

## The prevention of Social Housing Fraud Act 2013: What will it do?

By Andy Lane

### Introduction

1. This presentation considers the Prevention of Social Housing Fraud Act (“the Act”), which came into force on 15 October 2013, from a practical perspective. A brief background to the Act will be set out below at paragraphs 3 to 7 along with the intended effects. There will then follow an examination of the provisions of the Act and an evaluation of its likely future impact and use, particularly on and by local authorities and housing associations.
2. I should say at the outset that I am indebted to the input, creativity and research for this paper of Abla O’Callaghan and though I have put just my name at the end of the document as the presenter of this topic it should be treated as a joint piece of work save that any mistakes will be mine.

### Background

3. The Act was introduced after the Audit Commission had carried out an annual fraud survey of local government services. In *Protecting the Public Purse (PPP) 2012* (published in November) the Commission estimated that social landlords had lost control of the allocation of nearly 98,000 properties in England, which was a substantial increase from its 2011 estimate of 50,000 properties. Further in March 2012 the National Fraud Authority (NFA) estimated that tenancy fraud cost local housing authorities around £900m per year.
4. The key actions that had already been taken by social landlords to detect tenancy fraud (and continue to be taken) include:
  - employing staff dedicated to uncovering tenancy fraud;

- carrying out a series of regular tenancy audits to verify that the people living in a property are the tenants;
  - data matching; and
  - encouraging “tip-offs” from local residents<sup>1</sup>.
5. The NFA, in association with the Chartered Institute of Housing, had previously published *The Guide to Tackling Tenancy Fraud* in 2011. The Guide identified the following “key learnings and recommendations” for social landlords:
- 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.

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<sup>1</sup> Wendy Wilson, The Prevention of Social Housing Fraud Act 2013, House of Commons Library, 31 October 2013 at 4 – 5

- Private registered providers and local authorities 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.**

6. Turning back to the Act itself, its Explanatory Notes explain the driving force behind it:

*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.*

7. In order to give effect to these clear intentions 12-section Act has introduced the following provisions:

- Criminal offences of unlawful sub-letting/parting with possession by secure tenants (section 1) and assured tenants (section 2) of social landlords<sup>2</sup>. Paragraphs 13 to 17 explain this further below.

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<sup>2</sup> There had previously been the availability of the less-directed Fraud Act 2006 as explained in the seminal article on the Act prior to its commencement, "Acting on housing fraud" by Dean Underwood and Leon Glenister (4 April 2013) <http://www.solicitorsjournal.com/comment/acting-housing-fraud>

- Wide powers for local authorities to prosecute both secure tenants and assured tenants of social landlords (section 3). Paragraphs 34 to 44 below consider this in more detail.
- An Unlawful Profit Order (UPO) such that if an offence has been committed (though not necessarily prosecuted) the tenant(s) will have to pay the profits of their unlawful sub-letting to the landlord. This can be following conviction (section 4) or in civil proceedings (section 5). Paragraphs 21 to 33 below expand upon this issue.
- The permanent loss of security of tenure following the parting with possession or unlawful sub-letting of the whole of the demised premises now applies to assured tenants of social landlords – by way of the introduction of section 15A of the Housing Act 1988 (section 6) – as it has done for some time to secure tenants as provided for at section 93(2) of the Housing Act 1985. This is explained further at paragraphs 18 to 20 below.
- The power given to the Secretary of State and Welsh Ministers to make regulations to aid with the investigation of social housing fraud (section 7). Paragraphs 45 to 48 below give an update on this issue.

## **Tenancy Fraud and Sub-letting/Parting with possession**

8. The Act is therefore concerned with tenancy fraud arising out of the unlawful subletting or the parting with possession of social rented housing.
9. In terms of subletting a room in the demised premises, there remains a distinction between secure tenants and assured tenants. Secure tenants have long had an express statutory right to take in lodgers and with the written consent of their landlord they can sublet or part with possession of part of the demised premises<sup>3</sup>. On the other hand, assured tenants of private registered providers do not have this option as a statutory right and their tenancy agreements can exclude any form of subletting or permit such activity but only with the permission, usually written, of the landlord. In essence there is however little practical difference between the two.

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<sup>3</sup> Section 93(1) of the Housing Act 1985

10. This is a relevant issue for the purposes of the Act however because what many people do not appreciate is that sub-letting/parting with possession of just part of the demised premises is also an offence so long as it is a breach of tenancy (express or implied), there is no written consent from the landlord to such actions, the tenant no longer lives at the property as her/his only or principal home and knows it is a breach or acts dishonestly in sub-letting/parting with possession: sections 1(1)(2); 2(1)(2).
11. But as noted above at paragraph 7, both secure and assured tenants are prohibited from subletting the whole of their properties and will permanently lose security of tenure if they do so<sup>4</sup>. Whereas such scenarios are largely evidential, there is a considerable body of case-law in cases where there has been no sub-letting or parting with possession of the whole but rather the tenant (or both tenants if a joint tenancy) have left to live elsewhere. In such instances the broad issue is whether that tenant had (at least at the time provided for in the notice to quit) an objective intention to return<sup>5</sup>.
12. The review of this “intention to return” defence was in fact considered when the Government published the *“Social Housing Fraud - Summary of responses to consultation and next steps”* July 2012 (“the Responses”) and it was concluded that whilst more clarity around the defence would be helpful, there was concern around any “tightening” that specified a length of time for which a tenant can be absent. Further the National Housing Federation (NHF) raised issues around implications for the European Convention on Human Rights:

*“A further point is that the “principal home” test automatically avoids any possibility of a challenge under Article 8 of the Human Rights Convention (Respect for the Home) since the court has decided that the property is not the tenant’s principal home. A “length of absence” test would not have this advantage, and if it were challenged under 11 irrevocable loss of security that would otherwise result under s93 of the*

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<sup>4</sup> Section 81 of the Housing Act 1985 (secure tenancies) and section 1(1)(b) of the Housing Act 1988 (assured tenancies)

<sup>5</sup> In *Crawley BC v Sawyer* (1988) 20 HLR 98 for example the Court of Appeal dismissed an appeal against the decision of a Judge that the tenant retained his tenancy even though he went to live with his girlfriend in 1985, the electricity to the premises was cut off in June 1985 and the gas in 1986 and in July 1986 the defendant himself told the authority that he was living with his girlfriend and that they intended to purchase her home.

*Housing act 1985. It is hard to discern what useful purpose is served by this right and we suggest that it should be abolished, at least for new secure tenants.*<sup>6</sup>

## **Criminal Offences – Section 1 and 2**

13. Two criminal offences have been created by the Act concerning the sub-letting/parting with possession of properties held under either secure or assured tenancies that are granted by private registered providers (PRPs) or registered social landlords (RSLs)<sup>7</sup>. The difference between the two offences is the state of mind of the offending tenant.

14. And so where a secure tenant knowingly sublets or parts with possession of the whole or part of their property in breach of an express or implied term of their tenancy, this results in the commission of an offence:

- i. The first “lesser” offence is committed whether the tenant no longer occupies the property as her/his only or principal home and sublets or parts possession of all or part of it in the knowledge that this is in breach of tenancy. A person convicted of this offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: sections 1(5); 2(6).

This offence is not committed if the reason behind the tenant’s subletting or parting with possession is due to violence or threats of violence by an individual living in the property or in the locality towards the tenant or a member of the tenant’s family living with the tenant immediately before they ceased to reside in the demised premises: sections 1(3); 2(4).

Further an offence will not be committed if the individual is occupying the property in these circumstances is entitled to apply for a right to occupy it, or to have the tenancy transferred to him, or a person in respect of whom

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<sup>6</sup> NHF *Response to Social Housing Fraud*, April 2012

<sup>7</sup>Section 2(3) - Sub-tenants will not themselves commit an offence under the Act though it is arguable that they may be committing other offences if they knew that the tenant was acting unlawfully and thereby “assisted” or “encouraged” such an offence

such an application might be made. This is likely to include spouses, former spouses, civil partners, co-habitants and children for whose benefit the tenancy might be transferred: sections 1(4); 2(5).

- ii. The more serious offence occurs if the tenant acts dishonestly in the sub-letting/parting with possession.

A person convicted of this offence is liable (sections 1(6); 2(7))—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

15. Proceedings for an offence under the Act may be brought within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge, but no such proceedings may be brought more than three years after the commission of the offence, or, in the case of continuous contravention, after the last date on which the offence was committed: section 3(1), (2)<sup>8</sup>.

16. The deterrent effect of the Act was considered to be significant by the National Housing Federation (NHF) despite the anticipation that the actual number of prosecutions would be limited. Seeking redress to the criminal courts was considered most beneficial in cases where there had been significant financial gain as the financial hardship of bringing cases to court had to be taken into account.

17. A scenario where criminalising social tenants may prove problematic is in relation to social tenants who come from abroad but who may return to their country for some

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<sup>8</sup>A certificate signed by the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved: section 3(3). Section 3(1)–(3) also applies in relation to an associated offence which is a summary offence (to the extent that they would not otherwise apply to that offence): section 3(4).

time to maintain their family links and in the meantime family and friends would take care of the property in order prevent its loss. This might expose the tenant to prosecution (or arguments as to loss of status, though that is the case now) and even though the tenant may raise defences, the success of this may be dependent on access to effective and efficient legal advice<sup>9</sup>.

## Loss of Assured Tenant Status

18. The Act places secure and assured tenants on an equal footing in that it ensures that assured tenants of PRPs and RSLs, who are not shared ownership lessees, will lose security of tenure permanently if, in breach of their tenancy agreement, they sub-let or part with possession of the whole of their property. (section 6 of the Act)
19. The landlord can end the tenancy by serving a notice to quit; possession proceedings in these circumstances are simpler. This will bring assured tenants in line with secure tenants of local authorities. The provision does not apply to leaseholders of registered providers who occupy under a shared ownership lease.
20. This equalisation of security for secured and assured tenants has been supported and welcomed by PRPs and RSLs as it is clearly tackling the abuse of the social housing system.

## Unlawful Profit Orders (UPOs)

21. This new type of order is one through which the court may require the defendant to pay the landlord the profit made from an unlawful sub-letting. This order can be made in relation to civil or criminal proceedings where there has been a conviction for unlawful sub-letting.

## Civil UPOs

22. Section 5 of the Act enables social landlords to seek an unlawful profit order in civil proceedings against secure and assured tenants who have “moved out” and sublet or parted with possession of their homes (or part of) in breach of their tenancy

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<sup>9</sup> Annette Cafferkey, The Prevention of Social Housing Fraud Act 2013, Journal of Housing Law 2013



agreements in return for payment. Landlords can recover the total amount received by the tenant minus rent paid by the tenant to their landlord during the relevant period.

23. Where an order has already been issued following a conviction against the tenant as part of criminal proceedings, an order arising out of 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.
24. The UPO provisions again do not apply to assured tenancies which are also shared ownership leases (see *Richardson v Midland Heart* [2008] L. & T.R. 31)
25. The order is discretionary and the maximum payable is the tenant's net profit, i.e. the total received from the sub-letting less any rent, including service charges, paid to the landlord during the period the property was sublet.
26. The Civil UPO will be determined on the civil standard of proof and should be included in any claim for possession commenced as a result of the non-occupation. It should also be noted that if a landlord fails to include it in the possession claim, then it may be arguable that it is an abuse of process for the landlord to raise it in a subsequent stand-alone claim.

## Criminal UPOs

27. Criminal courts must consider whether to make a UPO following a tenant's conviction for unlawful sub-letting/parting with possession or an associated offence and may do so *'if they consider it appropriate'*.
28. A criminal UPO may be made whether or not a civil UPO has been made (and vice versa) but the Act makes provision to prevent duplication by providing for the amount payable under the latter order to be limited by reference to the former: sections 4(7); 5(7).

29. Once again the orders are limited to a maximum value<sup>10</sup> and so, as provided by section 4(6), it is a two-step process:

*Step 1.* Determine the total amount the offender received as a result of the conduct constituting the offence (or the best estimate of that amount).

*Step 2.* Deduct from the amount determined under Step 1 the total amount, if any, paid by the offender as rent to the landlord (including service charges) over the period during which the offence was committed.

30. Where the court considers that, as well as being appropriate to make an unlawful profit order, it would be appropriate to impose a fine, but that the offender has insufficient means to pay both the court must give preference to making an unlawful profit order (though it may impose a fine as well): section 4(8), (9).

31. If the court decides not to make an unlawful profit order, it must give reasons for that decision on passing sentence on the offender: section 4(4).

## UPOs – Practical considerations

32. An obstacle in terms of obtaining a UPO is that of proving the extent of the sub-letting or parting with possession, and also the amount the tenant has profited.

33. The common experience is that very often the occupier pays the tenant the rent in cash, which means it is rare for there to be a written document which can prove the duration of either the sub-letting or parting with possession, or the amount of rent the “sub-tenant” has paid. Evidence from neighbours may be relied upon but the quality of this is variable<sup>11</sup> and the evidence of the sub-tenant is often limited or non-existent. It does however make sense to include provision for a UPO in a possession claim in particular, where based on sub-letting.

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<sup>10</sup>If the amount required to be paid by a person under an unlawful profit order is not paid when it is required to be paid, that person must pay interest (presently 8% - section 17 of the Judgments Act 1838) on the amount for the period for which it remains unpaid: section 4(10).

<sup>11</sup> Sonia Rai, Prevention of Social Housing Fraud Act 2013 – Is this the end of unlawful subletting in social housing?

<http://www.shla.org.uk/news/59,prevention-of-social-housing-fraud-act-2013-is-this-the-end-of-unlawful-subletting-in-social-housing>

## Power to Prosecute

34. As a result of the Act, local authorities now have the power to prosecute both sub-letting and associated offences, such as aiding or abetting or conspiracy, whether or not they are the social landlord in question or the property is within the local authority's area. Paragraph 15 above provides some relevant time-limits.
35. This is line with the response to the consultation prior to the Act coming into force where there was agreement that local authorities should undertake prosecutions as giving housing associations the power to prosecute could jeopardise their status as non-public bodies<sup>12</sup>.
36. Despite the Local Authority's wide powers to prosecute, the practical considerations that need to be taken into account in terms of the relationship between the local authority and private registered providers are unclear. Issues such as the following have come to the fore:
- As it is the local authority that has to issue legal proceedings, will local authorities who are in financial hardship prioritise such prosecutions or actively pursue them?
  - Will local authorities require housing associations to seek possession before taking criminal proceedings so they can rely on the finding of the court?<sup>13</sup>
37. The positive aspect of this arrangement however is that once a local authority has obtained a conviction, a housing association will be able to rely on that in order to prove beyond reasonable doubt (i.e. above the balance of probabilities standard required in the county court) that the tenant has sub-let or otherwise parted with possession.
38. The question that is inevitably yet to be answered is whether there will be more prosecutions as a result of the Act. This appears to be in large part dependent on the

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<sup>12</sup> LGA *Response to Social Housing Fraud*, April 2012

<sup>13</sup> Paul Hayes, What you need to know about the new social housing fraud act, 15 October 2013, see <http://www.theguardian.com/housing-network/2013/oct/15/social-housing-fraud-prevention-act-guide>

finances of each local authority's prosecution teams and the will of social landlords (by that I mean whether they are more concerned with "getting the properties back").

39. Social Housing Watch has recently reported that the Department for Communities and Local Government has set aside £20m to help combat this kind of fraud. £8m pounds has been granted to 43 local authorities to fund tenancy fraud investigations and the Chartered Institute of Housing were granted £1m to set up a national housing fraud helpline to advise local authorities. The remaining part of the fund is subject to bidding.
40. It may be that some social landlords would elect to issue their own claims for possession and seek a civil UPO, due to both its lower standard of proof and fact that they may not want to await the local authority's prosecution in situations where arrears are increasing<sup>14</sup>.
41. Moreover as the remedies (particularly in terms of UPOs) may overlap, civil proceedings may be stayed pending criminal prosecutions and most social landlords are likely to want to resolve the matter without recourse to the courts.
42. In terms of the evidence that may be required prior to a prosecution occurring, it is likely that direct evidence will be needed in relation to the property being sub-let or any parting with possession, for instance evidence from the sub-tenant and/or a written agreement between the sub-tenant and the tenant<sup>15</sup>. Further, documentary evidence such as utility bills, payments of benefits and correspondence sent to that address (as now) may be used as circumstantial evidence that the tenant has parted with possession unlawfully.

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<sup>14</sup> Byron Brittan, 'What the prevention of Social Housing Fraud Act 2013 means in practice', 7 August 2013, see [http://www.localgovernmentlawyer.co.uk/index.php?option=com\\_content&view=article&id=15119%3A%20what-the-prevention-of-social-housing-fraud-act-2013-means-in-practice&catid=60&Itemid=28](http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=15119%3A%20what-the-prevention-of-social-housing-fraud-act-2013-means-in-practice&catid=60&Itemid=28) – of course the civil courts have often stressed their right to proceed – subject to considering questions of prejudice - even where criminal proceedings relating to similar issues are afoot: *Szczepanski v Szczepanski* [1985] Fam Law 120; *Harris v Crisp* (1992) Times 12/8/92

<sup>15</sup> Supra at 11

43. The evidential issues that may arise are likely to relate to the difficulty of getting the sub-tenant to assist, particularly if they have been “evicted” by the tenant and no contact details can be found. If personal information is available, there is the further matter of it being covered by data protection rules and thus not being available to the prosecution.
44. Moreover, it has been considered that private registered providers are unlikely to rely on local authorities to bring prosecutions in relation to property that they own. This is likely to result in most prosecutions relating to secure tenancies, where the landlord is the local authority, save for cases where the PRPs have a good relationship with the local authority where their properties are located<sup>16</sup>, or rely on the local authority to investigate fraud matters already.

## Information for Fraud Investigations

45. In relation to compelling persons to provide information for the purposes of housing fraud investigations, the Act gives the Secretary of State and Welsh Ministers in the devolved Government power to make regulations in this regard, which may include criminalizing a failure to provide such information, which will place it on the same level as similar benefit fraud investigations.
46. The Department for Communities and Local Government (DCLG) confirmed that the regulations were still to be drafted. No information has yet been published by the Welsh Government.
47. As highlighted above, there are several evidential issues in relation to prosecutions, and this information-sharing aspect of the Act will be essential in terms of assisting prosecuting teams in obtaining sufficient evidence in order to bring a successful prosecution. It is anticipated that the Secretary of State will lay regulations before parliament in the summer for commencement in the autumn.
48. The Information Commissioner’s Office has previously stated in their response to the consultation that it did not wish to see the power used for “fishing expeditions” and would like disclosures to be made in compliance with the Data Protection Act’s

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<sup>16</sup> Ibid

requirements. The ICO would like local authorities using a mandatory gateway to “publish information through their FOI publication scheme about how often they use the gateway and (where possible) the outcomes that have followed from this use.”<sup>17</sup>

## Practical Implications

49. The main purpose of the Act is to reduce the number of unlawfully sublet homes in England and Wales; it is nevertheless still uncertain whether the Act will have this effect in the future. It is likely that civil remedies will be utilised much more often and more readily than the criminal remedies due to the added financial burden and the higher standard of proof required in criminal cases.

50. In order for the intended result of the Act to come into fruition it is vital that social landlords and those representing have consideration for the following:

- Care needs to be taken so that the threat of a prosecution and a potential criminal conviction is not used as a means through which to repossess the property.
- Individuals working in social housing need to be familiar with the evidence that is required to prove sub-letting or parting with possession unlawfully and be able to evaluate the potential defences that may apply.
- Training in relation to the type of evidence that is required to obtain a conviction and how to obtain it will be useful and information sharing will be vital.
- In relation to PRPs asking local authorities to prosecute in relation to their property, the PRPs should ensure that they have procedures which set out information sharing and each party’s role in any prosecution.
- Consideration will also need to be given by local authorities and PRPs as to whether they wish to attempt to obtain a conviction before they

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<sup>17</sup> ICO, *Social Housing Fraud consultation response*, April 2012

commence possession proceedings for if a conviction is secured against a tenant, security of tenure is permanently lost<sup>18</sup>.

51. Suggestions that would perhaps assist with this process have been put forward such as the provision of more pragmatic assistance, for instance a fast track county court procedure to recover possession, alongside provisions for recovering profit<sup>19</sup>. These are not though in place at present.

## Positive Steps

### Raising Awareness

52. A number of social landlords have been making efforts to raise awareness of the new Act amongst tenants. The Gloucestershire Tenancy Fraud Forum (GTFF) has been the most active in this regard along with certain others such as Peabody, the London-based landlord, and the Manchester Tenancy Fraud Initiative.

53. The GTFF set up a scheme in April 2013 which alongside the council included six other social housing landlords, namely Rooftop Housing, Severn Vale Housing, Guinness Hermitage, Gloucester City Homes, Cheltenham Borough Homes and Two Rivers Housing. This scheme has seen fraudulent tenants evicted from up to 70 homes in Gloucestershire and the GTFF has dealt with 132 cases since it was set up.

### Subletting Amnesties

54. A “key amnesty” was put in place after the Act came into force where council tenants who illegally sub-let their homes were warned to hand back their keys or face prosecution<sup>20</sup>.

55. Amongst those involved in this were South Essex Homes and Southend Council. Southend Council, for example, offered their tenants the chance to end their

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<sup>18</sup> Supra at 11

<sup>19</sup> Supra at 9

<sup>20</sup> Annie Hayes, Sub-letting tenants offered an amnesty, 8 November 2013 [http://www.echo-news.co.uk/news/local\\_news/10795926.Sub\\_letting\\_tenants\\_offered\\_an\\_amnesty/?ref=nt](http://www.echo-news.co.uk/news/local_news/10795926.Sub_letting_tenants_offered_an_amnesty/?ref=nt)

tenancies without the fear of prosecution if they gave up their properties before November 30 2013.

56. Social housing providers and housing providers that have been involved in the subletting amnesty include Viridian and the G15 group of London housing associations.

57. These initiatives and steps taken have had a measurable impact on reducing the number of unlawfully sublet or partly possessed homes and it is presumably anticipated that this will improve as awareness of the Act increases.

## Conclusion

58. In summary, the following points can be gleaned from the Act in practice:

- The potential of criminal conviction is likely to have a deterrent effect on some tenants unlawfully sub-letting, and social landlords are more likely to try and recoup the profits made.
- The focus though is likely to be much more on civil proceedings rather than criminal as non-criminal sanctions are seen as generally adequate and effective, with the unlawful profit orders in possession claims in the civil courts being the most common.
- The potential loss of security of tenure for assured tenants is likely to be the most significant change<sup>21</sup>.
- Local Authorities and social landlords should adopt good practices as outlined above from an early stage for the Act's purpose to be achieved.

59. There was broad support in the Responses amongst social housing providers for the creation of a new criminal offence to cover certain types of tenancy fraud. However, these landlords also emphasised that, in most cases, non-criminal sanctions were "adequate and effective". The NHF response pointed out that landlords would still

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<sup>21</sup> James Menzies, Sub-letting solutions, see <http://www.insidehousing.co.uk/home/blogs/sub-letting-solutions/7001359.article>



want to seek prompt termination of the tenancy through civil means, as criminal cases would take several months to come to trial.<sup>22</sup>

60. The Act has made it no easier for a social landlord to regain possession of the property in circumstances where the tenant has lost their security of tenure and they are still required to follow due process and obtain sufficient evidence in order to regain possession of the property. However, it is perhaps anticipated that the clearer criminalisation of sub-letting will “encourage” such perpetrators not only to not to act unlawfully in this sense at all but that if they do to not challenge quite so much possession proceedings issued after the service of a notice to quit.

61. It is early days and we will see!

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<sup>22</sup> NHF *Response to Social Housing Fraud*, April 2012