



# Housing and Planning Act 2016

## 2016 CHAPTER 22

### PART 2

#### ROGUE LANDLORDS AND PROPERTY AGENTS IN ENGLAND

### CHAPTER 2

#### BANNING ORDERS

##### *Banning orders: key definitions*

#### **14 “Banning order” and “banning order offence”**

- (1) In this Part “banning order” means an order, made by the First-tier Tribunal, banning a person from—
  - (a) letting housing in England,
  - (b) engaging in English letting agency work,
  - (c) engaging in English property management work, or
  - (d) doing two or more of those things.
- (2) See also section 18 (which enables a banning order to include a ban on involvement in certain bodies corporate).
- (3) In this Part “banning order offence” means an offence of a description specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3) may, in particular, describe an offence by reference to—
  - (a) the nature of the offence,
  - (b) the characteristics of the offender,
  - (c) the place where the offence is committed,
  - (d) the circumstances in which it is committed,

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- (e) the court sentencing a person for the offence, or
- (f) the sentence imposed.

[<sup>F1</sup>(5) An offence under section 12 of the Tenant Fees Act 2019 is also a banning order offence for the purposes of this Part.]

#### Textual Amendments

**F1** S. 14(5) inserted (1.6.2019) by [Tenant Fees Act 2019 \(c. 4\), ss. 12\(6\), 34\(1\)](#); S.I. 2019/857, reg. 3(k)

#### Commencement Information

- I1** S. 14(1)(2) in force at 6.4.2018 by [S.I. 2018/393, reg. 2\(a\)](#)
- I2** S. 14(3)(4) in force at 3.11.2017 for specified purposes by [S.I. 2017/1052, reg. 2\(a\)](#)
- I3** S. 14(3)(4) in force at 6.4.2018 in so far as not already in force by [S.I. 2018/393, reg. 2\(a\)](#)

### *Imposition of banning orders*

## 15 Application and notice of intended proceedings

- (1) A local housing authority in England may apply for a banning order against a person who has been convicted of a banning order offence.
- (2) If a local housing authority in England applies for a banning order against a body corporate that has been convicted of a banning order offence, it must also apply for a banning order against any officer who has been convicted of the same offence in respect of the same conduct.
- (3) Before applying for a banning order under subsection (1), the authority must give the person a notice of intended proceedings—
  - (a) informing the person that the authority is proposing to apply for a banning order and explaining why,
  - (b) stating the length of each proposed ban, and
  - (c) inviting the person to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (4) The authority must consider any representations made during the notice period.
- (5) The authority must wait until the notice period has ended before applying for a banning order.
- (6) A notice of intended proceedings may not be given after the end of the period of 6 months beginning with the day on which the person was convicted of the offence to which the notice relates.

#### Commencement Information

**I4** S. 15 in force at 6.4.2018 by [S.I. 2018/393, reg. 2\(a\)](#)

## 16 Making a banning order

- (1) The First-tier Tribunal may make a banning order against a person who—

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- (a) has been convicted of a banning order offence, and
  - (b) was a residential landlord or a property agent at the time the offence was committed (but see subsection (3)).
- (2) A banning order may only be made on an application by a local housing authority in England that has complied with section 15.
- (3) Where an application is made under section 15(1) against an officer of a body corporate, the First-tier Tribunal may make a banning order against the officer even if the condition in subsection (1)(b) of this section is not met.
- (4) In deciding whether to make a banning order against a person, and in deciding what order to make, the Tribunal must consider—
  - (a) the seriousness of the offence of which the person has been convicted,
  - (b) any previous convictions that the person has for a banning order offence,
  - (c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and
  - (d) the likely effect of the banning order on the person and anyone else who may be affected by the order.

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**Commencement Information**

**I5** [S. 16](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

## **17 Duration and effect of banning order**

- (1) A banning order must specify the length of each ban imposed by the order.
- (2) A ban must last at least 12 months.
- (3) A banning order may contain exceptions to a ban for some or all of the period to which the ban relates and the exceptions may be subject to conditions.
- (4) A banning order may, for example, contain exceptions—
  - (a) to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or
  - (b) to allow letting agents to wind down current business.

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**Commencement Information**

**I6** [S. 17](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

## **18 Content of banning order: involvement in bodies corporate**

- (1) A banning order may include provision banning the person against whom it is made from being involved in any body corporate that carries out an activity that the person is banned by the order from carrying out.
- (2) For this purpose a person is “involved” in a body corporate if the person acts as an officer of the body corporate or directly or indirectly takes part in or is concerned in the management of the body corporate.

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#### Commencement Information

**I7** [S. 18](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

### 19 Power to require information

- (1) A local housing authority may require a person to provide specified information for the purpose of enabling the authority to decide whether to apply for a banning order against the person.
- (2) It is an offence for the person to fail to comply with a requirement, unless the person has a reasonable excuse for the failure.
- (3) It is an offence for the person to provide information that is false or misleading if the person knows that the information is false or misleading or is reckless as to whether it is false or misleading.
- (4) A person who commits an offence under this section is liable on summary conviction to a fine.

#### Commencement Information

**I8** [S. 19](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

### 20 Revocation or variation of banning orders

- (1) A person against whom a banning order is made may apply to the First-tier Tribunal for an order under this section revoking or varying the order.
- (2) If the banning order was made on the basis of one or more convictions all of which are overturned on appeal, the First-tier Tribunal must revoke the banning order.
- (3) If the banning order was made on the basis of more than one conviction and some of them (but not all) have been overturned on appeal, the First-tier Tribunal may—
  - (a) vary the banning order, or
  - (b) revoke the banning order.
- (4) If the banning order was made on the basis of one or more convictions that have become spent, the First-tier Tribunal may—
  - (a) vary the banning order, or
  - (b) revoke the banning order.
- (5) The power to vary a banning order under subsection (3)(a) or (4)(a) may be used to add new exceptions to a ban or to vary—
  - (a) the banned activities,
  - (b) the length of a ban, or
  - (c) existing exceptions to a ban.
- (6) In this section “spent”, in relation to a conviction, means spent for the purposes of the Rehabilitation of Offenders Act 1974.

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**Commencement Information**

**I9** [S. 20](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

*Consequences of banning order, including consequences of breach*

**21 Offence of breach of banning order**

- (1) A person who breaches a banning order commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 51 weeks or to a fine or to both.
- (3) If a financial penalty under section 23 has been imposed in respect of the breach, the person may not be convicted of an offence under this section.
- (4) Where a person is convicted under subsection (1) of breaching a banning order and the breach continues after conviction, the person commits a further offence and is liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day or part of a day on which the breach continues.
- (5) In proceedings for an offence under subsection (4) it is a defence to show that the person had a reasonable excuse for the continued breach.
- (6) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (2) to 51 weeks is to be read as a reference to 6 months.

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**Commencement Information**

**I10** [S. 21](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

**22 Offences by bodies corporate**

- (1) Where an offence under section 21 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of a body corporate, the officer as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were an officer of the body corporate.

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**Commencement Information**

**I11** [S. 22](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

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## 23 Financial penalty for breach of banning order

- (1) The responsible local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to an offence under section 21(1).
- (2) In this section “responsible local housing authority” means the local housing authority for the area in which the housing to which the conduct relates is situated.
- (3) Only one financial penalty under this section may be imposed in respect of the same conduct unless subsection (4) allows another penalty to be imposed.
- (4) If a breach continues for more than 6 months, a financial penalty may be imposed for each additional 6 month period for the whole or part of which the breach continues.
- (5) The amount of a financial penalty imposed under this section is to be determined by the authority imposing it, but must not be more than £30,000.
- (6) The responsible local housing authority may not impose a financial penalty in respect of any conduct amounting to an offence under section 21(1) if—
  - (a) the person has been convicted of an offence under that section in respect of the conduct, or
  - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (7) Schedule 1 deals with—
  - (a) the procedure for imposing financial penalties,
  - (b) appeals against financial penalties, and
  - (c) enforcement of financial penalties.
- (8) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.
- (9) The Secretary of State may by regulations amend the amount specified in subsection (5) to reflect changes in the value of money.
- (10) A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this section or Schedule 1.

### Commencement Information

- I12** S. 23(1)-(7)(9)(10) in force at 6.4.2018 by S.I. 2018/393, **reg. 2(a)**  
**I13** S. 23(8) in force at 3.11.2017 by S.I. 2017/1052, **reg. 2(b)**

## 24 Saving for illegal contracts

A breach of a banning order does not affect the validity or enforceability of any provision of a tenancy or other contract entered into by a person despite any rule of law relating to the validity or enforceability of contracts in circumstances involving illegality.

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**Commencement Information**

**I14** [S. 24](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

**25 Banned person may not hold HMO licence etc**

Schedule 2 changes the rules about granting and revoking licences under Parts 2 and 3 of the Housing Act 2004 where a banning order has been made.

**Commencement Information**

**I15** [S. 25](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)

**26 Management orders following banning order**

Schedule 3 amends the Housing Act 2004 to allow interim and final management orders to be made in cases where a banning order has been made.

**Commencement Information**

**I16** [S. 26](#) in force at 3.11.2017 for specified purposes by [S.I. 2017/1052](#), [reg. 2\(d\)\(e\)](#)

**I17** [S. 26](#) in force at 6.4.2018 in so far as not already in force by [S.I. 2018/393](#), [reg. 2\(a\)](#)

*Anti-avoidance*

**27 Prohibition on certain disposals**

- (1) A person who is subject to a banning order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person.
- (2) A disposal in breach of the prohibition imposed by subsection (1) is void.
- (3) A transfer is “unauthorised” for the purposes of subsection (1) unless it is authorised by the First-tier Tribunal on an application by the person who is subject to the banning order.
- (4) In subsection (1) “prohibited person” means—
  - (a) a person associated with the landlord,
  - (b) a business partner of the landlord,
  - (c) a person associated with a business partner of the landlord,
  - (d) a business partner of a person associated with the landlord,
  - (e) a body corporate of which the landlord or a person mentioned in paragraph (a) to (d) is an officer,
  - (f) a body corporate in which the landlord has a shareholding or other financial interest, or
  - (g) in a case where the landlord is a body corporate, any body corporate that has an officer in common with the landlord.
- (5) In section (4)—

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“associated person” is to be read in accordance with section 178 of the Housing Act 1996;

“business partner” is to be read in accordance with section 34(5) of the Deregulation Act 2015.

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**Commencement Information**

**I18** [S. 27](#) in force at 6.4.2018 by [S.I. 2018/393](#), [reg. 2\(a\)](#)



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 172(1)(a) words renumbered as s. 172(1)(a) by [2017 c. 20 s. 26\(8\)\(a\)\(i\)](#)
- s. 172(1)(b) inserted by [2017 c. 20 s. 26\(8\)\(a\)\(ii\)](#)