the offence? If not, how can this best be tackled?
- What has been the impact (if any) of removing an upper limit on potential fines for certain housing offences?
- Should we consider setting minimum fines for repeat housing offences which have aggravating features? If so, what would be an appropriate level? Are there alternative approaches?
- Are the relevant housing offences listed appropriate?
- How should we deal with offences committed by a company if the offence was the result of a deliberate act or omission by an officer or officers of that company?

Blacklisting and banning rogue landlords

The private rented sector has grown considerably in recent years. This can make it difficult for local authorities to identify rented property in their area. We are, therefore, considering whether data for privately rented dwellings held by the Tenancy Deposit schemes should be made available to local authorities. This will 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.

In addition, we are considering whether persistent rogue landlords and letting agents should be prevented from continuing to operate in the private rented sector. One option

would be to put these offenders on a blacklist which could be used by local authorities to help focus their enforcement action where it is most needed. It would also help local authorities keep track of landlords/letting agents with previous housing offences, many of whom try to continue operating under the radar by moving to a different local authority area and restarting their rogue business model in a new locality. A recent example of this practice occurred in a London borough where a landlord had rented out unsafe and substandard accommodation with a range of conditions including dangerous electrics, damp and mould, a complete absence of heating, leaking waste pipes, filthy kitchen facilities and serious pest infestations. As a result, the landlord was convicted of more than 100 housing offences. He subsequently moved his business out of the area but continued to operate from a different London borough managing a large portfolio of properties across London and the South of England.

In particularly serious cases, it may be necessary to ban rogue landlords or letting agents from renting out property. During the time such a ban was in force, it would be an offence for them (or anyone associated with them) to be involved with the letting or managing of residential property.

There would need to be an appropriate sanction where a person is found continuing to rent out properties. Possibilities could include a term of imprisonment, a Rent Repayment Order or the potential for further action under the Proceeds of Crime Act 2002.

Reasons for putting someone on a blacklist and/or issuing a ban could include:

- 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).

Where a director, secretary or officer of a company commits an offence, as set out above, the company may also be blacklisted.

If we did introduce a blacklist, we would need to consider a mechanism for appeals, and for determining how long someone should remain on it and how it would be administered.

There are issues around who should have access to the blacklist. Local authorities and certain Government Departments would need access but so may other organisations. If such a list is developed, we would need to ensure that any personal data was protected in accordance with the Data Protection Act 1998, for example, by ensuring that there were appropriate restrictions on access to the data and that it remained up to date and accurate.

There are also a number of issues around the effect of banning rogue landlords, such as what arrangements need to be put in place to ensure tenanted properties are properly managed. The Housing Act 2004 gives local authorities powers (and duties) in certain

circumstances currently to make management orders, under which they (or their agents) take over the properties from the landlords.

We could consider extending those circumstances to include where a landlord has been blacklisted. A local authority, or an agent that it appoints, would be able to collect the rent from the tenant (or end the tenancy in certain circumstances) and would be able to recover its costs in running the property. Potentially, the local authority could force the sale of a property where the owner is subject to a ban in order to recoup any losses or costs incurred by the authority (for example costs of repairs and costs incurred in management of the property). Where there was a surplus after deduction of costs, one option may be for the local authority to retain that surplus and use it for housing purposes.

Questions:

- Do you agree that data held by the Tenancy Deposit schemes should be made available to local authorities?
- Do you agree that there should be a blacklist of persistent rogue landlords and letting agents?
- Do you agree with the proposed reasons for placing someone on a blacklist and issuing a ban?
- 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?
- Should local authorities have the right to place the offender on the blacklist on any of the above grounds?
- Do you agree with the penalties proposed for breaching a ban?
- If a local authority took over management of a property, how could we ensure that they did not incur a loss in managing the dwelling?
- Should we consider stronger penalties, for example, seizing the property of persistent offenders who ignore bans? What safeguards would be needed to ensure that this power was used proportionately?

Fit and proper person test

In deciding whether to issue a property licence, for example for a licensable HMO or under a discretionary licensing scheme, the local authority should be satisfied that the licence holder is a "fit and proper" person. The test was introduced by the Housing Act 2004 and its purpose is to ensure that those responsible for operating the licence and managing the property are of sufficient integrity and good character and do not pose a risk to the welfare or safety of persons occupying the property. Currently local authorities can refuse a licence 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;
- for HMO licences, has breached a condition in any applicable code of practice.

We are considering whether the fit and proper person test needs to be made more rigorous and less open to differing interpretations. This would help ensure that local authorities are able to identify individuals who should be refused a licence.

At present, where an applicant fails a fit and proper person test and there is no alternative fit and proper person to whom the licence could be issued, the local authority must arrange to take over management of the HMO itself. We are considering whether there:

- should be a power to issue a provisional licence which would be subject to regular review and could be revoked at any time;
- are circumstances in which a licence can be refused or revoked without the need for a management order to be put in place.

Where a local authority chose the second option and refused to issue a licence, the effect of this would be that the applicant would not be permitted to rent out a licensable property. There would need to be a transitional period after such a decision was made to give any tenants of that property adequate time to find alternative accommodation and/or to give the landlord time to sell the property. It would be an offence for a landlord who was refused a licence to subsequently rent out a dwelling. Landlords would have a right to appeal a decision not to grant a licence.

More generally, we propose to strengthen the fit and proper person test by introducing additional conditions which the local authority will be required to consider. Possible additional criteria include:

- 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.

Where a landlord failed to meet these additional criteria, their licence application could be refused. The local authority would inform the landlord this has happened and how they can appeal the decision.

Questions

- Should local authorities be required to refuse a licence to anyone who fails the fit and proper person test? If so, what impact is this likely to have on the number of licences granted?

- Is the revised fit and proper person test sufficiently robust or any elements of it too stringent?
- Should other criteria be added?
- How much more expensive would it be for a local authority to apply a revised fit and proper person test?

Section 2 – Rent Repayment Orders and Civil penalties

Introduction

An effective enforcement regime is essential to drive up housing standards in the private rented sector and tackle criminal landlords. Following the ‘polluter pays’ principle the cost of enforcement should fall primarily on rogue landlords rather than good landlords, or the general tax payer. Therefore we are considering the scope for enabling local authorities to recover more of the costs associated with proactively inspecting properties and ensuring that landlords comply with their responsibilities.

In particular, we are exploring the scope for extending Rent Repayment Orders (RROs) and the introduction of Civil penalties thereby helping to support more targeted and effective enforcement of breaches of housing legislation.

Rent Repayment Orders

Rent Repayment Orders were introduced under the Housing Act 2004. They currently only apply where a landlord has failed to obtain a licence for a licensable property. Under the current system, a local authority or a tenant can apply to the First Tier Tribunal for a RRO where a landlord has committed the offence of not having a licence for a licensable property. The landlord can be required to repay up to 12 months rent. Where rent has been paid through Housing Benefit, that money can be retained by the local authority and used for housing purposes.

Rent Repayment Orders are effective because they make it unprofitable for a landlord to dodge their responsibilities. We are considering extending them to cover other scenarios. These could include:

- 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, issued by the local authority under the Housing Act 2004.

No reputable landlord would behave in this way and it is unacceptable that a small minority of landlords knowingly rent out substandard and potentially dangerous accommodation, particularly where the rent is being paid either partially or in full from Housing Benefit/Universal Credit.

An illegal eviction occurs when a landlord forces a tenant to leave their home without following the correct legal procedure, which generally includes serving a possession notice and obtaining a court order. Illegal eviction is a criminal offence and if found guilty, a landlord can be sentenced to up to 2 years imprisonment and/or a fine. As noted above however, fines have to be set at a level that takes account of the landlord’s means, so may not reflect how much rental income the landlord has received from the tenant. In addition,

a fine does not compensate a tenant who has been the victim of illegal eviction. Therefore, we are considering extending Rent Repayment Orders to cover cases of illegal eviction. Where rent had been paid through Housing Benefit, the rent would be repaid to the local authority.

Where a local authority carries out an inspection of a property and discovers a hazard, they must take action further action if it is a Category 1 or serious hazard. Where it is a category 2, or less serious hazard, the local authority may, at its discretion, take further action. Action by a local authority can include issuing an Improvement Notice requiring the landlord to carry out specified improvement works within a certain timescale, a Prohibition Order banning the use of all or part of a dwelling and a Hazard Awareness Notice.

If a landlord does not comply with either an Improvement Notice or Prohibition Order, they can be prosecuted and fined. Again however, a tenant will not receive any financial compensation and, where Housing Benefit has been paid, taxpayers' money will have been used to pay rent for substandard accommodation. We are therefore considering extending Rent Repayment Orders to cover situations where a landlord fails to comply with an Improvement Notice, a Prohibition Order or a Hazard Awareness Notice.

The current Rent Repayment Order system requires a local authority to apply for an Order after satisfying a First Tier tribunal that the landlord has rented out a licensable property without having obtained a licence. For tenants, they can only apply for an Order after a landlord has been convicted of doing so. At present, the local authority or tenant has to make a separate application to the First Tier Tribunal for the Rent Repayment Order. This adds extra costs and time and is a potential deterrent. We are therefore considering empowering the First Tier Tribunal to impose an automatic Rent Repayment Order or, where the case has gone to Court, for the Courts to transfer the case following a conviction to the First Tier Tribunal for and automatic Rent Repayment Order. This would avoid the need for a local authority or tenant to make a separate application.

Questions

- Should we introduce Rent Repayment Orders for situations where a tenant has been illegally evicted or a landlord has failed to comply with a statutory notice?
- Should Rent Repayment Orders be introduced for any other situations?
- Should a Rent Repayment Order be limited to 12 months?
- Should issuing of a Rent Repayment Order be automatic?
- How many additional Rent Repayment Orders per year are likely to be issued if they were extended?
- Would the use of Rent Repayment Orders have a significant impact on landlords?

Civil penalties

Local authorities find civil penalties a useful tool for promptly dealing with certain civil wrongs, without recourse to the courts. Currently civil penalty notices can be issued for:

- local parking infringements;
- the failure of letting agents to make their fees transparent;
- breaches of energy performance building regulations; and
- may soon apply to a lack of working smoke and carbon monoxide alarms in a private rented home.

The prosecution of landlords or letting agents for housing offences can be expensive and time consuming. One way of raising standards could be to give local authorities the power to impose a civil penalty for certain breaches of housing legislation. This could help reduce costs and enable local authorities to focus the bulk of their enforcement work against rogue landlords in their area.

Civil penalties could potentially be issued where there has been a relatively minor breach, and would not preclude initiating a prosecution for future or related breaches

We are considering introducing civil penalties for:

- overcrowded property;
- breaches of licensing rules;
- hazardous disrepair;
- poor sanitation;
- electrical faults;
- damp; and
- infestation of vermin.

Local authorities would retain the income from civil penalties and use them for housing enforcement purposes. Landlords would have the right to appeal against a civil penalty. It would be important to ensure that civil penalties were only served where appropriate, and with the aim of improving housing conditions, not as a way of generating revenue.

Questions

- What situations or contraventions should be covered by civil penalty?
- Assuming civil penalties are introduced based on the suggested criteria, how frequently is such a power likely to be used?
- Are they likely to be a genuine deterrent?
- What would be an appropriate penalty? Should it be similar to the potential fine for not displaying letting agent fees (up to £5,000)?
- Should there be higher penalties for repeat offenders?
- How should the appeals process work? For example, should there be a right of appeal to the First Tier Tribunal?

- How would we ensure compliance and enforcement activity is concentrated on serious breaches rather than incentivising overzealous enforcement of low level breaches?

Section 3 - Abandonment

Current situation

A property is “abandoned” when the tenant simply disappears. A landlord may suffer from rent arrears and, in some cases, find damage to the property. Abandonment may also leave the property unsecured and so vulnerable to vandalism.

Abandonment can result in the landlord having to seek a possession order from the court because they are uncertain whether they can legitimately repossess the property. This takes time, during which the landlord is losing more rent.

Currently, landlords can be unsure whether they are entitled to re-enter a property on the ground of abandonment and, in a worst case scenario, may find that they have committed an offence of unlawful eviction and/or harassment if they do so.

Proposed solution

Where it is clear a property has been abandoned under a tenancy, we want to speed up the process so that the landlord can obtain possession of their property without the time and expense of a court process.

The process that we are proposing to introduce is described in broad terms below. We estimate that it would reduce the amount of time involved in repossessing a property by about 2 – 3 months:

- 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 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

Questions:

- How widespread a problem is abandonment?
- What costs does a landlord currently face when presented with an abandoned property?
- How effective would the process described above be in tackling the issue?
- Does the lack of a courts process present too much uncertainty?
- What are the reasonable steps and actions a landlord should take to satisfy him/herself that a property is abandoned?
- What happens if a tenant returns to re-claim a property?
- What should the landlord do with the tenant's personal property?