



# Housing and Planning Act 2016

## 2016 CHAPTER 22

VALID FROM 10/03/2017

### PART 2

#### ROGUE LANDLORDS AND PROPERTY AGENTS IN ENGLAND

VALID FROM 06/04/2018

### CHAPTER 1

#### INTRODUCTION

#### **13 Introduction to this Part**

- (1) This Part is about rogue landlords and property agents.
- (2) In summary—
  - (a) Chapter 2 allows a banning order to be made where a landlord or property agent has been convicted of a banning order offence,
  - (b) Chapter 3 requires a database of rogue landlords and property agents to be established,
  - (c) Chapter 4 allows a rent repayment order to be made against a landlord who has committed an offence to which that Chapter applies, and
  - (d) Chapter 6 contains definitions.

*Status: Point in time view as at 13/07/2016. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 03/11/2017

## CHAPTER 2

### BANNING ORDERS

#### *Banning orders: key definitions*

#### **14 “Banning order” and “banning order offence”**

- (1) In this Part “banning order” means an order, made by the First-tier Tribunal, 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.
- (2) See also section 18 (which enables a banning order to include a ban on involvement in certain bodies corporate).
- (3) In this Part “banning order offence” means an offence of a description specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3) may, in particular, describe an offence by reference to—
  - (a) the nature of the offence,
  - (b) the characteristics of the offender,
  - (c) the place where the offence is committed,
  - (d) the circumstances in which it is committed,
  - (e) the court sentencing a person for the offence, or
  - (f) the sentence imposed.

VALID FROM 06/04/2018

#### *Imposition of banning orders*

#### **15 Application and notice of intended proceedings**

- (1) A local housing authority in England may apply for a banning order against a person who has been convicted of a banning order offence.
- (2) If a local housing authority in England applies for a banning order against a body corporate that has been convicted of a banning order offence, it must also apply for a banning order against any officer who has been convicted of the same offence in respect of the same conduct.
- (3) Before applying for a banning order under subsection (1), the authority must give the person a notice of intended proceedings—

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- (a) informing the person that the authority is proposing to apply for a banning order and explaining why,
  - (b) stating the length of each proposed ban, and
  - (c) inviting the person to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (4) The authority must consider any representations made during the notice period.
- (5) The authority must wait until the notice period has ended before applying for a banning order.
- (6) A notice of intended proceedings may not be given after the end of the period of 6 months beginning with the day on which the person was convicted of the offence to which the notice relates.

## **16 Making a banning order**

- (1) The First-tier Tribunal may make a banning order against a person who—
  - (a) has been convicted of a banning order offence, and
  - (b) was a residential landlord or a property agent at the time the offence was committed (but see subsection (3)).
- (2) A banning order may only be made on an application by a local housing authority in England that has complied with section 15.
- (3) Where an application is made under section 15(1) against an officer of a body corporate, the First-tier Tribunal may make a banning order against the officer even if the condition in subsection (1)(b) of this section is not met.
- (4) In deciding whether to make a banning order against a person, and in deciding what order to make, the Tribunal must consider—
  - (a) the seriousness of the offence of which the person has been convicted,
  - (b) any previous convictions that the person has for a banning order offence,
  - (c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and
  - (d) the likely effect of the banning order on the person and anyone else who may be affected by the order.

## **17 Duration and effect of banning order**

- (1) A banning order must specify the length of each ban imposed by the order.
- (2) A ban must last at least 12 months.
- (3) A banning order may contain exceptions to a ban for some or all of the period to which the ban relates and the exceptions may be subject to conditions.
- (4) A banning order may, for example, contain exceptions—
  - (a) to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or
  - (b) to allow letting agents to wind down current business.

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## **18 Content of banning order: involvement in bodies corporate**

- (1) A banning order may include provision banning the person against whom it is made from being involved in any body corporate that carries out an activity that the person is banned by the order from carrying out.
- (2) For this purpose a person is “involved” in a body corporate if the person acts as an officer of the body corporate or directly or indirectly takes part in or is concerned in the management of the body corporate.

## **19 Power to require information**

- (1) A local housing authority may require a person to provide specified information for the purpose of enabling the authority to decide whether to apply for a banning order against the person.
- (2) It is an offence for the person to fail to comply with a requirement, unless the person has a reasonable excuse for the failure.
- (3) It is an offence for the person to provide information that is false or misleading if the person knows that the information is false or misleading or is reckless as to whether it is false or misleading.
- (4) A person who commits an offence under this section is liable on summary conviction to a fine.

## **20 Revocation or variation of banning orders**

- (1) A person against whom a banning order is made may apply to the First-tier Tribunal for an order under this section revoking or varying the order.
- (2) If the banning order was made on the basis of one or more convictions all of which are overturned on appeal, the First-tier Tribunal must revoke the banning order.
- (3) If the banning order was made on the basis of more than one conviction and some of them (but not all) have been overturned on appeal, the First-tier Tribunal may—
  - (a) vary the banning order, or
  - (b) revoke the banning order.
- (4) If the banning order was made on the basis of one or more convictions that have become spent, the First-tier Tribunal may—
  - (a) vary the banning order, or
  - (b) revoke the banning order.
- (5) The power to vary a banning order under subsection (3)(a) or (4)(a) may be used to add new exceptions to a ban or to vary—
  - (a) the banned activities,
  - (b) the length of a ban, or
  - (c) existing exceptions to a ban.
- (6) In this section “spent”, in relation to a conviction, means spent for the purposes of the Rehabilitation of Offenders Act 1974.

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### Consequences of banning order, including consequences of breach

VALID FROM 06/04/2018

#### 21 Offence of breach of banning order

- (1) A person who breaches a banning order commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 51 weeks or to a fine or to both.
- (3) If a financial penalty under section 23 has been imposed in respect of the breach, the person may not be convicted of an offence under this section.
- (4) Where a person is convicted under subsection (1) of breaching a banning order and the breach continues after conviction, the person commits a further offence and is liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day or part of a day on which the breach continues.
- (5) In proceedings for an offence under subsection (4) it is a defence to show that the person had a reasonable excuse for the continued breach.
- (6) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (2) to 51 weeks is to be read as a reference to 6 months.

VALID FROM 06/04/2018

#### 22 Offences by bodies corporate

- (1) Where an offence under section 21 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of a body corporate, the officer as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate.

#### 23 Financial penalty for breach of banning order

- (1) The responsible local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to an offence under section 21(1).
- (2) In this section “responsible local housing authority” means the local housing authority for the area in which the housing to which the conduct relates is situated.

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- (3) Only one financial penalty under this section may be imposed in respect of the same conduct unless subsection (4) allows another penalty to be imposed.
- (4) If a breach continues for more than 6 months, a financial penalty may be imposed for each additional 6 month period for the whole or part of which the breach continues.
- (5) The amount of a financial penalty imposed under this section is to be determined by the authority imposing it, but must not be more than £30,000.
- (6) The responsible local housing authority may not impose a financial penalty in respect of any conduct amounting to an offence under section 21(1) if—
  - (a) the person has been convicted of an offence under that section in respect of the conduct, or
  - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (7) Schedule 1 deals with—
  - (a) the procedure for imposing financial penalties,
  - (b) appeals against financial penalties, and
  - (c) enforcement of financial penalties.
- (8) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.
- (9) The Secretary of State may by regulations amend the amount specified in subsection (5) to reflect changes in the value of money.
- (10) A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this section or Schedule 1.

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#### **24 Saving for illegal contracts**

A breach of a banning order does not affect the validity or enforceability of any provision of a tenancy or other contract entered into by a person despite any rule of law relating to the validity or enforceability of contracts in circumstances involving illegality.

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#### **25 Banned person may not hold HMO licence etc**

Schedule 2 changes the rules about granting and revoking licences under Parts 2 and 3 of the Housing Act 2004 where a banning order has been made.

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## 26 Management orders following banning order

Schedule 3 amends the Housing Act 2004 to allow interim and final management orders to be made in cases where a banning order has been made.

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### *Anti-avoidance*

## 27 Prohibition on certain disposals

- (1) A person who is subject to a banning order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person.
- (2) A disposal in breach of the prohibition imposed by subsection (1) is void.
- (3) A transfer is “unauthorised” for the purposes of subsection (1) unless it is authorised by the First-tier Tribunal on an application by the person who is subject to the banning order.
- (4) In subsection (1) “prohibited person” means—
  - (a) a person associated with the landlord,
  - (b) a business partner of the landlord,
  - (c) a person associated with a business partner of the landlord,
  - (d) a business partner of a person associated with the landlord,
  - (e) a body corporate of which the landlord or a person mentioned in paragraph (a) to (d) is an officer,
  - (f) a body corporate in which the landlord has a shareholding or other financial interest, or
  - (g) in a case where the landlord is a body corporate, any body corporate that has an officer in common with the landlord.
- (5) In section (4)—

“associated person” is to be read in accordance with section 178 of the Housing Act 1996;

“business partner” is to be read in accordance with section 34(5) of the Deregulation Act 2015.

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VALID FROM 03/11/2017

## CHAPTER 3

### DATABASE OF ROGUE LANDLORDS AND PROPERTY AGENTS

#### *The database and its content*

VALID FROM 06/04/2018

#### **28 Database of rogue landlords and property agents**

- (1) The Secretary of State must establish and operate a database of rogue landlords and property agents for the purposes of this Chapter.
- (2) Sections 29 and 30 give local housing authorities in England responsibility for maintaining the content of the database.
- (3) The Secretary of State must ensure that local housing authorities are able to edit the database for the purpose carrying out their functions under those sections and updating the database under section 34.

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#### **29 Duty to include person with banning order**

- (1) A local housing authority in England must make an entry in the database in respect of a person if—
  - (a) a banning order has been made against the person following an application by the authority, and
  - (b) no entry was made under section 30, before the banning order was made, on the basis of a conviction for the offence to which the banning order relates.
- (2) An entry made under this section must be maintained for the period for which the banning order has effect and must then be removed.

VALID FROM 06/04/2018

#### **30 Power to include person convicted of banning order offence**

- (1) A local housing authority in England may make an entry in the database in respect of a person if—
  - (a) the person has been convicted of a banning order offence, and
  - (b) the offence was committed at a time when the person was a residential landlord or a property agent.



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- (2) A local housing authority in England may make an entry in the database in respect of a person who has, at least twice within a period of 12 months, received a financial penalty in respect of a banning order offence committed at a time when the person was a residential landlord or a property agent.
- (3) A financial penalty is to be taken into account for the purposes of subsection (2) only if the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.
- (4) Section 31 imposes procedural requirements that must be met before an entry may be made in the database under this section.
- (5) An entry made under this section—
  - (a) must be maintained for the period specified in the decision notice given under section 31 before the entry was made (or that period as reduced in accordance with section 36), and
  - (b) must be removed at the end of that period.
- (6) Subsection (5)(a) does not prevent an entry being removed early in accordance under section 36.
- (7) The Secretary of State must publish guidance setting out criteria to which local housing authorities must have regard in deciding—
  - (a) whether to make an entry in the database under this section, and
  - (b) the period to specify in a decision notice under section 31.

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### **31 Procedure for inclusion under section 30**

- (1) If a local housing authority decides to make an entry in the database in respect of a person under section 30 it must give the person a decision notice before the entry is made.
- (2) The decision notice must—
  - (a) explain that the authority has decided to make the entry in the database after the end of the period of 21 days beginning with the day on which the notice is given (“the notice period”), and
  - (b) specify the period for which the person's entry will be maintained, which must be at least 2 years beginning with the day on which the entry is made.
- (3) The decision notice must also summarise the person's appeal rights under section 32.
- (4) The authority must wait until the notice period has ended before making the entry in the database.
- (5) If a person appeals under section 32 within the notice period the local housing authority may not make the entry in the database until—
  - (a) the appeal has been determined or withdrawn, and
  - (b) there is no possibility of further appeal (ignoring the possibility of an appeal out of time).

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- (6) A decision notice under this section may not be given after the end of the period of 6 months beginning with the day on which the person—
- (a) was convicted of the banning order offence to which the notice relates, or
  - (b) received the second of the financial penalties to which the notice relates.

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### 32 Appeals

- (1) A person who has been given a decision notice under section 31 may appeal to the First-tier Tribunal against—
  - (a) the decision to make the entry in the database in respect of the person, or
  - (b) the decision as to the period for which the person's entry is to be maintained.
- (2) An appeal under this section must be made before the end of the notice period specified in the decision notice under section 31(2).
- (3) The Tribunal may allow an appeal to be made to it after the end of the notice period if satisfied that there is a good reason for the person's failure to appeal within the period (and for any subsequent delay).
- (4) On an appeal under this section the tribunal may confirm, vary or cancel the decision notice.

### 33 Information to be included in the database

- (1) The Secretary of State may by regulations make provision about the information that must be included in a person's entry in the database.
- (2) The regulations may, in particular, require a person's entry to include—
  - (a) the person's address or other contact details,
  - (b) the period for which the entry is to be maintained;
  - (c) details of properties owned, let or managed by the person;
  - (d) details of any banning order offences of which the person has been convicted;
  - (e) details of any banning orders made against the person, whether or not still in force;
  - (f) details of financial penalties that the person has received.
- (3) In relation to a case where a body corporate is entered in the database, the regulations may also require information to be included about its officers.

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### 34 Updating

A local housing authority must take reasonable steps to keep information in the database up-to-date.

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### 35 Power to require information

- (1) A local housing authority may require a person to provide specified information for the purpose of enabling the authority to decide whether to make an entry in the database in respect of the person.
- (2) A local housing authority that makes an entry in the database in respect of a person, or that is proposing to make an entry in the database in respect of a person, may require the person to provide any information needed to complete the person's entry or keep it up-to-date.
- (3) It is an offence for the person to fail to comply with a requirement, unless the person has a reasonable excuse for the failure.
- (4) It is an offence for the person to provide information that is false or misleading if the person knows that the information is false or misleading or is reckless as to whether it is false or misleading.
- (5) A person who commits an offence under this section is liable on summary conviction to a fine.

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#### *Removal or variation*

### 36 Removal or variation of entries made under section 30

- (1) An entry made in the database under section 30 may be removed or varied in accordance with this section.
- (2) If the entry was made on the basis of one or more convictions all of which are overturned on appeal, the responsible local housing authority must remove the entry.
- (3) If the entry was made on the basis of more than one conviction and some of them (but not all) have been overturned on appeal, the responsible local housing authority may—
  - (a) remove the entry, or
  - (b) reduce the period for which the entry must be maintained.

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- (4) If the entry was made on the basis of one or more convictions that have become spent, the responsible local housing authority may—
  - (a) remove the entry, or
  - (b) reduce the period for which the entry must be maintained.
- (5) If the entry was made on the basis that the person has received two or more financial penalties and at least one year has elapsed since the entry was made, the responsible local housing authority may—
  - (a) remove the entry, or
  - (b) reduce the period for which the entry must be maintained.
- (6) The power in subsection (3), (4) or (5) may even be used—
  - (a) to remove an entry before the end of the two-year period mentioned in section 31(2)(b), or
  - (b) to reduce the period for which an entry must be maintained to less than the two-year period mentioned in section 31(2)(b).
- (7) If a local housing authority removes an entry in the database, or reduces the period for which it must be maintained, it must notify the person to whom the entry relates.
- (8) In this section—
 

“responsible local housing authority” means the local housing authority by which the entry was made;

“spent”, in relation to a conviction, means spent for the purposes of the Rehabilitation of Offenders Act 1974.

### **37 Requests for exercise of powers under section 36 and appeals**

- (1) A person in respect of whom an entry is made in the database under section 30 may request the responsible local housing authority to use its powers under section 36 to—
  - (a) remove the entry, or
  - (b) reduce the period for which the entry must be maintained.
- (2) The request must be in writing.
- (3) Where a request is made, the local housing authority must—
  - (a) decide whether to comply with the request, and
  - (b) give the person notice of its decision.
- (4) If the local housing authority decides not to comply with the request the notice must include—
  - (a) reasons for that decision, and
  - (b) a summary of the appeal rights conferred by this section.
- (5) Where a person is given notice that the responsible local housing authority has decided not to comply with the request the person may appeal to the First-tier Tribunal against that decision.
- (6) An appeal to the First-tier Tribunal under subsection (5) must be made before the end of the period of 21 days beginning with the day on which the notice was given.

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- (7) The First-tier Tribunal may allow an appeal to be made to it after the end of that period if satisfied that there is a good reason for the person's failure to appeal within the period (and for any subsequent delay).
- (8) On an appeal under this section the tribunal may order the local housing authority to—
  - (a) remove the entry, or
  - (b) reduce the period for which the entry must be maintained.

VALID FROM 06/04/2018

*Access to information in the database*

**38 Access to database**

The Secretary of State must give every local housing authority in England access to information in the database.

**39 Use of information in database**

- (1) The Secretary of State may use information in the database for statistical or research purposes.
- (2) The Secretary of State may disclose information in the database to any person if the information is disclosed in an anonymised form.
- (3) Information is disclosed in an anonymised form if no individual or other person to whom the information relates can be identified from the information.
- (4) A local housing authority in England may only use information obtained from the database—
  - (a) for purposes connected with its functions under the Housing Act 2004,
  - (b) for the purposes of a criminal investigation or proceedings relating to a banning order offence,
  - (c) for the purposes of an investigation or proceedings relating to a contravention of the law relating to housing or landlord and tenant,
  - (d) for the purposes of promoting compliance with the law relating to housing or landlord and tenant by any person in the database, or
  - (e) for statistical or research purposes.
- (5) For the purposes of paragraph 17 of Schedule 23 to the Finance Act 2011 (which relates to HMRC data-gathering powers), the database is to be treated as being maintained by the Secretary of State.

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## CHAPTER 4

### RENT REPAYMENT ORDERS

VALID FROM 06/04/2017

#### *Rent repayment orders: introduction*

#### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
  - (a) repay an amount of rent paid by a tenant, or
  - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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### *Application for rent repayment order*

#### **41 Application for rent repayment order**

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if—
  - (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
  - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if—
  - (a) the offence relates to housing in the authority's area, and
  - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

#### **42 Notice of intended proceedings**

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
  - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
  - (b) state the amount that the authority seeks to recover, and
  - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.
- (5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

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VALID FROM 06/04/2017

### *Making of rent repayment order*

#### **43 Making of rent repayment order**

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
  - (a) section 44 (where the application is made by a tenant);
  - (b) section 45 (where the application is made by a local housing authority);
  - (c) section 46 (in certain cases where the landlord has been convicted etc).

#### **44 Amount of order: tenants**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

<i><b>If the order is made on the ground that the landlord has committed</b></i>	<i><b>the amount must relate to rent paid by the tenant in respect of</b></i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
  - (a) the rent paid in respect of that period, less
  - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
  - (a) the conduct of the landlord and the tenant,
  - (b) the financial circumstances of the landlord, and
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.



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#### **45 Amount of order: local housing authorities**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.
- (2) The amount must relate to universal credit paid during the period mentioned in the table.

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<i><b>In the order is made on the ground that the landlord has committed</b></i>	<i><b>the amount must relate to universal credit paid in respect of</b></i>
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an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
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an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence
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- (3) The amount that the landlord may be required to repay in respect of a period must not exceed the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
  - (a) the conduct of the landlord,
  - (b) the financial circumstances of the landlord, and
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

#### **46 Amount of order following conviction**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).
- (2) Condition 1 is that the order—
  - (a) is made against a landlord who has been convicted of the offence, or
  - (b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.
- (3) Condition 2 is that the order is made—
  - (a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or
  - (b) in favour of a local housing authority.
- (4) For the purposes of subsection (2)(b) there is “no prospect of appeal”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.
- (5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

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### *Enforcement of rent repayment order*

#### **47 Enforcement of rent repayment orders**

- (1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.
- (2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.
- (3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.

VALID FROM 06/04/2017

### *Local housing authority functions*

#### **48 Duty to consider applying for rent repayment orders**

If a local housing authority becomes aware that a person has been convicted of an offence to which this Chapter applies in relation to housing in its area, the authority must consider applying for a rent repayment order.

#### **Commencement Information**

- II** S. 48 in force at 6.4.2017 for specified purposes by [S.I. 2017/281](#), **reg. 4(b)** (with [reg. 5](#))

#### **49 Helping tenants apply for rent repayment orders**

- (1) A local housing authority in England may help a tenant to apply for a rent repayment order.
- (2) A local housing authority may, for example, help the tenant to apply by conducting proceedings or by giving advice to the tenant.

VALID FROM 06/04/2017

### *Amendments etc and interpretation*

#### **50 Rent repayment orders: consequential amendments**

- (1) The Housing Act 2004 is amended as follows.
- (2) In section 73 (other consequences of operating unlicensed HMOs: rent repayment orders)—
  - (a) in subsection (4), after “section 74” insert “ (in the case of an HMO in Wales) or in accordance with Chapter 4 of Part 2 of the Housing and Planning Act 2016 (in the case of an HMO in England) ”;

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(b) in subsection (5)(a), after “HMO” insert “ in Wales ”.

(3) In section 96 (other consequences of operating unlicensed houses: rent repayment orders)—

- (a) in subsection (4), after “section 97” insert “ (in the case of a house in Wales) or in accordance with Chapter 4 of Part 2 of the Housing and Planning Act 2016 (in the case of a house in England) ”;
- (b) in subsection (5)(a), after “house” insert “ in Wales ”.

### **51 Housing benefit: inclusion pending abolition**

- (1) In this Chapter a reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992.
- (2) Where a local authority applies for a rent repayment order in relation to housing benefit, a reference in this Chapter to “rent” includes any payment in respect of which housing benefit may be paid.

### **52 Interpretation of Chapter**

- (1) In this Chapter—
- “offence to which this Chapter applies” has the meaning given by section 40;
- “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;
- “rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;
- “rent repayment order” has the meaning given by section 40.
- (2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.

VALID FROM 06/04/2017

## **CHAPTER 5**

### **APPEALS UNDER THIS PART**

### **53 Appeals from the first-tier tribunal**

- (1) A person aggrieved by a decision of the First-tier Tribunal made under this Part may appeal to the Upper Tribunal.
- (2) An appeal may not be brought under subsection (1) in relation to a decision on a point of law (as to which see instead section 11 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Upper Tribunal)).

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- (3) An appeal may not be brought under subsection (1) if the decision is set aside under section 9 of the Tribunals, Courts and Enforcement Act 2007 (review of decision of First-tier Tribunal).
- (4) An appeal may be brought under subsection (1) only if, on an application made by the person concerned, the First-tier Tribunal or Upper Tribunal has given its permission for the appeal to be brought.
- (5) In any case where the Upper Tribunal is determining an appeal under subsection (1), section 12(2) to (4) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) apply.

VALID FROM 06/04/2017

## CHAPTER 6

### INTERPRETATION OF PART 2

#### **54 Meaning of “letting agent” and related expressions**

- (1) In this Part “letting agent” means a person who engages in letting agency work (whether or not that person engages in other work).
- (2) But a person is not a letting agent for the purposes of this Part if the person engages in letting agency work in the course of that person's employment under a contract of employment.
- (3) In this Part “letting agency work” means things done by a person in the course of a business in response to instructions received from—
  - (a) a person (“a prospective landlord”) seeking to find another person to whom to let housing, or
  - (b) a person (“a prospective tenant”) seeking to find housing to rent.
- (4) But “letting agency work” does not include any of the following things when done by a person who does nothing else within subsection (3)—
  - (a) publishing advertisements or disseminating information;
  - (b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;
  - (c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.
- (5) In this Part “English letting agency work” means letting agency work that relates to housing in England.

#### **55 Meaning of “property manager” and related expressions**

- (1) In this Part “property manager” means a person who engages in English property management work.

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- (2) But a person is not a property manager for the purposes of this Part if the person engages in English property management work in the course of that person's employment under a contract of employment.
- (3) In this Part “English property management work” means things done by a person in the course of a business in response to instructions received from another person (“the client”) where—
- (a) the client wishes the person to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the client's behalf, and
  - (b) the premises consist of housing in England let under a tenancy.

## 56 General interpretation of Part

In this Part—

- “banning order” has the meaning given by section 14;
- “banning order offence” has the meaning given by section 14;
- “body corporate” includes a body incorporated outside England and Wales;
- “database” means the database of rogue landlords and letting agents established under section 28;
- “English letting agency work” has the meaning given by section 54;
- “English property management work” has the meaning given by section 55;
- “financial penalty” means a penalty that—
  - (a) is imposed in respect of conduct that amounts to an offence, but
  - (b) is imposed otherwise than following the person's conviction for the offence;
- “housing” means a building, or part of a building, occupied or intended to be occupied as a dwelling or as more than one dwelling;
- “letting”—
  - (a) includes the grant of a licence, but
  - (b) except in Chapter 4, does not include the grant of a tenancy or licence for a term of more than 21 years,
- and “let” is to be read accordingly;
- “letting agency work” has the meaning given by section 54;
- “letting agent” has the meaning given by section 54;
- “local housing authority” has the meaning given by section 1 of the Housing Act 1985;
- “officer”, in relation to a body corporate, means—
  - (a) any director, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity;
- “property agent” means a letting agent or property manager;
- “property manager” has the meaning given by section 55;
- “residential landlord” means a landlord of housing;
- “tenancy”—

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- (a) includes a licence, but
- (b) except in Chapter 4, does not include a tenancy or licence for a term of more than 21 years.

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