

*These notes refer to the Prevention of Social Housing Fraud Bill
as brought from the House of Commons on 12th November 2012 [HL Bill 55]*

PREVENTION OF SOCIAL HOUSING FRAUD BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Prevention of Social Housing Fraud Bill as brought from the House of Commons on 12th November 2012. They have been provided by the Department for Communities and Local Government, with the consent of Baroness Eaton, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Prevention of Social Housing Fraud Bill 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 Bill 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 Bill 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 Bill 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.

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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 Bill extends to England and Wales only. It applies to England and to Wales.

COMMENTARY

Clause 1: Unlawful sub-letting: secure tenancies

7. The clause 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.

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9. Subsection (2) of clause 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.

Clause 2: Unlawful sub-letting: assured tenancies

11. This clause 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 clause 1. The offences do not apply to PRP and RSL tenants under a shared ownership lease.

Clause 3: Prosecution of offences

12. This clause 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 clauses 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 magistrate's 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. Subsections (1) and (2) of clause 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 clause 1 or 2 (or an associated offence of aiding, abetting, counselling or procuring etc as defined in clause 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.

Clause 4: Unlawful profit orders: criminal proceedings

15. Clause 4 makes provision for unlawful profit orders in criminal proceedings for offences under clause 1 or clause 2 (and for related offences).

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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 clause 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 clause 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.

Clause 5: Unlawful profit orders: civil proceedings

23. This clause 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

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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).

Clause 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. Clause 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 clause does not apply to PRP and RSL leaseholders with shared ownership leases.

Clause 7: Regulations about powers to require information

28. Clause 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).

Clause 8: Regulations about related offence

31. Clause 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 clause 7.

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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.

Clause 9: Regulations: supplementary

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

Clause 10: Consequential amendments

34. Clause 10 and the Schedule make provision for the consequential amendments that are required as a result of the creation of unlawful profit orders in criminal and civil proceedings.

Clause 11: Interpretation

35. Clause 11 makes provision in relation to the interpretation of the Bill.

Clause 12: Extent, commencement and short title

36. Clause 12 provides that the Bill 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 clause 12(3) the provisions of the Bill 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.

FINANCIAL EFFECTS

38. The Bill does not confer major new functions on local authorities, who already have wide powers to bring civil or criminal proceedings and who have powers to require the provision of information under the Social Security Administration Act 1992.

39. Local authority landlords, PRPs and RSLs may benefit financially from the provisions in the Bill for unlawful profit orders that may be made in their favour.

SUMMARY OF IMPACT ASSESSMENT

40. An Impact Assessment has been prepared in relation to the Bill and will be made available on the website of the Department for Communities and Local Government (www.communities.gsi.gov.uk).

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PUBLIC SECTOR MANPOWER IMPLICATIONS

41. The Bill will not represent a significant change to public service manpower.

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