



# Prevention of Social Housing Fraud Act 2013

## 2013 CHAPTER 3

### 5 Unlawful profit orders: civil proceedings

- (1) The court may, on the application of the landlord of a dwelling-house let under a secure or an assured tenancy [<sup>F1</sup>or a secure contract], make an unlawful profit order if—
  - (a) in the case of a secure tenancy, the conditions in subsection (3) are met, and
  - (b) in the case of an assured tenancy [<sup>F2</sup>or a secure contract], the conditions in subsection (4) are met.
- (2) An “unlawful profit order” is an order requiring the tenant against whom it is made to pay the landlord an amount representing the profit made by the tenant from the conduct described in subsection (3)(a) or (4)(c).
- (3) The conditions in the case of a secure tenancy are that a tenant under the tenancy—
  - (a) in breach of an express or implied term of the tenancy, has sub-let or parted with possession of—
    - (i) the whole of the dwelling-house, or
    - (ii) part of the dwelling-house without the landlord's written consent,
  - (b) has ceased to occupy the dwelling-house as the tenant's only or principal home, and
  - (c) has received money as a result of the conduct described in paragraph (a).
- (4) The conditions in the case of an assured tenancy [<sup>F3</sup>or a secure contract] are that—
  - (a) the landlord is a private registered provider of social housing [<sup>F4</sup>,] a registered social landlord [<sup>F5</sup>or in relation to Wales a community landlord],
  - (b) the tenancy is not a shared ownership lease,
  - (c) in breach of an express or implied term of the tenancy, a tenant under the tenancy has sub-let or parted with possession of the whole or part of the dwelling-house,
  - (d) the tenant has ceased to occupy the dwelling-house as the tenant's only or principal home, and

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*Changes to legislation:* There are currently no known outstanding effects for the Prevention of Social Housing Fraud Act 2013, Section 5. (See end of Document for details)

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- (e) the tenant has received money as a result of the conduct described in paragraph (c).
- (5) The amount payable under an unlawful profit order must be such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the landlord or the tenant, but subject to subsections (6) and (7).
- (6) The maximum amount payable under an unlawful profit order is calculated as follows—
- Step 1* Determine the total amount the tenant received as a result of the conduct described in subsection (3)(a) or (4)(c) (or the best estimate of that amount).
- Step 2* Deduct from the amount determined under step 1 the total amount, if any, paid by the tenant as rent to the landlord (including service charges) over the period during which the conduct described in subsection (3)(a) or (4)(c) took place.
- (7) Where an unlawful profit order has been made against the tenant under section 4, an order under this section may only provide for the landlord to recover an amount equal to the aggregate of the following—
- (a) any amount by which the amount of the tenant's profit found under this section exceeds the amount payable under the order made under section 4, and
- (b) a sum equal to any portion of the amount payable under the order made under section 4 that the landlord fails to recover,
- and the landlord may not enforce the order under this section, so far as it relates to a sum mentioned in paragraph (b), without the leave of the court.
- (8) For the purposes of this section “the court” means the High Court or the county court.
- (9) Section 110(3) of the Housing Act 1985 (by which the claimant in proceedings relating to a secure tenancy may not recover the claimant's costs if the proceedings are taken in the High Court) does not apply to proceedings under this section.

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#### Textual Amendments

- F1** Words in s. 5(1) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **33(4)(a)(i)**
- F2** Words in s. 5(1)(b) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **33(4)(a)(ii)**
- F3** Words in s. 5(4) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **33(4)(b)(i)**
- F4** Punctuation in s. 5(4)(a) substituted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **33(4)(b)(ii)(aa)**
- F5** Words in s. 5(4)(a) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **33(4)(b)(ii)(bb)**
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#### Commencement Information

- I1** S. 5 in force for E. at 15.10.2013 by S.I. 2013/2622, **art. 2**
- I2** S. 5 in force for W. at 5.11.2013 by S.I. 2013/2861, **art. 2**

**Changes to legislation:**

There are currently no known outstanding effects for the Prevention of Social Housing Fraud Act 2013, Section 5.