

PREVENTION OF SOCIAL HOUSING FRAUD ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Prevention of Social Housing Fraud Act 2013 which received Royal Assent on 31 January 2013. They have been prepared by the Department for Communities and Local Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Prevention of Social Housing Fraud Act creates new criminal offences of unlawful sub-letting by secure and assured tenants of social housing. It also makes provision concerning the prosecution of these offences (including prosecution powers for local authorities). The Act additionally provides for courts to make orders for the recovery from defendants of profits made from unlawful sub-letting, either following conviction or in separate civil proceedings. It provides that assured tenants of dwelling-houses let by social landlords who unlawfully part with possession of, or sub-let, their dwelling-houses lose their status as assured tenants and cannot subsequently regain that status; in this respect, the Act brings assured tenancies into line with secure tenancies (where the restoration of secure status is already excluded following parting with possession or sub-letting of the whole dwelling-house by the tenant). Finally, the Act also provides powers for the Secretary of State and the Welsh Ministers to make regulations in relation to social housing fraud investigations. Those regulations will contain provisions equivalent to some of those set out in Part 6 of the Social Security Administration Act 1992 (with modifications) which deal with the investigation of fraudulent claims for social security benefits.
4. The policy rationale for the new provisions is to ensure that social housing is being occupied by those to whom it was allocated, and that local authorities have access to more information in order to be able to detect fraud in the social housing stock. Whilst the current law provides that a secure tenant who has sub-let or parted with possession of the whole dwelling-house ceases to be a secure tenant and that a tenant who is not in occupation of the dwelling-house cannot be an assured tenant (which enables the landlord to gain possession of the dwelling-house more easily), this has not proved to be an adequate deterrent to sub-letting and parting with possession, as tenants only risk losing the tenancy of a property in which they do not live.
5. The new provisions are intended to create additional deterrents to unlawful sub-letting in the form of the new offences, orders for the recovery of profits and loss of assured tenancy status.

TERRITORIAL EXTENT AND APPLICATION

6. The Act extends to England and Wales only. It applies to England and to Wales.

COMMENTARY

Section 1: Unlawful sub-letting: secure tenancies

7. The section creates two new criminal offences in relation to secure tenancies. In general, secure tenants are local authority tenants although other social landlords, such as private registered providers of social housing ("PRPs") in England and registered social landlords ("RSLs") in Wales may have secure tenants. The offences only apply where the tenant has ceased to occupy the property.
8. Under *subsection (1)*, secure tenants will commit an offence if, in breach of an express or implied term of their tenancy agreement, they sub-let or part with possession of the whole or part of the property and know this action to be in breach of that tenancy agreement. *Subsection (3)* provides that tenants will not have committed an offence under subsection (1) if they ceased to occupy the dwelling-house and sub-let or parted with possession of it because of violence or threats of violence towards them or their family from a person living in the dwelling-house or in the locality of the dwelling-house. *Subsection (4)* provides that the tenant will not have committed the offence in subsection (1) where the person who occupies the dwelling-house as a result of the tenant's actions is a person entitled to apply to a court for a right to occupy the dwelling-house, or to have the tenancy transferred to them; or a person in respect of whom an application may be made to have the tenancy transferred to them. In practice this will include the tenant's current or former spouse, civil partner or co-habitant or a child for whose benefit the tenancy could be transferred.
9. *Subsection (2)* of section 1 creates an additional new criminal offence, applicable where the tenant has acted dishonestly. The acts comprising this offence are otherwise the same as for the offence under subsection (1). The type of dishonesty intended is knowledge that a reasonable and honest person would consider the action in question to be dishonest. The offence under subsection (2) carries a greater penalty than that under subsection (1). Whether or not the action was dishonest will be a question of fact but is more likely to be found where the tenant made a profit from the transaction, for example by charging a market rent for the property. The defences of sub-letting because of violence or threats of violence, or occupation by a spouse, civil partner etc are not available where dishonesty can be established under subsection (2).
10. *Subsections (5) and (6)* set out the penalties that are to apply upon conviction of the offences under subsections (1) and (2) respectively.

Section 2: Unlawful sub-letting: assured tenancies

11. This section creates two offences in relation to assured tenants of PRPs and RSLs. The offences and penalties are in substantially the same terms as those that apply in relation to secure tenants under section 1. The offences do not apply to PRP and RSL tenants under a shared ownership lease.

Section 3: Prosecution of offences

12. This section provides for time limits for the bringing of prosecutions for the new offences created by sections 1 and 2, and gives powers to local authorities to prosecute the offences.
13. The offences in sections 1(1) and 2(1) that do not include an element of dishonesty are summary-only offences (which is to say that they may only be prosecuted in the magistrates' court). Unless provision is made in legislation, a summary-only offence must be prosecuted within 6 months of the date of the commission of the offence.

*These notes refer to the Prevention of Social Housing Fraud Act
2013 (c.3) which received Royal Assent on 31 January 2013*

Subsections (1) and (2) of section 3 enable the prosecutor to bring a prosecution within 6 months of the date on which evidence sufficient to warrant the prosecution came to the knowledge of the prosecutor, provided it is brought no later than 3 years after the date on which the offence was committed (or the last day on which it was committed if it was a continuing offence).

14. *Subsection (5)* enables a local authority to prosecute an offence under section 1 or 2 (or an associated offence of aiding, abetting, counselling or procuring etc as defined in section 11(10)) whether or not the local authority is or was the landlord of the property and whether or not the property is within the prosecuting local authority's area. This enables a local authority to prosecute offences committed in PRP and RSL properties and in properties owned and managed by other local authorities.

Section 4: Unlawful profit orders: criminal proceedings

15. **Section 4** makes provision for unlawful profit orders in criminal proceedings for offences under section 1 or section 2 (and for associated offences).
16. An unlawful profit order is an order requiring a convicted offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct that constituted the offence (*subsection (3)*).
17. Where an offender is convicted of an offence under section 1 or 2 (or an associated offence), the court must (whether on application or otherwise) decide whether to make an unlawful profit order, and may make such an order where it considers it appropriate to do so instead of, or in addition to, dealing with the offender in any other way (*subsection (2)*). If a court decides not to make an unlawful profit order it must give reasons for that decision when it passes sentence on the offender (*subsection (4)*).
18. The amount payable under an unlawful profit order is a matter for the court's discretion, subject to the matters referred to in paragraphs 19 and 20 below.
19. The maximum amount payable under such an order is determined by *subsection (6)*. This provides for calculating the amount of profit made as the total amount received by the offender as a result of the unlawful conduct minus any rent paid by the offender to the landlord during the period in which the conduct was committed.
20. *Subsection (7)* provides that where an unlawful profit order has already been made against the tenant in civil proceedings under section 5, an unlawful profit order following conviction may only be for the recovery of an amount of profit made by the tenant that exceeds the amount payable under the civil order (or which the landlord has failed to recover under that order).
21. *Subsections (10) and (11)* provide that interest will accrue on an amount payable under an unlawful profit order that is not paid at the time that it is required to be paid.
22. *Subsection (12)* makes provision concerning the application of sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 in relation to unlawful profit orders.

Section 5: Unlawful profit orders: civil proceedings

23. This section allows social landlords to seek an unlawful profit order in civil proceedings against secure and assured tenants who, in breach of their tenancy, have ceased to occupy and sub-let or parted with possession of their properties and who have received money as a result of that conduct. (It does not apply to PRP and RSL tenants under a shared ownership lease.)
24. Such an unlawful profit order enables the landlord to recover the profit the tenant has made from the unlawful activity. The amount payable under an unlawful profit order is a matter for the court's discretion, subject to *subsection (6)*, which provides that the

maximum amount payable under an unlawful profit order is to be calculated as the total amount received by the tenant as a result of the unlawful conduct minus any rent paid by the tenant to the landlord during the period in which the conduct took place.

25. *Subsection (7)* provides that where an unlawful profit order has already been made against the tenant following a conviction in criminal proceedings, an order in civil proceedings may only be for the recovery of an amount of profit made by the tenant that exceeds the amount payable under the criminal order (or which the landlord has failed to recover under that order).

Section 6: Loss of assured status

26. A secure tenant who sub-lets or parts with possession of the whole property will cease to be a secure tenant and cannot regain secure status by moving back into the property. The loss of secure status means that the landlord may end the tenancy by giving notice and this makes possession proceedings simpler. As the law stands, assured tenants who sub-let or part with possession of the whole property will not have assured status during this period, as the property is not the tenant's only or principal home, but the tenant may regain assured status by moving back into the property.
27. **Section 6** ensures that PRP and RSL assured tenants will lose assured status permanently if they sub-let or part with possession of the whole property in breach of their tenancy agreement. This puts those tenants on equal footing with secure tenants. This section does not apply to PRP and RSL leaseholders with shared ownership leases.

Section 7: Regulations about powers to require information

28. **Section 7** allows the Secretary of State and the Welsh Ministers to make regulations, for England and Wales respectively, providing powers for persons to require the provision of information. These powers can only be used for housing fraud investigations purposes, which are defined in *subsection (7)*.
29. Regulations may include provision about the persons by whom these powers may be exercised and may, in particular, provide local authorities with the power to authorise persons to exercise the powers (*subsection (2)*). *Subsection (6)* requires persons exercising the powers to have regard to guidance issued or approved by the Secretary of State or the Welsh Ministers.
30. Regulations made under this section may, in particular, include provisions equivalent to the provisions in the Social Security Administration Act 1992 listed in *subsection (4)*.

Section 8: Regulations about related offence

31. **Section 8** enables the Secretary of State and the Welsh Ministers to make regulations, for England and Wales respectively, providing for the creation of offences that may be committed by a person refusing or failing to provide information when required to do so by or under regulations under section 7.
32. The intention is to create criminal offences equivalent to those that apply to persons failing to provide information in relation to social security fraud investigations under section 111 of the Social Security Administration Act 1992.

Section 9: Regulations: supplementary

33. **Section 9** makes provision in relation to the regulation making powers of the Secretary of State and the Welsh Ministers under sections 7 and 8.

Section 10: Consequential amendments

34. Section 10 and the Schedule make provision for the consequential amendments that are required as a result of the creation of new offences, the loss of assured status and the creation of unlawful profit orders in criminal and civil proceedings.

Section 11: Interpretation

35. Section 11 makes provision in relation to the interpretation of the Act.

Section 12: Extent, commencement and short title

36. Section 12 provides that the Act extends to England and Wales only, save that any amendments to other Acts have the same extent as the provisions being amended.

COMMENCEMENT

37. By section 12(3) the provisions of the Act, other than section 12 which comes into force on the date of commencement, will come into force in relation to England on a day or days appointed by the Secretary of State by order and in relation to Wales on a day or days appointed by the Welsh Ministers by order.

HANSARD REFERENCES

38. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

| <i>Stage</i> | <i>Date</i> | <i>Hansard Reference</i> |
|--------------------------------|------------------|--|
| House of Commons | | |
| Introduction | 20 June 2012 | Vol. 546 Col. 881 |
| Second Reading | 13 July 2012 | Vol. 548 Cols. 616-638 |
| Money Resolution | 23 October 2012 | Vol. 551 Cols. 891-894 |
| Committee | 24 October 2012 | Public Bill Committee on the Prevention of Social Housing Fraud Bill |
| Report and Third Reading | 9 November 2012 | Vol. 552 Cols. 1195-1196 |
| House of Lords | | |
| Introduction | 12 November 2012 | Vol. 740 Col. 1275 |
| Second Reading | 30 November 2012 | Vol. 741 Cols. 383-391 |
| Order of Commitment discharged | 18 December 2012 | Vol. 741 Col. 1466 |
| Third Reading | 14 January 2013 | Vol. 742 Col. 474 |
| Royal Assent | 31 January 2013 | Commons: Vol. 557 Col. 1071 |
| | | Lords: Vol. 742 Col. 1637 |