



Department for
Communities and
Local Government

Prevention of Social Housing Fraud Act 2013

Impact Assessment

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October 2013

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Title: Social Housing Fraud IA No: DCLG/0080 Lead department or agency: DCLG Other departments or agencies:	Impact Assessment (IA)		
	Date: 23/08/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Graham Knapper (Tel. 0303 444 3667)			
Summary: Intervention and Options		RPC Opinion: RPC Opinion Status	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£125m	-£1.7m	£193k	Yes IN

What is the problem under consideration? Why is government intervention necessary?
Latest estimates suggest that there are around 98,000 unlawfully occupied social homes in England. This prevents social landlords from allocating them to those people in genuine need. There is currently a lack of adequate deterrent to tenants to abuse their tenancy, and social landlords have inadequate powers of investigation, often finding it hard to detect and prosecute social housing fraudsters.
Government intervention is needed to increase both the penalties for social housing fraud and social landlords' investigatory powers.

What are the policy objectives and the intended effects?
The overarching objective is to deter people from engaging in social housing fraud in order to reduce the number of unlawfully occupied social homes and free up more social housing for those in genuine need. This would be achieved by deterring people from engaging in social housing fraud, incentivising those already committing fraud to stop and making it easier for social landlords to detect and evict those who continue to commit fraud.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. 'Do nothing' – leave the legislative framework unchanged
2. Make the unauthorised sub-letting of social housing a criminal offence
3. Make the unauthorised sub-letting of social housing a criminal offence and give enhanced data access powers to local authorities for social housing fraud investigation purposes

Option 3 is preferred as it will allow landlords to recover the greatest number of social homes for reallocation to those on the waiting list.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 08/2018

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence Policy Option 2

Description: Make the unauthorised sub-letting of social housing a criminal offence

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)																		
			Low: £m	High: £m	Best Estimate: £20.9m																
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<p>Other key non-monetised costs by 'main affected groups'</p> <p>There may be circumstances in which evicted tenants need to be rehoused, thereby incurring costs, but these cases would be extremely rare as authorities are within their rights to refuse tenancies to those who have made themselves intentionally homeless.</p> <p>Landlords would incur legal costs by bringing prosecutions, although there is the possibility that in some cases they may be awarded costs and be awarded the profit the tenant has made from sub-letting.</p>																					
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BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO? Measure qualifies as
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Costs:	0	Benefits:	0	Net:	0	Yes	IN
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Summary: Analysis & Evidence Policy

Option 3

Description: Make the unauthorised sub-letting of social housing a criminal offence and give enhanced data access powers to local authorities to detect social housing fraud

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £m	High: £m	Best Estimate: £125m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		£m	£m
High		£m	£m
Best Estimate		£2.6m	£22m

Description and scale of key monetised costs by 'main affected groups'

There may be costs to both social and private landlords in the form of void costs or lost rental income due to the time involved in installing new tenants when existing ones leave. For social and private landlords the void costs are assumed to be a one-off 4 week rental cost for each dwelling, as in option 2. There would be administration costs to data providers when complying with data requests from landlords. We estimate these to be £1.7m.

Other key non-monetised costs by 'main affected groups'

There may be circumstances in which evicted tenants need to be rehoused, thereby incurring costs, but these cases would be extremely rare as authorities are within their rights to refuse tenancies to those who have made themselves intentionally homeless.

Landlords would incur legal costs by bringing prosecutions, although there is the possibility that in some cases they would be awarded costs and be awarded the profit the tenant has made from sub-letting.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		£m	£m
High		£m	£m
Best Estimate		£18.7m	£147m

Description and scale of key monetised benefits by 'main affected groups'

The effect of this proposal would be to free up social housing. This would lead to a reduction of the housing benefit bill as tenants are rehoused in social properties. These housing benefit gains are, in principle, offset by the loss of the illegal profit made by those unlawfully subletting. However, as this loss to fraudsters is not included in the costs they account for a net benefit. We also expect fewer civil cases to be taken to court (as the result of the threat of a criminal sanction), which will be a saving for the landlord.

Other key non-monetised benefits by 'main affected groups'

The main benefit of this policy is that we expect a greater number of social homes to become available for allocation to those on the waiting list. This would enable local authorities and housing associations to better manage stock, house more households in genuine need and tackle issues such as overcrowding and underoccupation. Also, the detection of social housing fraud could also lead to detection of housing benefit fraud.

Key assumptions/sensitivities/risks

Key assumptions: a) A 25% deterrence effect in the best estimate scenario, 15% in the low scenario and 35% in the high scenario. b) An average of 4 weeks for social and private sector landlords to replace the tenant. c) Social tenants unlawfully subletting their properties do not receive housing benefits. d) We assumed a reduction in the number of unsuccessful cases (i.e., no eviction sentence) in court. e) Only 5% of cases in London and 2% elsewhere require criminal prosecution, with less than 10% of them ending in prison sentences.

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £1.7m	Benefits:	Net: -£1.7m	Yes	IN

Evidence Base (for summary sheets)

Problem under consideration

1. There are currently around 4m social homes in England. Who gets housed in one of these homes is governed largely by legislation that states that local authorities must give reasonable preference (i.e. priority) to certain people. The current 'reasonable preference' categories are people who:
 - are homeless or owed certain homelessness duties
 - need to move on medical or welfare grounds
 - live in overcrowded or unsatisfactory housing
 - need to move to avoid hardship to themselves or others
2. The requirements in the allocation legislation are designed to ensure that overall priority for social housing is given to those who need it most. However, there is sufficient flexibility within the allocation legislation for local councils to set their own local policy priorities, through the use of local preference criteria (alongside the 'reasonable preference' categories) and local lettings policies.
3. In 2010/11, around 90% of all new general needs lettings went to households in reasonable preference.
4. The Audit Commission estimates that around 98,000 of these 4m social homes are being unlawfully occupied¹. Analysis carried out by consultancy Experian Public Services suggests the figure could be more than 150,000² in practice, while other research has indicated that it could be approaching 20% of all social homes³. Many social landlords have recently stepped up their efforts to crack down on social housing fraud, which has resulted in an increase in the number of social homes being recovered, but there is a long way to go.
5. While not all tenants commit fraud for profit, the financial rewards can be significant. In some parts of the country, social rent is less than 50% of market rent. This means that anyone renting out their social home at, or close to, market rent can make a substantial profit.
6. Most forms of unlawful occupation, including sub-letting, are considered to be civil matters rather than criminal offences. This means that while the profits that can be made by committing social housing fraud can be substantial (owing to the sub-market rents charged), the punishment is relatively minor. In many cases the tenant is simply required to give back the keys to the property they are letting out unlawfully.
7. In addition to this lack of deterrent, social housing fraud investigators do not have sufficient investigatory powers to tackle the problem adequately, meaning that they can only detect a fraction of the homes being unlawfully occupied.

¹ page 15 of "Protecting the Public Purse 2012 – Fighting fraud against local government and local taxpayers" Audit Commission, November 2012. The 98k figure is based on 4% of stock in London and 2% of stock elsewhere.

² <http://www.experian.co.uk/assets/identity-and-fraud/social-housing-tenancy-press-release.pdf>

³ <http://www.telegraph.co.uk/news/uknews/9030127/Fifth-of-council-house-tenancies-found-to-have-indications-of-fraud.html>

Rationale for intervention

8. The most compelling reason for intervention is that unlawful occupation prevents tens of thousands of social homes from being allocated to the people who need them most. At a time when demand for social housing far outweighs supply, recovering more of the estimated 98,000 unlawfully occupied homes would provide some relief to households on the waiting list. Government invests significant sums in the provision of social and affordable housing and it is important that this is used for those in greatest need, not as a means to make a profit.
9. An estimated 62%⁴ of tenants in social housing are in receipt of housing benefit, and the proportion amongst new entrants to the sector is even higher. Rents for social housing are much lower than for private rented accommodation (where many people live when there are no social homes available), so unlawful occupation also carries a cost for taxpayers by raising overall expenditure on housing benefit. This provides another reason for Government intervention: to maximise value for money for taxpayers.
10. Feedback from social landlords suggests that many of the people engaging in social housing fraud continue to claim housing benefit fraudulently in respect of properties in which they are not living. In such cases, recovering dwellings can further improve value for money for taxpayers by reducing fraudulent benefit claims.
11. Government has already tried a variety of initiatives for reducing unlawful occupation. These include: grant funding to landlords, publication of best practice guidance, the creation of a team of experts offering hands-on advice to social landlords, financial incentives to members of the public to report social housing fraud, the provision of marketing materials to enable landlords to advertise their crackdowns and the creation of a framework agreement to allow local authorities to use credit reference agencies more cheaply.
12. While these initiatives have had a degree of success, it is evident by comparing the number of homes being recovered with the number of homes still being unlawfully occupied that stronger measures are needed if more significant inroads are to be made.

Policy objective

13. The aim is to create a situation where the benefits of committing social housing fraud are outweighed by the potential repercussions of being caught, e.g. the potential criminal conviction and/or fine that could be handed down to an individual would deter them from committing the crime to begin with. The objective is to be achieved by introducing stronger sanctions and raising the likelihood of being detected.

Description of options considered (including do nothing)

14. This Impact Assessment explores three options for overcoming the problems stemming from social housing fraud.

Option 1 – ‘do nothing’

15. The first option is for Government to take no further action beyond what is already being done to encourage local authorities and housing associations to crack down on unlawful

⁴ DCLG, English Housing Survey 2009-10, <http://www.communities.gov.uk/documents/statistics/pdf/1851086.pdf>

occupation. Social landlords would essentially continue with the resources and powers they currently have. In essence this would maintain the status quo.

16. In addition to there being few sanctions against unauthorised sub-letting, social landlords would continue to be unable to access data from many organisations that enable them to detect, tackle and prosecute cases of social housing fraud.
17. In light of this, we expect a large number of social homes to continue to be unlawfully occupied. This would prevent social housing being allocated to households in need and increase Government expenditure on housing benefit.
18. Option 1 forms the baseline against which the impacts of the other two options are appraised.

Option 2 – ‘Make the unauthorised sub-letting of social housing tenancy a criminal offence’

19. The second option would give social landlords the opportunity to pursue unauthorised sub-letting as a criminal offence in addition to their current ability to pursue it as a civil matter. Being prosecuted criminally would carry greater sanctions, including a fine and damage to reputation.
20. At present, many organisations are unsure whether personal data can be shared with third parties for the purpose of non-criminal investigations, and some routinely refuse to do so for social housing fraud. Under this option landlords would still not be able to *compel* other organisations to supply them with data that might aid in identifying cases of unauthorised sub-letting, but criminalisation would remove doubt that currently exists that data *can* be shared for detecting such matters. This would aid detection.

Option 3 – Make the unauthorised sub-letting of social housing a criminal offence and give enhanced data access powers to local authorities for social housing fraud matters

21. The third option, like option 2, would make unauthorised sub-letting a criminal offence – increasing the sanctions associated with being detected. However, this option would also see local authorities given the power to compel certain organisations to provide them with data that would aid them in detecting social housing fraud. Local authority social housing fraud investigators would then have similar access to data as investigators of housing benefit fraud.
22. Along with creating a deterrent in the form of a criminal record and a possible prison sentence, allowing greater access to data should increase detection and recovery rates. Greater access to data would allow landlords more freedom to investigate social housing fraud and increase the amount of evidence that could be compiled. For instance, allowing a local authority to query a tenant’s financial details might uncover evidence of extra income pertaining to rent on an illegal sub-let and prove the tenant actually lived elsewhere.

The preferred option

23. *Option 3 is the preferred option* as it is expected to meet the Government’s key policy objective of reducing the number of social houses that are unlawfully occupied and enabling them to be reallocated to those on the waiting list in greatest need.
24. Option 1 would fail to increase the deterrent to unlawful occupation. Option 2 would allow unauthorised sub-letting to be pursued as a criminal offence and also remove any doubt that data *can* be shared for unauthorised sub-letting investigations, but would fall short of

increasing detection rates as much because it would not allow as much access to data for the purpose of investigating social housing fraud as option 3.

Evidence on the scale of the problem

25. There is little firm evidence on the exact extent of unlawful occupation. Experian has recently conducted research suggesting that the number of unlawfully occupied social homes may be in excess of 150,000⁵. The analysis below is based on the more conservative estimate that around 98,000 social homes are unlawfully occupied – equating to around 4% of social homes in London and about 2% in the rest of England.
26. Data provided by local authorities show that in 2008/09 around 95% of recovered social homes were in London. In 2011/12 the figure was around 70%. Many local authorities already run programmes to detect and prevent unlawful occupation and recent recovery work throughout England clearly shows that the problem is not confined to London.
27. Audit Commission data indicate that in 2008/09 around 1,000 local authority-owned homes were recovered. This increased to around 1,600 in 2009/10 and around 1800 in 2011/12. On top of this we tentatively estimate that about 500 units owned by housing associations were recovered in 2011/12 (this estimate is less robust as there is less information on social housing fraud in housing association properties).
28. Assuming that there are 98,000 unlawfully occupied dwellings throughout England, a figure of 2,300 recovered homes per year implies the national recovery rate is currently around 2.5%.
29. Feedback from local authorities suggests that the rate at which social housing fraud is detected and properties are recovered varies significantly from one area to another though. Some social landlords do not recover any homes, while others recover well in excess of 100 per year.

How landlords tackle unlawful occupation

30. The majority of tenants found to be committing social housing fraud decide to end their tenancies voluntarily when challenged by their landlord. Feedback from local authorities in June 2010 suggests that the figure is around 60% in London and around 85% elsewhere. Currently, a social landlord can pursue a civil case against a tenant who does not end their tenancy voluntarily. The proceedings can involve a number of steps and may take many months.

Steps involved in pursuing social housing fraud via a civil route:

- Evidence gathering - this may include e.g. tenancy checks, interviews with the tenant and witness statements.
- Substantiate the tenant's responses, make court application and submit particulars of claim to the court.
- Wait for a hearing date to be set.

⁵ <http://www.experian.co.uk/assets/identity-and-fraud/social-housing-tenancy-press-release.pdf>

- Obtain a possession order, if successful.
 - Landlord applies for bailiff. This will allow the court bailiffs to attend the property and put up a notice of eviction.
31. Not all actions are required in every case – tenants may acknowledge their wrongdoing at an early stage in the process and hand back the keys to the property.

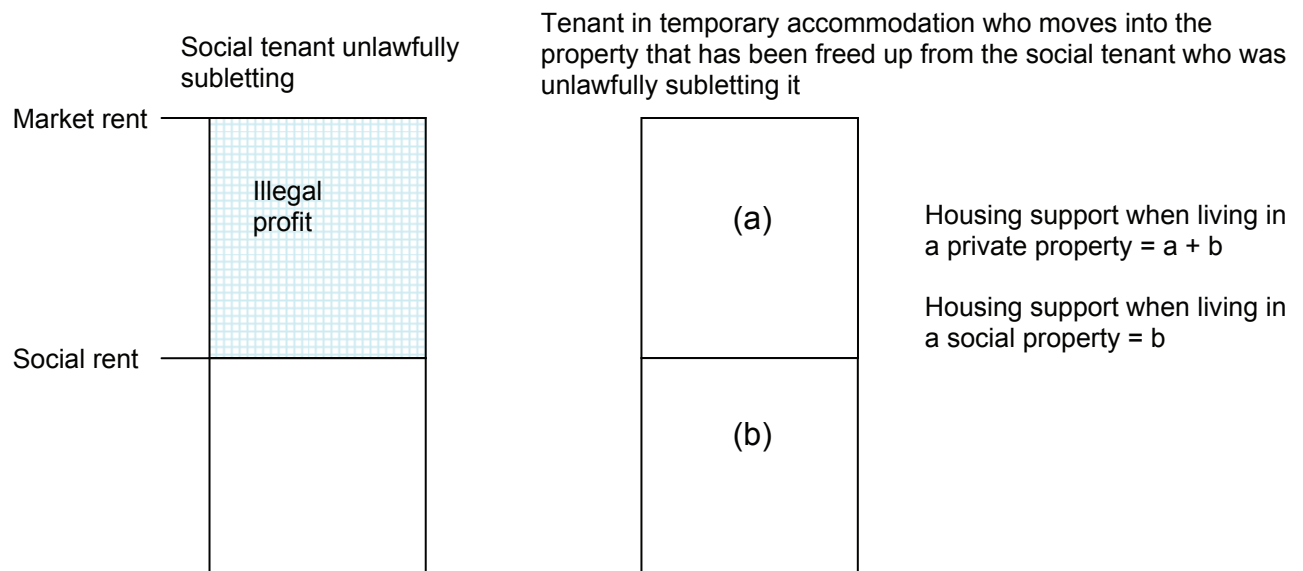
Data and assumptions

32. A consultation exercise ran from 11th January 2012 to 4th April 2012 and outlined proposals to reduce the prevalence of fraud within the social sector. Of the 188 respondents, around 90% backed the creation of a new criminal offence and a mandatory information gateway.
33. It was clear from the responses that the overarching aim of the majority of social landlords is to recover the fraudulently occupied home as quickly as possible so that it can be re-let to someone in need on the housing waiting list. As outlined in paragraph 30, in most current cases of detected fraud court action is not necessary to recover possession of the property as the landlord accepts the tenant's voluntarily termination of the tenancy. It is assumed that the threat of a criminal sanction would increase a detected tenant's willingness to terminate their tenancy voluntarily, so **for both options 2 and 3 we assume that the percentage of detected cases not requiring court action to rises, overall, to 82% in option 2 and 85% in option 3 (we do not have evidence to support this assumption).**
34. The consultation exercise also highlighted that, generally, the criminal route would be used only in the more extreme cases, for example where a lot of money had been made, multiple properties were involved or prosecution was clearly in the public interest. It was also evident that landlords are very aware of the increased burden of proof in, and the increased cost of, criminal cases. Therefore, **it is assumed, based on the consultation responses and discussions with various landlords, that only around 5% of detected cases in London would involve a criminal prosecution and 2% elsewhere.**
35. **We also assumed that those tenants who stop committing fraud, but who remain undetected, will be split 90/10 between those who terminate their tenancy and those who move back in to the social home.**
36. **In the baseline, we assume that the numbers starting to commit social housing fraud each year are about 3% of the total group currently committing the offence, i.e. about 3,000 households per year, the same number that we assume stop tenancy fraud each year (i.e. 3,000 households stop social housing fraud each year or 3% of the total).** By increasing the deterrent effect through criminalisation we hope to make an impact on the numbers starting to commit tenancy fraud as well as on the numbers who are already committing it.

Option 2

37. Under option 2, landlords would have the option of pursuing unauthorised sub-letting as a criminal offence, which would decrease the expected net profit relative to the baseline by increasing the cost if caught through introducing the threat of a fine, repayment of profits, a criminal record and, potentially, even a prison sentence.

38. The level of fines handed out would vary to reflect the different levels of severity of unauthorised sub-letting.
39. The cost associated with a criminal record is difficult to quantify but may cause a hindrance to employment, e.g. lost earnings, subsequent exclusion from certain types of jobs, as well as carrying a social stigma.
40. The cost of a loss of tenancy could be equal to the value of the difference between social and market rent that the tenant would have to pay in the absence of a social home. A convicted tenant may well be refused housing from a local authority and have to arrange private accommodation or live with friends and family.
41. The profit made by an individual involved in social housing fraud depends on a number of factors, such as what other benefits they are receiving. If they are not receiving other benefits such as housing benefit, the profit would be the difference between the social rent and the market level rent. If the tenant is also claiming housing benefit, the profit could be as much as 100% of market rent. For our analysis, **we assume individuals involved in social housing fraud do not claim housing benefit**. The following diagram illustrates in a simplified way the impact of this proposal.



- When the social tenant subletting without permission is caught, he/she loses the profit that he/she is making illegally.
- This loss equals the savings to the Government in term of lower housing support to the household that is relocated in the property that has been freed up (area (a))
- However, as the profit was illegally obtained, its loss is not accounted as such and, therefore, the net benefit equals (a)

42. In reality, some of these tenants would be receiving housing benefits and social landlords have pointed out that the detection of social housing fraud has led on a number of occasions to the detection of housing benefit fraud. So, if individuals involved in social housing fraud are on housing benefits there is a chance they lose these benefits.
43. *Some tenants might be also claiming council tax benefit. However, the amount of these benefits is small compared to housing benefits so we have excluded them altogether from our analysis.*

44. We expect these additional costs to have a deterrent effect on those involved in social housing fraud. However, we are not able to estimate the magnitude of this effect. Therefore, we assume that these additional costs lead to: 5% fewer tenants starting social housing fraud a year (compared to the baseline) in the central case (2% and 10% and in the low and high scenarios respectively).

45. Given the additional costs set out above, we think this is a cautious assumption.

Costs

Void Costs

46. There may be costs to landlords in the form of void costs or lost rental income due to the time involved in installing new tenants when existing ones leave as a result of option 2. The analysis includes those who leave because they are deterred from committing fraud (we assume they all hand in their keys and leave anyway), those who stop committing fraud (we assume 90% of whom hand in their keys, with the other 10% moving back in to the social home) and those tenants replaced after being detected and evicted by the landlord. We are assuming that all those who engage in sub-letting have another place to live and will live there. As suggested by the CORE 2010/11 data⁶, void costs are assumed to be a one-off 4 week rental cost for each social dwelling.

47. There may also be void costs for landlords in the private sector, for example when people are taken off the waiting list and leave private accommodation to move into the freed up social units. It is conservatively assumed that the average void times in the private sector is the same as the social sector (4 weeks).

48. Given the above assumptions we may see private landlords' void costs of £3m and social landlords' void costs of £1m over 10 years at present value.

Re-housing costs

49. In terms of re-housing social tenants evicted for social housing fraud, local authorities report that around 5% ask to be re-housed after the eviction. In most cases local authorities refuse to offer new housing as they no longer feel they owe the ex-tenant the main homelessness duty.

50. Eviction of the occupiers of the dwelling should not pose a large obstacle, and those sub-tenants paying market rent for the social home are likely to be able to move on easily and find private sector rented accommodation as there would be no increase in the rent that they would have to pay.

Impact on the Justice system⁷

51. We estimate that, currently, there are around 735 civil cases per year and, for the purposes of this impact assessment, that there are no criminal cases. Under option 2, we

⁶ See table 2.c, p.5, at <https://core.communities.gov.uk/CORE/DocumentsUpload/CORE%20Publications/CORE%20Annual%20Statistical%20Release/CORE%20Statistical%20Release%202010-2011.pdf.pdf>

⁷ Using 2011 costs

estimate that the number of civil cases would drop to around 350 and the number of criminal cases would rise to 88. The overall impact of this would be an additional cost to the justice system of around £340k. The following estimates have been arrived at by using as a proxy the 'dishonest representation for obtaining benefit' offence under s13 of the Social Security Administration (Fraud) Act 1997:

71% of criminal cases are heard in the Magistrates court, of which 83% (52 cases) are found guilty. Of those: 18% are fined, 2% are given a prison sentence with an average of 3.1 months (of which only half is served) and 62% are given community sentences (this assumes those with suspended sentences are given community sentences).

29% of criminal cases are heard in the Crown court, of which 83% (21 cases) are found guilty. Of those: 1% are fined, 18% are given a prison sentence of an average of 9.3 months (of which only half is served) and 77% are given community sentences (this assumes those with suspended sentences are given community sentences).

- Legal aid: we assume that one third of civil cases qualify for legal aid. This gives a current legal aid cost for civil cases of around £37k. Post-change, the fall in the number of civil cases would reduce this figure to around £18k. However, the amount of legal aid for criminal cases (we assume that all criminal cases qualify for legal aid) would amount to just under £133k, thereby giving an overall net cost of around £112k.
- Prison costs: we assume that 83% (73 cases) of the 88 criminal cases will result in a guilty verdict. Magistrates court: 1 case involves a prison sentence of an average of 3.1 months, of which only half (1.5 months) is served. At £30k per year per prison place, we assume that this 1 case will cost around £3,750 per year. Crown court: 4 cases involve a prison sentence of an average of 9.3 months, of which only half (4.6 months) is served. These 4 cases will cost around £45,000 per year. The total prison costs would be around £50,000 per year.
- Community Sentences: 48 cases receive a community sentence. At a cost of £3k per case, we estimate that this will amount to around £145k.
- Court costs: we expect the majority of criminal cases to be heard in a Magistrates court rather than a Crown court. For this impact assessment we assume that the split will be 71/29. For housing benefit fraud cases, the nearest proxy offence, the current average cost of a Magistrates court case is £150. For Crown court cases, the average figure is £777. This results in a cost of around £29k per year.
- Victim surcharge: those who are fined may be expected to pay a victim surcharge first. This would not be a cost to the court system as such, except for those victim surcharges/fines that remain unpaid and need to be enforced. It would be a benefit to the victims surcharge fund. We assume that 80% of surcharges and 80% of fines would be paid, so there are potential enforcement costs associated with the 20% that do not pay. However we do not have unit costs for this and so identify this as an unmonetised cost to the justice system.

Benefits

Quantified benefits

52. We estimate that there would be a reduction of 2,900 social properties being unlawfully occupied. This would mean a transfer from those currently committing fraud to the Government (through saving in housing benefit) and to the tenants who move into the recovered properties as they would have to pay a lower rent (the part of the rent not covered by housing benefits). Given that the loss of a profit obtained through unlawful

actions should not be included as a cost (HMT Green Book), this transfer is in fact a net profit for society.

Potential savings in housing benefit from private rented sector tenant transfer

53. The increased number of tenants leaving social housing as a result of option 2 (fewer people starting or continuing to engage in sub-letting and handing in their keys) subsequently frees up extra lets for those households in genuine need that are both in receipt of housing benefit and housed in the private rented sector. Moving these individuals from the private rented sector into the freed up social lets lowers the housing benefits bill. The housing benefit savings to the taxpayer is the proportion of the difference between the social and private rents covered by housing benefits. Under the central scenario, the expected savings is approximately £33m in housing benefit over 10 years at present value.
54. This benefit to taxpayers is a transfer from those individuals who no longer receive profit from unauthorised sub-letting as a result of this policy. However, the loss to fraudsters is not accounted as a cost in this IA following guidance from the HMT Green Book. Therefore, the net impact to society is a net benefit. This is in line with Green Book supplementary guidance on appraising crime. As stated in 'The Economic and Social Costs of Crime 2000'⁸: "*The fundamental distinction between a transfer and a loss to society is the distinction between a wanted and an unwanted transfer. A burglary, theft or robbery involves an illegal transfer of property that is unwanted by one party, the victim, and the transfer of the property out of the legal economy. This study treats transfers out of the legal economy and into the illegal economy as costs of crime.*"

Savings to social landlord from fewer civil court cases

55. As detailed in paragraph 33, we expect a reduction in the number of civil cases. Given that civil court cases operate on a cost recovery basis, fewer civil court cases would mean fewer court fees for social landlords. We estimate these savings to amount to £1.8m (present value) over 10 years.

Non- quantified benefits

Benefit to local authorities and housing association of better management of their stock

56. The main benefit of this policy is that we expect a greater number of social homes to become available, which could be used by local authorities and housing associations to house more of those in genuine need and better manage stock to tackle issues such as overcrowding and underoccupation⁹. The Localism Act 2011 contains provisions that give increased freedoms to social landlords and enable them to use their stock more efficiently. For example, they are no longer required to issue 'lifetime' tenancies, instead being able to give fixed-term tenancies to new tenants. The proposed strengthening of legislation to reduce social housing fraud complements the Act's provisions.

⁸ Home Office Research Study 217

<http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs/hors217.pdf>

⁹ Freeing up more houses (which would be of various sizes) would allow existing households to be moved around, e.g. an underoccupier of a 3 bed property may agree to move into a newly-recovered 1 bed if, for example, it's in a desirable area.

Analysis of Option 3 – ‘Criminalise unauthorised sub-letting and increase local authorities’ access to data’

Deterrent measures and detection rates

57. Currently, recovery rates are tentatively estimated at 2.5%¹⁰. A sharp increase is needed in order to bring about a perception of likely detection and conviction. While increased penalties alone may stop some from sub-letting without permission, there may be a number who may not be deterred by the possibility of a criminal record, fine or loss of profit unless there is also a sharp increase in the likelihood of detection. It is the combined effect of both the increased penalty and the increase in the chance of being detected that should lead to a decrease in the numbers involved. Also, the Act’s new data access provisions are not limited to detecting cases of sub-letting; section 7 allows access to data for purposes relating to the “prevention, detection or securing evidence for a conviction of” sub-letting, application and right to buy/acquire fraud:

<http://www.legislation.gov.uk/ukpga/2013/3/section/7>

58. Deterrent rates will be higher than in option 2 as landlords’ increased access to data will have an impact on detection rates. For example, a tenant may not be put off by the prospect of receiving a criminal record and fine as his/her chances of being caught are low, however if they are aware that the likelihood of detection has increased due to landlords’ enhanced access to data they would be more likely to stop or not start.

59. Detection rates would be increased by introducing a ‘mandatory gateway’ that would oblige certain data-holders to share data with local authorities investigating social housing fraud. For example, a local authority could request data from an organisation that might indicate rent being paid elsewhere or show a regular deposit of money each month suggesting they are renting out a property. The powers that investigators currently have are inadequate, especially when compared with those of their housing benefit counterparts. Adding a criminal record, an appearance in court, a fine and the loss of any profit made to the current penalty of the loss of a social home provides far more of a deterrent.

60. Research provided by “*Llad Phillips and Harold L. Votey, Jr*” on “the deterrent effect of criminal activity on law enforcement”¹¹ found a strong positive impact on the reduction of criminal activity with increased law enforcement. In this case, we would hope to see a reduction in the instances of social housing fraud under the combined introduction of a criminal prosecution with an increased rate of detection.

Estimated number of people likely to stop and refrain from beginning social housing fraud

61. It is difficult to say how many people this will impact directly and how many tenants will refrain from beginning or stop committing social housing fraud.

62. Here the penalty should be the same as option 2, but the detection rate will have increased from the introduction of a ‘mandatory gateway’ obliging certain data holders to submit information regarding tenants suspected of social housing fraud.

63. The new access to data is likely to lead to a higher increase in the detection rate and a stronger deterrent effect than in option 2. So under option 3 we assume that:

¹⁰ As noted earlier, the 2.5% is derived from an estimate of 2,300 recoveries in 2010/11 out of a total of 98,000 unlawfully occupied properties

¹¹ <http://www.jstor.org/pss/724146>

- i. **25% fewer tenants start to commit social housing fraud compared to the baseline – 15% and 35% in the low and high scenarios.**
- ii. **there is a 40% increase in the number of those currently committing fraud stopping (because they are detected (50% increase) and evicted or they stop voluntarily (25% increase)) in year 1 compared to the baseline. After year 1, the number of those committing social housing fraud who stop drops to 20% each year (5 percentage points higher than in the baseline).**

Also, with better evidence gathered through the ‘mandatory data gateway’ we expect fewer cases being lost in court and, therefore, more landlords being granted possession of the property. **We assume the rate of unsuccessful civil cases will fall from 10% in the baseline to 5% after the introduction of the ‘mandatory gateway’.**

64. The modelling predicts a fall in the total number of tenants engaged in social housing fraud by 15,100 after 10 years, i.e. from 98,000 to 83,000 social homes.

Costs

Cost of acquiring data

65. There will be a cost borne by data providers when assisting with data queries. For example, those bodies included in a mandatory gateway may incur minor labour costs in the form of time taken to respond to queries from landlords. These costs are unlikely to be significant – a view supported by Water UK in their response to the recent consultation exercise:

“The water industry regards these proposals as being essentially an extension of existing powers in relation to matters such as housing benefit fraud. These existing powers have not proved to be an undue burden on water companies.”

66. It is estimated that there are just over 100,000 requests¹² for data under the relevant housing benefit legislation. It is very likely that there would be far fewer requests for social housing fraud investigations than there currently are for housing benefit fraud investigations as many local authorities will not have the same capacity, experience or expertise as they have for housing benefit fraud. Therefore we assume that there will be around 40,000 data requests per year for social housing fraud investigations (that equates to 1% of the social housing stock). It is important to note that requests for data to organisations on the gateway would be made only after efforts to obtain data had been made by other means - such bodies would certainly not be the first port of call.

67. The Impact Assessment of the Child Support Information Regulations 2008¹³ concerned the addition of energy companies to the Child Support Agency’s list of bodies from whom they could demand data. It includes an analysis of the costs to the companies of dealing with data requests which assumes 15 minutes per request at a cost of £3.75 (using an hourly wage rate of £15 in 2008 prices).

¹² The National Anti-Fraud Network makes the majority of the requests (around 93,500). 83% of Local Authorities use this organisation. Assuming the other 17% of Local Authorities make a similar number of requests, the total number made would be 113,000. We choose the 100,000 figure as an approximation.

¹³ <http://www.dwp.gov.uk/docs/child-support-regs-impact-assessment.pdf>

68. For caution, our analysis assumes an average cost of £5 per request¹⁴. Given these assumptions the estimated net present cost to business is £1.7m over 10 years (around 40,000 requests per year at £5 each) and an average annual cost of £193,000.

Void Costs

69. Void costs are likely to be seen where tenants hand in their keys or are convicted of social housing fraud and subsequently evicted from their social home. The analysis assumes all those tenants who are deterred from starting to commit fraud will hand back the keys to the landlord, and 90% of those already committing fraud who decide to stop will hand back the keys, the remaining 10% moving back into the social home. It is assumed that the average void times where dwellings are unoccupied is 4 weeks. In this option landlords would be likely to see an estimated cost of £21m over a 10 year period at present value.

Justice costs¹⁵

70. An increased rate of detection under option 3 will lead to an increased rate of conviction and extra costs to the judicial system¹⁶. We estimate that, currently, there are around 735 civil cases per year, and, for the purposes of this impact assessment, that there are no criminal cases. Under option 3, we estimate that the number of civil cases would drop to 374 and the number of criminal cases would rise to 93. The same assumptions are made as in paragraph 51. The overall impact of this would be an additional cost to the justice system of around £360k per year.

- Legal aid: we assume that one third of civil cases qualify for legal aid. This gives a current legal aid cost for civil cases of around £37k. Post-change, the fall in the number of civil cases would reduce this figure to around £18k. However, the amount of legal aid for criminal cases (we assume that all criminal cases qualify for legal aid) would amount to around £136k, thereby giving an overall net cost of around £120k.
- Prison costs: we assume that 83% (77 cases) of the 93 criminal cases will result in a guilty verdict as landlords would only look to use the criminal route in instances where they have a very strong case. Magistrates court: 1 case involves a prison sentence of an average of 3.1 months, of which only half (1.5 months) is served. At £30k per year per prison place, we assume that this 1 case will cost around £3,750 per year. Crown court: 4 cases involve a prison sentence of an average of 9.3 months, of which only half (4.6 months) is served. These 4 cases will cost around £45k per year. The total prison costs would be around £50,000 per year.
- Community Sentences: 51 cases receive a community sentence. At a cost of £3k per case, we estimate that this will amount to around £150k.
- Court costs: we expect the majority of criminal cases to be heard in a Magistrates court rather than a Crown court. This would be in line with the current position for housing benefit fraud cases. For this impact assessment we assume that the split will be 71/29. As outlined in paragraph 51, the average costs for Magistrates and Crown court cases for housing benefit fraud are £150 and £777 respectively. Using these figures results in a cost of around £30k per year.
- Victim surcharge: those who are fined may be expected to pay a victim surcharge first. This would not be a cost to the court system as such (except for those victim

¹⁴ The £5 cost figures has been estimated as follows: firstly, the wage labour cost has been up-rated to take into account for a 2.5% inflation per year (i.e., $£3,75 * (1.025)^4 = £4.14$); then non-wage labour costs have been added on top of it (i.e., $£4.14 * 1.21 = £5$).

¹⁵ Using 2011 costs

¹⁶ Unlikely the increase would be proportionate. Many landlords will accept voluntary terminations, and when faced with a potential criminal conviction fraudsters will be less likely to take their chances in court

surcharges/fines that remain unpaid and need to be enforced). It would be a benefit to the victims surcharge fund. We assume that 80% of surcharges and 80% of fines would be paid, so there are potential enforcement costs associated with the 20% that do not pay. However we do not have unit costs for this and so identify this as an unmonetised cost to the justice system.

Re-housing costs

71. In terms of re-housing, local authorities report that only around 5% of social tenants evicted for social housing fraud ask to be re-housed. As with option 2, in most cases local authorities refuse to offer new housing as they no longer feel they owe the ex-tenant the main homelessness duty.
72. Eviction of the occupiers of the dwelling (e.g. the sub-tenants) should not pose a large obstacle, and those sub-tenants paying market rent for a social home are likely to be able to move on easily and find private sector rented accommodation.

Benefits

Quantified benefits

Potential savings in housing benefit from private rented sector tenant transfer

73. The increased number of tenants leaving social housing as a result of option 3 (fewer people starting or continuing to engage in social housing fraud and handing in their keys) subsequently frees up extra lets (15,100 over ten years) for those households in receipt of local housing allowance housed in the private rented sector. Moving these individuals from the private rented sector into the freed-up social lets lowers the housing benefit bill. The housing benefit saving to the taxpayer is the difference between the social and private rents (in London this difference is approximately £110 and elsewhere £40) and this is multiplied by the proportion of households on housing benefit (69% in London and 57% elsewhere). Under the central scenario, the expected savings are approximately £185m in housing benefit over 10 years at present value.
74. As with option 2 this benefit to taxpayers is a transfer from those individuals who no longer receive profit from fraud as a result of this policy. It is a transfer, but the benefit to taxpayers is included in the benefit figures as the loss to unlawful fraud is not considered to be a cost. This is in line with Green Book supplementary guidance on appraising crime.

Savings to social landlords from fewer civil court cases

75. Given that we expect a reduction in the number of civil cases and that they generally work on a cost recovery basis, fewer civil court cases would mean a reduction in the civil court fees paid by social landlords. We estimate these savings amount to £1.2m (present value) over 10 years.
76. These savings are similar to those in option 2. The reason for this is because under option 3 landlords would be able to detect more social housing fraud due to their enhanced powers to gather evidence.

Non-quantified benefits

Increased detection rate

77. Currently, social housing fraud investigators use either section 35 or, less commonly, section 29 of the Data Protection Act to obtain data from other organisations. However, these sections do not allow them to *compel* organisations to supply personal data when asked, and there is also no general statutory power to share data on which the requesting body can rely. As a result, many social housing fraud investigators find it difficult to obtain data from other organisations. Some have commented that getting data can depend on the interpretation of legislation of the individual person handling the request, and as a result there is a lack of consistency of response. The access to extra data could reveal information and evidence leading to the eviction of a social housing tenant.
78. Increasing detection rates could help tackle other forms of fraudulent activities. Many landlords have reported that when they investigate social housing fraud they also uncover other types of fraud. Housing Benefit and Council Tax Single Person Discount fraud appear to be the most common related types, with visa overstays and serious organised crime also having been detected.

Better management of stock

79. The resulting increase in stock available to let will better enable social landlords to manage their stock more efficiently and tackle other pressing social housing issues such as overcrowding and underoccupation.
80. Giving more powers to landlords to deal with social housing fraud complements the tenure reform provisions in the Localism Act which seek to give them more control over their stock by, for example, allowing them to issue tenancies for a fixed term rather than the current requirement to give 'lifetime' tenancies.

Increased deterrent

81. As with option 2, enabling landlords to pursue unauthorised sub-letters via a criminal rather than civil route should increase the deterrent effect. What differentiates this option from option 2 is the increased detection rate which in itself acts as another deterrent. Increasing the number of convicted social housing fraudsters is likely to set an example to others thinking about abusing their tenancies, especially individuals who assume that they may escape prosecution due to a low level of detection.

Summary

82. The benefits of creating a new criminal offence and introducing a mandatory gateway for increased data sharing can be seen in the estimated number of tenants that might be deterred or incentivised to stop committing social housing fraud and the savings to housing benefit.
83. The preferred option (3) gives social landlords the flexibility to evaluate the merits of taking a criminal case against a suspected fraudster with a greater evidence base thanks to increased access to data. Option 2 does allow the criminal route to be taken against an unauthorised sub-letter, but falls short in that it does not allow as strong an evidence base to be compiled as there would be no mandatory gateway offered.

84. Option 3 is preferred because the greater level of detection complements the increased deterrent and should allow for a greater reallocation of social homes, in turn creating savings in housing benefit and allowing social housing landlords greater freedom to manage their housing stock and tackle issues such as overcrowding or underoccupation.

Risks

85. Void Costs - Landlords will not be compelled to use any new powers they are given, and they would undoubtedly consider the void costs they would incur when deciding how many cases of fraud to pursue.

86. Cost to the Justice System – we believe that there would be 93 more criminal cases per year, and around 360 fewer civil cases (i.e. possession proceedings) per year.

87. Costs to data holders - We believe that the unit cost to a data holder of providing information to a local authority that we have used is on the safe (i.e. high) side, as detailed in paragraph 67.

Specific Impact tests

Equalities Impacts

88. There has been no evidence from current work that certain groups of people are more affected than others. Feedback from landlords strongly suggests that there is no such thing as a typical social housing fraudster, and an exercise carried out by a landlord in the Midlands showed that their investigatory work, albeit based around a relatively small number of tenancies, did not have a significantly disproportionate impact on any particular social group. An equalities screening was undertaken, but it was not thought necessary to undertake a full equalities impact assessment.

Economic Impacts

89. We do not expect there to be a significant cost to small firms other than the void costs to certain smaller housing association landlords.

Impact on micro-businesses

90. Making the detection of social housing fraud easier will increase the expectation that housing association landlords will step up their efforts to crack down on the abuse of their stock. However, **there would be no obligation** on them to do so, most of those who do will be providers who own large numbers of properties (i.e. are non-micro) and many housing associations enter into agreements with their local authority whereby the authority investigates the association's stock (using their own resources) in return for nomination rights to any recovered properties. We therefore expect the impact on micro-businesses to be negligible.

91. Micro-businesses, in the form of some credit unions, will be included on the mandatory gateway list of those compelled to provide data to local authorities for social housing fraud investigations. However, the impact on them will be negligible.¹⁷

Environmental Impacts

92. We do not anticipate any environmental impacts.

Social Impacts

93. We do not anticipate any social impacts.

Sustainable Development

94. We do not anticipate any sustainable development impact.

Privacy Impact Assessment

95. The creation of a mandatory information gateway will compel certain bodies to share personal data with local authorities. Therefore, a privacy impact assessment will be conducted.

¹⁷ In 2012/13, the National Anti-Fraud Network (see footnote 12) made around 40 requests to credit unions using powers in the Social Security Fraud Act 2001 (N.B. not all are categorised as micro-businesses). We can therefore predict that there would be fewer than 20 requests to credit unions using the new investigatory powers (see paragraph 66). At a cost of £5 per request (see footnote 14), the total impact on all credit unions would be around £100 per year.