



Prevention of Social Housing Fraud Act 2013

2013 CHAPTER 3

An Act to create offences and make other provision relating to sub-letting and parting with possession of social housing; to make provision about the investigation of social housing fraud; and for connected purposes. [31st January 2013]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

VALID FROM 15/10/2013

1 Unlawful sub-letting: secure tenancies

- (1) A tenant of a dwelling-house let under a secure tenancy commits an offence if—
 - (a) in breach of an express or implied term of the tenancy, the tenant sub-lets or parts with possession of—
 - (i) the whole of the dwelling-house, or
 - (ii) part of the dwelling-house without the landlord's written consent,
 - (b) the tenant ceases to occupy the dwelling-house as the tenant's only or principal home, and
 - (c) the tenant knows that the conduct described in paragraph (a) is a breach of a term of the tenancy.
- (2) A tenant of a dwelling-house let under a secure tenancy commits an offence if—
 - (a) dishonestly and in breach of an express or implied term of the tenancy, the tenant sub-lets or parts with possession of—
 - (i) the whole of the dwelling-house, or

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- (ii) part of the dwelling-house without the landlord's written consent, and
 - (b) the tenant ceases to occupy the dwelling-house as the tenant's only or principal home.
- (3) The offence under subsection (1) is not committed where the tenant takes the action described in paragraphs (a) and (b) of that subsection because of violence or threats of violence by a person residing in, or in the locality of, the dwelling-house—
- (a) towards the tenant, or
 - (b) towards a member of the family of the tenant who was residing with the tenant immediately before the tenant ceased to occupy the dwelling-house.
- (4) The offence under subsection (1) is not committed if a person (“P”) who occupies the dwelling-house as a result of the conduct described in subsection (1)(a) is—
- (a) a person entitled to apply to the court for an order giving P a right to occupy the dwelling-house or to have the tenancy transferred to P, or
 - (b) a person in respect of whom an application may be made to have the tenancy transferred to P or to another person to be held for P's benefit.
- (5) A person convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person convicted of an offence under subsection (2) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

VALID FROM 15/10/2013

2 Unlawful sub-letting: assured tenancies

- (1) A tenant of a dwelling-house let under an assured tenancy to which this section applies commits an offence if—
- (a) in breach of an express or implied term of the tenancy, the tenant sub-lets or parts with possession of the whole or part of the dwelling-house,
 - (b) the tenant ceases to occupy the dwelling-house as the tenant's only or principal home, and
 - (c) the tenant knows that the conduct described in paragraph (a) is a breach of a term of the tenancy.
- (2) A tenant of a dwelling-house let under an assured tenancy to which this section applies commits an offence if—
- (a) dishonestly and in breach of an express or implied term of the tenancy, the tenant sub-lets or parts with possession of the whole or part of the dwelling-house, and
 - (b) the tenant ceases to occupy the dwelling-house as the tenant's only or principal home.
- (3) This section applies to an assured tenancy—

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- (a) under which the landlord is a private registered provider of social housing or a registered social landlord, and
 - (b) which is not a shared ownership lease.
- (4) The offence under subsection (1) is not committed where the tenant takes the action described in paragraphs (a) and (b) of that subsection because of violence or threats of violence by a person residing in, or in the locality of, the dwelling-house—
- (a) towards the tenant, or
 - (b) towards a member of the family of the tenant who was residing with the tenant immediately before the tenant ceased to occupy the dwelling-house.
- (5) The offence under subsection (1) is not committed if a person (“P”) who occupies the dwelling-house as a result of the conduct described in subsection (1)(a) is—
- (a) a person entitled to apply to the court for an order giving P a right to occupy the dwelling-house or to have the tenancy transferred to P, or
 - (b) a person in respect of whom an application may be made to have the tenancy transferred to P or to another person to be held for P's benefit.
- (6) A person convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person convicted of an offence under subsection (2) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

VALID FROM 15/10/2013

3 Prosecution of offences

- (1) Proceedings for an offence under section 1(1) or 2(1) may be brought within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.
- (2) But no such proceedings may be brought more than three years—
- (a) after the commission of the offence, or
 - (b) in the case of continuous contravention, after the last date on which the offence was committed.
- (3) A certificate signed by the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.
- (4) Subsections (1) to (3) also apply in relation to an associated offence which is a summary offence (to the extent that they would not otherwise apply to that offence).
- (5) A local authority may prosecute an offence under section 1 or 2 in relation to a dwelling-house—

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- (a) whether or not the dwelling-house is or was let under a tenancy under which the local authority is or was the landlord, and
 - (b) whether or not the dwelling-house is located in the local authority's area.
- (6) Subsection (5) also applies in relation to an associated offence (to the extent that it would not otherwise apply to that offence).

VALID FROM 15/10/2013

4 Unlawful profit orders: criminal proceedings

- (1) This section applies if a person (“the offender”) is convicted of—
- (a) an offence under section 1 or 2, or
 - (b) an associated offence in relation to an offence under section 1 or 2.
- (2) The court by or before which the offender is convicted—
- (a) must, on application or otherwise, decide whether to make an unlawful profit order, and
 - (b) may, if it considers it appropriate to do so, make such an order, instead of or in addition to dealing with the offender in any other way.
- (3) An “unlawful profit order” is an order requiring the offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct constituting the offence.
- (4) If the court decides not to make an unlawful profit order, it must give reasons for that decision on passing sentence on the offender.
- (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 offender or the prosecutor, 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 offender received as a result of the conduct constituting the offence (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 offender as rent to the landlord (including service charges) over the period during which the offence was committed.
- (7) Where an unlawful profit order has been made against the offender under section 5, 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 offender's profit found under this section exceeds the amount payable under the order made under section 5, and
 - (b) a sum equal to any portion of the amount payable under the order made under section 5 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.

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- (8) Subsection (9) applies where the court considers—
- (a) that, as well as being appropriate to make an unlawful profit order, it would be appropriate to impose a fine, and
 - (b) that the offender has insufficient means to pay both—
 - (i) an appropriate sum under an unlawful profit order, and
 - (ii) an appropriate sum under a fine.
- (9) The court must give preference to making an unlawful profit order (though it may impose a fine as well).
- (10) If the amount required to be paid by a person under an unlawful profit order is not paid when it is required to be paid, that person must pay interest on the amount for the period for which it remains unpaid.
- (11) The rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (interest on civil judgment debts).
- (12) Sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (supplementary provisions about compensation orders) apply to unlawful profit orders as if—
- (a) references to a compensation order were to an unlawful profit order (subject to paragraph (d)),
 - (b) references to the compensation to be paid under a compensation order were to the amount to be paid under an unlawful profit order,
 - (c) section 133(3)(a) and (b) were omitted, and
 - (d) the reference in section 133(3)(c) to a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002 or an unlawful profit order (or both) were to such a confiscation order or a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (or both).
- (13) In this section “the landlord” means the landlord under the tenancy in respect of which the offence was committed.

VALID FROM 15/10/2013

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, 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, 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

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- (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 are that—
- (a) the landlord is a private registered provider of social housing or a registered social 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
 - (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.

VALID FROM 15/10/2013

6 Loss of assured tenancy status

After section 15 of the Housing Act 1988 insert—

“15A Loss of assured tenancy status

- (1) Subsection (2) applies if, in breach of an express or implied term of the tenancy, a tenant of a dwelling-house let under an assured tenancy to which this section applies—
 - (a) parts with possession of the dwelling-house, or
 - (b) sub-lets the whole of the dwelling-house (or sub-lets first part of it and then the remainder).
- (2) The tenancy ceases to be an assured tenancy and cannot subsequently become an assured tenancy.
- (3) This section applies to an assured tenancy—
 - (a) under which the landlord is a private registered provider of social housing or a registered social landlord, and
 - (b) which is not a shared ownership lease.
- (4) In this section “registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996.
- (5) In this section “shared ownership lease” means a lease of a dwelling-house—
 - (a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
 - (b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.”

VALID FROM 15/10/2013

7 Regulations about powers to require information

- (1) The appropriate authority may by regulations provide for the exercise, for prescribed housing fraud investigation purposes, of powers to require the provision of information.
- (2) The appropriate authority may by regulations—
 - (a) make provision about the persons by whom powers conferred by regulations under this section may be exercised;
 - (b) in particular, make provision for the authorisation by local authorities of persons to exercise those powers.
- (3) The provision that may be made by regulations under this section includes, in particular, provision equivalent to—

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- (a) provision made by a relevant enactment, or
 - (b) provision that is capable of being made under a relevant enactment, with such modifications as the appropriate authority thinks fit.
- (4) For the purposes of subsection (3), each of the following enactments is a “relevant enactment”—
- (a) section 109B of the Social Security Administration Act 1992 (powers to require information);
 - (b) section 110A of that Act (authorisations by local authorities to exercise powers of investigation);
 - (c) section 121DA(2) and (3) of that Act (interpretation of Part 6 of that Act).
- (5) After the repeal of section 110A of the Social Security Administration Act 1992 by Part 1 of Schedule 14 to the Welfare Reform Act 2012, the reference to that section in subsection (4) is to that section as it had effect immediately before it was repealed.
- (6) A person exercising powers conferred by regulations under this section must have regard to guidance issued or approved by the appropriate authority.
- (7) In this section “housing fraud investigation purposes” means purposes relating to the prevention, detection or securing of evidence for a conviction of—
- (a) an offence under this Act;
 - (b) an offence under the Fraud Act 2006 relating to the unlawful sub-letting or parting with possession of the whole or part of a dwelling-house let by a local authority, a private registered provider of social housing or a registered social landlord,
 - (c) an offence under the Fraud Act 2006 relating to an application for an allocation of housing accommodation under Part 6 of the Housing Act 1996,
 - (d) an offence under the Fraud Act 2006 relating to an application for accommodation, or for assistance in obtaining accommodation, under Part 7 of the Housing Act 1996,
 - (e) an offence under the Fraud Act 2006 relating to—
 - (i) a claim to exercise the right to buy under Part 5 of the Housing Act 1985,
 - (ii) a claim to exercise the right to acquire under section 16 of the Housing Act 1996, or
 - (iii) a claim to exercise the right to acquire under section 180 of the Housing and Regeneration Act 2008, or
 - (f) an associated offence in relation to an offence mentioned in any of paragraphs (a) to (e).
- (8) In this section “prescribed” means prescribed by regulations under this section.

VALID FROM 15/10/2013

8 Regulations about related offence

- (1) The appropriate authority may by regulations provide for the creation of an offence that may be committed by a person by refusing or failing to provide any information or document when required to do so by or under regulations under section 7.

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- (2) Regulations under this section—
 - (a) must provide for an offence under the regulations to be triable only summarily;
 - (b) may not provide for such an offence to be punishable with a fine exceeding level 3 on the standard scale.
- (3) Regulations under this section—
 - (a) may provide, in a case where a person is convicted of an offence under the regulations and the act or omission constituting the offence continues after the conviction, for the person to be guilty of a further offence and liable on summary conviction to a daily fine;
 - (b) may not provide for the daily fine to exceed £40.
- (4) The appropriate authority may by regulations make provision—
 - (a) about defences to an offence under regulations under this section;
 - (b) about the commission by a body corporate of such an offence;
 - (c) about the conduct of proceedings for such an offence;
 - (d) about the time limits for bringing such proceedings;
 - (e) about the determination of issues arising in such proceedings;
 - (f) about other matters of procedure and evidence in relation to such an offence.

VALID FROM 15/10/2013

9 Regulations: supplementary

- (1) In sections 7 and 8 “the appropriate authority” means—
 - (a) the Secretary of State, in relation to England, and
 - (b) the Welsh Ministers, in relation to Wales.
- (2) Regulations under section 7 or 8—
 - (a) are to be made by statutory instrument,
 - (b) may make different provision for different cases or circumstances, and
 - (c) may contain incidental, supplementary, consequential, transitional, transitory or saving provision.
- (3) A statutory instrument containing regulations made by the Secretary of State under section 7 or 8 may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (4) A statutory instrument containing regulations made by the Welsh Ministers under section 7 or 8 may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.

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10 Consequential amendments

The Schedule (consequential amendments) has effect.

VALID FROM 15/10/2013

11 Interpretation

- (1) In this Act—
- (a) “secure tenancy” has the meaning given by section 79 of the Housing Act 1985, and
 - (b) “assured tenancy” has the same meaning as in Part 1 of the Housing Act 1988.
- (2) In the application of this Act in relation to a secure tenancy, the following expressions have the same meaning as in the Housing Act 1985—
- “dwelling-house” (see section 112 of that Act);
 - “landlord” (see section 621 of that Act);
 - “tenancy” (see section 621 of that Act);
 - “tenant” (see section 621 of that Act).
- (3) In the application of this Act in relation to an assured tenancy, the following expressions have the same meaning as in the Housing Act 1988—
- “dwelling-house” (see section 45(1) of that Act);
 - “landlord” (see section 45(1) and (3) of that Act);
 - “tenancy” (see section 45(1) of that Act);
 - “tenant” (see section 45(1) and (3) of that Act).
- (4) References in this Act to a member of the tenant's family (in relation to a secure or an assured tenancy) are to be construed in accordance with section 113 of the Housing Act 1985.
- (5) In this Act “shared ownership lease” means a lease of a dwelling-house—
- (a) granted on payment of a premium calculated by reference to a percentage of the value of the dwelling-house or of the cost of providing it, or
 - (b) under which the lessee (or the lessee's personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of the dwelling-house.
- (6) References in this Act to the landlord under a secure or an assured tenancy include—
- (a) in a case where the tenancy has ended, a person who was the landlord under the tenancy, and
 - (b) in a case where the tenancy has ceased to be a secure or an assured tenancy, the person who was the landlord under the tenancy when it was a secure or an assured tenancy.
- (7) References in this Act to the tenant under a secure or an assured tenancy include—

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- (a) in a case where the tenancy has ended, a person who was the tenant under the tenancy, and
 - (b) in a case where the tenancy has ceased to be a secure or an assured tenancy, a person who was the tenant under the tenancy when it was a secure or an assured tenancy.
- (8) In this Act “local authority” means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly.
- (9) In this Act “registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996.
- (10) In this Act “associated offence”, in relation to an offence, means—
- (a) an offence of aiding, abetting, counselling or procuring the commission of that offence,
 - (b) an offence of attempting or conspiring to commit that offence, or
 - (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to that offence.

12 Extent, commencement and short title

- (1) This Act extends to England and Wales only, subject to subsection (2).
- (2) An amendment of an Act made by this Act has the same extent as the provision to which it relates.
- (3) The provisions of this Act, apart from this section, come into force—
 - (a) in relation to England, on such day as the Secretary of State may by order appoint;
 - (b) in relation to Wales, on such day as the Welsh Ministers may by order appoint.
- (4) An order under subsection (3) is to be made by statutory instrument.
- (5) An order under subsection (3) may—
 - (a) appoint different days for different purposes, and
 - (b) make transitional, transitory or saving provision.
- (6) This Act may be cited as the Prevention of Social Housing Fraud Act 2013.

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SCHEDULE

Section 10

CONSEQUENTIAL AMENDMENTS

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