

APPENDIX 2

BANNING ORDERS POLICY AND PROCEDURE

This policy and procedure forms part of the Council's Intervention and Enforcement Policy, and should be read in conjunction with that document.

It also reflects current guidance issued by the Department of Communities and Local Government (DCLG).

1. About Banning Orders

- 1.1. The Housing and Planning Act 2016 provides for Councils in England to apply for a Banning Order against a person who has been convicted of a Banning Order offence.
- 1.2. A Banning Order is an Order by the First-Tier Tribunal Property Chamber (Residential Property) (FTT) that bans a landlord from:
 - Letting housing in England;
 - Engaging in English letting agency work;
 - Engaging in English property management work or
 - Doing two or more of those things.
- 1.3. A landlord subject to a Banning Order is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may be subject to a Management Order.
- 1.4. Annex 1.0 outlines Banning Order offences.
- 1.5. There are some conditions on what constitutes a Banning Order offence; these are set out in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.
 - If a person has received an absolute and/or conditional discharge for a relevant housing offence then that offence cannot be regarded as a Banning Order offence (items 1-5 of the Schedule of offences);
 - If a person has committed a serious criminal offence they must have been sentenced in the Crown Court in order for that offence to be regarded as a Banning Order offence (items 7-14 of the Schedule);
 - Certain offences are only Banning Order offences where the offence can be linked to the tenant or other occupier or the property owned or rented out by the landlord.

2. Decision to apply for a Banning Order

- 2.1. We will pursue a Banning Order for the most serious offenders and the Service Manager or a Team Manager will make the final decision as to whether to apply for a Banning Order and the duration of that Banning Order. The decision will

be made on a case-by-case basis with regard to the following factors in this section.

2.1.1 The seriousness of the offence

In considering the seriousness of the offence, we will consider the sentence imposed by the Court in respect of the Banning Order offence, for example whether the offender received a maximum or minimum sentence. However, other factors will also be considered.

2.1.2 Previous convictions/rogue landlord database

We will check the Rogue Landlord Database and any other relevant databases in order to establish whether a landlord has committed other Banning Order offences or has received any Civil Penalties in relation to Banning Order offences. A longer Banning Order may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.

2.1.3 The harm caused to the occupier

Particular account will be taken of the harm or potential for harm to the occupier caused by the Banning Order offence. The greater the harm or the potential for harm (this may be as perceived by the occupier), the longer the proposed length of the ban is likely to be.

2.1.4 Punishment of the offender

The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that we set Banning Orders at a high enough level to remove the worst offenders from the sector. We will seek to ensure that the Banning Order has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

2.1.5 Deter the offender from repeating the offence

In imposing a Banning Order we seek to prevent further offending. The length of the ban we propose will therefore prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban will therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence.

2.1.6 Deterring others from committing similar offences

An important part of deterrence of others is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so

exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.

3.0 Our power to require further information

- 3.1 The Housing and Planning Act 2016 provides that we can require a landlord to provide information for the purpose of enabling us to decide whether to apply for a Banning Order. This could include but is not limited to requiring a landlord to provide information on all properties in his/her ownership. We will use this power where we consider that it will help us to achieve our policy aims and exercise our statutory powers and responsibilities effectively.
- 3.2. It is an offence for a landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence to provide information that is false or misleading. Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine.

4.0 Procedure for making a Banning Order

- 4.1. Where we intend to apply for a Banning Order, we will issue a 'Notice of Intent' to the landlord within 6 months of conviction of a Banning Order offence. The Notice of Intent will set out why we intend to apply for a Banning Order, the proposed length of the Banning Order and the landlord's right to make representations. The landlord then has 28 days to make representations. We will then consider any representations made during that 28 day period before deciding whether to make an application for a Banning Order.
- 4.2. If we decide to proceed, a Banning Order application will be made to the FTT.
- 4.3. The FTT will consider the Council's application and decide whether to issue a Banning Order and if it decides to issue a Banning Order, how long the Banning Order should last.
- 4.4. A Banning Order must specify the duration of the Order and it must last for at least 12 months. There is no maximum duration.
- 4.5. Only the FTT can revoke or vary a Banning Order.
- 4.6. Where a Banning Order includes a ban on letting, a landlord (unless authorised by the FTT) is prevented from transferring the property to certain persons whilst the Banning Order is in force including family members, business partners and their associates or a corporate body for which the landlord is an officer.
- 4.7. A Banning Order does not invalidate any tenancy agreement held by occupiers in the property, regardless of whether the agreement was issued before or after the Banning Order was made. This is to ensure an occupier of

the property does not lose their rights under the terms and conditions of their tenancy agreement.

- 4.8. A landlord may appeal to the Upper Tribunal against the decision of the FTT to make the Banning Order.
- 4.9. Government guidance encourages local housing authorities to publicise successful Banning Orders for individual landlords. We will also have regard to Ministry of Justice guidance when deciding whether to publicise outcomes.

5.0 Breach of Banning Orders

- 5.1. Breach of a Banning Order is a criminal offence. Where a landlord or agent breaches a Banning Order, s/he can be prosecuted by the Council or face a Financial Penalty of up to £30,000 as an alternative to prosecution (see Appendix 1). If the breach continues after conviction or financial penalty, the person commits a further offence and is liable to further prosecution or Financial Penalty.
- 5.2. Where the landlord lets a property in breach of a Banning Order, we can make an Interim Management Order to take over the management of the property in place of a landlord, the primary aim of which is to safeguard the health and safety of occupiers.
- 5.3. In addition, a Council or a tenant can apply to a FTT for a Rent Repayment Order where a landlord has breached a Banning Order.

Definitions

‘Landlord’ also includes a property agent

‘Banning Order Offences’ are described in ‘The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 and displayed at Annex 1.

Annex 1

Banning Order Offences

The following list of banning order offences is taken from the Schedule to the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 and may be subject to change.

Offences are subject to certain conditions**

	Statute	Provision	Offence
1.	Protection from Eviction Act 1977	Section 1(2), (3) and (3A)	Unlawful eviction and harassment of occupier
2.	Criminal Law Act 1977	Section 6(1)	Violence for securing entry
3.	Housing Act 2004	Section 30(1)	Failing to comply with an improvement notice
	Housing Act 2004	Section 32(1)	Failing to comply with a prohibition order
	Housing Act 2004	Section 72(1), (2) and (3)	Offences in relation to licensing of Houses in Multiple Occupation
	Housing Act 2004	Section 95(1) and (2)	Offences in relation to licensing of houses under Part 3
	Housing Act 2004	Section 139(7)	Contravention of an overcrowding notice
	Housing Act 2004	Section 234(3)	Failure to comply with management regulations in respect of Houses in Multiple Occupation
	Housing Act 2004	Section 238(1)	False or misleading information
4.	Regulatory Reform (Fire Safety) Order 2005	Article 32(1) and (2)	Fire safety offences
5.	Health and Safety at Work etc. Act 1974	Section 33(1)(c) where a person contravenes any requirement specified in regulation 36 of the Gas Safety (Installation and Use) Regulations 1998	Gas safety offences - duties on landlords
6.	Immigration Act 2014	Section 33A(1) and (10)	Residential tenancies – landlord offences
	Immigration Act 2014	Section 33B(2) and (4)	Residential tenancies – agent offences
7.	Fraud Act 2006	Section 1(1)	Fraud

	Fraud Act 2006	Section 6(1)	Possession etc. of articles for use in frauds
	Fraud Act 2006	Section 7(1)	Making or supplying articles for use in frauds
	Fraud Act 2006	Section 9(1)	Participating in fraudulent business carried on by sole trader etc.
	Fraud Act 2006	Section 11(1)	Obtaining services dishonestly
	Fraud Act 2006	Section 12(2)	Liability of company officers for offences by company
8.	Criminal Justice Act 2003	Schedule 15	Specified violent and sexual offences
9.	Misuse of Drugs Act 1971	Section 8	Occupiers etc. of premises to be punishable for permitting certain activities to take place there
	Misuse of Drugs Act 1971	Section 9	Prohibition of certain activities relating to opium
	Misuse of Drugs Act 1971	Section 9A(1) and (3)	Prohibition of supply etc. of articles for administering or preparing controlled drugs
	Misuse of Drugs Act 1971	Section 18(1), (2), (3) and (4)	Miscellaneous offences
	Misuse of Drugs Act 1971	Section 19	Attempts etc. to commit offences
	Misuse of Drugs Act 1971	Section 20	Assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law
	Misuse of Drugs Act 1971	Section 21	Offences by corporations
10.	Proceeds of Crime Act 2002	Section 327	Concealing etc. criminal property
	Proceeds of Crime Act 2002	Section 328	Arrangements
	Proceeds of Crime Act 2002	Section 329	Acquisition, use and possession
11.	Protection from Harassment Act 1997	Section 2	Offence of harassment
	Protection from Harassment Act 1997	Section 2A	Offence of stalking

12.	Anti-social Behaviour, Crime and Policing Act 2014	Section 30	Breach of criminal behaviour order
	Anti-social Behaviour, Crime and Policing Act 2014	Section 48	Failure to comply with a community protection notice
13.	Criminal Damage Act 1971	Section 1(1)	Destroying or damaging property
	Criminal Damage Act 1971	Section 2	Threats to destroy or damage property
	Criminal Damage Act 1971	Section 3	Possessing anything with intent to destroy or damage property
14.	Theft Act 1968	Section 7	Theft
	Theft Act 1968	Section 9	Burglary
	Theft Act 1968	Section 21	Black

** The above offences are banning order offences —

(a) an offence listed in any of items 1 to 5 of the Schedule, unless the sentence imposed on the person convicted of the offence (“the offender”) is an absolute discharge or a conditional discharge;

(b) an offence listed in item 6 of the Schedule;

(c) an offence listed in any of items 7 to 14 of the Schedule if—

(i) the offence was committed against or in collusion with a tenant occupying any housing (or another person occupying that housing with the tenant) or the offence was committed at or in relation to that housing;

(ii) at the time the offence was committed, the offender was the residential landlord or property agent of that housing or an officer of a body corporate who was the residential landlord or property agent of that housing; and

(iii) the offender was sentenced for the offence in the Crown Court.