



Department for
Communities and
Local Government

Rent repayment orders under the Housing and Planning Act 2016

Guidance for Local Housing Authorities

Foreword

The private rented sector is an important part of our housing market, housing 4.5 million households in England¹. The quality of privately rented housing has improved rapidly over the past decade with 82% of private renters are satisfied with their accommodation, and staying in their homes for an average of 4 years.

The Government wants to support good landlords who provide decent well maintained homes, and avoid further regulation on them which increases costs and red tape for landlords and also pushes up rents for tenants.

But a small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords and disrupt their business model.

Significant progress has already been made in doing this:

- £12 million provided to a number of local authorities to help tackle acute and complex problems with rogue landlords, including “Beds in Sheds”. More than 70,000 properties have been inspected and over 5,000 landlords are facing further enforcement action or prosecution;
- Introduced protection for tenants against retaliatory eviction where they have a legitimate complaint and stopped landlords from serving an open-ended eviction notice at the start of a tenancy;
- Required landlords to install smoke alarms on every floor of their property, and test them at the start of every tenancy, and to install carbon monoxide alarms in high risk rooms.

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords and we plan to implement these in 2017:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (coming into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences (coming into force on 6 April 2017);
- Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties (scheduled to come into force on 1 October 2017);
- Banning orders for the most serious and prolific offenders (scheduled to come into force on 1 October 2017).

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/595785/2015-16_EHS_Headline_Report.pdf

When extended rent repayment orders were introduced through the Housing and Planning Act 2016, Ministers made clear that they expected this power to be used robustly as a way of clamping down on rogue landlords. In the House of Commons, Brandon Lewis MP (then Minister of State for Housing and Planning at the Department for Communities and Local Government) made the following statement on 8 February 2016:

[This] will enable councils to issue remedy payment orders for up to 12 months. That will give them a resource that [it is hoped] they will use².

² <https://hansard.parliament.uk/Commons/2016-02-08/debates/1602085000014/PrivateRentedSector>

1. Purpose and scope

1.1 Introduction

This guidance has been produced to help local housing authorities use their powers in the Housing and Planning Act 2016 to seek a rent repayment order against landlords in the private rented sector for a range of offences which are listed at paragraph 1.8.

In this guidance, the term “landlords” also include “property agents”, “letting agents” and “managing agents”, unless specified otherwise.

1.2 What is the status of this guidance?

This is statutory guidance issued under section 41 of the Housing and Planning Act 2016. Local housing authorities must have regard to this guidance in the exercise of their functions in respect of rent repayment orders.

Where the words “may” or “should” are used, this means that a particular course of action is recommended or advised, but is not mandatory. Where the words “must” or “shall” are used, that means the guidance reflects a statutory requirement.

1.3 Will the First-tier Tribunal use this guidance?

While the First-tier Tribunal is not bound by it, they will have regard to this guidance.

1.4 What is a rent repayment order?

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

1.5 Who is the rent repaid to?

Either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis (see also section 6 of this guidance).

1.6 Rent repayment orders were introduced by the Housing Act 2004. What's changed?

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences which are described at paragraph 1.8 below.

1.7 Is there provision for transitional arrangements covering licensing offences under section 72 and 95 of the Housing Act 2004?

Yes. Where the offence was either (a) wholly committed before 6 April 2017 or (b) the commission of the offence started before 6 April 2017 and ended no later than 5 April 2018, the provisions in the Housing Act 2004 continue to apply. Any receipt from a rent repayment order made under these transitional arrangements should be applied in accordance with the Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007

Where the offence was wholly committed on or after 6 April 2017, the provisions in the Housing and Planning Act 2016 will apply and this guidance should be used.

1.8 What are the new grounds for seeking a rent repayment order?

Rent repayment orders are being extended to cover the following situations:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;³
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

1.9 Does the landlord have to be convicted of an offence before a local authority or tenant can apply for a rent repayment order?

A rent repayment order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed in paragraph 1.8 above. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

³ When banning orders come into force, scheduled to be 1 October 2017

2. Using the new powers

2.1 What is the legal basis for these powers?

Chapter 4 of Part 2 of the Housing and Planning Act 2016

2.2 Who will be able to use these powers?

Local housing authorities and tenants.

2.3 When will this power be introduced?

These powers will come into force on 6 April 2017. They are not retrospective and will not apply to offences committed before that date.

2.4 What is the maximum amount of rent that can be recovered through a rent repayment order?

The maximum amount of rent that can be recovered is capped at 12 months.

2.5 Who is responsible for issuing a rent repayment order?

The First-tier (Property) Tribunal

2.6 What burden of proof is required?

A criminal standard of proof is required. This means that the First-tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence or the landlord has been convicted in the courts of the offence for which the rent repayment order application is being made.

2.7 How can a local housing authority establish whether there would be a realistic prospect of conviction?

Local housing authorities may wish to consult the Crown Prosecution Service *Code for Crown Prosecutors*⁴ for this purpose as it provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction.

The Code has two stages: (i) the evidential stage and (ii) the public interest stage.

⁴ https://www.cps.gov.uk/publications/code_for_crown_prosecutors/

3. Applying for a rent repayment order

3.1 What factors should be taken into account when deciding whether to apply for a rent repayment order?

Local housing authorities are expected to develop and document their own policy on when to prosecute and when to apply for a rent repayment order and should decide each case independently.

3.2 What factors should a local housing authority take into account when considering how much rent they should seek to recover?

Where a landlord has been convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).

Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:

- a. **Punishment of the offender.** Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;
- b. **Deter the offender from repeating the offence.** The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence;
- c. **Dissuade others from committing similar offences.** Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.
- d. **Remove any financial benefit the offender may have obtained as a result of committing the offence.** This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

3.3 Can a local housing authority impose a civil penalty and seek a rent repayment order for the same offence?

A local housing authority can impose a civil penalty and apply for 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 (section 30);
- Offences in relation to licensing of Houses of Multiple Occupation (section 72(1));

- Offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

3.4 Can a local housing authority prosecute and also seek a rent repayment order in respect of the same offence?

A local housing authority can prosecute a landlord and seek a rent repayment order against them for the same offence.

3.5 Is it possible for a rent repayment order to be granted automatically following conviction for a relevant offence?

No, an application for a rent repayment order must be made separately to the First-tier Tribunal. However, where the landlord has been convicted of the offence, the First-tier Tribunal must award the rent repayment order and must require that the amount of the rent repayment order is the maximum that it has the power to order is repaid.

3.6 Do the extended rent repayment order powers cover the common parts of a building?

No. The extended rent repayment order powers only apply to those parts of a property which is being rented out to a tenant.

3.7 Does the landlord have to be convicted of an offence before an application for a rent repayment order can be made?

It is not necessary for a landlord to have been convicted of an offence before an application for a rent repayment order can be made. Where a landlord has not been convicted of an offence in the courts, the local housing authority will need to satisfy the First-tier Tribunal, beyond reasonable doubt, that the offence was committed by the landlord.

3.8 Can a rent repayment order be applied for against a managing agent or “head tenant” who has sublet a property and is carrying out all the usual landlord activities?

No, a rent repayment order can only be applied for against the landlord of a property. A rent repayment order cannot be sought against a managing agent or “head tenant” unless they are the landlord of the property, entitled to keep the rent.

3.9 What is the process for applying for a rent repayment order where the applicant is a local housing authority?

The process for applying for a rent repayment order is set out below. A local housing authority may only apply for a rent repayment order if the offence relates to housing in the local housing authority’s area. In deciding whether to apply for a rent repayment order, the local housing authority must have regard to this guidance. This process applies whether or not the landlord has been convicted of the offence:

- Before applying for a rent repayment order, the local housing authority must give the landlord a notice of intended proceedings;

- A notice of intended proceedings must be served within 12 months of the date on which the landlord committed the offence to which it relates;
- A notice of intended proceedings must
 - Inform the landlord that the local housing authority is proposing to apply for a rent repayment order and explain why;
 - State the amount that the local housing authority is seeking to recover;
 - Invite the landlord to make representations within a period specified in the notice which must be at least 28 days.
- The local housing authority must consider any representations made within the notice period;
- The local housing authority must not apply to the First-tier Tribunal for a rent repayment order until the period specified in the notice of intended proceedings has expired;
- An application for a rent repayment order can be made to the First-tier Tribunal once the notice has been made and the time for representations has passed.

3.10 Can a local housing authority apply for costs to cover the expense incurred in seeking a rent repayment order from the First-tier Tribunal?

Generally, each party bears its own costs. However, the First-tier Tribunal may award costs where a person has acted unreasonably in bringing, defending or conducting proceedings.

3.11 Are there any circumstances where a local housing authority must consider applying for a rent repayment order?

If a local housing authority becomes aware that a person who is a landlord has been convicted of any of the offences listed at paragraph 1.8, and the offence was committed in their area, it must consider applying for a rent repayment order.

4. Tenants and rent repayment orders

4.1 Can a tenant apply for a rent repayment order?

Yes, provided that:

- the offence relates to housing that was occupied by the tenant at the time of the offence; and
- the application for a rent repayment order is made within 12 months of the date that the offence has been committed.

4.2 Does a tenant have to go through the same procedure as a local housing authority if they want to apply for a rent repayment order?

No. A tenant does not have to go through the same process. To make an application for a rent repayment order, a tenant only needs to submit a claim to the First-tier Tribunal which sets out the reasons for the claim and the dates to which it relates.

4.3 Will local housing authorities be expected to support any claim by a tenant even if the authority has decided not to prosecute or seek a rent repayment order in the same case?

There is no statutory obligation on local housing authorities to support a claim by a tenant for a rent repayment order. However, a local authority may wish to consider introducing and applying a consistent policy on when to prosecute and when to seek a rent repayment order where an offence appears to have been committed.

5. Amount of rent to be repaid

5.1 Can the First-tier Tribunal only order that the maximum amount of rent must be repaid if the local housing authority or tenant has applied for the maximum amount?

The First-tier Tribunal must order that the maximum amount of rent (up to 12 months) is repaid where the landlord has been convicted of the offence to which the rent repayment order applies. This is regardless of whether or not the local housing authority or tenant has applied for a lesser amount. Where the landlord has not been convicted, the First-tier Tribunal will determine the amount to be repaid in accordance with section 44 (tenants) or section 45 (local housing authorities) of the Housing and Planning Act 2016.

5.2 How much rent must be repaid to the local housing authority if the landlord has been convicted of the offence for which a rent repayment order is being sought?

Where a landlord has been convicted of any of the offences listed at paragraph 1.8 and the rent repayment order, or part of it, is being made in favour of the *local housing authority* (because rent was paid through Housing Benefit/Universal Credit), the First-tier Tribunal must require the landlord to repay all of the rent paid to the landlord by the local housing authority up to a maximum of 12 months, provided the conditions in section 46 of the Housing and Planning Act 2016 are met.

5.3 Can a rent repayment order cover a full 12 month period even if the offence was committed over less than a 12 month period?

No, a rent repayment order can only cover the period during which the offence was committed, up to a maximum of 12 months.

Note that for offences involving unlawful eviction/violent entry, it is the 12 months preceding the offence that counts.

5.4 How much rent must be repaid to the tenant if the landlord has been convicted of the offence for which a rent repayment order is being sought?

Where a landlord has been convicted of any of the offences listed at paragraph 1.8 and the rent repayment order is being made in favour of the *tenant*, the First-tier Tribunal must require the landlord to repay all of the rent paid to the landlord by the tenant up to a maximum of 12 months rent, provided the conditions in section 46 of the Housing and Planning Act 2016 are met.

5.5 How much rent must be repaid to the local housing authority if the landlord has NOT been convicted of the offence?

Where a landlord has not been convicted of an offence in the courts, the First-tier Tribunal must be satisfied beyond reasonable doubt that he has committed the offence. Where it is satisfied to that standard, the First-tier Tribunal can order that all of the rent paid as

Housing Benefit/Universal Credit must be repaid to the local housing authority, up to a maximum of 12 months rent.

In determining the amount to be repaid, the First-tier Tribunal must, in particular, take into account:

- The conduct of the landlord;
- The financial circumstances of the landlord; and
- Whether the landlord has at any time been convicted of one of the offences listed at paragraphs 1.7 and 1.8.

5.6 Isn't it for the First-tier Tribunal to decide on the amount of a rent repayment order?

Not necessarily. If a landlord has been convicted in respect of the same offence for which a rent repayment order is being made, the First-tier Tribunal must award the maximum amount of rent possible (capped at 12 months). They only have discretion on the amount where there has not been a prior conviction

5.7 What is the position if both a local housing authority and a tenant want to apply for a rent repayment order covering different periods?

The amount to be repaid to the local housing authority will be determined in accordance with section 45 of the Housing and Planning Act 2016 while for the tenant, the amount to be repaid will be determined in accordance with section 44 of the Act.

7. Other issues

7.1 Can the amount of a rent repayment order ever exceed the amount of rent actually paid?

No, the amount of any rent repayment order can never be more than the rent that was actually paid over the previous 12 months. This applies regardless of whether rent was paid from the tenant's own resources or through Housing Benefit/Universal Credit.

7.2 Does the landlord have any appeal rights?

A landlord may appeal against a decision of the First-tier Tribunal to the Upper Tribunal provided that permission to appeal has been given by the First-tier Tribunal or the Upper Tribunal.

7.3 Can a local housing authority publicise when a rent repayment order has been made, including who it was made against, the reasons and the amount?

It will be for individual local housing authorities to decide this taking account of their responsibilities under the Data Protection Act 1998.

7.4 What if the landlord refuses to pay a rent repayment order?

Where the landlord fails to pay a rent repayment order, the local housing authority or tenant should refer the case to the county court for an Order of that Court. If necessary, the local housing authority or tenant should use county court bailiffs to enforce the order and recover the debt.

For further information on debt recovery, please refer to the following leaflets produced by HM Courts and Tribunal Service:

Third party debt orders and charging orders. How do I apply for an order? How do I respond to an order? (leaflet number EX325)

I have a Tribunal decision but the respondent has not paid. How do I enforce it? (leaflet number EX328)

7.5 What is the purpose of the database of rogue landlords and property agents?

The purpose of the database is to enable local housing authorities to record information about, and target enforcement action against, any landlord who has:

- received a banning order under the Housing and Planning Act 2016;
- been convicted of a banning order offence; or
- received 2 or more civil penalties over a 12 month period

8. Income from rent repayment orders

8.1 What happens to any money that a local housing authority receives from a rent repayment order?

Income received from a rent repayment order can be retained by the local housing authority provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations⁵.

⁵ <http://www.legislation.gov.uk/uksi/2017/367/contents/made>