

EXPLANATORY MEMORANDUM TO
THE RENT REPAYMENT ORDERS AND FINANCIAL PENALTIES (AMOUNTS
RECOVERED) (ENGLAND) REGULATIONS 2017

2017 No. 367

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations set out how a local housing authority must deal with any monies recovered under rent repayment orders under Chapter 4 of Part 2 of the Housing Act 2016 (“the 2016 Act”) and any financial penalties received under section 249A of the Housing Act 2004 (“the 2004 Act”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Chapter 4 of Part 2 of the Act makes provision relating to rent repayment orders. It consolidates and extends provision for rent repayment orders made in the 2004 Act.
- 4.2 A rent repayment order (“RRO”) is an order which may be made by the First-tier Tribunal on the application of the local housing authority or a tenant if the landlord commits certain offences related to the rented property (set out in section 40 of the Act). Under a RRO a landlord may be required to repay up to 12 months rent.
- 4.3 Where the rent was paid (directly or indirectly) with Universal Credit or Housing Benefit, a RRO may require the landlord to pay the local housing authority a sum equivalent to the benefit received in the relevant period.
- 4.4 Under section 41 of the Act, a tenant or a local authority can apply for a RRO against a landlord who has committed one of the specified offences if it was committed in the previous 12 months (in relation to an application by a tenant) or in the 12 months previous to the date on which a notice of intended proceedings was given (in relation to an application by the local authority). A local authority may apply to the First-tier Tribunal if the offence occurred in its area, and it has given the landlord prior notice

of its intention to apply for a RRO (in accordance with section 42). A tenant may apply if they occupy the property to which the offence relates.

- 4.5 These regulations make provision about how a local housing authority must deal with the monies recovered under an RRO. Any such monies may be retained by the local housing authority provided that they are used to fund functions given to a local housing authority under Parts 1 to 4 of the 2004 Act, Part 2 of the 2016 Act or connected with the enforcement of, or promotion of compliance with the law of housing or landlord and tenant by a landlord or a property agent as they relate to the private rented housing. If those monies are not used for that purpose the Local Housing Authority must pay them into the Consolidated Fund.
- 4.6 Section 126 of the 2016 Act introduces Schedule 9 which amends the 2004 Act to enable local housing authorities to impose civil penalties of up to £30,000 as an alternative to prosecution for certain 2004 Act offences.
- 4.7 These Regulations provide that the local housing authority must deal with any monies received as civil penalties in the same way as they must deal with monies received from RROs (set out at paragraph 4.5).

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales
- 5.2 This instrument applies to Local Housing Authorities in England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The private rented sector is an important part of our housing market, housing 4.3 million households in England. The quality of privately rented housing has improved over the past decade with surveys showing that 82% of private renters are satisfied with their accommodation and stay in their homes for an average of 4 years.
- 7.2 The government wants to support the vast majority of good landlords who provide decent well maintained homes, and avoid unnecessary regulation which increases costs and red tape for landlords, whilst pushing up rents and reducing choice for tenants. However, we are determined to crack down on the small minority of rogue landlords and property agents who knowingly rent out unsafe and substandard accommodation. We want to compel those landlords and property agents to either improve the standard of any accommodation they rent out and to comply with their obligations, or to leave the sector entirely.
- 7.3 Through the Housing and Planning Act 2016, we have introduced a package of measures which will enable local authorities to effectively tackle these rogue or criminal landlords and property agents. The package incorporates a national database of rogue landlords/property agents convicted of certain offences (or who have received multiple civil penalties as an alternative to prosecution in relation to certain offences). In addition, banning orders are being introduced for the most serious and prolific offenders. Civil penalties of up to £30,000 as an alternative to prosecution

and the extension of Rent Repayment Orders to cover illegal eviction, or failure to comply with certain statutory notices which are the subject of these Regulations are also part of this package.

- 7.4 The purpose of introducing these measures and allowing local authorities to keep amounts recovered, is to give local authorities not only the powers that they need to improve standards in the private rented sector but also the resource to carry them out. These Regulations allow local authorities to use such monies to fund their duties to enforce legislation that relates to the private rented sector. This is to encourage local authorities to increase their inspection and enforcement activities against rogue landlords and property agents.

Consolidation

- 7.5 This is the first exercise of the enabling powers and the issue of consolidation therefore does not arise.

8. Consultation outcome

- 8.1 The Government published a technical discussion paper on 3 August 2015, [*Tackling rogue landlords and improving the private rental sector*](#). The document invited views on a range of potential measures, including our intention to allow local authorities to retain monies received from rent repayment order and civil penalties to be used to crack down on the small minority of criminal landlords who rent out unsafe and overcrowded properties, and exploit their tenants. We received 615 responses from a range of organisations and individuals across the sector, including landlord associations, housing charities, local authorities, as well as individual landlords and tenants. No substantial objections were raised and many of the respondents agreed this was a sensible way of helping to fund future enforcement action.

9. Guidance

- 9.1 The Government will be publishing guidance for local authorities to coincide with the coming into force of the measures.

10. Impact

- 10.1 There is no impact on compliant business, charities or voluntary bodies but there will be an impact on those who break the law because local authorities will have more resource to tackle landlords and property agents who are acting illegally.
- 10.2 The impact on the public sector will be to provide local authorities with additional resource to tackle more effectively the worst offending landlords and property agents who are acting illegally.
- 10.3 An Impact Assessment has not been prepared for this instrument because it does not apply to compliant businesses

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 We will monitor the number of civil penalties issued through the database of rogue landlords and property agents and will use data from HM Courts and Tribunal Service on the number of rent repayment orders that have been made.

13. Contact

- 13.1 Sally Turner at the Department for Communities and Local Government, Telephone: 03034443707 or email: sally.turner@communities.gsi.gov.uk can answer any queries regarding the instrument.