



Consultation paper on proposed banning order offences under the Housing and Planning Act 2016

Response to the Department of Communities and
Local Government

February 2017

About the Chartered Institute of Environmental Health (CIEH):

CIEH is the professional voice for environmental health representing over 9,000 members working in the public, private and non-profit sectors. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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A. Relevant housing offences

1. Do you agree that the relevant housing offences described in this document should be regarded as banning order offences unless the offender received an absolute or conditional discharge?

Yes

2. Do you think any of the relevant housing offences described in this document should NOT be regarded as banning order offences?

No

3. If you answered YES to the previous question, please specify and give reasons

N/A

4. Do you think any other type of offences for which a local authority has powers to prosecute should be treated as banning order offences?

Yes

5. If you answered YES to the previous question, please specify which other offences should be treated as banning order offences and give reasons

We sought the views of our members in forming this consultation response. The majority of respondent are Housing Managers and Environmental Health Officers (EHOs) working for Local Authorities. There are a number of additional offences that our members would like to see included under the list of potential banning order offences for landlords.

Part X of the Housing Act 1985

This part of the Housing Act is sometimes is used in practice to secure convictions for serious overcrowding in single dwellings.

Offences under the Health and Safety at Work Act 1974

Successful prosecutions of landlords for offences under the Health and Safety at Work Act 1974 sometimes happen in premises, which have split usage, such as shops with accommodation on the upper floors. This Act is only invoked in the context of the Private Rented Sector where the conditions at the property affect the residents of the residential premises. An individual who has been convicted of an offence under this Act is likely to also not comply with the health and safety requirements relating to rented property.

Eviction Act 1977 and the Protection from Harassment Act 1997

Offences under the Protection from Eviction Act 1977 and Protection from Harassment Act 1997 should be considered for inclusion as potential banning

order offences, as these would include any landlord convicted of harassment or an illegal eviction.

Prosecutions related to Building Regulations and Planning Enforcement Notice breaches:

All of the offences in the list below would either be directly related to the standard of housing provision or would involve intentional criminal behaviour by the offending person. Theft, money laundering and unfair trading convictions suggest that someone may be unsuitable to have access to tenants' rooms and property and to deal with rents and deposits. The following should therefore be considered for inclusion as the banning order offences:

- relevant offences/practice for a banning order to be made against a person under Section 3 of the Estate Agents Act 1979
- Regulation 8-12 offences of the Consumer Protection from Unfair Trading Regulations 2008
- Sections 327, 328 and 329 of the Proceeds of Crime Act 2002
- Regulation 45 offence of the Money Laundering Regulations 2007 as amended
- Theft Acts
- A breach of a Prohibition Order

Section 80 of the Environmental Protection Act 1990

DCLG may wish to consider including the above offence as part of the list of banning order offences. Typically, a Section 80 notice could be served for serious damp and mould, where the heating and insulation are deemed inadequate or in cases where rising, penetrating damp or condensation is deemed to pose a risk to the health of the occupier. Whilst we recognise that Part 1 Housing Act 2004 is more appropriate for this scenario, the Environmental Protection Act 1990 is an alternative option, and we understand that it is still occasionally used in practice.

Section 79(a) of the Environmental Protection Act 1990

Whilst we recognise that Section 79 has been superseded by provisions in the Housing Act 2004, this power is occasionally still used in practice to tackle property-based issues in the private rented sector, where situations could result in poor effects to health. However, inclusion of this offence should be limited to where the offence relates to a private rented sector property and the conviction is against the relevant landlord or managing agent.

B. Immigration offences

6. Do you agree that letting to someone disqualified from renting because of their immigration status, resulting in an offence under Part 3 of the Immigration Act, should be regarded as a banning order offence?

Yes.

C. Serious criminal offences

7. Do you agree that any offence involving fraud under the Fraud Act 2006, and for which the offender was sentenced in the Crown Court, should be regarded as a banning order offence?

Yes

8. Do you agree that an offence for which the offender was sentenced in the Crown Court and which involves the production, possession or supply of all classes of illegal drugs (including poisons) and/or managing premises where drug dealing and/or production takes place, should be regarded as a banning order offence?

Yes

9. Do you agree that any offence under Schedule 15 of the Criminal Justice Act 2003 (specified violent and sexual offences) should be regarded as a banning order offence?

Yes

10. Do you think any of the serious criminal offences described in this document should not be regarded as banning offences?

No

11. If you answered YES to the previous question, please specify which offences should not be regarded as banning order offences and give reasons

D. Other criminal offences

12. Do you agree that an offence for which the offender was sentenced in the Crown Court should be regarded as a banning order offence where it was committed against, or in conjunction with, any person who was residing at the property owned by the offender, other than a person associated with the offender?

Yes

13. Do you agree that a link should be maintained between the property and the offence when determining what should constitute a banning order offence?

No. In cases of someone convicted of violent or sexual offences, the offences should not necessarily be linked to the property. If, for example, the landlord is convicted of a serious offence such as rape but which is not connected to a premises, it might be appropriate to ban them from renting properties to people who may become potential victims. Whilst fraud, drugs offences and violence may not be property-related, landlords with such convictions may pose a risk to their potential tenants. This will apply more readily in cases where someone is convicted of particularly violent or serious convictions or in cases where there is

a large number of convictions. This should therefore be further fleshed out in the enforcement guidance, if included on the list.

14. Do you have any further comments about banning order offences?

Some of our members felt that the process for these orders is very long and complex. The squeezed resources available within Local Authorities mean that it might be increasingly difficult for Authorities to use all their powers effectively. Furthermore, some concern was expressed about how the First-Tier Tribunal will make its decision. Some guidance on this would help Authorities to decide whether to seek a banning order. It will also help to provide greater consistency to decisions made in different First-Tier Tribunals.

A substantial proportion of our members felt that whilst it seems sensible to have a link between an offence and the property, in practice, there may be some problems with this approach. This seemed to apply in particular in cases of violence, sexual offences and fraud. For example, where there is an offence of fraud this may well be unconnected to the property but would raise serious concerns about the suitability of that person to deal with tenants or their money. Similarly, someone with convictions of rape, harassment or violence may pose a risk to the potential tenants.

With regards to question 6, some of our members felt that some safeguards need to be in place for landlords convicted of renting to those without the appropriate immigration status. This provision needs to only apply to landlords who are repeat offenders or in some way protecting those who might have made a genuine mistake. For example, if a landlord fails to spot fraudulent documents.

Inclusion of further case studies would help these regulations to be adopted more consistently. It would also be helpful to publicise any Banning Orders so that potential renters are aware of these.

Further clarification is sought on the following points, which should be addressed in the accompanying guidance for these regulations:

- If the current proposal on timescales comes into being, Banning Orders will not apply to convictions prior to 1 October 2017. Will a conviction post 1 October 2017 still be available for an offence committed prior to 1 October 2017?
- Para. 15 - How could the local authority require a person to provide certain specified information? If they refuse to supply this information, what action can be taken?