

The Housing Act 2004 Section 249a

Financial penalties as alternative to prosecution

1.0 Introduction

- 1.1 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution for certain housing offences.
- 1.2 The list of offences that that may be dealt with by way of a financial penalty are as follows:
- Failure to comply with improvement notice (Housing Act 2004 Section 30)
 - Licensing of HMOs under Housing Act 2004 Part 2 (Housing Act 2004 Section 72)
 - Licensing of houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95)
 - Failure to comply with overcrowding notice, (Housing Act 2004 Section 139(7))
 - Management regulations in respect of HMOs. (Housing Act 2004 Section 234)

2.0 Financial Penalties

- 2.1 The law allows a maximum financial penalty of £30,000 to be imposed per offence.
- 2.2 In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil penalties under the Housing and Planning Act 2016 has been incorporated into the charging table adjustments set out in Appendix 1.
- 2.3 In determining the financial value of an imposed penalty, this Council shall have regard to the charging table and guidance notes in Appendix 1.

3.0 Process for imposing penalty charges

- 3.1 Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.
- 3.2 A "Notice of Intent" shall be served on the person suspected of committing the offence. The Notice shall specify:
- a. The amount of any proposed financial penalty
 - b. The reasons for proposing the financial penalty
 - c. Information about the right to make representation to the Council.
- 3.3 The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
- 3.4 Following the 28 day period the Council will decide:
- a. Whether to impose a financial penalty on the person, and
 - b. The value of any such penalty imposed.

3.5 If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:

- a. the amount of the financial penalty,
- b. the reasons for imposing the penalty,
- c. information about how to pay the penalty,
- d. the period for payment of the penalty,
- e. information about rights of appeal to the First tier Tribunal
- f. the consequences of failure to comply with the notice.

4.0 **Consequences of non-compliance and miscellaneous provisions**

4.1 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

4.2 Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.

4.3 The Council may, at any time:

- a. Withdraw a notice of intent or final notice
- b. reduce the amount specified in a notice of intent or final notice

Where the Council decides to take either action, it will write to the person to whom the notice was given.

4.4 Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State.

Appendix 1 –

Charging table for determining value of Financial Penalties imposed under Housing Act 2004

Failure to comply with an Improvement Notice (Section 30)		£
1st offence	<i>(note 1)</i>	5000
2nd subsequent offence by same person/company	<i>(note 2)</i>	15000
Subsequent offences by same person/company	<i>(note 7)</i>	25000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+2500
Large housing portfolio (10+ units of accommodation)	<i>(note 3)</i>	+2500
Multiple Category 1 or high Category 2 Hazards	<i>(note 4)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week	<i>(note 6)</i>	-50%

Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)		£
Failure to obtain property Licence (section 72(1))	<i>(note 1)</i>	10000
2nd subsequent offence by same person/company	<i>(note 2)</i>	30000
Perpetrator demonstrates Income to be less than £440/week	<i>(note 6)</i>	-50%
Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach		5000
Perpetrator demonstrates Income to be less than £440/week	<i>(note 6)</i>	-50%

Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)		£
Failure to Licence (section 95(1))	<i>(note 1)</i>	10000
2nd subsequent offence by same person/company	<i>(note 2)</i>	30000
Perpetrator demonstrates Income to be less than £440/week	<i>(note 6)</i>	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach		5000
Perpetrator demonstrates Income to be less than £440/week	<i>(note 6)</i>	-50%

Offences of contravention of an overcrowding notice (section 139)		£
1st relevant offences	<i>(note 1)</i>	5000
2nd subsequent offence by same person/company	<i>(note 2)</i>	15000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding	<i>(note 3)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week	<i>(note 6)</i>	-50%

Failure to comply with management regulations in respect of HMOs (Section 234)	£
1 st relevant offences <i>(note 1)</i>	1000/offence
Second subsequent offences by same person/company for the same offence	3000/offence
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability <i>(note 8)</i>	+2500
Large housing portfolio (10+ units of accommodation) <i>(note 3)</i>	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>	+2500
Perpetrator demonstrates Income to be less than £440/week <i>(note 6)</i>	-50%

NOTES

Note 1 – Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 2 - 2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 - Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

At the time of publication this document can be found at www.gov.uk and a summary table is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6 - Perpetrator demonstrates Income to be less than £440/week

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7 - Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 – Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.