



Community Services

**The Housing and Planning Act 2016
Rent Repayment Order Policy (Draft)**

1 Legal Background

1.1 Section 40 of The Housing and Planning Act 2016 empowers a First Tier Tribunal (FTT) to make a Rent Repayment Order (RRO), that is an order requiring the landlord under a tenancy of housing in England to—

- repay an amount of rent paid by a tenant, or
- pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

This document takes account of guidance issued by the Government ⁽¹⁾.

It proposes:

- How the Council will fulfil its mandatory duty to consider making an application for an RRO when it becomes aware that a landlord has been convicted of a relevant offence.
- How the Council will use its discretionary powers in other relevant circumstances.

(1) 'Rent repayment orders under the Housing and Planning Act 2016, Guidance for Local Housing Authorities', DCLG 2017.

1.2 The Rent Repayment powers complement other enforcement tools that the Council has under the Housing Act 2004; those are:

- to impose financial penalties,
- to prosecute,
- where the offence is failure to comply with a notice requiring works, to carry out those works in default.

2 Duties

2.1 The Council has a duty to consider applying for an RRO if it becomes aware that a person has been convicted of a relevant offence in relation to housing in its area (Section 48 Housing and Planning Act 2016).

2.2 In deciding whether to apply for an RRO a local housing authority must have regard to the RRO Guidance for local housing authorities, published by the DCLG (now the Ministry of Housing Communities and Local Government (MHCLG)) in April 2017.

3 Discretionary powers

3.1 A tenant or local authority may apply for an RRO against a person who has committed a relevant offence in the authority's area but has not been convicted (Section 41 Housing and Planning Act 2016). This could include, for example, where the Council has imposed financial penalties instead of prosecution, where a person has admitted the offence and accepted a caution, or a conviction has not yet been secured.

- 3.2 A local housing authority may help a tenant apply for an RRO; for example, by helping the tenant to apply, by conducting proceedings, or by providing advice. (Section 49 Housing Act 2016)

4 Procedure

4.1 In the Event of a Conviction

- 4.1.1 In respect of a tenancy where a relevant award of universal credit has been paid (to any person) in respect of rent under the tenancy, the council will consider applying for an RRO in all cases where it becomes aware that a person has been convicted of one or more of the following offences ('relevant offences') in its district:

- Violence for securing entry, s.6(1) Criminal Law Act 1977
- Unlawful eviction or harassment of occupier, s.1 Protection from Eviction Act 1977
- Failure to comply with an improvement notice, s.30 Housing Act 2004
- Failure to comply with a prohibition order, s, s.32 Housing Act 2004
- Control or management of unlicensed HMO, s.72(1) Housing Act 2004
- Control or management of unlicensed house, s.95(1) Housing Act 2004
- Breach of a banning order, s.21 Housing and Planning Act 2016

The Council will consider each case individually and will take into account the following factors.

- Culpability of the offender
- Harm, or potential harm to tenants or other persons
- Aggravating factors, including previous track-record of the offender, previous offences and previous convictions
- Mitigating factors

- 4.1.2 The Council will use the decision matrix in Appendix A, to inform its decisions but will also take into account the resources available to it at the time the decision is made, the resources likely to be available to it during the anticipated period of the application process, and the appropriate allocation of resources it should make in light of its other activities and priorities.

- 4.1.3 Where a landlord has been convicted of an offence, the First-tier Tribunal **must** order the amount of rent to be repaid is the maximum sum that the tribunal has power to order in accordance with sections 44 or 44 respectively (Section 46 Housing and Planning Act 2016).

4.2 In the Event of an Offence but no Conviction

- 4.2.1 The Council may also consider applying for an RRO in all cases where it becomes aware that a person has committed one or more of the relevant offences in the Council's district but has not been convicted including: -

- where financial penalties have been imposed,
- where a where a person has admitted the offence and accepted a caution,
- where a conviction has not yet been secured.

- 4.2.1 In these circumstances the Council will first satisfy itself that there is likely to be sufficient evidence to prove, beyond reasonable doubt, that an offence has been committed. If there is judged to be sufficient evidence, the Council will then apply the approach set out in sections 2.1.2 and 2.1.3 above in considering whether or not to apply for an RRO.
- 4.2.3 If the Council considers it appropriate to apply for an RRO in these circumstances, it is also required to consider how much rent it should seek to recover.

Note:- In respect of the first 2 offences in section 4.1.1 the amount is fixed, by s.45 Housing & Planning Act 2016, as the amount of universal credit paid in the period of 12 months ending with the date of the offence.

4.2.4 In accordance with the guidance provided to it (s3.2 MHCLG Guidance for Local Housing Authorities), the Council will take into account the following in determining how much rent to seek to recover:

- **Punishment of the offender**

Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences.

- **Deterring the offender from repeating the offence**

The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence.

- **Dissuading others from committing similar offences**

Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.

- **Removing any financial benefit the offender may have obtained as a result of committing the offence**

This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

4.2.5 However, having concluded that an application for an RRO is appropriate, and subject to any mitigating or aggravating factors, the Council is most likely to conclude that it should apply to recover the maximum possible amount

For all but the first 2 offences in section 2.1.1, the maximum amount is the amount of universal credit paid in the period, not exceeding 12 months, during which the landlord was committing the offence (s45 Housing & Planning Act 2016)

4.3 Assistance to tenants wishing to make an RRO in cases in which there is evidence of an offence but no conviction

The Council will consider assisting a tenant apply for a RRO when requested, but will only do so if it is satisfied there is likely to be sufficient evidence to prove, beyond reasonable doubt, that an offence has been committed, and if it has the resource to do so.

RRO Policy 2021 – Appendix A
Determining when to apply for a rent repayment order:

Introduction

The decision matrix in this document will inform the Council’s decision making as to whether or not it is appropriate to make an application for a rent repayment order. It takes account of the culpability of the offender and the harm caused to the tenant as a means of establishing the severity of the offence in question. The severity can then be further adjusted up or down by consideration of aggravating and/or mitigating factors.

1. Culpability

The Council will have regard to three levels of culpability as described in table 1 below:

Table 1

High deliberate or reckless act	<ul style="list-style-type: none"> • Intentional breach by offender • Disregard of law • Failure to take action to deal with issues of which they were aware
Medium: negligent act	<ul style="list-style-type: none"> • Failure to take reasonable care to avoid serious offence, e.g. partly complied with an Improvement Notice • Failure to make themselves aware of legal responsibilities
Low	<ul style="list-style-type: none"> • Little fault of the offender, e.g. damage caused by tenant, let down by contractor or has full management agreement with agent to oversee the property

2. Harm

The Council will have regard to the harm caused to the individual, to the community (e.g. economic loss) and other types of harm (e.g. public concern over the impact of poor housing on the neighbourhood).

The nature of the harm will depend on the circumstances of the victim (tenant). Where there is no actual harm, the Council will consider the relative danger the person was exposed to as a result of the offence (i.e. the likelihood of harm occurring and the seriousness of what could have resulted) as described in Table 2 below:

Table 2

High	<ul style="list-style-type: none"> • Defect gives rise to possibility of extreme or severe harm outcomes to occupants and visitors, • Overcrowding • Especially serious or psychological effect on victim • Vulnerable victim(s) • Multiple victims
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Medium	<ul style="list-style-type: none"> Defect gives rise to serious harm outcomes to occupants and visitors.
Low	<ul style="list-style-type: none"> Defect giving rise to moderate harm outcomes to occupants and visitors. Property fully compliant with management regulations/licensing standards but no licence in place

3. Severity

The severity of the offence is established by combining culpability and harm as described in Table 2 below:

Table 3

High culpability High harm	High Culpability Medium Harm	High culpability Low harm
Medium Culpability High Harm	Medium Culpability Medium Harm	Medium Culpability Low harm
Low Culpability High Harm	Low Culpability Medium Harm	Low Culpability Low Harm

Subject to any mitigating or aggravating factors, the Council is most likely to conclude that applying for an RRO is appropriate when the culpability and harm circumstances of a case are judged to fall in one of the red portions of the table, but it may also conclude that an application is appropriate for cases judged to fall in the orange sectors (including the darker orange sector for Medium culpability/Medium harm). It is unlikely to conclude that an RRO application is appropriate if the circumstances are judged to fall in the green sector