

**Response to the Department for Communities and Local Government (DCLG)
Consultation on the Proposed Banning Order Offences
under the Housing and Planning Act 2016
from ARLA Propertymark**

February 2017

Background:

1. ARLA Propertymark (Association of Residential Letting Agents) is the UK's foremost professional and regulatory body for letting agents; representing almost 9,000 members. Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected and their money is safe.

Questions:

A. Relevant housing offences

Question 1 - Do you agree that the relevant housing offences described in this document should be regarded as banning order offences unless the offender received an absolute or conditional discharge?

2. Yes, we agree that the relevant housing offences described in this document should be regarded as banning order offences unless the offender received an absolute or conditional discharge. However, we think that the Government should also consider including letting agents who do not display their fees in accordance with the Consumer Rights Act 2015 and agencies who are not members of a redress scheme under the Enterprise and Regulatory Reform Act 2013 as banning order offences. Furthermore, on the offence for allowing a HMO that is not subject to licensing to become overcrowded, there must be safeguards in place against prosecution when tenants overcrowd without the consent or knowledge of the landlord.

Question 2 – Do you think any of the relevant housing offences described in this document should NOT be regarded as banning order offences?

3. No, we do not think that any of the relevant housing offences described in this document should not be regarded as banning order offences.

Question 3 – If you answered YES to the previous question, please specify and give reasons.

4. Not Applicable.

Question 4 – Do you think any other type of offences for which a local authority has powers to prosecute should be treated as banning order offences?

5. No, we do not think any other type of offences for which a local authority has powers to prosecute should be treated as banning order offences.

Question 5 – If you answered YES to the previous question, please specify which other offences should be treated as banning order offences and give reasons.

6. Not Applicable.

B. Immigration Offences

Question 6 – Do you agree that letting to someone disqualified from renting because of their immigration status, resulting in an offence under Part 3 of the Immigration Act, should be regarded as a banning order offence?

7. Yes, we do agree that letting to someone disqualified from renting because of their immigration status, resulting in an offence under Part 3 of the Immigration Act, should be regarded as a banning order offence. However, this should only be the case if that individual is convicted under the Immigration Act 2016.

C. Serious Criminal Offences

Question 7 - Do you agree that any offence involving fraud under the Fraud Act 2006, and for which the offender was sentenced in the Crown Court, should be regarded as a banning order offence?

8. Yes, we do agree that any offence involving fraud under the Fraud Act 2006, where the defendant has either being convicted on Indictment or Committed to the Crown for sentencing, should be regarded as a banning order offence.

Question 8 – Do you agree that an offence for which the offender was sentenced in the Crown Court and which involves the production, possession or supply of all classes of illegal drugs (including poisons) and/or managing premises where drug dealing and/or production takes place, should be regarded as a banning order offence?

9. Yes, we do agree that an offence for which the offender was sentenced in the Crown Court and which involves the production, possession or supply of all classes of illegal drugs (including poisons) and/or managing promises where drug dealing and/or production takes place, should be regarded as a banning order offence. However, it should only be deemed a banning order offence where the defendant was complicit in, and convicted of, these offences.

10. However, as outlined in point C of the consultation document on page 14 there must continue to be a link between the offence and the property for this to be regarded as a banning order offence.

Question 9 – Do you agree that any offence under Schedule 15 of the Criminal Justice Act 2003 (specified violent and sexual offences) should be regarded as a banning order offence?

11. Yes, we agree that any offence under Schedule 15 of the Criminal Justice Act 2003 (specified violent and sexual offences) should be regarded as a banning order offence. However, as outlined in paragraph 28 of the consultation document on page 16 there must continue to be a link between the offence and the property for this to be regarded as a banning order offence.

Question 10 – Do you think any of the serious criminal offences described in this document should not be regarded as banning offences?

12. No, we do not think any of the serious criminal offences described in this document should not be regarded as banning offences.

Question 11 – If you answered YES to the previous, please specify which offences should not be regarded as banning order offences and give reasons.

13. Not Applicable.

D. Other Criminal Offences

Question 12 – Do you agree that an offence for which the offender was sentenced in the Crown Court should be regarded as a banning order offence where it was committed against, or in conjunction with, any person who was residing at the property owned by the offender, other than a person associated with the offender?

14. Yes, we agree that an offence for which the offender was sentenced in the Crown Court should be regarded as a banning order offence where it was committed against, or in conjunction with, any person who was residing at the property owned by the offender, other than a person associated with the offender.

Question 13 – Do you agree that a link should be maintained between the property and the offence when determining what should constitute a banning order offence?

15. Yes, we do agree that a link should be maintained between the property and the offence when determining what should constitute a banning order offence. To do otherwise would make this situation too broad as it would bring all offences into scope for a potential banning order.

Additional Comments:

Question 14 – Do you have any further comments about banning order offences?

16. ARLA is pleased that the Government has consulted on banning orders in order to clarify what these offences will include. However, we would question the openness of the register. It seems completely illogical and defeats the purpose of the legislation that the database of rogue landlords and letting agents will only be accessible to local authorities and the Department for Communities and Local Government. If there is no public access to the database how will landlords or tenants know if they are using a banned agent and

how do agents see if those applying for employment are blacklisted or banned.

17. Furthermore, we believe that access to the list should be granted to industry bodies such as ARLA Propertymark. As the largest professional body for letting agents in the UK unless we are included we will not know if our members are banned or blacklisted. Additionally, access to the register will allow us to ensure we can take the appropriate action against any member on the list.
18. If a local authority takes over the control of a property subject to banning orders we would recommend that the ongoing management of such properties should be given to a list of accredited local letting agents who are regulated by one of the professional bodies. They can manage the properties on behalf of the council and after management fees, maintenance and other charges are covered (such as mortgages), and any money remaining can be passed back to the local authority to repay the costs of any Works in Default.
19. Many letting agents are also sales agents and therefore regulated under the Estate Agents Act 1979. Consequently, we believe that being banned under Estate Agents Act 1979 should also constitute a banning order offence under the Housing and Planning Act 2016. Without combining the lists, there is a very real danger that a banned sales agent could set up as a letting agent or vice versa which will do little to improve the industry.