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Housing and Planning Act 2016

2016 CHAPTER 22

PART 2

ROGUE LANDLORDS AND PROPERTY AGENTS IN ENGLAND

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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VALID FROM 06/04/2018

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.
- (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subsection (2) only if the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.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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VALID FROM 06/04/2018

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).
- (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.

VALID FROM 06/04/2018

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.

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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.

Commencement Information

II [S. 33](#) in force at 3.11.2017 by [S.I. 2017/1052](#), [reg. 2\(c\)](#)

VALID FROM 06/04/2018

34 Updating

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

VALID FROM 06/04/2018

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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VALID FROM 06/04/2018

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.
- (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.

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- (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.
- (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,

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- (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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