

# Private Sector Housing Civil Penalties Policy April 2019



...an outstanding place to live, invest and bring up families



**South Tyneside Council**

**HELLO TOMORROW  
CHANGE IS HAPPENING**



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# 1. Introduction and Overview

## 1.1 Introduction

The Government wants to support good landlords who provide decent well maintained homes and is keen to strike a balance between unnecessary regulation which can increase costs for landlords and tenants and tackling rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.

The Housing and Planning Act 2016 ('the 2016 Act') introduces a number of measures to help local housing authorities deal more robustly with rogue landlords and property agents who knowingly flout their legal obligations and amends the Housing Act 2004 ('the 2004 Act') to allow the imposition of civil penalties.

This policy has been developed in accordance with Section 3.5 of the 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities ("the DCLG Guidance"), published by the Department for Communities and local Government.

As this area of the law is recently new and lessons are still being learnt as the suite of case law and tribunal decisions grow, the policy will be kept under review and updated where appropriate. Given the emergence of this area, South Tyneside Council wishes to adopt a logical and methodical, open and transparent approach to how Civil Penalties are calculated. South Tyneside Council has considered the approach of Local Authorities across the Country and has sought to go forward with a policy on Civil Penalties that has been tried and tested at First Tier Tribunal (Property Chamber) already.'

In this document the term 'landlord' will be used to refer to the 'owner', 'person having control', 'person managing' or 'licence holder', as defined under the Housing Act 2004 ('2004 Act'). The term 'Landlord' will also be used to refer to tenants of houses in multiple occupation (HMO) who have committed offences under section 234 of the 2004 Act. The term 'the Council' refers to South Tyneside Council in its capacity as a Local Housing Authority.

The policy sets out how the Council will use these new powers, how it will determine whether to impose a civil penalty or to prosecute and how it will determine the level of financial penalty to be imposed.

## 1.2 Civil Penalties and Recipients

A civil penalty is a financial penalty of up to £30,000 which can be imposed on a landlord as an alternative to prosecution for specific offences under the 2004 Act. The amount of penalty is determined by the Council in each case.

Those persons involved in the owning or managing of private rented properties will be the most likely recipients of civil penalties. The Council does however have the power to impose civil penalties on tenants of HMOs, for offences under section 234 of the 2004 Act, and will consider doing so as appropriate.

## 1.3 Legal Basis and Relevant offences

Section 126 and Schedule 9 of the 2016 Act enable the Council to impose a civil penalty as an alternative to prosecution for the following housing offences under the 2004 Act:

- 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)
- Contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

The Housing and Planning Act 2016 ('2016 Act') also allows local housing authorities to impose a civil penalty in relation to a breach of a banning order under Section 21 of the 2016 Act.



## 1.4 Policy Statement

The policy will ensure that South Tyneside Council can consider the use of civil penalties as an alternative to prosecution for specified housing offences, whilst retaining the option to prosecute

The Council will consider Civil Penalties for all breaches of one or more of the sections detailed above and will consider enforcement action on a case-by-case basis in line with South Tyneside Council's General Statement of Enforcement Policy.

The Private Sector Housing Civil Penalties Policy is designed to ensure transparency, consistency and fairness in the manner in which civil penalties are imposed and will help ensure that the Council's use of civil penalties is appropriate and proportionate, creating a level playing field for all landlords.

It is believed that civil penalties will act as a powerful deterrent for those landlords who may otherwise consider that the financial benefits of

non-compliance outweigh the risk of enforcement action against them. The power to impose civil penalties will encourage landlords to reconsider poor practices which in turn will lead to greater levels of compliance and improved housing standards across South Tyneside's private rented sector.

## 1.5 Contribution to Wider Objectives

This policy directly contributes towards South Tyneside Council's vision to 'make South Tyneside an outstanding place to live, invest and bring up families'. The policy will assist the Council to meet the aims of the South Tyneside Council Strategy 2017 - 2020 and the developing Integrated Housing Strategy, through the further regeneration of our town centres and neighbourhoods, and in particular the provision of communities where people feel safe and where there is access to good housing.

## 2. Principles of Civil Penalties

Civil Penalties can only be imposed as an alternative to prosecution. The Council cannot impose a civil penalty and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the Council cannot impose a civil penalty in respect of the same offence. Similarly, if a civil penalty has been imposed, a person cannot then be prosecuted for the same conduct.

Only one civil penalty can be issued for each of the first four offences detailed above however, it is possible to issue a civil penalty for each separate breach of the Houses in Multiple Occupation Management Regulations.

Where the Council has determined to apply a civil penalty in response to a relevant housing offence it may also take additional actions under the 2004 Act, including requiring landlords to undertake works in default and issuing a Rent Repayment Order.

In cases where the landlord and agent have committed the same offence, the Council can impose a civil penalty on both of them. The level of civil penalty imposed on each of them may differ depending on the circumstances.



### 3. Prosecution or Civil Penalty?

The same criminal standard of proof is required for a civil penalty as for prosecution. Before imposing a civil penalty, the Council must be satisfied beyond reasonable doubt that the landlord has committed the offence(s) and that if the matter were prosecuted in a Magistrates' Court there would be a realistic prospect of conviction.

Where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the Council will need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

In determining whether there is sufficient evidence to secure a conviction, the Council will have regard to South Tyneside Council's General Statement of Enforcement Policy and the Crown Prosecution Service Code for Crown Prosecutors, published by the Director of Public Prosecutions.

In determining whether to seek to apply a civil penalty, the Council will consider:

- Is there sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is there a public interest in imposing a Civil Penalty in respect of the offence?
- The Council's own Enforcement Policy, including the alternative option of prosecuting for the offence. There may be reasons why a prosecution may be more appropriate than a civil penalty, for example the case is particularly serious and the landlord has committed similar offences in the past and/or a banning order should be considered.
- Has the evidence been reviewed by the appropriate senior manager?
- Has the evidence been reviewed by the Council's Legal Services?

### 4. The Totality Principle

Where a landlord has committed multiple offences, and a civil penalty could be imposed for each one, consideration should be given to whether it is just and proportionate to impose a penalty for each offence.

When calculating the penalty amounts for multiple offences, there will inevitably be a cumulative effect and care should be taken to ensure that the total amount being imposed is just and proportionate to the offences.

The landlord may also have committed multiple similar offences or offences which arose from the same incident and in these cases the Council will consider whether it may be more appropriate to only impose penalties for the more serious offences being considered and to prevent any double-counting.

Having regard to the above, the Council will decide whether to impose a civil penalty for each offence, or if not, which offences should be pursued. Where a single more serious offence can be considered to encompass several less serious offences, then this is the offence that will normally be considered for the civil penalty. A decision not to impose a civil penalty for some of the offences does not mean that other enforcement options (such as the issue of a simple caution) cannot be pursued in respect of those offences.



## 5. Determining the Civil Penalty Amount

### 5.1 Factors to be taken into account

The Council has the power to impose a civil penalty of up to £30,000. The actual amount levied in each case should reflect the severity of the offence and take into account the landlord's income and track record.

DCLG has published statutory guidance to which local housing authorities must have regard in the exercise of their functions in respect of civil penalties.

The guidance provides advice on the factors that should take into account when deciding on the level of civil financial penalty. These are:

- **the severity of the offence** – a higher penalty will be appropriate for more serious offences
- **the culpability and track record of the offender** – a higher penalty will be appropriate where an offender has a history of failing to comply with their obligations; where their actions were deliberate; or where they knew, or ought to have known that they were in breach of their legal responsibilities
- **the level of harm caused to the tenant** – the greater the harm or potential for harm to the tenant, the higher the penalty should be
- **punishment of the offender** - a civil penalty should not be regarded as an easy or lesser option to prosecution but the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending

- **deterrence** – the decision to apply a civil penalty should deter the offender from repeating the offence and help to ensure that landlords comply with all of their legal responsibilities in future; it should also deter others from committing similar offences although the fact that a landlord has received a civil penalty will not be in the public domain
- **removal of financial benefit** – applying a civil penalty should remove any financial benefit that the offender may have obtained as a result of committing the offence.

The Council will take into account all of the factors identified in statutory guidance, South Tyneside Council's Enforcement Policy; and relevant local circumstances in determining whether to apply a civil penalty where specific housing offences have occurred and in determining the appropriate level of financial penalty on a case by case basis.

### 5.2 Structure of the Civil Penalty

The civil penalty will be made up of two distinct components, the first being the penalty calculation (taking account of the severity of the offence, the landlord's track record and the landlord's income) and the second takes account of the financial benefit, if any, which the landlord obtained from committing the offence. The two components added together determine the final penalty amount that will be imposed on the landlord.

The process is broken down into four main stages:

- Stage 1** – determines the penalty band for the offence. Each penalty band has a starting amount and a maximum amount
- Stage 2** – determines how much will be added to the penalty amount as a result of the landlord's income and track record
- Stage 3** – figures from Stage 2 are added to the penalty band from Stage 1. The total amount at this stage cannot go above the maximum amount for the particular penalty band.
- Stage 4** – considers any financial benefit that the landlord may have obtained from committing the offence. This amount will be added to the figure from Stage 3.

*Appendix I details how the amount of financial penalty will be determined.*



## 6. Process for Imposing a Civil Penalty

### 6.1 Notice of Intent

When the Council has determined that a financial penalty is the most appropriate action as an alternative to prosecution and the Council has determined the amount of any proposed financial penalty, then they must serve a "Notice of Intent". The Notice of Intent must be served on the person suspected of committing the offence. The Notice will specify:

- a. The amount of any proposed civil penalty
- b. The reasons for proposing to impose a civil penalty
- c. Information about the landlord's right to make representations to the Council.

### 6.2 Representations

Any landlord who is in receipt of a 'notice of intent' has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior officer.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Representations can only be made by the recipients of a 'notice of intent'. Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties

have an automatic right to make representations but if they are received, they will be considered on a case by case basis and responded to where the Council considers it necessary.

### 6.3 Final Notice

Once the 28 day representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of the civil penalty can be a lower amount than was proposed in the notice of intent but it cannot be a greater amount.

If the Council decides to impose a civil penalty, a final notice will be issued containing the following information:

- 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;
- information about right of appeal to the First Tier Tribunal, and;
- the consequences of failure to comply with the notice.

### 6.4 Withdrawing or Amending Notices

The Council can at any time withdraw either the Notice of Intent or Final Notice or reduce the amount of a civil penalty imposed. This will be in the form of a written notice to the person on whom the notice was served.

If the Council decides to withdraw a civil penalty, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case by case basis.

A landlord cannot be prosecuted for the same offence once the penalty has been paid and the matter concluded.

### 6.5 Appeals to the Tribunal

The person who has been served a Final Notice has the right of appeal to the First-tier Tribunal ("the Tribunal") against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.



### 6.6 Payment of a Civil Penalty

Payment of the civil penalty will be within 28 days, beginning with the day after that on which the final notice was given (“the 28 day payment period”), unless that notice is suspended due to an appeal. Where appealed and the decision to serve the Notice upheld it will be for the Tribunal to specify the period in which the landlord is to pay any fine imposed.

### 6.7 Other consequences of having a Civil Penalty imposed

Where a civil penalty has been imposed on a landlord, this will form part of the Council’s consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person’s involvement in the property will be considered.

Where a landlord has two civil penalties imposed in a 12 month period, each for a banning order offence, the Council will include their details on the ‘Database of Rogue Landlords and Property Agents’.

### 6.8 Recovering an unpaid Civil Penalty

If the financial penalty imposed is not paid within the appropriate time period, either 28 days from the date of the Final Notice, or within such time as determined by the First Tier Tribunal, the Council will commence proceedings to recover the debt owed. This will include the recovery of any additional costs to the Council from having to undertake such action.

The Council’s existing debt recovery process will be followed including pursuance of the debt via the county courts if appropriate.

Where the civil penalty has been appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgements, Orders and Fines, once accepted by the County Court. Inclusion on this register may make it more difficult for the landlord to get financial credit.

### 6.9 Income from Civil Penalties

Any income from Civil Penalties is retained by the Local Housing Authority that imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector. Further details can be found in Statutory Instrument 367 (2017).

The Senior Development Services Managers have the delegated authority to authorise the imposition of a Civil Penalty, in accordance with this Policy.

## 7. Roles and Responsibilities

Relevant officers, in consultation with the Council’s Legal Services, other local authorities, and partner agencies as may be necessary, will determine whether a Civil Penalty is to be imposed in respect of relevant offences and the level of the Civil Penalty to be imposed and will make recommendations to the Development Services Senior Management team.

Officers will maintain close liaison and co-operation with the Council’s Legal Services Section throughout the decision-making process.

The Council will make a final determination of the level of the civil penalty and will complete a formal record of the decision, setting out both the reasons for the imposition of a civil penalty and the factors that have been taken into account in determining the amount of the penalty.





## Appendix 1- Determining the Civil Penalty Amount

### Stage 1: Determining the Penalty Band

This stage considers the landlords culpability for the offence and the seriousness of harm risked to the tenants or visitors to the property. Landlords are running a business and are expected to be aware of their legal obligations. A higher penalty will be appropriate where a landlord has a history of failing to comply with their obligations and/or their actions were deliberate.

### Step 1: Culpability

Table 1 sets out the four levels of culpability that will be considered; each level has accompanying examples of the behaviours that could constitute that particular level. The behaviour of the landlord should be compared to this table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord’s culpability may vary between offences. (Table 1 has been taken from the ‘Health and Safety offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline’ effective from 1st February 2016 as a model template.

**Table 1 – Levels of Culpability**

Very High	Deliberate breach or flagrant disregard for the law
High	<ul style="list-style-type: none"> <li>Offender fell far short of their legal duties; for example, by:                             <ul style="list-style-type: none"> <li>Failing to put in place measures that are recognised legal requirements or regulations;</li> <li>Ignoring warnings raised by the Council, tenants or others;</li> <li>Failing to make appropriate changes after being made aware of risks, breaches or offences;</li> <li>Allowing risks, breaches or offences to continue over a long period of time</li> </ul> </li> <li>Serious and/or systemic failure by the person or organisation to comply with legal duties.</li> </ul>
Medium	<ul style="list-style-type: none"> <li>Offender fell short of their legal duties in a manner that falls between descriptions in ‘high’ and ‘low’ culpability categories.</li> <li>Systems were in place to manage to manage risk or comply with legal duties but these were not sufficiently adhered to or implemented.</li> </ul>
Low	<ul style="list-style-type: none"> <li>Offender did not fall far short of their legal duties; for example, because:                             <ul style="list-style-type: none"> <li>significant efforts were made to address the risk, breaches or offences, although they were inadequate on this occasion;</li> <li>they have offered a reasonable defence for why they were unaware of the risk, breach or offence.</li> </ul> </li> <li>Failings were minor and occurred as an isolated incident</li> </ul>

# Assessments

## Assessing a landlord's culpability

When assessing culpability, all of the evidence gathered as part of the investigation into the offence will be considered and any aggravating or mitigating factors which may be relevant to the assessment of culpability will be identified.

### Aggravating factors could include:

- Previous convictions for similar offence/s, having regard to the time elapsed since the conviction
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor

- Record of letting substandard accommodation i.e. record of having to take enforcement action previously whether complied with or not
- Record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash
- Evidence of threatening behaviour/harassment of the tenant

### Mitigating factors could include:

- Co-operation with the investigation e.g. turns up for the PACE interview
- Voluntary steps taken to address issues e.g. submits a prompt licence application
- Willingness to undertake training

- Level of tenant culpability
- Willingness to join recognised landlord accreditation scheme
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- Vulnerable individual(s) (owners not tenants) where their vulnerability is linked to the committing of the offence
- Good character i.e. no previous convictions and/or exemplary conduct

Using these factors, consider each category of culpability in Table 1 and identify the one that the landlord's behaviour falls within; where a landlord's behaviour could meet more than one of the categories, chose the highest one of those met.

## Step 2: Seriousness of Harm Risked

Table 2 separates the seriousness of harm risked into three levels and each one has an accompanying description to illustrate what would constitute that level of harm risked.

The harm risked by the offence should be compared to the table to determine the appropriate level. This exercise will be repeated for each offence that is being considered as the seriousness of harm risked can vary between offences.

When using the table to determine the appropriate level, consideration will be given to the worst possible harm outcomes that could reasonably occur as a result of the landlord committing the offence. This means that even if some harm has already come to tenants or visitors to the property, considerations will still be given to whether there was the potential for even greater harm to have occurred.

**Table 2 - Seriousness of Harm Risked**

Level A	The seriousness of harm risked would meet the guidance for Class I and Class II harm outcomes in the Housing Health and Safety Rating System <sup>1</sup> .
Level B	The seriousness of harm risked would meet the guidance for Class III and Class IV
Level C	All other cases not falling within Level A or Level B (e.g. where an offence occurred but the level of harm to the tenants or visitors does not meet the descriptions for Level A or Level B).

<sup>1</sup> Office of the Deputy Prime Minister: London (2006), Housing Health and Safety Rating Operating Guidance, page 47



### Step 3: Penalty Levels

Table 3 brings together the already determined level of culpability and the seriousness of harm risked, to identify the appropriate penalty level (1-5+).

**Table 3 – Penalty Levels**

Seriousness of Harm Risked	Culpability			
	Very High	High	Medium	Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

### Step 4: Penalty Bands

Comparison of the penalty level from Step 3 to table 4 gives the penalty band for the offence. This penalty band determines both the starting amount and the upper limit for the penalty calculation. This approach takes account of the 'Sentencing Council's Guidelines for Courts', used by the courts when determining the level of fines to apply to certain offences.

**Table 4 – Penalty Bands**

Penalty Level	Penalty Band
1	£600 - £1200
2	£1200 - £3000
3	£3000 - £6000
4	£6000 - £15,000
5/5+	£15,000 - £30,000

### Stage 2 – Considering the landlord's income and track record

There are two elements to consider here – the landlord's income and the landlord's track record. Each will affect the penalty calculation.

#### The landlord's finances

Statutory guidance advises that local authorities should use their existing powers, as far as practicable, to make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

Although the Council is permitted to consider all of the landlord's income and assets when calculating a civil penalty, full financial investigations will normally only be considered for the more serious offences.

For penalties that fall within bands 5 and 5+, a financial investigation of the landlord will usually be carried out and all sources of income received by the landlord can be considered as 'relevant income' for the purpose of calculating the civil penalty. Specifically, the average weekly income of the landlord for the 12 months preceding the date of the offence will be used.

For penalties that fall within bands 1 to 4, the landlord's income will still be considered but the 'relevant income' will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

For property owners, this will be the weekly rental income, as declared on the tenancy agreements, for the property where the offence occurred and at the time the offence occur.

For property agents, the relevant income will be any fees they received for the management of the property. As stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

**IMPORTANT:** although the Council will not normally consider carrying out a full financial investigation where the offence falls within penalty bands 1 to 4, the Council does reserve the right to do so where it considers it reasonable and proportionate to the circumstances.



### Calculating the increase as a result of the landlord's income

This is a two-step process with step 1 determining what counts as relevant weekly income and step 2 determining what percentage of this relevant weekly income should be added to the penalty amount.

Step 1 – take the penalty band, as determined in Stage 1, and compare it to Table 5: this will state what can be considered as relevant weekly income for the offence.

**Table 5 – Defining relevant weekly income**

Penalty Level	Relevant Weekly Income
1	Gross rental income or management fees for the property where the offence occurred
2	
3	
4	
5 /5+	All income for the offender (carry out a financial assessment)

Step 2 – take the penalty band, as determined in Stage 1, and compare it to Table 6. This will give the percentage of the landlord's relevant weekly income to be added to the civil penalty.

**Table 6 – Percentage of Relevant Weekly Income**

Penalty Level	% of Relevant Weekly Income
1	50% of relevant weekly income
2	100% of relevant weekly income
3	150% of relevant weekly income
4	250% of relevant weekly income
5	400% of relevant weekly income
5+	600% of relevant weekly income

### Availability of tenancy agreements or management contracts

Tenancy agreements and property management contracts can be requested using the Council's existing powers under section 235 of the Housing Act 2004 and this will be pursued where copies are not readily available.

In cases where the landlord is not forthcoming with this information or documentation, an estimate of the weekly average income will be used instead and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

Representations against estimated incomes will only be accepted where sufficient evidence of the landlord's income is provided to support these claims. Estimates of average weekly income will be calculated on a case by case basis but they will generally be based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

**IMPORTANT:** the Council will not normally consider a landlord's assets but does reserve the right to consider assets in any cases where the Council considers it reasonable and proportionate to do so. Each of these cases will be dealt with on a case by case basis.

### The landlord's Track Record

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations; as such, the track record of the landlord will be an important factor in determining the final amount of the civil penalty that is imposed. The questions below must be asked for each landlord that will receive a civil penalty.

1. Has the landlord had any relevant<sup>1</sup> notices, under Part 1 of the Housing Act 2004, served on them in the last 5 years? If so, how many times have they been subject to such enforcement action in that timeframe?
2. Has the landlord had any civil penalties imposed on them in the last 2 years? If so, how many civil penalties have been imposed on them in that timeframe?
3. Has the landlord accepted any cautions for relevant<sup>1</sup> offences in the last 2 years? If so, how many cautions for relevant<sup>1</sup> offences have they accepted in that timeframe?



4. Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a 'straight to enforcement action' approach?
5. Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?
6. Has the landlord breached any relevant<sup>2</sup> notices, which resulted in works in default being carried out, in the last 2 years? If so, how many times have works in default been carried out under such circumstances in that timeframe?
7. Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?
8. Has the landlord been prosecuted for any relevant<sup>3</sup> offences in the last 2 years? If so, how many times have such prosecutions taken place in that timeframe?
9. Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?
10. Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?

<sup>1</sup> any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'

<sup>2</sup> any notices served under any legislation relating to housing, public health or environmental health.

<sup>3</sup> any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

**IMPORTANT:** question 1 refers to all relevant notices served during the two years: this means that where the offence is failure to comply with an improvement notice, that notice should also be included in the answer to the question.

### Calculating the increase in penalty as a result of the landlord's track record

Each of the questions will be placed into one of four categories, based on the seriousness of the offence or enforcement action to which the question refers. Each category of question is given a rating that increases with the seriousness of the category. Table 7 shows the four categories and the weighting which is applied to each one.

**Table 7 – Weightings**

Category	Weighting
Category 1 (Least serious)	1
Category 2 (Moderately Serious)	5
Category 3 (Very Serious)	10
Category 4 (Most Serious)	20

Any questions where the answer is 'no' will have a weighting of zero but 'yes' answers will accrue the weighting for that particular question, e.g. if the weighting for a question is 10 and the answer to that question is 'yes' then the score for that particular question will be 10.

For those questions where the number of occasions is relevant the number of occasions is relevant, the total weighting for a 'yes' answer will be the weighting for that question multiplied by the number of occasions. For example, if a question has a weighting of 5 and the landlord has committed the offence three times, this will give a total score of 15 for the question. Table 8 shows the category which each of the questions falls within and the subsequent weighting that is applied as a result.

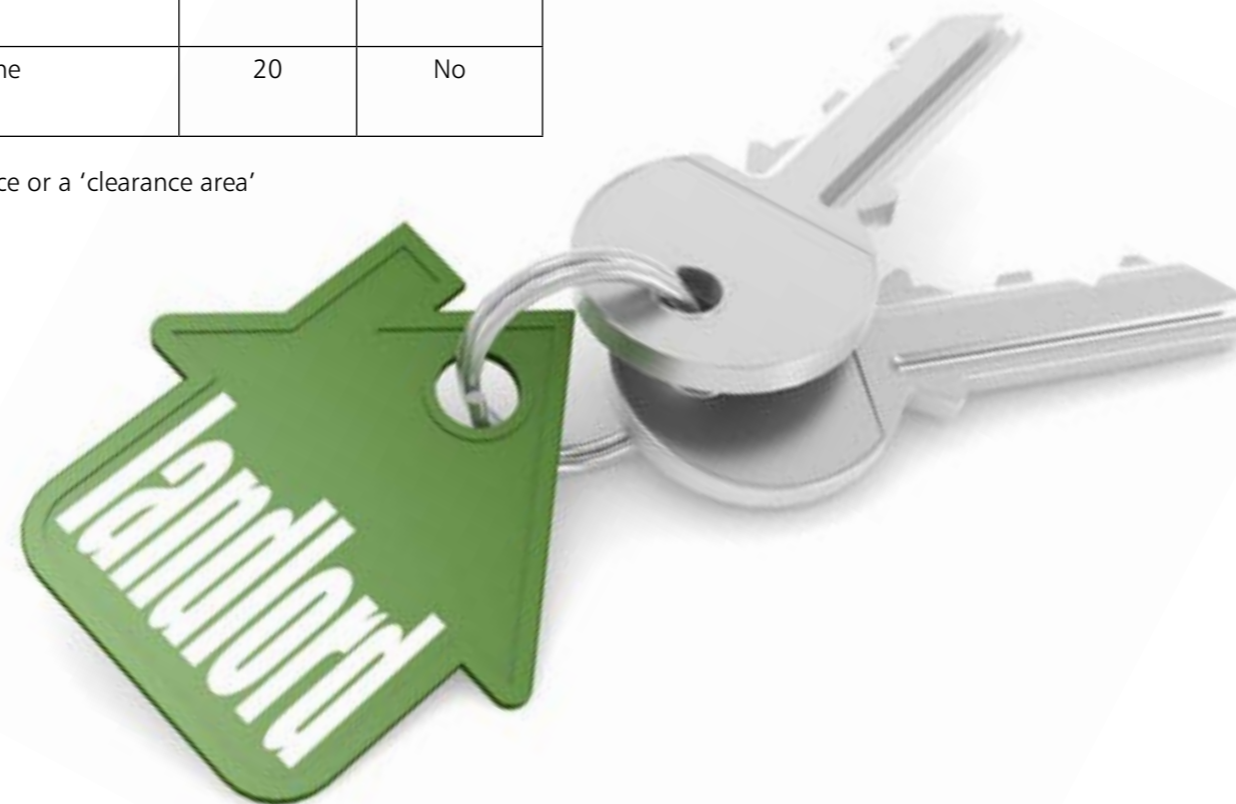
**Table 8 – Questions and Weightings**

Questions	Weighting for a 'Yes' answer	Multiplied by the number of occasions?
Has the landlord had any relevant <sup>1</sup> notices, under Part 1 of the Housing Act 2004, served on them in the last 5 years?	1	Yes
Has the landlord had any civil penalties imposed on them in the last 2 years?	5	Yes
Has the landlord accepted any cautions for relevant <sup>1</sup> offences in the last 2 years?	10	Yes
Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a 'straight to enforcement action' approach?	5	No
Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?	5	No
Has the landlord breached any relevant <sup>2</sup> notices, which resulted in works in default being carried out, in the last 2 years?	10	Yes
Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?	10	No
Has the landlord been prosecuted for any relevant <sup>3</sup> offences in the last 2 years?	20	Yes
Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	20	No
Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?	20	No

<sup>1</sup> any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'

<sup>2</sup> any notices served under any legislation relating to housing, public health or environmental health.

<sup>3</sup> any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.



Once all the questions have been answered, the weighting for each is totalled and compared to Table 9: this gives the percentage increase that will be applied to the penalty amount. The increase will be a percentage of the starting amount for the penalty band that the offence falls within. For example, where the total score for the question is 23, the corresponding percentage increase in Table 9 will be 60%.

**Table 9 - % increase**

Score	%	Score	%
0	0%	21	55%
1	5%	23	60%
3	10%	25	65%
5	15%	27	70%
7	20%	29	75%
9	25%	31	80%
11	30%	33	85%
13	35%	35	90%
15	40%	37	95%
17	45%	39+	100%

**IMPORTANT:** the penalty calculation will never be increased past the upper limit of the penalty band: however, where the landlord has a history of non-compliance, it is appropriate to factor this into the assessment of their overall culpability. This could affect the initial assessment of the appropriate penalty level and lead to a higher penalty band being used as the starting point.

**Stage 3 – Adding Income and Track Record Amounts to the Penalty Band**

Stage 1 gives the penalty band for the offence and this determines the starting amount and the upper limit for the penalty calculation. Stage 2 gives the amount that should be added as a result of the landlord's income and the amount that should be added as a result of the landlord's track record.



### Combining the Stage 1 and Stage 2 figures

To determine the penalty amount, the two figures from Stage 2 should be added to the starting amount for the penalty band. For example if the increase for income is £500 and the increase due to the landlord's track record is £1000, these two figures are added to the starting amount for the penalty to arrive at the penalty amount.

If the amount calculated, by adding the figures for the landlord's income and track record, is less than the upper limit for the penalty band, then this is the amount that will be used. However, if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used instead.

### Stage 4 – Financial benefit obtained from committing the offence

A guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed should never be less than it would have reasonably cost the landlord to comply in the first place.

#### Determination of financial benefit

Calculating the amount of financial benefit obtained will need to be done on a case by case basis but the next table gives some examples of potential financial benefit for each of the offences.

Offence	Examples of potential financial benefit
Failure to comply with an Improvement Notice (section 30)	The cost of any works that were required to comply with the improvement notice but which have not been removed by works in default.
Offences in relation to licensing of HMOs (section 72)	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offences in relation to licensing of houses under Part 3 of the Act (section 95)	Rental income whilst the property was operating unlicensed of where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offence of contravention of an overcrowding notice (section 139)	Rental income whilst the property is being occupied in contravention of the overcrowding notice.
Failure to comply with management regulations in respect of HMOs (section 234)	The cost of any works that are required to avoid breaching the regulations

### Adding financial benefit to the penalty amount

The Council will need to be able to prove that financial benefit was obtained before it can be included in the civil penalty calculation. However, where it can be proven, the amount obtained should be added to the penalty calculation amount from Stage 3 and this will give the final civil penalty amount that will be imposed on the landlord.

**IMPORTANT:** where the landlord has obtained financial benefit in the form of rental income and this full amount has been added to the total penalty, it will be appropriate to take this into consideration when deciding whether or not to pursue a Rent Repayment Order.





If you know someone who needs this information in a different format, for example large print, Braille or a different language, please call Marketing and Communications on 0191 427 1717.