



Department for
Communities and
Local Government

Civil penalties under the Housing and Planning Act 2016

Guidance for Local Housing Authorities



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Foreword

The private rented sector is an important part of our housing market, housing 4.3 million households in England. The quality of privately rented housing has improved rapidly over the past decade with 82% of private renters satisfied with their accommodation, and staying in their homes for an average of 4 years¹.

The Government wants to support good landlords who provide decent well maintained homes, and avoid unnecessary regulation which increases costs and red tape for landlords and also pushes up rents for tenants.

But a small number of rogue landlords knowingly rent out unsafe and substandard accommodation. We are determined to crack down on these landlords and disrupt their business model.

Significant progress has already been made in doing this:

- £12 million provided to a number of local authorities to help tackle acute and complex problems with rogue landlords, including “Beds in Sheds”. More than 70,000 properties have been inspected and over 5,000 landlords are facing further enforcement action or prosecution;
- Introduced protection for tenants against retaliatory eviction where they have a legitimate complaint and stopped landlords from serving an open-ended eviction notice at the start of a tenancy;
- Required landlords to install smoke alarms on every floor of their property, and test them at the start of every tenancy, and to install carbon monoxide alarms in high risk rooms.

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords and we plan to implement these in 2017:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (coming into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences (coming into force on 6 April 2017);
- Database of rogue landlords and property agents convicted of certain offences (scheduled to come into force on 1 October 2017);
- Banning orders for the most serious and prolific offenders (scheduled to come into force on 1 October 2017).

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501065/EHS_Headline_report_2014-15.pdf

When civil penalties were introduced through the Housing and Planning Act 2016, Ministers made very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.

In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated:

“[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000 “²

“It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”³

² <https://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160105/debtext/160105-0004.htm>

³ *ibid*

1. Purpose and scope

1.1 Introduction

This document has been prepared as a guide for local housing authorities to help them understand how to use their new powers to impose a civil penalty as an alternative to prosecution for certain housing offences.

In this guidance, the term “landlords” also includes “property agents” and “letting agents”, unless specified otherwise.

1.2 What is the status of this guidance?

This is statutory guidance issued under Schedule 9 of the Housing & Planning Act 2016. Local housing authorities must have regard to this guidance in the exercise of their functions in respect of civil penalties.

Where the words “may” or “should” are used, this means that a particular course of action is recommended or advised, but is not mandatory. Where the words “must” or “shall” are used, that means the guidance reflects a statutory requirement.

1.3 What is a civil penalty?

For the purposes of this guidance, a civil penalty is a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004.

1.4 Which housing offences are covered?

Local housing authorities will be able to impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

1.5 Can a civil penalty be issued for failure to comply with a Prohibition Order?

A civil penalty is available as an alternative for certain specified housing offences under the Housing Act 2004. Breach of a Prohibition Order is not one of the specified offences. Where a landlord breaches a Prohibition Order, local housing authorities can now seek a rent repayment order in addition to prosecuting the landlord (see separate guidance on rent repayment orders).

1.6 What is the legal basis for these powers?

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

1.7 Who will be able to use these powers?

Local housing authorities.

1.8 Will there be provision to cover the initial costs to local housing authorities associated with the introduction of civil penalties?

There is no provision for this in the legislation.

1.9 Who are civil penalties aimed at?

They are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed at paragraph 1.4 above.

1.10 When will these powers come into force?

The powers will come into force on 6 April 2017. They are not retrospective and will not apply to offences committed before that date.

1.11 What is the maximum penalty that can be imposed?

The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. In determining an appropriate level of penalty, local housing authorities should have regard to the guidance at paragraph 3.5 which sets out the factors to take into account when deciding on the appropriate level of penalty. Only one penalty can be imposed in respect of the same offence.

1.12 Is there a minimum level of penalty?

A minimum penalty level has not been set. See paragraph 3.5 for guidance on the factors to take into account when deciding on the level of civil penalty.

2. Civil penalties and other sanctions

2.1 Can a local housing authority impose a civil penalty and prosecute for the same offence?

No. A civil penalty can only be imposed as an alternative to prosecution. The legislation does not permit local housing authorities to impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the local housing authority cannot impose a civil penalty in respect of the same offence.

Similarly, if a civil penalty has been imposed, a person cannot then be convicted of an offence for the same conduct. See paragraph 3.3 for guidance on the factors to take into account when deciding whether to prosecute or impose a civil penalty.

2.2 Can multiple civil penalties be issued if there have been a number of breaches of House in Multiple Occupation management regulations?

A civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations.

Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Hence, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

2.3 Can a separate civil penalty be issued for each hazard specified on an Improvement Notice?

No. Only one civil penalty can be issued for failing to comply with an Improvement Notice.

2.4 Can more than one civil penalty be issued where a landlord consistently fails to carry out work specified in an Improvement Notice over a period of time?

No. Only one civil penalty can be imposed for a single offence. However, where a landlord fails to comply with an Improvement Notice and subsequently receives a civil penalty as a result, a further Improvement Notice could then be issued if the work still hadn't been carried out.

2.5 Can a civil penalty be imposed on both a landlord and letting agent for failing to obtain a licence for a licensable property?

Where both the letting agent and landlord can be prosecuted for failing to obtain a licence for a licensable property, then a civil penalty can also be imposed on both the landlord and agent as an alternative to prosecution. The amount of the civil penalty may differ depending on the individual circumstances of the case.

2.6 Can a civil penalty be imposed on both a landlord and letting agent in respect of the same offence?

Where both a landlord and a letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances of the case.

3. Determining an appropriate sanction

3.1 What burden of proof is required?

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In order to actually achieve a conviction in the magistrates' court, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

3.2 How can a local housing authority establish whether there would be a realistic prospect of conviction?

Local housing authorities should consult the Crown Prosecution Service *Code for Crown Prosecutors*⁴ for this purpose as it provides advice on the extent to which there is likely to be sufficient evidence to secure a conviction.

The Code has two stages: (i) the evidential stage and (ii) the public interest stage.

3.3 What factors should a local housing authority take into account when deciding whether to prosecute or impose a civil penalty?

Local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case-by-case basis in line with that policy.

Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used in cases where serious offences have been committed. A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and a local housing authority may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

Where a local housing authority decides to prosecute, it should consider the scope for working together with other local housing authorities where a landlord has committed breaches in more than one local authority area.

⁴ https://www.cps.gov.uk/publications/code_for_crown_prosecutors/

3.4 How does the local housing authority make an assessment of a landlord's or letting agent's assets and any income?

Local housing authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

3.5 What factors should a local housing authority take into account when deciding on the level of civil penalty?

Local housing authorities have the power to impose a civil penalty of up to £30,000. They should develop and document their own policy on determining the appropriate level of civil penalty in a particular case. Generally, we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending.

Local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties

where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

4. Procedure

4.1 What procedure must be followed by a local housing authority if they want to impose a civil penalty?

The procedure for imposing a civil penalty is set out at Schedule 13A of the Housing Act 2004 and summarised below.

4.2 What is the first stage of the process?

The local housing authority must give the person a notice of its proposal ('notice of intent') to impose a financial penalty;

- The notice of intent must set out:
 - the amount of the proposed financial penalty;
 - the reasons for proposing to impose the penalty; and
 - information about the right of the landlord to make representations.

4.3 Does the notice of intent have to be translated into other languages?

No, there is no requirement to translate any of the documents into another language.

4.4 Is there a deadline for serving a notice of intent?

The notice of intent must be given no later than 6 months after the local housing authority has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

4.5 What happens after a person receives a notice of intent?

A person who is given a notice of intent may make written representations to the local housing authority about the intention to impose a financial penalty;

Any representations must be made within 28 days from when the notice was given.

4.6 What happens after representations (if any) have been made?

After the end of the period for representations, the local housing authority must decide whether to impose a penalty and, if so, the amount of the penalty.

If the local housing authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

4.7 What information must be contained in the final notice?

The final notice must set out:

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;

- the period for payment of the penalty (28 days);
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

4.8 Can the local housing authority withdraw or amend the notice?

The local housing authority may at any time:

- withdraw a notice of intent or final notice; or
- reduce the amount specified in a notice of intent or final notice.

4.9 Does the landlord have a right of appeal?

A person who receives a final notice may appeal to the First-tier Tribunal against:

- the decision to impose a penalty; or
- the amount of the penalty.

4.10 Does the penalty have to be paid even if an appeal is outstanding?

If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

5. Role of the First-tier Tribunal

5.1 What approach will the First-tier Tribunal take when considering an appeal?

An appeal will involve a re-hearing of the local housing authority's decision to impose a civil penalty. It may also have regard to matters of which the local housing authority was unaware when the decision to impose a civil penalty was made.

5.2 What powers does the First-tier Tribunal have to cancel or amend the amount of a civil penalty imposed by the local housing authority?

The First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the local housing authority, or to cancel the civil penalty. If the First-tier Tribunal decides to increase the penalty, it may only do so up to a maximum of £30,000.

5.3 Will the First-tier Tribunal follow this guidance?

While the First-tier Tribunal is not bound by it, they will have regard to this guidance.

5.4 Are there any grounds for restricting appeal rights to guard against frivolous appeals where the appeal has no merit?

Appeal rights are contained within Schedule 13A to the Housing Act 2004. The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

6. Enforcement

6.1 The landlord has refused to pay the civil penalty. How can it be enforced?

Where the landlord or property agent fails to pay a civil penalty, the local housing authority should refer the case to the county court for an Order of that Court. If necessary, the local housing authority should use county court bailiffs to enforce the order and recover the debt.

For further information on debt recovery, please refer to the following leaflets produced by HM Courts and Tribunal Service:

Third party debt orders and charging orders. How do I apply for an order? How do I respond to an order? (leaflet number EX325)

I have a Tribunal decision but the respondent has not paid. How do I enforce it? (leaflet number EX328)

6.2 How do I prove that the landlord has refused to pay a civil penalty?

A certificate signed by the chief finance officer of the local housing authority which states that the amount due had not been received by a specified date will be treated by the courts as conclusive evidence of that fact.

6.3 Can a local housing authority still carry out works in default?

Yes. Section 31 and Schedule 3 of the Housing Act 2004 relating to works in default continue to operate. These powers are not affected by the Housing & Planning Act 2016.

6.4 Can a civil penalty be recorded on the database of rogue landlords and property agents?

Where a landlord receives two or more civil penalties over a 12 month period, local housing authorities may include that person's details in the database of rogue landlords and property agents. While it is not compulsory, local housing authorities are strongly encouraged to do so. This will help ensure that other local housing authorities are made aware that formal action has been taken against the landlord

6.5 Are there any other consequences?

If a landlord receives a civil penalty, that fact can be taken into account if considering whether the landlord is a fit and proper person to be the licence holder for a House in Multiple Occupation or any other property subject to licensing.

7. Database

7.1 What is the purpose of the database of rogue landlords?

The purpose of the database is to enable local housing authorities to record information about, and target enforcement action against, any landlord who has:

- received a banning order under the Housing and Planning Act 2016;
- been convicted of a banning order offence; or
- received 2 or more civil penalties over a 12 month period

7.2 The landlord is already on the database because they previously received 2 or more civil penalties. They have now received a further single civil penalty. Can this information be added to the database?

Yes, the information can be added to the database.

7.3 The landlord is already on the database because they have been convicted of a banning order offence. They have now received a single civil penalty. Can this information be added to the database?

No. A banning order is not a civil penalty and so would not be counted when calculating the total number of civil penalties that have been received.

8. Income from civil penalties

8.1 What can the local housing authority do with any income received from a civil penalty?

Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations⁵.

⁵ <http://www.legislation.gov.uk/uksi/2017/367/contents/made>