

# PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT HOUSING AND PLANNING ACT 2016  
(BANNING ORDER OFFENCES) REGULATIONS  
2017

*Tuesday 9 January 2018*

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**Saturday 13 January 2018**

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**The Committee consisted of the following Members:**

*Chair:* MR LAURENCE ROBERTSON

- |   |  |
|---|--|
| † Berry, Jake ( <i>Parliamentary Under-Secretary of State for Housing, Communities and Local Government</i> ) | † Mercer, Johnny ( <i>Plymouth, Moor View</i> ) (Con)  |
| † Brown, Lyn ( <i>West Ham</i> ) (Lab)  | † Onn, Melanie ( <i>Great Grimsby</i> ) (Lab)          |
| † Clifton-Brown, Sir Geoffrey ( <i>The Cotswolds</i> ) (Con)  | Sheerman, Mr Barry ( <i>Huddersfield</i> ) (Lab/Co-op) |
| † Efford, Clive ( <i>Eltham</i> ) (Lab)   | † Spelman, Dame Caroline ( <i>Meriden</i> )            |
| † Elmore, Chris ( <i>Ogmore</i> ) (Lab)   | † Stephenson, Andrew ( <i>Pendle</i> ) (Con)           |
| † Foster, Kevin ( <i>Torbay</i> ) (Con)   | † Sturdy, Julian ( <i>York Outer</i> ) (Con)           |
| † Hayes, Helen ( <i>Dulwich and West Norwood</i> ) (Lab)  | † Zeichner, Daniel ( <i>Cambridge</i> ) (Lab)          |
| † Knight, Julian ( <i>Solihull</i> ) (Con)  |  |
| † Lefroy, Jeremy ( <i>Stafford</i> ) (Con)  | Peter Stam, <i>Committee Clerk</i>                     |
| † Matheson, Christian ( <i>City of Chester</i> ) (Lab)  | † <b>attended the Committee</b>                        |

# Fifth Delegated Legislation Committee

Tuesday 9 January 2018

[MR LAURENCE ROBERTSON *in the Chair*]

## Draft Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017

2.30 pm

**The Parliamentary Under-Secretary of State for Housing, Communities and Local Government (Jake Berry):** I beg to move,

That the Committee has considered the draft Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

It is a pleasure to serve under your chairmanship, Mr Robertson, for what I believe is the first time. I draw the Committee's attention to my entry in the Register of Members' Financial Interests. The draft regulations were laid before the House on Wednesday 29 November 2017.

The Government value the private rented sector, an important part of our housing market that houses some 4.5 million households in England. We want to support good landlords who provide decent, well maintained homes; we also want to avoid unnecessary further regulation. Most private landlords provide a decent service to their tenants, respecting their rights and complying with the obligations and legal requirements imposed on them. However, we know that a small number of landlords and property agents do not meet their legal obligations and sometimes exploit their tenants by renting out substandard, overcrowded and often dangerous accommodation. Those landlords and property agents often do not respond to legitimate complaints made by their tenants; some would even prefer to be prosecuted rather than to maintain their properties to a decent standard. Such practices, which damage the reputation of the sector and of the vast majority of good landlords, frankly have no place whatever in Britain's housing market.

The Government have implemented tough measures to enable local authorities to target rogue landlords under the Housing and Planning Act 2016. In April 2017, we introduced civil penalties of up to £30,000 as an alternative to prosecution. We also extended rent repayment orders to cover a wide range of housing offences, including illegal eviction and failure to comply with statutory notices. Banning orders, the subject of the draft regulations, are an important part of this wider package and will enable local authorities to take effective enforcement measures against rogue landlords.

It may help if I briefly outline the purpose of banning orders. A banning order is defined in section 14 of the 2016 Act as

“an order...banning a person from—

- (a) letting housing in England,
- (b) engaging in English letting agency work,
- (c) engaging in English property management work, or
- (d) doing two or more of those things.”

Section 15 enables a local housing authority to apply to the first-tier tribunal

“for a banning order against a person who has been convicted of a banning order offence.”

A banning order must last for a minimum of 12 months, but there is no upper limit. A landlord who breaches a banning order may face further enforcement action, including an unlimited fine and up to six months in prison.

Hon. Members will be aware of the Government's intention to introduce a database of rogue landlords and rogue property agents. Any landlord or property agent subject to a banning order will be entered on the database, which can then be used by local housing authorities throughout England to co-ordinate their enforcement activity against rogue landlords.

We will also ensure that tenants who live in property rented out by landlords subject to a banning order retain adequate protection. A banning order will not invalidate any tenancy agreement held by the tenant in the property, regardless of whether it was issued before or after the banning order was made. That will ensure that the tenant does not lose their rights under the terms and conditions of their existing tenancy agreement. The 2016 Act therefore provides that, in certain circumstances, the management of a property can be taken on by the local housing authority following the making of a banning order.

Banning orders target the most prolific offenders who have been convicted of serious housing, immigration or other criminal offences connected to their role as a landlord. They will prevent rogue landlords and property agents from earning income from renting out properties or engaging in letting agency or other property management work, forcing them either to raise the standard of the service that they provide or to leave the sector entirely.

Hon. Members will be aware that we did not include specific banning order offences in the 2016 Act. During the passage of the Bill, concerns were raised about the nature and scope of banning order offences. In response, we held a public consultation on which existing criminal offences should be regarded as banning order offences. We also amended the Bill to ensure that the regulation-making powers were subject to the affirmative procedure, to allow full scrutiny by Parliament of the proposed offences. The regulations before the Committee specify which offences will constitute banning order offences under section 14 of the Act, but I shall summarise the offences, which are set out in the schedule to the regulations.

All the offences listed in the regulations are existing criminal offences. By making them banning order offences, we are not introducing any new offences, but simply introducing a new and draconian sanction for pre-existing criminal offences. Broadly speaking, the regulations cover three types of offences. The first type is housing offences relating to a breach of existing requirements under the Housing Act 2004 and other housing-related legislation, provided that the person convicted of the offence has not received an absolute or conditional discharge for the offence. That condition is in place to ensure that banning orders remain a proportionate sanction.

We want to target only the worst offenders who have been convicted of serious housing offences. Those offences include failure to comply with an improvement or overcrowding notice, failure to comply with houses in

multiple occupation licensing and selective licensing of other privately rented properties, and offences relating to fire and gas safety. They also include unlawful eviction of tenants or violence or harassment towards them by the landlord or letting agency. Such offences are serious and directly impact the health and safety of the tenants of a property. The offences are directly related to the offender's role as a landlord, and in our view it is right that they are included as banning order offences.

The second type of offence is immigration offences under part 3 of the Immigration Act 2014. For a banning order to be made against a landlord, that landlord would need to be convicted of offences including letting a property to an illegal immigrant. Where the original immigration offence is prosecuted, that would generally be a serious offence that would probably be associated with wider exploitation of migrants, so it is appropriate that offenders should be banned.

The third type is serious criminal offences with a connection to the landlord or tenant. A banning order may be sought where a person has been convicted in the Crown court of a serious criminal offence including fraud, misuse of drugs or sexual offences. The Government consider it appropriate to include those serious criminal offences as banning order offences where there is a clear link between the offence and the offender's role as a landlord. It is for that reason that the offence is linked to property being rented out and/or the tenant living at the property.

The banning order offences regulations were the subject of a consultation held over the eight weeks between 13 December 2016 and 10 February 2017. We received responses from local housing authorities, landlords' organisations, tenants' groups, housing charities and representatives of letting agents. We published our response to the consultation on 28 December 2017. In total, there were 223 responses, with a high level of support for our proposals. Overall, 84% of the respondents agreed that the proposed banning order offences were the right ones. In addition, we have included in the regulations a range of further offences that were suggested by respondents during the consultation, because we consider them to be offences that are most commonly committed by rogue landlords against their tenants. The additional offences, listed as items 10 to 14 of the schedule, include offences relating to the Proceeds of Crime Act 2002, harassment, antisocial behaviour, criminal damage and theft.

The vast majority of landlords and agents who comply with their responsibility will not be affected or have to worry about the regulations. Indeed, the Government believe that they will benefit from them, since standards and compliance with the law across the sector will be set as a level playing field. Good landlords, who work hard for their tenants, provide a decent place to live and comply with the law, will no longer have to face unfair competition from the rogues, who ignore the law and flout their obligations.

Ultimately, it will be for local housing authorities to determine whether to apply for a banning order in any given circumstance. My Department will produce comprehensive guidance for local authorities in England on how they may use the new powers. I therefore—

**Clive Efford** (Eltham) (Lab): Before the Minister sits down, I want to clarify a matter. In my constituency, I have a number of homes in multiple occupation that are

a source of antisocial problems, drugs and violence and are poorly managed. Many of them are owned by one company. If a banning order were applied to a company that owned properties, would it apply to all its properties or just to the individual property?

**Jake Berry:** If the hon. Gentleman does not mind, I will deal with his question in my concluding remarks, when we have had the benefit of colleagues' views in that area. Therefore, before anyone else intervenes, I recommend the draft regulations to the Committee.

2.42 pm

**Melanie Onn** (Great Grimsby) (Lab): It is a pleasure to serve under your chairmanship, Mr Robertson.

The legislation has been a long time coming, but I welcome the Government's adoption of yet another Labour party initiative. It was the last Labour Government who first proposed protecting tenants with a national register of landlords. The coalition Government labelled the proposal burdensome red tape and bureaucracy, and ditched it. My right hon. Friend the Member for Doncaster North (Edward Miliband) revived the idea, promising to root out rogue landlords, but it was then dismissed by the Conservatives because it meant more spending, which is odd considering the Government's own impact assessment two years later that put the cost at a maximum of £40 million a year.

During that period, we have seen hundreds of thousands more households pushed into the private sector. Rents have increased by an average of 16%, and there has been no protection from that kind of exploitation. The changes in the Housing and Planning Act 2016 fall well short of the tough action we have been advocating for years, but they are a step in the right direction. To protect tenants from rogue landlords, we must have in place penalties for breaching the law and ways of rooting out those whose past actions deem them unfit to be landlords. The Act was passed in May 2016, so why has it taken 20 long months to introduce this statutory instrument? It took almost 11 months from the close of the consultation for the Government to publish their response and introduce the regulations. The delay has unnecessarily allowed rogue landlords the freedom to continue operating, without housing authorities having easy recourse to the law to protect tenants.

The Government's consultation response states that almost half of respondents suggested additional offences that should be considered banning order offences, some of which were not criminal offences and some of which were already covered in the Government's proposals. However, some of the suggestions were not adopted in the legislation because they were deemed

"not sufficiently serious to warrant a banning order".

Will the Minister give some examples of those suggestions, and if possible make available a full list of the suggestions in that category after this sitting? It is quite a subjective assertion, and we could do with some more detail.

The offences added to the list following the consultation—items 7 to 14 of the schedule to the regulations—will be considered banning order offences only when they have been committed against or in collusion with a tenant at a time when the offender is a landlord. Why has that qualifier been introduced for those offences? Although they are not housing-specific offences, is it not the case that they would still make a

[Melanie Onn]

landlord or agent not a fit and proper person for the role, regardless of whether the victims were their own tenants?

On the matter of banning orders, will there be guidance for tribunals? What qualifies for the minimum 12-month banning order, and what extends to the presumably indefinite banning order that may well come about as a result of that process? Will the indefinite bannings be monitored, or will there be any monitoring of repeat-offender rogue landlords to establish the effectiveness of the legislation?

I notice that the Minister mentioned that if a banning order were to be implemented, tenants would not lose their rights and would remain in the property, and a local housing authority would take responsibility for the property. Who will the local housing authority be? Will it necessarily be a local authority, or could it be a housing association if the local authority no longer has responsibility for managing properties? We have been discussing the quality of properties and landlords who allow their properties to fall into disrepair. In order for tenants to be properly protected and live in properties kept to a decent standard, will it become the responsibility of the third party to make good the property, and who will foot the bill?

Also, it seems to me that for a banning order, the local housing authority might need to gather further evidence to meet the thresholds expected by the first-tier tribunal. Will additional funds be provided for the local housing authority to undertake that work? I am unclear how onerous it might turn out to be for the authorities, but if it becomes particularly onerous, there may be resource implications for them.

What estimate has the Minister made of the number of landlords currently operating who would be eligible for banning orders if the legislation were already in place? In other words, if the legislation is made, how many landlords does he expect will receive orders in the next year, two years or five years?

I also wish to make a point about enforcement, because the regulations are only as good as the levels of enforcement that will accompany them. If landlords are not policed, what is the value of the laws that supposedly govern them? The Government have stood in the way of local authorities such as Newham and Redbridge that are willing to use the licensing powers available to them to crack down on rogue landlords. Newham's licence was, bizarrely, not renewed for the Queen Elizabeth Olympic park area, while Redbridge's entire application was rejected. Newham has prosecuted more than 1,200 landlords who were illegally evicting tenants and providing substandard accommodation that, in many cases, failed to meet the most basic health and safety standards. It has recovered more than £3 million in unpaid council tax, and has banned almost 30 of the worst offenders. Why would the Government want to side with rogue landlords over exploited tenants?

Having said that, I accept that the regulations are absolutely better than the status quo, so we have no plans to oppose their progress.

2.50 pm

**Sir Geoffrey Clifton-Brown** (The Cotswolds) (Con): It is a pleasure to serve under your chairmanship, Mr Robertson. I well appreciate that my hon. Friend

the Member for Rossendale and Darwen (Jake Berry) is only standing in today. Although my remarks will be probing and I would like to receive some answers, I would be more than happy if he wrote to me after the sitting and put a copy in the Library. I am not necessarily expecting answers today, unless he has good knowledge he can impart. Before I make any further remarks, I should declare my entry in the Register of Members' Financial Interests, as I own some residential property.

I want to probe the scope and proportionality of the regulations. I welcome my hon. Friend's opening remark that the vast majority of the 4.5 million private landlords in this country let their property to a good standard. That is partially because it is in their own financial interest to do so. Getting new tenants is a very expensive operation these days, so it pays a landlord to maintain his property in a good state of repair and to try to retain tenants for a long time.

When the usual channels put someone like me on a Committee like this where I know something about the issue, they have to suffer the penalty of a few probing remarks. Under section 16 of the Housing and Planning Act 2016, a landlord can be convicted of an offence that is also contained in the schedule to the regulations. In a sense, the banning orders apply a double jeopardy offence under the law. In fact, it is clear from listening to my hon. Friend's remarks today that there is a third jeopardy, because in certain circumstances the landlord could be denied the ability to earn any income from his property while he is subject to a banning order. That is probably reasonable for a serious offence, such as violence to secure entry to a property, but I am concerned about the possibility of more minor offences leading to a banning order.

For example, under the Immigration Act 2016, a landlord has to inspect immigration documents to ensure that he or she is not letting to illegal immigrants. We might see that as perfectly reasonable, but some of the immigration documents from around the world are difficult to interpret, and it can be even more difficult to interpret whether they are fraudulent. It is also a requirement under the law to produce an energy performance certificate prior to letting a property nowadays. It is possible to commit a fairly minor offence and then be subject to a banning order.

A banning order is a serious step. It means that a landlord has to delegate letting and management powers to someone else. It may mean, if he can get possession under an assured shorthold tenancy, that he would rather gain possession and sell the property than have to go through the process of being unable to manage the property while subject to a banning order.

Through the all-party parliamentary group for the private rented sector, which is supported by the Government and the Opposition, we regularly come across landlords who own tens if not hundreds of properties. A banning order would have far more serious consequences for one of those landlords than for a landlord who owned just one property. I am not necessarily expecting an answer to this today, but when deciding whether to make a banning order, will the first-tier tribunal take into consideration section 16(4)(d) of the Housing and Planning Act, which mentions

"the likely effect of the banning order on the person and anyone else who may be affected by the order"?

My hon. Friends in the Whips Office will be pleased to know that I am not planning to oppose the regulations. They are a serious step, and when the first-tier tribunal is imposing banning orders, it needs to be fully cognisant of the serious effects they have.

2.54 pm

**Clive Efford:** I wish you, Mr Robertson, everyone on the Committee and all the officials here a happy new year. I will not keep the Committee long, and I will put my questions at the start to give people a fair chance of finding answers.

My first question is something that I mentioned earlier. In my constituency, a single company owns several properties. If it is found to have committed a criminal offence relating to one of those properties, and if the local authority then sorts a banning order, will that banning order to the company therefore mean that all its properties have to be taken over by a local housing authority or will the order apply to just that one property? If we are talking about an organisation—a company that is a fit and proper person, which is what we are seeking to achieve—surely if it is found to be criminally negligent or to have mismanaged its property, it follows that it should not be running other properties either. I seek clarification around that.

**Jake Berry:** Will the hon. Gentleman give way?

**Clive Efford:** I will, if I can just get my questions out to give people in the room the chance to hand the Minister a note if necessary. I am trying to be fair to him. I know the situation and I am genuinely after the answers, rather than trying to trip him up.

On the resourcing of tribunals, are we expecting a glut of these applications? My hon. Friend the Member for Great Grimsby raised the issue of tenants' rights during this period; they do need to be protected. We do not want a flurry of evictions coming about as a result of this measure, as has been pointed out by the hon. Member for The Cotswolds. People might decide that they want to sell the property, or even attempt to evict the tenants under the guise of wanting to sell the property, and therefore seek possession. What about damage that arises during the period in which a housing authority is in charge of the property? Who is liable? Does the landlord have any say over who manages that property during a banning order period, or is that to be determined by the tribunal and the local housing authority? I would like some clarification on those points.

**Sir Geoffrey Clifton-Brown:** The hon. Gentleman has raised an interesting point as to who is able to run those properties when a banning order is in place. Is the landlord or agent simply able to delegate that to somebody else not subject to a banning order, such as another agent, or will it have to be managed by a local housing association? We do need some clarification on that.

**Clive Efford:** I would like some clarification on that, too, but I feel the latter should be the case. The default position should be for the property to go to the local housing authority, because my experience with these companies, as I have described, has been that if we check with Companies House we find that they not only shift the properties around, but shift the companies

around. They change the responsible person for the company just by changing a few letters in the name, because there are other things going on behind some of these companies, such as tax avoidance and defaults on mortgages. With rogue landlords, this goes much deeper than the issue of letting properties, though I accept that the vast majority of landlords are not like that.

Those are the people we are legislating for here. It is important that a banning order is taken not just because that is desirable, but because we are taking punitive action against a landlord as they are not a desirable body to be managing their property, albeit for a year and possibly for a fixed period beyond that. At the same time, it is important that we are alive to the fact that those organisations will be prepared for actions such as these and will just shift the property's ownership around if they have a say in who takes over its management. They will no doubt have their own pet agency to take over and run it should the hiccup of a banning order occur. We want the orders to stick and we want them to be painful for those rogue landlords, so that we prevent them from entering into this kind of business in the first place. Perhaps the Minister will deal with my question now.

2.59 pm

**Jake Berry:** It is one of the unusual benefits of an ongoing Government reshuffle that this is the first of four debates that I will have the opportunity to respond to today, which would otherwise have been dealt with by colleagues from other areas of the Department.

I will deal first with the questions asked by the hon. Member for Eltham. It is correct that if a company owns multiple properties it can receive a banning order against all those properties, but that is subject to a local authority applying for a banning order against any office of the company. If that company has been convicted of a banning order offence, it will be possible to get a banning order against all those properties.

In terms of tenants' rights, which were raised by the hon. Member for Great Grimsby—my honourable friend outside this place—and the hon. Member for Eltham, local authorities have the power, through a management order, to take over the management of the property for the period of the banning order, thereby keeping the tenant in place and protecting them. The terms of that management order will ultimately be the local authority's responsibility. It would be surprising if the local authority did not choose one of its preferred local housing providers to manage that property, if it did not do so itself.

We in the House would all acknowledge that public sector housing providers, local authorities and quasi-public sector providers such as registered social landlords are extremely good landlords. That is why so many people want to live in those properties.

In relation to the point made by the hon. Member for Eltham, the landlords, whether companies or individuals, who will be affected by the regulations are by definition the bad eggs. We have anticipated that and have put wide-ranging anti-avoidance measures in the regulations to ensure that things such as properties cannot be transferred to husbands, wives, associated companies or associated parties to try to ensure that people cannot avoid the regulations by nefarious means. We will keep that under review because rogue landlords—or crooks, as people may call them—are quite inventive.

[Jake Berry]

My hon. Friend the Member for The Cotswolds, whom I congratulate on his recent knighthood—he has gone from a landlord to a landknight—set out several questions, which I am happy to write to him about. He also expressed concern that less serious offences may be caught by the regulations. The regulations are specifically drafted to cover the most serious offences and are not intended to catch the less serious. The vast majority of landlords, who make a living by letting out properties of a good standard and by providing a good service to their tenants, have nothing to fear from the regulations. We have designed the regulations to affect only the most serious offences. For many people, we are talking about the possibility of taking away their livelihood and their means of making a living for an extended period, so it is therefore appropriate that the offences are proportionate to that.

The hon. Member for Great Grimsby spoke about the Labour Government's proposal to create a national register of all landlords. In a much more proportionate way, the regulations create a national register of all rogue landlords, which will be maintained by the Government and local authorities working together. It will enable them to target effectively those landlords who are not providing a good service. That is much more effective than a national register of all landlords and it will be a strong tool for local authorities that want to target rogues. The national database will be searchable by local authorities in England.

The hon. Lady also said that the regulations had been a long time coming. They were quite a long time in their design, because the Government were determined to get them right, and we are grateful for the helpful suggestions that came in during the consultation to ensure that they are right. We are talking about depriving people of their opportunity to make a living. Although that is absolutely right for rogue landlords—they should be deprived of that opportunity—for the vast majority of landlords who are going about their business legitimately, we want to ensure that they are not prevented from making a legitimate living. Again, that goes back to the comments made by my hon. Friend the Member for The Cotswolds.

We intend to keep the banning order offences under review. I heard what the hon. Member for Great Grimsby said about the response to the consultation, but, in fact, these offences will change over time and we intend to

keep them under review to ensure that these banning orders remain up to date. We will listen to local authorities to ensure that they have the powers that they need to continue to provide decent service to tenants.

The hon. Lady also asked how many banning orders we expect. Our current estimate is that about 600 banning orders per year will be made, although we do not want to create a target for local authorities. Often, if they are told they are expected to do 10 each per year, they will do exactly 10 each. I hope local authorities fully embrace these new powers and simply get enough banning orders to deal with the rogue landlords in their area. There will be no guidance for the tribunal, but we will provide guidance for local authorities and ask the tribunal to have regard to the guidance.

On the last point made by the hon. Lady, we hope local authorities will have enough resources, because banning orders are additional sanctions for offences that local authorities already have a legal obligation to pursue. We have enabled them from April 2017 to keep the fines from civil offences of up to £30,000 and also enabled them to keep penalties relating to housing enforcement purposes.

The banning orders are a necessary tool to enable local authorities to combat rogue landlords who have committed serious offences relating to their role as landlord. Those rogues will continue to be prevented from operating for profit if they intend to keep providing poor-quality housing and continuing with bad management practices. Such practices, which we are discussing today as being subject to these banning orders, put health and safety and the welfare of tenants at risk. The Government and all in the House should be determined to crack down on that.

We want to compel rogue landlords either to improve the standard of housing they rent out and comply with their obligations or, if not, to leave the sector in its entirety and enable good landlords to enter and provide decent homes for people to live in. I therefore commend the regulations to the Committee.

*Question put and agreed to.*

*Resolved,*

That the Committee has considered the draft Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

3.7 pm

*Committee rose.*