

# PREVENTION OF SOCIAL HOUSING FRAUD ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY

#### *Section 1: Unlawful sub-letting: secure tenancies*

7. The section creates two new criminal offences in relation to secure tenancies. In general, secure tenants are local authority tenants although other social landlords, such as private registered providers of social housing ("PRPs") in England and registered social landlords ("RSLs") in Wales may have secure tenants. The offences only apply where the tenant has ceased to occupy the property.
8. Under *subsection (1)*, secure tenants will commit an offence if, in breach of an express or implied term of their tenancy agreement, they sub-let or part with possession of the whole or part of the property and know this action to be in breach of that tenancy agreement. *Subsection (3)* provides that tenants will not have committed an offence under subsection (1) if they ceased to occupy the dwelling-house and sub-let or parted with possession of it because of violence or threats of violence towards them or their family from a person living in the dwelling-house or in the locality of the dwelling-house. *Subsection (4)* provides that the tenant will not have committed the offence in subsection (1) where the person who occupies the dwelling-house as a result of the tenant's actions is a person entitled to apply to a court for a right to occupy the dwelling-house, or to have the tenancy transferred to them; or a person in respect of whom an application may be made to have the tenancy transferred to them. In practice this will include the tenant's current or former spouse, civil partner or co-habitant or a child for whose benefit the tenancy could be transferred.
9. *Subsection (2)* of section 1 creates an additional new criminal offence, applicable where the tenant has acted dishonestly. The acts comprising this offence are otherwise the same as for the offence under subsection (1). The type of dishonesty intended is knowledge that a reasonable and honest person would consider the action in question to be dishonest. The offence under subsection (2) carries a greater penalty than that under subsection (1). Whether or not the action was dishonest will be a question of fact but is more likely to be found where the tenant made a profit from the transaction, for example by charging a market rent for the property. The defences of sub-letting because of violence or threats of violence, or occupation by a spouse, civil partner etc are not available where dishonesty can be established under subsection (2).
10. *Subsections (5) and (6)* set out the penalties that are to apply upon conviction of the offences under subsections (1) and (2) respectively.