

**BANNING ORDERS POLICY**

Community Connections (Housing Improvement)  
Version 1 – October 2021



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**Banning Orders Policy**

<https://www.legislation.gov.uk/ukpga/2016/22/part/2/chapter/2>

[https://www.legislation.gov.uk/uksi/2018/216/pdfs/uksi\\_20180216\\_en.pdf](https://www.legislation.gov.uk/uksi/2018/216/pdfs/uksi_20180216_en.pdf)

(HAPA 2016 Part 2 Chapter 2 / Statutory Instrument 2018:216)

**Maximum Penalty:** There is no statutory maximum period for a banning order. However, the minimum term for a banning order is 12 months.

**MHCLG Guidance Document:**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/697643/Banning\\_order\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf)

**1.0 Introduction**

1.1 The Council is committed to improving standards in private sector housing, with the aim of ensuring that all private rented accommodation is well managed, properly maintained, safe and habitable. Whilst the Council acknowledges that the vast majority of landlords are compliant and do operate their business responsibly in Plymouth, there are some irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard, or unsafe.

1.2 This document outlines how the Council will utilise powers under the Housing and Planning Act 2016 to ban non-compliant landlords and managing agents from operating within the private rented sector. This policy should be read in conjunction with the Housing Improvement Policy.

1.3 The Housing and Planning Act 2016 introduced a range of measures to help local authorities deal more robustly with rogue and irresponsible landlords:

Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
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Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017);
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Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties (came into force on 6 April 2018);
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Banning orders for the most serious and prolific offenders (came into force on 6 April 2018)
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1.4 To utilise the banning order powers, the council is required to have in place its own policy as to when to pursue a banning order, and to decide the most appropriate course of action on a case-by-case basis in line with that policy.

1.5 This policy gives due regard to the non-statutory guidance issued by the Ministry of Housing, Communities and Local Government, which sets an expectation that banning orders should be aimed at the most serious offenders

**2.0 Principles Underpinning Enforcement Action**

2.1 Unless other guidance applies, The Council follows the principles set out in the Macrory Review, which expects policies to:

Aim to change the behaviour of the offender;
Aim to eliminate any financial gain or benefit from non-compliance;
Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
Be proportionate to the nature of the offence and the harm caused;
Aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
Aim to deter future non-compliance.

**3.0 Housing and Planning Act 2016- Banning Orders**

3.1 The Housing and Planning Act 2016 enables local authorities to apply to the First-tier Tribunal (F-tT) to impose a banning order on a landlord or managing agent, following conviction for a ‘banning order offence’.

3.2 A landlord subject to a banning order is prevented from:

Letting housing in England
Engaging in English letting agency work
Engaging in English property management work; or
Doing two or more of those things (to ensure that any order is effective and to prohibit engagement in other related activities)
A landlord subject to a banning order is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order
A landlord is prevented from transferring the property to certain persons whilst the banning order is in force.

3.3 A banning order must be for a minimum of 12 months but there is no maximum. The F-tT will set the banning period but the Council is required to recommend a period as part of an application.

**4.0 Factors in decision making**

4.1 The following factors will be considered by the local authority in deciding whether to apply for a banning order, and when recommending the length of a banning order:

The seriousness of the offence
Previous convictions/rogue landlord database entries
Harm caused to the tenant
Punishment of the offender
Deterrence to the offender from repeating the offence
Deterrence to others from committing similar offences

4.2 The decision to commence the procedure to apply for a banning order and length of proposed time for any such order will be authorised by a Technical Lead (Housing Improvement).

**5.0 Process**

5.1 The Council will give the landlord a notice of our proposal to apply for a banning order. This is called a ‘notice of intent’. The council will serve the notice of intent within six months of the landlord being convicted of the offence.

5.2 The notice of intent will set out that the Council is proposing to apply for a banning order and the reasons for this; the length of each proposed ban; Information about the right of the landlord to make representations during the notice period

5.3 A landlord has a minimum of 28 days to make representations to the local housing authority during the period of the notice of intent. The Council will consider any representations made during the notice period and will apply for the banning order once this period has expired.

5.4 Section 19 of the Housing and Planning Act 2016 provides that a local housing authority can require a landlord to provide information for enabling the local housing authority to decide whether to apply for a banning order. This could include requiring the landlord to provide information on all the properties that the landlord owns. It is an offence for the landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence to provide information that is false or misleading. Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine.

5.5 After the end of the period for representations, the Council will decide whether to pursue a banning order based on any representations received. If the decision is to proceed the Council will apply to the First-tier Tribunal who have the power to make the banning order.

5.6 Where a banning order is made, and the Landlord is an HMO licence holder, the individual will be determined not to be ‘fit and proper’ to hold a licence under part 2 or 3 under the Housing Act 2004 and any licences in force under those parts will be revoked.

5.7 Where a successful banning order has been made, the Council will consider whether to publish details of these, including the names of individual landlords. Legal advice will be sought prior to this where appropriate, and consideration will be given to the ministry of justice guidance as to whether to publish sentencing outcomes.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/487464/20150413-Publishing\\_Sentencing\\_Outcomes\\_Moj\\_Guidance\\_HQMCSA-O.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/487464/20150413-Publishing_Sentencing_Outcomes_Moj_Guidance_HQMCSA-O.pdf)

### **6.0 Tenancies following a banning order**

6.1 A banning order does not invalidate any tenancy agreement held by occupiers in the property, regardless of whether the agreement was issued before or after the banning order was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

6.2 Information on banned landlords will be made available to tenants on request.

### **7.0 Management Orders**

7.1 There may be circumstances where, following a banning order, the management of the property is taken over by the Council (See section 7 of the MHCLG Guidance). In such circumstances the tenant would pay their rent to the local housing authority.

7.2 A management order enables the Council to take over the management of a privately rented property in place of the landlord. The aim is to ensure that the health and safety of occupiers of the property and persons living or owning property nearby are protected, and to ensure that a property is still available to rent, particularly in areas of high demand.