



# THE PREVENTION OF SOCIAL HOUSING FRAUD BILL

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## The Prevention of Social Housing Fraud Bill

The Prevention of Social Housing Fraud Bill completed its third reading in the House of Lords on 14 January 2013; no amendments were made. As both Houses have agreed on the text of the Bill it now waits Royal Assent.

Housing tenancy fraud, including unlawful subletting, is estimated to cost £900 million per year according to a report published by the Audit Commission in November 2012 (see [www.audit-commission.gov.uk/fraud/protecting-the-public-purse-2012](http://www.audit-commission.gov.uk/fraud/protecting-the-public-purse-2012)). The National Fraud Authority, in association with the Chartered Institute of Housing, published "*The Guide to Tackling Tenancy Fraud*" in 2011 ([www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/our-work/tackling-social-housing-fraud](http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/our-work/tackling-social-housing-fraud)). The Guide suggested the following:-

- All landlords should ascertain the level of unlawful occupation in their stock.
- More local authorities should provide a fraud investigatory service to housing associations in return for nomination rights to homes recovered.
- Registered providers of social housing should have robust internal audit processes in place to detect possible fraudulent or corrupt actions by staff.
- Local authorities should consider photographing tenants at allocation and existing tenants at tenancy audits.
- Local authorities should consider the balance of the resources they allocate to housing benefit and housing tenancy fraud.
- A consistent best practice tenancy audit checklist and training needs to be devised to show how these can be carried out effectively.
- The Government should consider further incentivising local authorities and registered providers to investigate and recover unlawfully sublet properties.
- Registered providers and councils should commit to joint working and there should be political and managerial commitment to the recovery of unlawfully sub-let properties.
- Housing tenancy fraud is not restricted to London and work needs to be done to promote investigations outside London.

Unsurprisingly the Bill was introduced in July 2012 and received cross party support as it came at a time when the strain on housing, particularly in the social housing sector, was receiving much publicity and the welfare system was being overhauled.

Some say it is just another populist law that does not address the fundamental problem of not enough house building. However addressing the fraud prevalent in the social housing sector can surely only be a good thing?

As someone who has been practising for over 10 years in this area, for all types of landlords and tenants, I have seen an increase in cases of subletting, dubious tenancy grants, even more dubious succession claims and genuinely desperate “tenants” who have been duped by rogues and find themselves homeless and out of pocket. What I have not seen though is any increase in pursuing former tenants for money judgments for unpaid rent despite sub tenants paying their “landlord”, or general enforcement action by local authorities and housing associations (this is a subject I shall be discussing in a future briefing).

During one of the Bill’s readings in the House of Commons it was noted that local authorities might incur some ‘administrative costs’ as a result of the bill (presumably this factor would also apply to housing associations), but overall the costs of implementing the Bill are, according to the under-secretary of state for Communities and Local Government department, Brendan Lewis, unlikely to be significant. I have noticed an increase in adverts for investigation officers in the social housing sector, so I am not sure (although I am no expert) the costs will be minimal. Presumably it would mean more time is devoted to collecting and collating the evidence; more possession claims or criminal proceedings issued and the resulting cost which is, again in my view, never ultimately fully recouped.

In overview the Bill creates-

- a new criminal offences of unlawful subletting by assured and secure tenants in social housing (it does not apply to shared ownership leases);
- gives local authorities powers to prosecute in cases of unlawful subletting;
- enable courts (criminal and civil routes available) to order the recovery of any profit made from unlawful subletting from tenants; and
- provides that assured tenants who unlawfully sublet the whole of their dwelling cannot subsequently regain their security of tenure.

Clauses 1 and 2 of the Bill create two offences for secure and assured tenancies respectively- an offence will be committed where a tenant knowingly sublets or parts with possession of the whole or part of their dwelling in breach of an express or implied term of their tenancy agreement. An offence will also be committed where the tenant acts dishonestly. Dishonesty will be a question of fact but is more likely to be found where the tenant has made a profit. The explanatory notes state that dishonesty is to be measured against what a “*reasonable and honest person*” would consider as dishonest.

Proving dishonesty may be relatively easy if the duped occupiers agree to give evidence or if copies are retained of any tenancy agreements they have been given and the circumstances of the illegal sublet are fully recorded by the investigating officers.

Clause 3 of the Bill provides local authorities with the power to prosecute for the offences noted above and for aiding, abetting, counselling or procuring unlawful subletting (clause 3(7)). Prosecution has to take place within 6 months of the date on which evidence sufficient to warrant a prosecution becomes known provided it is no longer than 3 years after the date on which the offence was committed or the last days on which it was committed if it is a continuing offence.

The summary offence of illegal subletting receives a penalty of a fine up to level 5 on the standard scale. The maximum penalties for conviction on indictment for the dishonesty offence are up to 2 years imprisonment and an unlimited fine. Summary conviction can result in either a sentence of up to 6 months imprisonment or a fine (or both).

Local authorities and housing associations will have to work together as it is only local authorities that can bring a prosecution. Any local authority can prosecute so it is not limited to the most geographically obvious local authority for a housing association.

Clause 4 of the Bill places a duty upon the criminal court to consider whether to issue an unlawful profit order requiring the convicted tenant to pay the landlord an amount representing the profit made by the offence. An unlawful profit order can be made instead of or in addition to dealing with the offender in any other way.

Clause 5 of the Bill enables social landlords to seek an unlawful profit orders in civil proceedings where the subletting has resulted in payment to the tenant. In essence the social landlord will be able to recover the total amount received by the tenant minus any rent or service charges paid during the relevant period (clause 5(6)). The court is required to have regard to any representations made by the parties and, of course, the evidence.

Where an order has already been made following a conviction against the tenant a civil order may only be made 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 (clause 5(7)) and permission will be required from the court.

Tracing the profits may be difficult as there is no general requirement to force a tenant to disclose their bank statements to a local authority or housing association to see what deposits are being made. However many of the scams and illegal sub letting organised "rings" are usually all cash based systems. One suspects though that defending tenants in a county court action may be willing to disclose financial information to demonstrate they can't pay anything back. As with any litigation there is always a cost benefit analysis to be made as to whether the defendant is "good for the money". So whilst possession actions in the county court will not diminish it may be that more criminal prosecutions are pursued, at least in the first instance, for fines or sentencing to take place. However investigating officers are becoming increasingly adept at locating tenants other properties and assets so presenting this proof to both the criminal and civil courts is going to be important for the success of unlawful profit orders.

Clause 6 of the Bill inserts a new s.15A into the Housing Act 1988 to align assured tenancies with secure tenancies regarding the permanent loss of security of tenure on illegal subletting. Clause 7 provides the conduit for the regulations that will be necessary.

One assumes the proof really will be "in the pudding". If the Bill's measures are effective then logically one should see an increase in homes available, eventually. When enacted this Bill may be a deterrent to tenants considering an illegal sublet but the profit margins are so high in this area it is my personal view that prosecutions and civil unlawful profit orders must be pursued, along with other enforcement against tenants to start making the changes necessary.