



Department for
Communities and
Local Government

Baroness Williams of Trafford
Parliamentary Under Secretary of State

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Dear *Baroness*,

Housing and Planning Bill

I am writing following the first sitting of the Lords Committee on the Housing and Planning Bill on 9 February.

Banning and Management Orders

Lords Greaves, Campbell-Savours, Beecham and Foster asked about the interaction between banning and management orders and whether local authorities would be able to cover the cost of bringing properties up to standard from rental income where the landlord has failed to act when served with a statutory notice. They also raised concerns about whether authorities would be able to recover costs more generally through rents alone and if vulnerable tenants may find themselves homeless after a landlord was issued with a banning order.

When the First tier Tribunal makes a banning order it can make certain exceptions, including allowing a landlord to continue to rent out a property until an existing tenancy can be brought to an end. In addition, a local housing authority may make a management order to protect the health, safety and welfare of the existing tenants and may manage the property itself or appoint an agent to do so on its behalf. The authority or agent has the same rights and responsibilities as the landlord, including being responsible for maintenance and repairs.

The length of the management order can range from one to five years, but must cease to have effect when the banning order is lifted. Where a banning order is still in place when the management order expires, the management order can be replaced with a new one.

Where a property is subject to a mortgage and a management order is in force the local housing authority is not under any obligation to meet the owner's mortgage payments. It would remain the responsibility of the owner to continue to pay their mortgage. However, because the management order is made subject to the rights of the mortgagee, the authority may choose to make the payments and defray the cost from the rental income it receives. Indeed the failure to keep up with mortgage payments may be a reason for the local authority making the order in the first place to ensure vulnerable tenants are not made homeless through no fault of their own.

When a management order ends, or is revoked earlier, for example, at the request of a new owner, and the local authority has incurred a deficit in managing the property, this is payable by the owner. If the authority is unable to recover the monies from the owner it has the power

to force a sale of the property to recover the debt from the proceeds of the sale. The authority can only recover the costs it actually incurs in managing, improving and maintaining a property and the legislation does not make provision for the local authority to charge any interest on those costs.

Standard of Proof and Interface between Criminal and Civil Sanctions

Lord Beecham sought clarification on the standard of proof and the interface between criminal and civil sanctions. The Bill provides that where the local housing authority is satisfied the conduct of a person amounts to the offence of breaching a banning order, the authority may impose a financial penalty.

The maximum penalty that can be imposed is £30,000 and before imposing it the authority must give the person an opportunity to make written representations against the imposition of the penalty. If, having considered those representations, the local housing authority decides to impose the penalty on the person they will have a right of appeal to the First Tier Tribunal. If such an appeal is brought, the tribunal will decide whether a penalty should be imposed for the conduct and, if so, how much the penalty should be. A person who receives a financial penalty because of their conduct avoids prosecution in a criminal court and thus, if convicted, a criminal record.

When considering whether to issue a financial penalty or prosecute for the conduct the local authority will take into account the gravity of the conduct and any other aggravating or mitigating factors, as well as whether it would be in the public interest to prosecute. Our intention in the Bill is that before it decides to impose a financial penalty the local housing authority must satisfy itself that there is cogent and persuasive evidence that the person's conduct amounts to an offence to the criminal standard of beyond reasonable doubt. My Department will be issuing guidance on financial penalties, including on the circumstances in which a penalty may be imposed and the standard of proof to be applied; local authorities will be required to have regard to the guidance.

Although the financial penalty is up to £30,000 for a continuing breach of the banning order, any penalty must be proportionate to the period in which the breach occurred. This will be covered in more detail in the guidance.

Electrical Safety checks

Lords Beecham, Kennedy and Campbell-Savours raised the issue of electrical safety checks. I have listened carefully to the strength of feeling in the House on this issue. The Government has committed to undertake research to understand what, if any, legislative amendments regarding electrical safety in the private rented sector should be introduced. Protecting tenants is an important issue but it is also crucial that there is a demonstrable need for new regulations. Our research will ensure that any new requirements strike the right balance between protecting tenants and not causing an excessive regulatory burden for landlords.

This work is currently being undertaken and will inform any next steps in this area. We aim to convey our findings at Report stage.

Housing and Wellbeing Analysis/Report

Baroness Hollis asked for further information regarding the contents of the housing and Wellbeing report and its planned presentation before the House of Lords.

The Government already produces annual analyses on the relationship between housing and well-being via the *English Housing Survey* and the *Measuring National Well-being: Life in the UK index*. The English Housing Survey, which is funded and produced by my Department, includes information on the financial circumstances and satisfaction, and well-being of householders. The latest results were published on 18 February and are available on the Government's website at:

<https://www.gov.uk/government/statistics/english-housing-survey-2014-to-2015-headline-report>

We will be publishing a housing and well-being report in the summer, although that date has yet to be finalised. This work is about to start and our intention is to include an analysis on the impact of rent arrears and housing on well-being.

Short-term Holiday Lettings

Lord Beecham also sought clarification on short-term holiday lettings. Government is supportive of the sharing economy and recognises the benefits offered from the flexibility of short term lets. We do not collect data on the number of short-term holiday lets. Local authorities have powers to investigate complaints of statutory nuisance from people living within its sector, or taking action against those responsible. Similarly, other relevant existing legislation, such as health and safety requirements, remain in place for any properties in England being let out on a short-term basis. It will also remain a matter for local planning authorities to determine whether an unauthorised change of use has taken place, and whether they should take planning enforcement action in the public interest.

Property Guardians

Lord Beecham asked me to consider the issue of property guardianship schemes. I have reflected on the issues he raised, but must report that it remains the position of Government that it is not able to endorse such schemes. They frequently involve using non-domestic buildings as accommodation, a purpose for which they were not designed. However, we will continue to keep the situation under review.

National Register of Landlords

Finally Lord Campbell-Savours, Lord Foster of Bath, Lord Beecham and Lord Greaves asked about the cost of setting up a National Register of Landlords. The last Labour administration's estimated cost for a national register was £40 million a year, excluding set-up costs. I do not believe this type of blanket approach would be a prudent use of taxpayers' money or identify rogue landlords who work hard to remain under the radar. Therefore, a significant minority of rogue landlords would avoid being on the Register and remain unknown to local authorities.

A copy of this letter will be placed in the House library.



BARONESS WILLIAMS OF TRAFFORD

