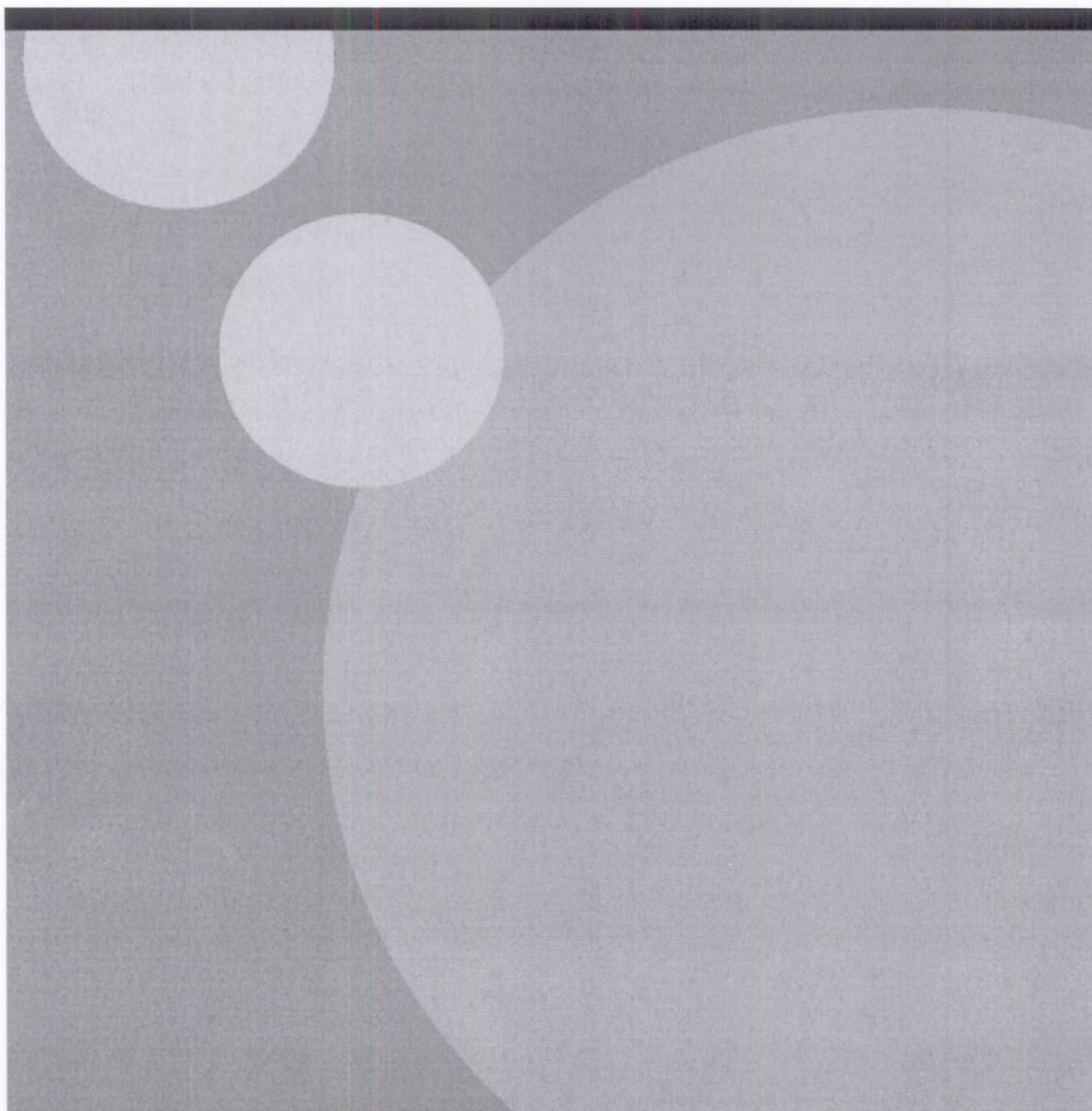




# Social Housing Fraud Consultation



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## Social Housing Fraud Consultation

January 2012  
Department for Communities and Local Government

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# Ministerial Foreword


Social housing is an extremely valuable asset. It provides millions of people with a stable, low cost home to help them get on with their lives. For those same reasons it is also in much demand. With 1.8m households on the waiting list, it is vital not only that each social home goes to a household who needs it, but also that it continues to be occupied by the household to whom it was given.

Unfortunately, a small minority of tenants try to cheat the system. Whether it be through subletting a home they have been allocated, often making a large profit in the process, or lying about their circumstances to get an allocation in the first place, their abuse of social housing not only deprives of a settled home those in genuine need who play by the rules, it also comes at a considerable cost to the taxpayer. The National Fraud Authority estimates that tenancy fraud costs around £900m per year. Replacing the social homes that are being unlawfully occupied – to house those who have effectively been displaced by tenancy fraudsters – would cost several billion pounds.

In recent years, many social landlords have stepped up their efforts to tackle fraud in their stock. Our investment of £20m has led to an increase in the number of homes being recovered, but there is still a long way to go. More landlords need to wake up to the problem, and central Government needs to play its part too by ensuring landlords have the powers they need to detect and prosecute fraudsters. At the moment, the incentive to a tenant to cheat is much greater than both the risk of detection and the penalty incurred. This cannot continue.

These proposals are about fairness. I want to make clear to anyone choosing to cheat that they will be found out and can be punished as a criminal. I also want to clear the obstacles that discourage landlords from taking action, giving them the powers they need and closing the legal loopholes that allow those who abuse their tenancies to keep them.

I am determined that social landlords should be able to make best use of their stock in a way which best meets the needs of their local area. Cutting down on fraud is a key part of ensuring this happens.



**Rt Hon Grant Shapps MP**  
**Minister for Housing and Local Government**

# The consultation process and how to respond

## Scope of the Consultation

<b>Topic of this consultation:</b>	Social housing fraud.
<b>Scope of this consultation:</b>	This paper seeks views on Government proposals to reduce the prevalence of fraud within the stock of social housing.
<b>Geographical scope:</b>	The scope of this consultation is limited to England.  Regulation of social housing is a devolved matter in Wales and the Department for Communities and Local Government will continue to consult the Welsh Government as it develops the proposals.
<b>Impact Assessment:</b>	An impact assessment will be published shortly.

## Basic Information

<b>To:</b>	The consultation is aimed at anyone who might be affected by these proposals. We are especially keen to hear the views of local authorities (regardless of whether they own stock), housing associations, social tenants and organisations holding data that may be relevant to tenancy fraud situations.
<b>Body responsible for the consultation:</b>	The consultation is being run by the Affordable Housing, Management & Standards Division within the Department for Communities and Local Government.
<b>Duration:</b>	This consultation will run for 12 weeks from Wednesday 11th January 2012 to 5pm on 4th April 2012.
<b>Enquiries:</b>	For enquiries, please contact: Graham.knapper@communities.gsi.gov.uk Tel. 0303 444 3667
<b>How to respond:</b>	By email to: socialhousingfraud@communities.gsi.gov.uk  Or by post to: Social Housing Fraud Consultation Department for Communities and Local Government Zone 1/J9, Eland House Bressenden Place London. SW1E 5DU.

<b>After the consultation:</b>	A summary of the responses to consultation will be published on the Department's website within three months of the end of the consultation period.
<b>Compliance with the Code of Practice on Consultation:</b>	The consultation period has been set at the standard twelve weeks.



# Introduction

1. At a time when there are 1.8m households on the waiting list for social housing and another 250,000 social households are statutorily overcrowded, it is conservatively estimated that there are at least 50,000 social homes in England being unlawfully occupied<sup>1</sup>. Recent work has suggested that the number could be significantly higher than this<sup>2</sup>.
2. While the term 'unlawful occupation' is most commonly taken to mean the subletting of the whole of a home by the tenant<sup>3</sup>, it also covers other activities such as key-selling (where the tenant leaves the property and passes on the keys in return for a one-off lump sum payment) and unauthorised succession (where someone misrepresents their circumstances in order to qualify to succeed to the tenancy following the previous tenant's death). Each case involves someone living in the home who should not be there.
3. Many social landlords have recently stepped up their efforts to crack down on tenancy fraud; this has resulted in an increase in the number of social homes being recovered for their proper use. Feedback from landlords has shown clearly that the problem is not just confined to London and other big cities, and it is an issue for both local authorities and housing associations.
4. In spite of the encouraging progress that has been made, it is apparent that further, stronger measures need to be considered.
5. Most forms of unlawful occupation, including subletting, are civil matters rather than criminal offences. This means that while the profit that can be reaped by abusing a social tenancy can be extremely lucrative, the legal consequences for those breaking the rules tend to be relatively minor – in most proven cases the legal tenant is simply required to give back the keys to a property in which they do not live. In addition to this lack of an effective deterrent, tenancy fraud investigators argue that they do not have sufficient investigatory powers, meaning that they can only detect a fraction of the homes being unlawfully occupied.

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<sup>1</sup> "Protecting the Public Purse 2010 – Fighting fraud against local government and local taxpayers" Audit Commission, October 2010

<sup>2</sup> <http://www.experian.co.uk/assets/identity-and-fraud/social-housing-tenancy-press-release.pdf>

<sup>3</sup> It should be noted that the taking in of lodgers and subletting part of a social home is allowed in certain circumstances. Page 29 of the following guidance provides further details on this: <http://www.communities.gov.uk/documents/housing/pdf/1396431.pdf>



6. The purpose of this consultation is therefore to invite views on whether existing legislation needs to be strengthened, and, if so, how that might be done, to reduce the prevalence of tenancy fraud in social housing. Importantly, we do not intend to remove social landlords' ability to pursue each case as a civil matter; rather, we wish to explore if they require a wider range of enforcement tools.
7. The extent of the problem is discussed in chapter one, the existing law in chapter two and the proposals for dealing with the problem in chapter three.
8. The consultation is aimed at anyone who might be affected by these proposals. We are especially keen to hear the views of local authorities (regardless of whether they own stock), housing associations, social tenants and organisations holding data that may be relevant to tenancy fraud situations.
9. This paper is concerned only with the law as it affects England.
10. This consultation is conducted in line with the Code of Practice on Consultation and falls within the scope of the Code.

# Chapter 1

## Extent and nature of the problem

11. The Audit Commission has estimated that there are at least 50,000 unlawfully occupied social homes in England - 2.5% of stock in London and 1% of stock elsewhere. Since increasing their efforts to reduce tenancy fraud, many London landlords have said that they believe the rate there to be at least 5%. The National Fraud Authority has estimated that tenancy fraud costs around £900m per year. Replacing those unlawfully occupied social homes – to provide homes for those households who have effectively been displaced by tenancy fraudsters - would cost several billion pounds.
12. The reason for the difference in frequency of unlawful occupation between London and the rest of the country is most often attributed to the higher difference in the capital between social rent and market rent. With the former being, on average, less than 50% of the latter, a tenant in London can make a substantial profit by charging market rent to the subtenant while they continue to pay the much lower level of social rent to the landlord. Cases of tenants making in excess of £10,000 per year per property have been uncovered by some London landlords.
13. In areas of the country where there is little difference between the two types of rent, it appears that subletting is less often for profit than in London and more often as a favour to friends or family to help them 'jump the queue'. Some landlords believe that succession fraud is more prevalent than subletting in their stock.

## Current rates of recovery

14. Results from social landlords have shown quite clearly that tenancy fraud is not confined to London. While London landlords have, generally, been tackling the problem for a little longer than those elsewhere (some recovering in excess of 100 properties a year), recent grant funding from central Government has encouraged landlords nationwide to address the problem. Despite often being less experienced and having fewer staff dedicated solely to tenancy fraud, some landlords outside London have recovered more than 50 properties each per year and expect that figure to grow as they build their levels of expertise.
15. While no data are collected centrally on the success rates of housing associations, the number of unlawfully occupied local authority-owned homes recovered is recorded. Around 1000 local authority-owned properties were recovered in 2008/09. The figure for 2010/11 was



approximately 1800. A number of landlords have also indicated that the number of voluntary tenancy terminations increased when they began to publicise their crackdowns. These are not included in the above figures.

16. Central Government has also promoted joint working between local authorities and the housing associations in their areas. Often having more resource, experience and expertise, it is not uncommon for a local authority to undertake work in a housing association's stock in return for nomination rights to any properties they recover. In some cases, local authorities have used grant funding given by central Government solely to investigate the stock of the housing associations in their area. In light of the fact that many housing associations have recently increased their commitment to tackling tenancy fraud, it is a reasonable assumption that the number of housing association homes being recovered has increased over the past couple of years.
17. It is important to note that, despite this encouraging upward trend in the rate of recovery, many social landlords believe that they are still merely scratching the surface.

## Profiles

18. Feedback from landlords strongly suggests that there is no such thing as a typical tenancy fraudster. An exercise carried out by a landlord in the Midlands, for example, showed that their investigatory work, albeit based around a relatively small number of tenancies, did not have a significantly disproportionate impact on any particular social group. There is also no typical 'recovered' home - while some landlords target high-rise properties, others focus their efforts on family-sized homes or those in central locations.
19. Many landlords have reported that when they uncover tenancy fraud they also uncover other types of fraud. Housing Benefit and Council Tax Single Person Discount fraud appear to be the most common related types, with visa overstays and serious organised crime also having been detected.

## Subtenants

20. Although it is often believed that the person who is occupying the home in place of the legal tenant is fully aware of and complicit in the deception, it has been found that in many instances this is not the case. Where a member of the public has answered an advert in the newspaper or gone through a letting agent, there is often a presumption on their part that everything is legitimate, especially when they are charged market rent for the property and have paid a deposit in advance. The first time many of these subtenants are aware that their 'landlord' is in fact the named tenant of a social home is when the



housing provider contacts them during a tenancy audit or following a tip-off from a neighbour.

21. Many of these subtenants are able to provide detailed information about their stay in the property and so are often valuable sources of evidence for the housing provider when seeking to evict the named tenant.
22. Landlords have reported that virtually no subtenants subsequently present themselves to the council as homeless when they leave the property, while feedback has shown that only around 5% of named tenants asked to be rehoused once they have been evicted for tenancy fraud. In many cases, councils refuse to add them to the waiting list as they no longer consider they owe the now ex-tenant the main homelessness duty, deeming that person to have made themselves intentionally homeless.

# Chapter 2

## Tackling tenancy fraud within the existing law

23. Tenancy fraud takes a number of forms. Below is a list and brief explanation of the main types of tenancy fraud:

### Civil matters

#### Subletting

24. While current law allows, in certain circumstances, social tenants to take in lodgers or sublet part of their properties, subletting the whole of the property is prohibited. This form of tenancy fraud is a civil matter only. In this sense it is no different from any other breach of civil statutory rules or of a contract. As with any other breach of contract, a landlord can apply to the court for a remedy, i.e. possession.

25. A tenant who has unlawfully sublet the whole of the property remains a tenant until such time as they leave or are evicted as a result of possession proceedings. However, if they are no longer in occupation then they may lose their status (becoming a common law tenant, i.e. one without statutory protection) which makes possession easier to obtain.

26. A landlord could also recover damages and costs in cases of unlawful subletting. However, the amount of financial compensation would be limited by the fact that rent was still being paid to the landlord at the expected rate, and the prospects for recovery of any damages awarded would not be particularly strong.

#### Key-selling

27. The practice of key-selling differs from that of subletting in that, in practice if not in law, the legal tenant usually severs all ties with the property in return for a lump-sum payment. While this practice is believed to be less common than subletting, it similarly constitutes a breach of contract and the landlord can recover possession in the same way.

#### Unauthorised assignment (including by mutual exchange)

28. Assignment is the formal legal transfer of the letting agreement from one tenant to another. The effect of a valid assignment is that, broadly,



the new tenant takes on the rights and responsibilities of the previous tenant.

29. Assignment of a tenancy is only possible in certain circumstances. If there is an unauthorised assignment, e.g. the tenant goes ahead without first obtaining the landlord's consent, the exchange will be treated as an invalid assignment. If the tenant obtains the landlord's consent by deception, e.g. providing false information, landlords can take action for possession on the basis that there has been a breach of the tenancy agreement and that the assignment is legally ineffective.

#### Wrongly claimed succession

30. When a social tenant dies, there are certain circumstances in which a spouse or family member can succeed to the tenancy. While the category of person who can succeed is wider for secure than assured tenancies, for both types there is a requirement that the successor was living with the tenant at the time of the tenant's death (and for certain categories of people for at least a year prior to the tenant's death).
31. Some people seek succession to a social home by virtue of claiming to fulfil the criteria when they were in fact either not residing with the previous tenant for the necessary period of time or do not fall into the category of person entitled to succeed. A landlord can then seek possession as they would against a trespasser after serving a notice to quit. The occupant can defend possession proceedings by claiming that they have succeeded legitimately.

## Criminal offences

#### Right to acquire/Right to buy fraud

32. This type of fraud involves the tenant providing misleading information when seeking to purchase the property they are renting from their social landlord regarding such details as how long they have lived in the property.
33. As a general rule, this type of fraud is illegal and can be dealt with in the criminal courts.
34. It should be remembered that wherever tenancy fraud is undetected, the registered tenant may ultimately attempt to purchase the property under the right to buy or right to acquire and so obtain a significant discount on the price.

#### Obtaining a tenancy through false statement

35. This is where a tenant knowingly or recklessly made a false statement in order to gain a tenancy. Section 171 of the Housing Act 1996 makes



it an offence to provide false information, or knowingly withhold relevant information, in relation to an application for housing accommodation.

## Current penalties

36. For civil matters, the consequences of tenancy fraud are limited to the loss of the tenancy, damages and costs, subject to the practical limits on the latter two mentioned above. Criminal liability (and penalties such as fines or imprisonment) is not available in the existing law.
37. Confusion often arises when the media report that a person has been jailed for subletting. In fact, subletting is often linked to types of fraud that are in themselves criminal (e.g. housing benefit fraud), and in such cases criminal penalties can be handed down specifically for that criminal act rather than for the subletting itself.
38. Recently, some social landlords have attempted to pursue instances of subletting as criminal offences using the Fraud Act 2006, but we are not aware that any defended case dealing solely with subletting has been successful. The Fraud Act offences require the accused person to have actively made a false representation, failed to disclose information where there is a legal duty to do so, or dishonestly abused a position which requires him or her to safeguard someone else's financial interests.
39. Although it is conceivable that some cases of tenancy fraud might fall within these provisions, there are very many (likely most) that would not. This is because tenancy fraud can be carried out without positive misrepresentations being made to the landlord, i.e. the tenant is silent on the matter rather than actively telling the landlord they are not doing it; there are no generally-applicable legal duties of disclosure (except in relation to housing benefit), i.e. the tenant is under no obligation to inform the landlord that the tenancy agreement has been breached or, where something is prohibited in statute, that the law has been broken; and the landlord and tenant relationship is not usually seen as one where the tenant has special responsibilities to look after the landlord's financial interests (unlike, for example, a trustee).
40. Therefore, it is the Department's view that there would be significant practical barriers to reliance on these offences to create any specific or general deterrence against tenancy fraud.

## Intention to return

41. While it is a condition of both a secure and an assured tenancy that the property must be used as the tenant's only or principal home, case law has established that a tenant can live elsewhere but still retain the tenancy to the property if they can prove they intend to return to it. This

intent can be demonstrated by such means as keeping furniture or other possessions in the home.

42. The courts currently apply a case-by-case approach – a sufficiently long absence will create a presumption that the tenancy has been abandoned, but the tenant can refute this by showing a ‘substantial, formal, outward and visible sign’ of an intention to return within a reasonable time. However, landlords have said that, in practice, the intention to return defence has allowed tenants to be away for years at a time and still retain their tenancy. This in turn can deter landlords from pursuing cases against non-occupying tenants.

## Landlords’ methods of detection

43. At present, landlords use a variety of tactics to detect and tackle tenancy fraud. The main ones are:

### Dedicated staff

44. An increasing number of landlords take the view that employing specialist officers is the most effective way of recovering properties, although their use is still far from universal. Generally, a dedicated officer should be aiming at recovering between 25 to 30 properties a year, although some officers recover as many as 50. It is often the case that a larger number of homes are recovered in the first year of work, reducing thereafter as there are fewer ‘easy wins’.

### Tenancy audits

45. Many landlords conduct tenancy audits, i.e. knocking on tenants’ doors to verify occupation. Doing this can be very time and resource intensive, so most landlords audit only a proportion of their stock each year or adopt a risk-based approach by targeting properties in specific locations.
46. In order to speed up the audit process, some landlords take a photo of the tenant when the tenancy is issued and keep it on file. When the tenant’s home is subsequently audited, a simple reference to the file can reduce substantially the amount of time needed to verify that person’s identity.

### Data matching

47. An increasing number of landlords are using data matching to identify fraud. Many start by doing an internal match of the various different sets of records they keep before going on to use a credit reference agency. In addition to highlighting cases of a tenant being registered at more than one address, such checks can flag up instances of bank



accounts being registered at multiple addresses and even tenants who have died.

### Tip-offs

48. Around half of all identified cases of unlawful occupation are believed to be detected thanks to information supplied by members of the public. Local residents are often best placed to notice if new neighbours arrive or the old ones move away. Raising awareness via posters, leaflets or adverts in local newspapers can therefore be invaluable.
49. While tip-offs are an invaluable source of information, they represent only the start of a process that will rely on one of the tools mentioned above to verify tenancy fraud and then build a credible case.

### Data sharing powers

50. The Data Protection Act 1998 requires organisations to process personal data in a fair and proportionate way. Eight principles govern the handling of personal data and strict criteria need to be met if data is to be shared. Under this Act, data sharing must be fair and lawful.
51. Currently, tenancy fraud investigators use section 35<sup>4</sup> of the Act to obtain data from other organisations. However, this section does not allow them to *compel* organisations to supply personal data when asked, and there is also no general statutory power to share data on which the requesting body can rely.
52. As a result, many tenancy fraud investigators find it difficult to obtain data from other organisations. Some have commented that getting data can depend on the interpretation of legislation by the individual person handling the request, and as a result there is a lack of consistency of response. Others have commented that some organisations refuse even to consider requests for non-criminal matters.
53. While section 29(3) of the Act can be used for criminal offences, like section 35 it does not require those asked for data to comply with the request.

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<sup>4</sup> Section 35 (2) of the Data Protection Act 1998: Personal data are exempt from the non-disclosure provisions where the disclosure is necessary: a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or b) for the purpose of obtaining legal advice



# Chapter 3

## Strengthening landlords' powers to tackle tenancy fraud

54. Landlords investigating tenancy fraud make two main points:
- a) the potential legal consequences for a tenant who commits tenancy fraud are inadequate and do not act as a meaningful deterrent; and
  - b) the lack of access they have to data means that their powers of detection and prosecution are severely limited.
55. Parallels are often drawn with housing benefit fraud, where financial penalties and custodial sentences are available to courts and investigators have wide access to data - their powers include being able to compel (rather than just request) third parties such as the suspect's employer, landlord, banks and utility companies to provide reasonable information on receipt of a request from an authorised officer.
56. The Government is concerned that the current legal consequences for tenancy fraudsters and investigatory powers available to social landlords contribute to the fact that tens of thousands of social homes are being misused.
57. Nothing contained in the proposals below would remove a social landlord's ability to prosecute tenancy fraud as a civil matter, rather they would be able to consider what the best enforcement approach is in the context of each particular case.
- **Criminal enforcement**
58. We are considering whether a new criminal offence of social housing tenancy fraud is necessary and proportionate. Criminal penalties could take the form of a fine, or a custodial sentence, or both. In addition, measures could be introduced to allow for any profits to be confiscated and for a restitutionary payment to be made to the landlord.
59. If a new criminal offence were to be created we propose that it should be able to be tried either in the Magistrates Court or in the Crown Court. The maximum sentence the Magistrates Court could impose would be 6 months imprisonment and a fine of £5,000. A Crown court can impose substantially greater penalties. As a starting point we are proposing that a suitable maximum penalty for tenancy fraud might be two years imprisonment and a fine of up to £50,000.

Do you agree that a new criminal offence should be created?

What would you consider to be a suitable maximum penalty for a Crown court conviction for tenancy fraud?

- **Give a broad definition to ‘tenancy fraud’**

60. We are considering whether a broad definition of ‘tenancy fraud’ would be appropriate. We would want to include at least the main forms, e.g. subletting the whole, key-selling and unauthorised assignment. We would welcome views on whether other forms of tenancy fraud should be covered by a new criminal offence and, if so, which ones.

Do you agree with our core proposal to give a broad definition to ‘tenancy fraud’? Which forms which should be included?

- **Allow restitutionary payments to be made to social landlords**

61. Currently, the Proceeds of Crime Act can be used to confiscate money made from certain kinds of criminal activity; however, this money goes back to the state rather than to the person or organisation against whom the offence was committed.

62. We propose allowing restitutionary payments to be made to the social landlord in whose stock tenancy fraud was committed. Payments of this nature would allow a landlord to recoup, in both civil and criminal cases, any money the tenant made using the landlord’s property (independent of any loss to the landlord). Such an order could be made at the discretion of the court trying the offence, and any sum ordered to be paid could be recovered from the defendant as a debt owed to the landlord.

Do you agree that restitutionary payments should be introduced and, if so, should be available in both the civil and the criminal court?

- **Extend local authorities’ powers of prosecution to cover tenancy fraud related issues**

63. Local authorities already have the power to bring criminal prosecutions for housing benefit fraud, certain road traffic offences and other offences set out in statute and committed in their area. This proposal would add tenancy fraud to the list of matters for which they have the power to prosecute.

64. We do not think it would be practicable to give the same power to housing associations without raising questions around their possible reclassification from private sector to public sector bodies, although common law gives them the right to bring private prosecutions in respect of criminal offences.



65. In the event that local authorities could prosecute for tenancy fraud matters, it would be possible for them to do so on behalf of housing associations.

Do you agree that powers of prosecution should be extended in this way?

- **Introduce powers for investigators to compel certain named categories of organisation to comply with local authorities' requests for data**

66. As already indicated, social landlords currently have comparatively few powers to obtain data necessary to detect and tackle tenancy fraud effectively. While criminalisation alone would remove any doubt about the legality of sharing data, it would not *oblige* dataholders to do so.

67. Some existing legislation includes explicit 'gateways' by which information can be disclosed or received for particular purposes. Such gateways may be permissive (creating a discretionary power to disclose or receive data) or mandatory (compelling data to be transferred in certain circumstances). We are considering whether to create a mandatory gateway that would ensure local authorities could access data relevant to their investigations from certain types of named organisation. Organisations obliged to provide data on request would face a criminal penalty for non-compliance. We propose a penalty similar to that currently in place for non-compliance with data requests for housing benefit fraud investigation purposes.

68. As with powers of prosecution, and for the same reclassification reasons, we would not look to give this power to housing associations. However, a local authority would be able to use any new data access powers to investigate potential fraud in a housing association's stock.

69. There are already many examples of joint working throughout the country between the two types of providers. One common arrangement involves a local authority using its resources to investigate a housing association's stock in return for nomination rights to any properties recovered. We envisage joint working arrangements being extended to enable housing associations to benefit from any new powers given to local authorities.

70. While we would welcome views on which categories of organisation should be covered by a mandatory gateway, we propose that it should include, as a minimum, banks, building societies and utility companies. Feedback from landlords has suggested that they hold data that would be important in detecting fraud.<sup>5</sup>

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<sup>5</sup> Data sharing can be mutually beneficial. Defra will shortly be consulting on measures to tackle bad debt in the water industry. Proposed measures include encouraging holders of data on occupancy to share data with water companies to enable them to effectively pursue



71. It is important to note that local authorities already have the power to oblige data-holders to supply data for other matters. Therefore, pursuing this option would not so much be granting a new power as extending the application of an existing one.

Do you agree that a mandatory gateway should be introduced?

Do you agree that a mandatory gateway should cover banks, building societies and utility companies? Should other data holders be included?

- **Review the 'intention to return'**

72. In order to prevent cases whereby a tenant can live away from the property for a substantial period of time and still maintain their tenancy, we would look to clarify when an 'intention to return' can prevent a landlord from gaining possession of a home not being occupied by the tenant.

73. There will clearly be times when a tenant has a very good reason for not living in the property, e.g. a stay in hospital, and any new rules would seek to differentiate between voluntary and unavoidable or necessary absences.

What would constitute a reasonable period of time for a tenant to be absent before a landlord could legitimately seek possession and what would constitute valid reasons for a tenant's non-occupancy?

- **Level the playing field for secure and assured tenancies**

74. When a secure or introductory tenant sublets the whole of their property, they necessarily lose their secure or introductory status and cannot regain it even if the sub-tenancy is subsequently ended. However, an assured tenancy is lost only for as long as the assured tenant is no longer occupying the property as their only or principal home.

75. We propose that assured tenancies be brought into line with secure tenancies, meaning that status cannot be regained once the whole of the property has been sublet.

Do you agree that assured tenancy status should not be able to be regained once the whole of the property has been sublet?

## Possible use of new powers

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debtors. The consultation can be found in due course at:  
<http://www.defra.gov.uk/consult/open>.

76. We are keen to hear how landlords would use any new powers they were given, especially regarding the frequency with which they would demand data using a mandatory gateway and the number of times they would choose to use a criminal rather than a civil prosecution. We would also like to hear from holders of data about the costs of processing requests for data.

As a social landlord, which factors would you consider when deciding whether to pursue a case using the criminal rather than civil route, e.g. strength of evidence, length of time the home had been unlawfully occupied, amount of money involved, history of the tenant, etc.? How often do you think you would pursue cases using the criminal rather than civil route?

As a social landlord, how would the creation of a new criminal offence influence the likelihood of you taking cases of tenancy fraud to court rather than simply accepting a tenant's voluntary termination of their tenancy?

As a local authority, how many requests for data for matters related to tenancy fraud would you envisage submitting per year, and to what type of organisation would you expect the majority of your requests to be submitted?

As a data-holder, what do you believe would be the unit cost of processing a data request?



## Questions

- Q1. Do you agree that a new criminal offence should be created?
- Q2. What would you consider to be a suitable maximum penalty for a Crown court conviction for tenancy fraud?
- Q3. Do you agree with our core proposal to give a broad definition to 'tenancy fraud'? Which forms should be included?
- Q4. Do you agree that restitutionary payments should be introduced and, if so, should they be available in both the civil and the criminal court?
- Q5. Should local authorities have the power to prosecute for tenancy fraud?
- Q6. Do you agree that a mandatory gateway should be introduced?
- Q7. Do you agree that a mandatory gateway should cover banks, building societies and utility companies? Should other data holders be included?
- Q8. How should the 'intention to return' be amended? What would be an appropriate period of time for which a tenant could be absent? What would constitute a necessary absence and what would constitute a voluntary absence?
- Q9. Should assured tenancies be brought into line with secure tenancies, meaning that status cannot be regained once the whole of the property has been sublet?
- Q10. As a social landlord, which factors would you consider when deciding whether to pursue a case using the criminal rather than civil route, e.g. strength of evidence, length of time the home had been unlawfully occupied, amount of money involved, history of the tenant, etc.? How often do you think you would pursue cases using the criminal rather than civil route?
- Q11. As a social landlord, how would the creation of a new criminal offence influence the likelihood of you taking cases of tenancy fraud to court rather than simply accepting a tenant's voluntary termination of their tenancy?
- Q12. As a local authority, how many requests for data for matters related to tenancy fraud would you envisage submitting per year, and to what type of organisation would you expect the majority of your requests to be submitted?
- Q13. As a data-holder, what do you believe would be the unit cost of processing a data request?