

Housing and Planning Act Commencement Update 2017

The Housing and Planning Act 2016 (“[the Act](#)”) received Royal assent almost a year ago on 12 May 2016. At the time, it sought to legislate for a variety of changes to housing law covering areas as diverse as private rented sector banning orders and rent repayment orders, a rogue landlords and property agents database, recovery of abandoned premises, extended (‘voluntary’) right to buy and sale of higher value local authority properties, pay to stay, reducing social housing regulation, succession rights for secure tenants and the phasing out of ‘tenancies for life’.

Cornerstone Barristers produced a detailed special edition housing newsletter on the Act which can still be read [here](#). Since then, there have been various updates in respect of the implementation of the Act. In particular, these updates have included the abandonment of the ‘pay to stay’ market rent policy for higher-income tenants; delayed introduction of the voluntary right to buy scheme for housing associations and associated levy on higher-value local authority assets; and a public consultation on provisions concerning rogue landlords and secure tenancies. Tara O’Leary explored those updates in our February 2017 newsletter [here](#) as well as in our November 2016 newsletter [here](#).

[The Housing and Planning Act 2016 \(Commencement No. 5, Transitional Provisions and Savings\) Regulations 2017](#) provided for various provisions of the Act to come into force on 10 March and 6 April 2017. The headline for LHAs is that rent repayment orders, civil (fixed) penalties and information seeking powers are now available in order to take action against landlords and property agents. For completeness, the following sections are now in force:

- Rent Repayment Orders, including a duty to consider them (ss.40 - 52);
- Appeals from the first-tier tribunal and interpretation of Part 2 (ss.53 - 56);
- Financial penalties as an alternative to prosecution under the Housing Act 2004 (s.126 and schedule 9);
- Housing information in England (ss.128 - 129);
- Limitation of administration changes and costs of proceedings (s.131);
- Development consent for projects that involve housing (s.160);
- Notice of general vesting declaration procedure (s.183 and paragraphs 1 to 7 of Schedule 15); and
- Interest on advance payments of compensation paid late (s.196(3)).

Rent repayment orders, financial penalties as an alternative to prosecution under the Housing Act 2004 and housing information are each dealt with below.

Rent Repayment Orders

Part 2, Chapter 4 of the Act allows the First-tier Tribunal (“FTT”) to make a rent repayment order against a landlord after an offence has been committed by a landlord. A tenant or a LHA may make applications for an order. An order may be sought even where a landlord has not been convicted of the offence in question, but the

FTT will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. The offences are not retrospective and it will thus not be possible to seek rent repayment orders in relation to offences committed before 6 April 2017. The offences in question are:

1. Using violence to secure entry contrary to s.6 of the Criminal Law Act 1977;
2. Illegal eviction or harassment of occupiers contrary to s.1 of the Protection from Eviction Act 1977;
3. Failure to comply with an improvement notice served by a local authority under the Housing Health and Safety Rating System (“HHSRS”) as governed by s.30 of the Housing Act 2004;
4. Failure to comply with a prohibition order under the HHSRS as governed by s.32 of the Housing Act 2004;¹
5. Breach of a Banning Order made under section 21 of the Act (although this offence has not yet taken effect and is only scheduled to do so from 1 October 2017); and
6. Operating a HMO or property without a licence (if the property requires a licence).

When applying for a rent repayment order, LHAs must have regard to the April 2017 [guidance](#) published by DCLG on rent repayment orders. This guidance details how LHAs can apply for rent repayment orders and notes that LHAs are expected to develop and document their own policy on when to prosecute and when to apply for rent repayment orders. It also outlines how if a landlord has been convicted of the offence to which the rent repayment order relates, the FTT must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).

However, where a landlord has not been convicted of the relevant offence, a number of factors should be taken into account when considering how much rent a LHA should seek to recover. These factors are punishment of the offender, the need to deter the offender from repeating the offence, the need to dissuade others from committing similar offences, and the removal of any financial benefit the offender may have obtained as a result of committing the offence.

The process by which a LHA may apply for a rent repayment order is also outlined in the guidance. It notes that a LHA may only apply for a rent repayment order if the offence relates to housing in the LHA’s area and that a LHA must comply with the following procedure:

- Before applying for a rent repayment order, it must give the landlord notice of intended proceedings, served within 12 months of the date on which the landlord committed the offence to which it relates;
- The notice must inform the landlord that the LHA is proposing to apply for a rent repayment order and explain why; state the amount that the LHA is seeking to recover; and invite the landlord to make representations within a period specified in the notice which must be at least 28 days;
- The LHA must consider any representations made within the notice period and must not apply to the FTT until the specified period in the notice expires.

Civil Penalties

Also in April 2017, DCLG published [guidance](#) for LHAs on civil penalties under the Act. As the guidance is issued pursuant to Schedule 9 of the Act, LHAs must now have regard to it in the exercise of their functions in respect of

¹ Under section 40(4) of the Act, both of the offences pursuant to the HHSRS (failure to comply with an improvement notice and failure to comply with a prohibition order) must be in relation to a hazard on the premises let by the landlord rather than in common parts.

civil penalties. The penalties in question arise in the context of the following housing offences in the Housing Act 2004:

- Failure to comply with an Improvement Notice (s.30);
- Offences in relation to licensing of HMOs (s.72);
- Offences in relation to licensing of houses under Part 3 (s.95);
- Offences of contravention of an overcrowding notice (s.139); and
- Failure to comply with management regulations in respect of HMOs (s.234)

Before it offers a penalty (which must not exceed £30,000) as an alternative to prosecution, the LHA must be satisfied beyond reasonable doubt that the offence has been committed. In a context in which the offences listed can carry unlimited fines, a £30,000 maximum penalty is likely to attract many landlords.

As is the case with rent repayment orders, a notice of intent must first be served by the LHA setting out the amount of the proposed financial penalty, the reasons for proposing to impose the penalty and information about the right of the landlord to make representations within 28 days from when the notice was given. Following this period for representations, a final notice must be served setting out the amount of the penalty, the reasons for imposing it, information about how to pay it and the period for payment (28 days), information about rights of appeal to the FTT and the consequences of failure to comply with the notice.

A LHA is also entitled to impose a civil penalty *and* seek a rent repayment order for certain offences. Both sanctions are available for the following offences under the Housing Act 2004:

- Failure to comply with an improvement notice (s.30);
- Offences in relation to licensing of HMOs (s.72(1)); and
- Offences in relation to licensing of houses under Part 3 (s.95(1))

Housing Information

The commencement of section 128 of the Act has led to the amendment of the Housing Act 2004 via the insertion of a new section 212A. This provides that all approved tenancy deposit scheme providers will be required to provide a LHA in England with any information that relates to a tenancy of a premises in the LHA's area if the LHA requests it. An [explanatory booklet](#) for LHAs on 'Obtaining and Using Tenancy Deposit Information' was published in April 2017. Helpfully, it includes a step-by-step guide as to how to request tenancy deposit information as well as a sample request letter for LHAs to send.

Under s212A(5), information obtained by a LHA pursuant to this section, may only be used for a purpose connected with the exercise of the authority's functions under any of Parts 1 to 4 of the Act in relation to any premises, or for the purpose of investigating whether an offence has been committed under any of those parts in relation to any premises.

Conclusion

Announcing the measures, Housing Minister Gavin Barwell noted that the powers commenced in April 2017 will give LHAs the tools to crack down on the small minority of rogue landlords who shirk their responsibilities. While LHAs will welcome these tools, the procedures to engage them must be carefully complied with and a prudent

LHA would be well advised to ensure that its officers are fully briefed on the various guidance documents highlighted above.

The next anticipated commencement under the Act is expected to be October 2017 when some of the more controversial measures such as banning orders, as well as a database of rogue landlords and property agents and management orders are due to come into force. However, with an election set to take place in June this year, a change of government may well lead to a different approach. For now though, the introduction of the April measures should provide more than enough material to which LHAs must adapt over the coming months.

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May 2017