

Housing Act 2004 Schedule 13A - “Financial penalties under section 249A”

The Housing Act 2004 is amended to include section 249A “Financial penalties for certain housing offences in England”. The local housing authority (ie “the Council”) may impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person’s conduct amounts to a relevant housing offence in respect of premises in England. “Relevant housing offence” means an offence under

- 1. section 30 (failure to comply with improvement notice)**
- 2. section 72 (offences in relation to licensing of HMOs)**
- 3. section 95 (offences in relation to licensing of houses under Part 3 selective licensing)**
- 4. section 139(7) (failure to comply with overcrowding notice); or**
- 5. section 234 (failure to comply with HMO management regulations)**

Only one financial penalty under this section may be imposed on a person in respect of the same conduct but a penalty can be issued for each separate breach of the House in Multiple Occupation management regulations.

Where both a landlord and a letting or managing agent have committed the same offence, a financial 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.

The Council may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if the person has been convicted of the offence, or if there are ongoing criminal proceedings in respect of that conduct.

Before imposing a financial penalty on a person under section 249A the Council must give the person notice of its proposal to do so (a “notice of intent”).

The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the Council has sufficient evidence of the conduct to which the financial penalty relates. However, if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs.

For the purposes of this paragraph a person’s conduct includes a failure to act.

After the end of the period for representations the Council must

- (a) decide whether to impose a financial penalty on the person, and
- (b) if it decides to impose a financial penalty, decide the amount of the penalty.

If the Council decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty. The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

The amount of a financial penalty imposed under this section is to be determined by the Council, but must not be more than £30,000.

Procedure

Before imposing the financial penalty the officer in the case must assemble sufficient evidence to be able to substantiate that an offence has been committed and its severity at a First Tier Tribunal if the penalty is appealed.

The officer should therefore, before imposing the penalty, collect all documentary and other evidence and keep it securely either in electronic or paper form, to an evidential standard and consider the need to undertake a PACE interview under caution before making a decision to impose a penalty. The officer should write a “statement of reasons” and keep it in two forms – one which can be disclosed to the recipient of the notice at the time the notice of intent is sent, and one in witness statement form, signed and dated.

The authority to impose a financial penalty is delegated only to Private Sector Housing Team Managers, not officers. This is to ensure as far as possible that there is consistency on when financial penalties are imposed and the level of the penalty. The Manager should scrutinise the evidence presented by the officer before agreeing to impose the penalty.

The process for determining the financial penalty to be imposed has two steps.

Step 1:

Seriousness of the offence (the more serious the offence the higher the penalty).

Decide which seriousness band the offence sits within, according to the chart

Maximum Levels of Financial Penalty under Housing Act 2004 s.249A				
Offence	Band 1	Band 2	Band 3	Band 4
s.95 (offences in relation to licensing of houses under Part 3 “selective licensing”) failure to licence (<u>not</u> HMOs)	Studio or 1 bed house or flat	2 or 3 bed house or flat	4 or more bed house or flat	Large property with 5 or more bedrooms or 6 or more occupiers
Level of severity				
Low	£500	£2,500	£4,500	£6,500
Medium	£1,000	£3,000	£5,000	£7,000
High	£1,500	£3,500	£5,500	£7,500
Very high	£2,000	£4,000	£6,000	£8,000

Maximum Levels of Financial Penalty under Housing Act 2004 s.249A				
Offence	Band 1	Band 2	Band 3	Band 4
s.30 (failure to comply with improvement notice)	Category 2 Hazards (1 to 4 hazards all scored F - J)	Category 2 Hazards (1 to 4 hazards where one is scored D or E or 5 or more hazards scored D-J)		
		Category 1 Hazard scored C	Category 1 Hazard scored B or 2 Cat 1 hazards (scored B or C)	Category 1 Hazard Scored A (except loft insulation) or 3 or more Cat 1 hazards (A, B or C)
s.72 (offences in relation to licensing of HMOs) failure to licence	Failure to obtain HMO licence where less than 5 persons reside in the HMO at the time of the offence	Failure to obtain HMO licence where 5 persons reside in the HMO at the time of the offence	Failure to obtain HMO licence where 6 or 7 persons reside in the HMO at the time of offence	Failure to obtain HMO licence where 8 or more persons reside in the HMO at the time of the offence
s.72 breach of licence condition – occupier numbers Overcrowding according to Housing Act 1985	Occupancy maximum exceeded temporarily (more than one week but less than 3 months) <u>and</u> by no more than one occupier	Occupancy maximum exceeded by 2 occupiers for more than one week <u>or</u> by one occupier for more than 3 months	Occupancy maximum exceeded by 3 or more occupiers for more than one week but less than 6 months	Occupancy maximum exceeded by 3 or more occupiers for more than 6 months
s.72 or s.95 breach of licence condition – other conditions	Conditions related to signage or information for tenants	Conditions related to: procedures for dealing with complaints or ASB; waste receptacles, maintenance of common parts, living areas, decoration etc	Conditions related to provision of documentation regarding fire detection, emergency lighting, gas, electricity installations; minor repairs or alterations (except those covered by Band 4)	Conditions related to condition of smoke alarms, carbon monoxide alarms, emergency lighting, gas, electricity installations or fire detection and prevention including provision of safe means of escape
s. 234 (failure to comply with management regulations in respect of HMOs)	3 or 4 person HMO	5 person HMO	6 or 7 person HMO or <u>any size</u> HMO where breach relates to provision of safe gas, electricity or water supplies	8 or more person HMO or <u>any size</u> HMO where breach relates to provision of fire safety measures
Level of severity				
Low	£1,250	£2,500	£12,500	£22,500
Medium	£1,500	£5,000	£15,000	£25,000
High	£1,750	£7,500	£17,500	£27,500
Very high	£2,000	£10,000	£20,000	£30,000

Step 2:

Follow the process to determine the level of severity of the offence within the band:

- Low
- Medium
- High or
- Very high

The level of severity within the allotted band determines the level of the financial penalty

Points will be allocated from 1 (low) to 4 (high) for each of the 6 categories from a. to f. below. The total of these points (minimum 6 maximum 24) will determine the severity level:

Severity score	Level
6 - 10	1. Low
11-15	2. Medium
16-20	3. High
21-24	4. Very high

a) Culpability:

- 1 = Offence was not deliberate non-compliance, error of omission only and may have been shared responsibility
- 2 = Offence was careless or negligent and not deliberate non-compliance - sole responsibility *Default score in the absence of evidence to the contrary*
- 3 = Offence was deliberate failure to comply with obligations but may have been shared actions or responsibility
- 4 = Offence was deliberate action or failure to act by a sole person who was or should have been aware of their legal obligations

b) Offence History:

- 1 = No previous history of contravening any provision of the law relating to housing or of landlord and tenant law ("previous history") *Default score in the absence of evidence to the contrary*
- 2 = Previous history for a contravention of any provision of the law relating to housing or of landlord and tenant law
- 3 = Previous history for more than one contravention of any provision of the law relating to housing or of landlord and tenant law
- 4 = Previous history for a contravention of any provision of the law relating to housing or of landlord and tenant law, including a financial penalty or conviction

c) Harm to tenants:

- 1 = Little or no actual impact on occupiers or third parties
- 2 = Effect on occupiers or third parties was primarily inconvenience, financial loss, stress or anxiety *Default score in the absence of evidence to the contrary*
- 3 = Effect on occupiers or third parties was primarily physical or mental harm; also as per 2 but more than 4 persons affected
- 4 = Effect on occupiers or third parties was medically diagnosed illness or injury; also as per 3 but more than 4 persons affected

d) Mitigating Factors:

- 1 = Significant (such as serious illness, bereavement)
- 2 = More than a little (such as minor illness, stress; belated attempts to remedy)
- 3 = A little (such as let down by a third party) *Default score in the absence of evidence to the contrary*
- 4 = None (default score where landlord does not respond to enquiries or the response is hostile or unco-operative)

e) Proportionality:

- 1 = Subject only has one rented property
- 2 = Small business or subject has two or three properties *Default score in the absence of evidence to the contrary*
- 3 = Medium size business or subject has more than three properties
- 4 = Subject has a large portfolio of rented properties (six or more)

f) Financial Impact On Landlord

- 1 = Significant (eg subject in administration or near bankrupt)
- 2 = More than some (eg subject has serious financial problems)
- 3 = Some (eg subject comfortably well off) *Default score in the absence of evidence to the contrary*
- 4 = Minor (eg subject is wealthy)