



Housing (Wales) Measure 2011

2011 nawm 5

PART 2

REGISTERED SOCIAL LANDLORDS

CHAPTER 4

ENFORCEMENT

Penalty

57 Grounds for imposition

After section 50G of the Housing Act 1996 insert—

“Penalty

50H Grounds for imposition

- (1) The Welsh Ministers may require a registered social landlord to pay a penalty if they are satisfied that—
 - (a) any of the following cases applies, and
 - (b) the imposition of a penalty is appropriate (whether or not as part of a response including other action).
- (2) Case 1 is where the registered social landlord has failed to meet a standard under section 33A.
- (3) Case 2 is where there has been misconduct or mismanagement in the affairs of the registered social landlord.
- (4) Case 3 is where the registered social landlord has failed to comply with an enforcement notice.

Status: This is the original version (as it was originally enacted).

- (5) Case 4 is where the registered social landlord has given an undertaking under section 6A and failed to comply with it.
- (6) Case 5 is where an offence under this Part has been committed by the registered social landlord.
- (7) Where the Welsh Ministers are satisfied that an offence under this Part has been committed in respect of a registered social landlord but by another person (such as a member, employee or agent of the registered social landlord)—
 - (a) Case 5 applies,
 - (b) the Welsh Ministers may require the other person to pay a penalty, and
 - (c) this Chapter applies with the substitution of references to that other person for references to the registered social landlord.
- (8) In order to rely on Case 5 the Welsh Ministers must be satisfied beyond reasonable doubt that it applies.”

58 Imposition

After section 50H of the Housing Act 1996 insert—

“50I Imposition

- (1) A penalty is imposed by the Welsh Ministers giving notice (a “penalty notice”) to the registered social landlord.
- (2) The notice must specify—
 - (a) the grounds on which the penalty is imposed,
 - (b) the amount of the penalty,
 - (c) how the penalty must be paid,
 - (d) a period within which it must be paid, and
 - (e) any interest or additional penalty which, by virtue of section 50M, is payable in the event of late payment.
- (3) The notice may require the registered social landlord to publish information about the penalty in a specified manner.
- (4) The notice must explain the effect of sections 50M(1), (3) and (5) and 50N.”

59 Amount

After section 50I of the Housing Act 1996 insert—

“50J Amount

- (1) The amount of a penalty imposed on the ground specified in Case 5 of section 50H may not exceed the maximum amount of fine that a magistrates' court could impose for the relevant offence.
- (2) The amount of a penalty imposed on the ground specified in any other Case of that section may not exceed £5,000.

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- (3) The Welsh Ministers may by order amend the amount specified in subsection (2).
- (4) An order under subsection (3) is to be made by statutory instrument and must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.”

60 Warning

After section 50J of the Housing Act 1996 insert—

“50K Warning

- (1) Before giving a penalty notice to a registered social landlord the Welsh Ministers must give the landlord a notice (a “pre-penalty warning”)—
 - (a) specifying grounds on which the Welsh Ministers think a penalty could be imposed,
 - (b) warning the landlord that the Welsh Ministers are considering imposing a penalty,
 - (c) including any indication that the Welsh Ministers are able to give of the likely amount of any penalty, and
 - (d) explaining the effect of sections 50L, 50M(1), (3) and (5) and 50N.
- (2) The Welsh Ministers must send a copy of a pre-penalty warning to any person they think appropriate (having regard, in particular, to any person who provided information as a result of which the pre-penalty warning is given).
- (3) A pre-penalty warning must—
 - (a) refer to section 6A, and
 - (b) indicate whether or to what extent the Welsh Ministers would accept a voluntary undertaking instead of, or in mitigation of, a penalty.
- (4) A pre-penalty warning may be combined with notice under one or more of the following—
 - (a) section 50S,
 - (b) paragraphs 15C, 15E and 15G of Schedule 1.”

61 Representations

After section 50K of the Housing Act 1996 insert—

“50L Representations

- (1) A pre-penalty warning must specify a period during which the registered social landlord may make representations to the Welsh Ministers.
- (2) The period must—
 - (a) be a period of at least 28 days, and
 - (b) begin with the date on which the registered social landlord receives the pre-penalty warning.
- (3) Representations may address—

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- (a) whether a penalty should be imposed;
 - (b) the amount of any penalty that may be imposed.
- (4) After the end of the period specified under subsection (1) the Welsh Ministers must—
- (a) consider any representations made, and
 - (b) decide whether to impose a penalty.”

62 Enforcement

After section 50L of the Housing Act 1996 insert—

“50M Enforcement

- (1) A penalty is to be treated as a debt owed to the Welsh Ministers.
- (2) The Welsh Ministers may—
 - (a) charge interest on a penalty not paid during the period specified under section 50I(2)(d);
 - (b) impose one or more additional penalties where a penalty is not paid during that period.
- (3) Interest and additional penalty are to be treated as penalty (and may have the effect of increasing the penalty above a limit set by section 50J).
- (4) A penalty notice may include provision allowing a discount if the penalty is paid on or before a date specified in the notice (falling within the period specified under section 50I(2)(d)).
- (5) A person to whom a penalty notice is given on the ground in Case 5 of section 50H may not be prosecuted for the offence by reference to which the penalty notice was given.”

63 Appeal

After section 50M of the Housing Act 1996 insert—

“50N Appeal

- A registered social landlord who is given a penalty notice may appeal to the High Court against—
- (a) the imposition of the penalty,
 - (b) its amount, or
 - (c) both.”