Ministry of Housing, Communities & Local Government

Database of rogue landlords and property agents under the Housing and Planning Act 2016

Statutory guidance for Local Housing Authorities

Contents

1. Purpose and scope

1.1 Introduction

The majority of landlords in the private rented sector provide decent and well managed accommodation, but there are a small number of rogue landlords and property agents who knowingly flout their legal obligations and rent out accommodation which is substandard, frequently to vulnerable tenants. The government is determined to crack down on these landlords and disrupt their business model.

The Housing and Planning Act 2016 ("the Act") introduced a range of measures to help local housing authorities tackle rogue landlords and drive up standards in the private rented sector. These measures include establishing and operating a database of rogue landlords and property agents.

1.2 What is the database of rogue landlords?

The database is a new tool for local housing authorities in England to keep track of rogue landlords and property agents. Database users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities.

1.3 What is the status of this guidance?

This document has been prepared as guidance for local housing authorities in England by the Secretary of State in accordance with section 30 (7) of the Act.

This is statutory guidance and local housing authorities must have regard to the criteria in this guidance in deciding whether to make an entry in the database under section 30[1] of the Act, and the period to specify in a decision notice under section 31[2] of the Act.

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[1] http://www.legislation.gov.uk/ukpga/2016/22/section/30/enacted
[2] http://www.legislation.gov.uk/ukpga/2016/22/section/31/enacted

2. Content of the database

2.1   Who is responsible for maintaining the content of the database?

Local housing authorities in England are responsible for maintaining the content of the database.

2.2   Under what circumstances must a local housing authority make an entry on the database?

Local housing authorities must make an entry on the database for a person or organisation who has received a banning order. Information on how to do this has been provided [separately](#).

2.3   Do local housing authorities have discretion to make an entry on the database in any other situation?

Section 30[3] of the Act allows local housing authorities to make entries for a person who has:

- been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or
- received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent.

2.4   What is the criteria for deciding whether to make an entry?

Section 3.3 of this guidance sets out the criteria to which local housing authorities must have regard in deciding whether to make an entry under section 30 of the Act.

2.5   What is the criteria to which local housing authorities must have regard in deciding the period to specify in a decision notice under section 31 of the Act?

Section 3.4 of this document sets out the criteria to which local housing authorities must have regard in determining the period to specify in a decision notice under section 31[4] of the Act.

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[3] http://www.legislation.gov.uk/ukpga/2016/22/section/30/enacted
[4] http://www.legislation.gov.uk/ukpga/2016/22/section/31/enacted

3. Making an entry in the database under section 30 of the Act

Local housing authorities should always consider whether it would be appropriate to make an entry on to the database when a landlord has been convicted of a banning order offence or received 2 or more financial penalties over a 12 month period.

The database is designed to be a tool which will help local housing authorities to keep track of rogue landlords and focus their enforcement action on individuals and organisations who knowingly flout their legal obligations. The more comprehensive the information on the database, the more useful it will be to authorities. Such information will also encourage joint working between local housing authorities who will be able to establish whether rogue landlords operate across their local housing authority areas.

3.1 When should a local housing authority make an entry in respect of banning order offences or financial penalties?

A local housing authority in England may make an entry on the database in respect of a person if;

a) the person has been convicted of a banning order offence, and the offence was committed at a time when the person was a residential landlord or a property agent; and

b) the person has, within a period of 12 months, received two or more financial penalties in respect of a banning order offence.

3.2 What action should a local housing authority take before making an entry on the database?

Local housing authorities must issue the person with a decision notice before making an entry, specifying the period for which the entry will be maintained (an example decision notice which can be used for this purpose is at Annex A).

3.3 What criteria must local housing authorities have regard to in deciding whether to make an entry in the database under section 30 of the Act?

Local housing authorities must have regard to the following criteria when deciding whether to make an entry in the database under section 30 of the Act:

a) **Severity of the offence.** The more serious the offence, the stronger the justification for including the offender on the database.

b) **Mitigating factors.** In cases where a less serious offence has been committed and/or there are mitigating factors, local housing authorities may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement. It is for local housing authorities to decide on a case by case basis whether mitigating factors are strong enough to justify a decision not to record a person's details on the database.

c) **Culpability and serial offending.** Whether the offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non compliance, the stronger the justification for making an entry on the database. Conversely, where it is a first offence and/or where it is a relatively minor, a local housing authority may decide that it is not appropriate to record a person's information on the database.

d) **Deter the offender from repeating the offence.** The ultimate goal is to prevent landlords and property agents, who have failed to comply with all of their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that (a) the local housing authority has the tools and is proactive in recording the details of rogue landlord and property agents and (b) that they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities. It will also encourage joint working between local housing authorities who will be able to establish whether rogue landlords operate across their local housing authority areas. For example, including someone on the database might be an important deterrent if they rent out property in multiple local housing authority areas, as inclusion on the database will make their information available to other local housing authorities.

e) **Deter others from committing similar offences.** Knowing that they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlords from committing banning order offences in the first place.

3.4 What criteria must local housing authorities have regard to in deciding the period to specify in a decision notice under section 31 of the Act?

Local housing authorities must have regard to the following criteria when deciding the period to specify in a decision notice:

a) **Severity of offence.** The severity of the offence and related factors, such as whether there have been several offences over a period of time, should be considered. Where an offence is particularly serious and/or there have been several previous offences; and/or the offence(s) have been committed over a period of time, then the decision notice should specify a longer period of time. Where one or more of those factors are absent, it may be appropriate to specify a shorter period.

b) **Mitigating factors.** These could include a genuine one-off mistake, personal issues such as ill-health or a recent bereavement. Where this is the case, a local housing authority may decide to specify a shorter period of time in the decision notice.

c) **Culpability and serial offending.** A track record of serial offending or where the offender knew, or ought to have known, that they were in breach of their responsibilities may suggest a longer time period would be appropriate.

d) **Deter the offender from repeating the offence.** The data should be retained on the database for a reasonable period of time so that it is a genuine deterrent to further offences.

4. Removal or variation of an entry from the database

4.1 Can entries be removed or varied?

All entries in the database are subject to variation or removal, by a local housing authority, pursuant to sections 36[5] and 37[6] of the Act.

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[5] http://www.legislation.gov.uk/ukpga/2016/22/section/36/enacted
[6] http://www.legislation.gov.uk/ukpga/2016/22/section/37/enacted

Annex A

Example decision notice template for local housing authorities

Decision Notice

Our intention to add your information to the database of rogue landlords and property agents

Date of Notice: **[INSERT DATE OF ISSUE]**

Entry on the national database of rogue landlords and property agents.

- You are receiving this notice to alert you that **[INSERT LOCAL HOUSING AUTHORITY NAME]** intends make an entry about you in the database of rogue landlords and property agents.

- The database is operated by the Secretary of State for Housing, Communities and Local Government but local housing authorities in England are responsible for maintaining the content of the database.

- Once created, we will maintain this entry on the database for a period of **[SPECIFY PERIOD]**, after which we will remove the entry.

We will make the entry on the database under the provisions in Chapter 3 of Part 2, of the Housing and Planning Act 2016.

<u>We intend to make this entry after the end of the period of 21 days from the date on which this notice is given (the notice period), unless a successful appeal is made.</u>

What the entry about you will include

We are going to make this entry because you have:

DELETE AS APPLICABLE

> (a) been convicted of a banning order offence
> **and/or**
> (b) received multiple financial penalties in respect of a banning order offence within a period of 12 months

The information held on the database may include the following:

- personal information (your name, address, date of birth and National Insurance number).
- details of financial penalties and specified criminal offences which are described in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.

How to appeal

Under Section 32 of the Housing and Planning Act you may appeal against our decision to make the entry in the database or against the decision as to the period for which the entry is to be maintained.

<u>If you want to make an appeal - you must do so before the end of the notice period.</u>

If you appeal, you must do so to the First-tier Tribunal **[INSERT LOCAL FTT DETAILS]** and explain that you wish to appeal against:

    (a) the decision by **[INSERT LOCAL HOUSING AUTHORITY NAME]** to make the entry,
    or
    (b) the period for which the entry will be held on the database.

The First-tier Tribunal may allow an appeal to be made to it after the end of the notice period if they are satisfied that there is a good reason for failing to appeal within the notice period. If your appeal is successful the First-tier Tribunal may confirm, vary or cancel the decision notice.