

CIH response to: proposed banning order offences under the Housing and Planning Act 2016



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Overall comments about banning orders and the private rented sector more generally

CIH supports the introduction of banning orders and associated plans to establish a database of rogue landlords.

The private rented sector (PRS) is a growing part of the market and now houses 19 per cent of all households in England, up from just nine per cent in 1992. However both property conditions and standards of housing management, while by no means universally poor, are highly variable. There is a particular problem at the lower end of the PRS where both property and management standards can be very poor. Here vulnerable households with very few alternative options can find themselves housed in overcrowded or unsafe conditions by unscrupulous landlords. Tenants at this end of the market frequently report instances of serious overcrowding, of landlords refusing to carry out essential repairs and express concerns about illegal or retaliatory evictions.

Concerted action is needed to tackle this problem and we recognise that the introduction of banning orders is part of a wider government strategy aimed at tackling rogue landlords, which also includes the extension of mandatory house in multiple occupation (HMO) licensing, the creation of new civil penalties, greater use of rent repayment orders and a ban on letting agent fees. These changes are all sensible and proportionate and could help to tackle some of the worst abuses of vulnerable tenants.

However we consider that more could still be done to improve standards across the sector (not just among the very worst landlords). Although outside the scope of this consultation, we suggest that government also consider a number of further interventions:

- Reviewing the statutory minimum standards to which landlords are subject: the PRS was substantially de-regulated in the 1980s, however there are still a variety of obligations with which landlords are required to comply. These were introduced piecemeal over a period of time and as a result are enforced by a range of different bodies in an uncoordinated manner. They are not widely understood by either landlords or tenants. We consider that the sector would benefit from the development of a single, easily understood set of minimum standards (covering both property conditions and housing management) for landlords
- Ensuring local authorities are able to properly resource proactive enforcement of standards: in many cases resource constraints mean that, even where there are licensing schemes in place, councils' enforcement work is largely reactive and they remain dependent on tenants' willingness to come forward with complaints to identify problems. The introduction of new civil penalties and greater use of rent repayment orders may help with this, but we would encourage government to look more generally at the issue of councils' ability to resource proactive enforcement work
- Introducing regulation of letting agents: a 2010 DCLG survey of landlords showed that 79 per cent of landlords receive less than a quarter of their income from rent, suggesting that being a landlord is a side-line activity for most. As a result, many lack the time, skills and knowledge to actively manage their properties effectively. In theory high street letting agents should offer a potential solution to this problem, however concerns have been raised about the way in which some elements of this industry operate. We consider that

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there is widespread agreement, including among organisations representing agents themselves, that regulation is needed to stamp out poor and exploitative practices

- Considering the options available to use accreditation or co-regulation schemes to encourage landlords to commit to higher standards: [Our previous research](#) carried out with the Resolution Foundation suggested that more landlords could be encouraged to sign up to a set of standards, over and above the legal minimum, if a number of tax incentives were made conditional upon them joining a recognised accreditation (or co-regulation) scheme. This might include, for example, giving accredited/co-regulated landlords a more generous tax allowance for 'allowable expenses' (where landlords deduct the cost of repairs from their profits for income tax purposes) and/or allowing them to benefit from capital gains tax rollover relief. We consider that these would offer a strong incentive for landlords to commit to higher standards, as part of a 'something for something' deal.

Answers to the specific questions posed in the consultation

Questions 1 – 5: Relevant housing offences

We agree with the proposed offences included in this section. These would all be relevant and proportionate as banning offences and, as they are generally enforced by local authorities in the first place, would all clearly be workable in practice. We expect that the majority of applications for banning orders are likely to relate to offences contained in this section of the consultation.

One other type of offence which could be considered is breaches of building regulations, where a landlord has illegally converted a property for letting. This often results in lettings of unsuitable and unsafe accommodation, in which case the use of a banning order may be appropriate.

Question 6: Immigration offences

We do not agree that letting to someone disqualified from renting because of their immigration status should constitute a banning offence. We consider that this is not necessary in order to achieve the policy's stated aim of protecting tenants from landlords who have been convicted of particularly serious offences, or who are prolific offenders.

More generally, we have concerns about the requirement for landlords to carry out immigration checks on prospective tenants (the 'right to rent' scheme). An [independent assessment of the initial pilot of this scheme](#), published in late 2015, revealed a number of problems:

- It was not widely understood by landlords: Almost one-fifth of landlords were unaware of the scheme and over a third said they did not understand it
- It was implemented inconsistently: Over 40 per cent of tenants from the pilot areas reported that their landlords hadn't carried out the checks
- It led to a rise in discriminatory lettings practices: More than 40 per cent of landlords contacted in the survey said they were now less likely to consider renting to someone who does not have a British passport. A quarter extended this to anyone who had a name which doesn't sound British or who had a foreign accent.

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A new evaluation of the scheme, across England, has been carried out by the Joint Council for the Welfare of Immigrants, and will be published later in February. This is expected to include clear evidence that the scheme is proving to be discriminatory against people who are entitled to rent accommodation but do not have a UK passport, and that the discrimination is worse for ethnic minority applicants.

Given these concerns, we believe it would be prudent not to further extend the scheme by making failure to comply with it a banning offence. This could result in landlords being banned not because they posed a danger to tenants but because they either were not aware of, or failed to understand, the scheme.

Questions 7 – 13: Serious and other criminal offences

We broadly agree with the proposed offences included in these sections, although in practical terms close working relationships between local authorities and police forces will be necessary for these to be exercised. These offences are not generally enforced by local authorities and so there is a question about whether they will always be made aware of relevant convictions.

A further question here is the need for these offences to be linked to a specific property i.e. that a local authority should only be able to seek a banning order when an individual has committed an offence, whilst acting in their capacity as a landlord. This means that local authorities will not be able to seek to ban individuals who have committed serious criminal offences in other, unrelated circumstances.

This is in contrast the situation in both Wales and Scotland where relevant landlord registration/licensing schemes both require landlords to pass a fit and proper person test. Although the specifics of these schemes vary, in both cases previous criminal convictions would be considered and an individual could be prevented from operating simply for having convictions which might affect their ability to be a good landlord.

While there may be some merit in the broader, more proactive approach which has been introduced in Wales and Scotland, we understand that in this instance the intention of the policy is to strengthen the powers available to take action against individuals who have been proven to be rogue landlords, and to prevent repeat offending. With that in mind, the proposed approach seems reasonable.