



# Housing (Wales) Measure 2011

2011 nawm 5

## PART 2 **W**

### REGISTERED SOCIAL LANDLORDS

## CHAPTER 4 **W**

### ENFORCEMENT

#### *Penalty*

#### 57 **Grounds for imposition** **W**

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.

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*Changes to legislation: There are currently no known outstanding effects for the Housing (Wales) Measure 2011, Cross Heading: Penalty. (See end of Document for details)*

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- (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.”

**Commencement Information**

- I1** S. 57 in force for specified purposes at 18.10.2011 by S.I. 2011/2475, arts. 1(2), 2(k)
- I2** S. 57 in force in so far as not already in force at 2.12.2011 by S.I. 2011/2475, arts. 1(2), 3(f)

**58 Imposition W**

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.”

**Commencement Information**

- I3** S. 58 in force at 18.10.2011 by S.I. 2011/2475, arts. 1(2), 2(l)

**59 Amount W**

After section 50I of the Housing Act 1996 insert—

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### “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.
- (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.”

#### Commencement Information

**I4** [S. 59](#) in force at 18.10.2011 by [S.I. 2011/2475](#), [arts. 1\(2\), 2\(1\)](#)

## 60 **Warning** **W**

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.”

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**Commencement Information**

**I5** S. 60 in force at 18.10.2011 by S.I. 2011/2475, arts. 1(2), 2(1)

**61 Representations** **W**

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—
  - (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.”

**Commencement Information**

**I6** S. 61 in force at 18.10.2011 by S.I. 2011/2475, arts. 1(2), 2(1)

**62 Enforcement** **W**

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)).

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- (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.”

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**Commencement Information**

**I7** S. 62 in force at 18.10.2011 by S.I. 2011/2475, arts. 1(2), 2(1)

**63 Appeal W**

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.”

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**Commencement Information**

**I8** S. 63 in force at 18.10.2011 by S.I. 2011/2475, arts. 1(2), 2(1)

**Changes to legislation:**

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Heading: Penalty.