

EXPLANATORY MEMORANDUM TO
THE HOUSING (MANAGEMENT ORDERS AND FINANCIAL PENALTIES)
(AMOUNTS RECOVERED) (ENGLAND) REGULATIONS 2018

2018 No. 209

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, 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 surplus monies recovered under management orders under sections 110(5A) and 119(4B) of the Housing Act 2004 (“the 2004 Act”) and any financial penalties received under section 23(8) of the Housing and Planning Act 2016 (“the 2016 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 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 Section 26 of, and Schedule 3 to, the 2016 Act amend Chapter 1 of Part 4 of the 2004 Act to enable interim or final management orders to be made in respect of property let in breach of a banning order made under section 16 of the 2016 Act¹.
- 4.2 A banning order is an order that may be made by the First-Tier Tribunal where a landlord or property agent has been convicted of a banning order offence specified in regulations under section 14(3).
- 4.3 The effect of a banning order is to ban a person from letting housing in England and/or engaging in English letting agent or property management work.
- 4.4 Under a management order the local housing authority takes over the management of a property and receives any rent paid by its occupiers in place of the landlord. Under sections 110 and 119 of the 2004 Act the local housing authority is entitled to retain monies to cover relevant expenditure related to the management of the property and any compensation payable to third parties.

¹ Chapter 1 of Part 4 of the 2004 Act also enables a local housing authority to make an interim or final management order in respect of property that requires a license under Parts 2 or 3 of the Act (if certain conditions are met). This instrument does not apply in relation to such management orders.

- 4.5 These Regulations make provision about how a local housing authority must deal with the amount of rent recovered under a management order made under sections 107(2A) or 113(3A) or (6A) of the 2004 Act (management orders relating to property let in breach of a banning order) after relevant expenditure and any required compensation has been deducted (“the surplus”). The surplus may be retained by the local housing authority to fund its enforcement functions connected with the private rented sector. If the surplus is not used for that purpose the local housing authority must pay it into the Consolidated Fund.
- 4.6 Section 23 of the 2016 Act enables local housing authorities to impose civil penalties of up to £30,000 as an alternative to prosecution following a breach of a banning order.
- 4.7 These Regulations provide that the local housing authority must deal with any monies received as civil penalties imposed for a breach of a banning order in the same way as they must deal with surplus monies received from management orders in respect of any property let in breach of a banning order (set out at paragraph 4.4).

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 is keen to strike the right balance on regulation in order to avoid stifling investment in the sector. 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 2016 Act, 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 Rent Repayment Orders which have been extended to cover illegal eviction or failure to comply with certain statutory notices and civil penalties of up to £30,000 can be used as an alternative to prosecution. It also includes 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, preventing them from earning income from

renting out properties or engaging in letting agency or property management work. Extending management orders to properties where a landlord is subject to a banning order, and enabling local authorities to impose civil penalties following a breach of a banning order, 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.
- 7.5 These Regulations allow local authorities to use management order surpluses and amounts recovered by way of financial penalties under section 23 of the 2016 Act 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

- 7.6 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*². The document invited views on a range of potential measures, including our intention to allow local authorities to retain monies received from management orders 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 non statutory guidance for local authorities on banning orders under Part 2, Chapter 2 of the 2016 Act and updating guidance on civil penalties under the 2016 Act³ to include statutory guidance under section 23(10) of the 2016 Act about the exercise of local housing authority functions relating to financial penalties following the breach of a banning order. Both guidance documents will be produced 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.

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450862/Discussion_paper_FINAL.pdf

³ <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

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 management orders that have been made.

13. Contact

13.1 Tom Quinlan at the Ministry of Housing, Communities and Local Government, Telephone: 03034443697 or email: tom.quinlan@communities.gsi.gov.uk can answer any queries regarding the instrument.