

SCHEDULE 1

Regulation 2

Excluded tenancies

Private registered provider of social housing

1. A tenancy where the landlord is a private registered provider of social housing⁽¹⁾.

Shared accommodation with landlord or landlord's family

2.—(1) A tenancy under the terms of which the occupier shares any accommodation with the landlord or a member of the landlord's family.

(2) For the purposes of this paragraph—

- (a) an occupier shares accommodation with another person if the occupier has the use of an amenity in common with that person (whether or not also in common with others);
- (b) “amenity” includes a toilet, personal washing facilities, a kitchen or a living room but excludes any area used for storage, a staircase, corridor or other means of access;
- (c) a person is a member of the same family as another person if—
 - (i) those persons live as a couple;
 - (ii) one of them is the relative of the other; or
 - (iii) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple;
- (d) “couple” means two people who are married to, or civil partners of, each other or who live together as if they are a married couple or civil partners;
- (e) “relative” means parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew, niece or cousin;
- (f) a relationship of the half-blood is to be treated as a relationship of the whole blood; and
- (g) a stepchild of a person is to be treated as that person's child.

Long leases

3.—(1) A tenancy that—

- (a) is a long lease; or
- (b) grants a right of occupation for a term of 7 years or more.

(2) In this paragraph “long lease” means a lease which is a long lease for the purposes of section 7 of the Leasehold Reform, Housing and Urban Development Act 1993⁽²⁾ or which, in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be such a lease if the tenant's total share (within the meaning given by that section) were 100 per cent.

(3) A tenancy does not grant a right of occupation for a term of 7 years or more if the agreement can be terminated at the option of a party before the end of 7 years from the commencement of the term.

Student halls of residence

4.—(1) A tenancy that grants a right of occupation in a building which—

(1) See section 80(3) of the Housing and Regeneration Act 2008 (c. 17) for meaning of “private registered provider of social housing”. Section 80(3) was substituted by S.I. 2010/844.

(2) 1993 c. 28

- (a) is used wholly or mainly for the accommodation of students, and
- (b) is a hall of residence.

(2) In this paragraph “student” has the same meaning as in an order made under paragraph 4 of Schedule 1 to the Local Government Finance Act 1992⁽³⁾.

Hostels and refuges

5.—(1) A tenancy that grants a right of occupation in a hostel or refuge.

(2) In this paragraph “hostel” means a building which satisfies the following two conditions.

(3) The first condition is that the building is used for providing to persons generally, or to a class of persons—

- (a) residential accommodation otherwise than in separate and self-contained premises; and
- (b) board or facilities for the preparation of food adequate to the needs of those persons (or both).

(4) The second condition is that either of the following applies in relation to the building—

- (a) it is managed by a private registered provider of social housing;
- (b) it is not operated on a commercial basis and its costs of operation are provided whole or in part by a government department or agency, or by a local authority; or
- (c) it is managed by a voluntary organisation or charity.

(5) In this paragraph “refuge” means a building which satisfies the second condition in sub-paragraph (4) and is used wholly or mainly for providing accommodation to persons who have been subject to any incident, or pattern of incidents, of—

- (a) controlling, coercive or threatening behaviour;
- (b) physical violence;
- (c) abuse of any other description (whether physical or mental in nature); or
- (d) threats of any such violence or abuse.

(6) In this paragraph “government department” includes any body or authority exercising statutory functions on behalf of the Crown.

(7) In this paragraph “voluntary organisation” means a body, other than a public or local authority, whose activities are not carried on for profit.

Care homes

6.—(1) A tenancy that grants a right of occupation in a care home.

(2) In this paragraph “care home” has the meaning given in section 3 of the Care Standards Act 2000⁽⁴⁾.

Hospitals and hospices

7.—(1) A tenancy that grants a right of occupation in a hospital or hospice.

(3) 1992 c. 14

(4) 2000 c. 14. Heading was substituted by Schedule 3(1), paragraph 3(d) of the Regulation and Inspection of Social Care (Wales) Act 2016, *anaw.* 2; sub-section (1) was amended by Schedule 3(1), paragraph 3(a) of the Regulation and Inspection of Social Care (Wales) Act 2016; sub-section (3) and words in sub-section (4) were repealed by the Regulation and Inspection of Social Care (Wales) Act 2016; sub-section (4) was added by Schedule 5(1), paragraph 4(3) of the Health and Social Care Act 2008, c. 14.

(2) In this paragraph “hospital” has the meaning given in section 275 of the National Health Service Act 2006⁽⁵⁾.

(3) In this paragraph “hospice” means an establishment other than a hospital whose primary function is the provision of palliative care to persons who are suffering from a progressive disease in its final stages.

Other accommodation relating to healthcare provision

8.—(1) A tenancy—

- (a) under which accommodation is provided to a person as a result of a duty imposed on a relevant NHS body by an enactment; and
- (b) which is not excluded by another provision of this Schedule.

(2) In this paragraph “relevant NHS body” means—

- (a) a clinical commissioning group; or
- (b) the National Health Service Commissioning Board.

(3) In this paragraph “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978⁽⁶⁾.

SCHEDULE 2

Regulation 12

Procedure for and appeals against financial penalties

Notice of intent

1.—(1) Before imposing a financial penalty on a private landlord for a breach of a duty under regulation 3, a local housing authority must serve a notice on the private landlord of its intention to do so (a “notice of intent”).

(2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority is satisfied, in accordance with regulation 11, that the private landlord is in breach (“the relevant day”), subject to sub-paragraph (3).

(3) If the breach continues beyond the end of the relevant day, the notice of intent may be served—

- (a) at any time when the breach is continuing; or
- (b) within the period of 6 months beginning with the last day on which the breach occurs.

(4) The notice of intent must set out—

- (a) the amount of the proposed financial penalty;
- (b) the reasons for proposing to impose the penalty; and
- (c) information about the right to make representations under paragraph 2.

Right to make representations

2. The private landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the local housing authority about the proposal to impose a financial penalty on the private landlord.

(5) 2006 c. 41

(6) 1978 c. 30

Final notice

3.—(1) Within 28 days of the end of the period mentioned in paragraph 2 the local housing authority must—

- (a) decide whether to impose a financial penalty on the private landlord; and
- (b) if it decides to do so, decide the amount of the penalty.

(2) If the authority decides to impose a financial penalty on the private landlord, it must serve a notice on the private landlord (a “final notice”) imposing that penalty.

(3) 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 served.

(4) The final notice must set out—

- (a) the amount of the financial penalty;
- (b) the reasons for imposing the penalty;
- (c) information about how to pay the penalty;
- (d) the period for payment of the penalty;
- (e) information about rights of appeal; and
- (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

4.—(1) A local housing authority may at any time—

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

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the private landlord on whom the notice was served.

Appeals

5.—(1) A private landlord on whom a final notice is served may appeal to the First-tier Tribunal against—

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

(2) An appeal under this paragraph must be brought within the period of 28 days beginning with the day after that on which the final notice was served.

(3) If a private landlord appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(4) An appeal under this paragraph—

- (a) is to be a re-hearing of the local housing authority’s decision; but
- (b) may be determined having regard to matters of which the authority was unaware when it made that decision.

(5) On an appeal under this paragraph the First-tier Tribunal may confirm, quash or vary the final notice.

(6) The final notice may not be varied under sub-paragraph (5) so as to make it impose a financial penalty of more than £30,000.

Recovery of financial penalty

6.—(1) This paragraph applies if the private landlord does not pay the whole or any part of a financial penalty which, in accordance with this Schedule, the private landlord is liable to pay.

(2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which—

(a) is signed by the chief finance officer of the local housing authority which imposed the penalty; and

(b) states that the amount due has not been received by a date specified in the certificate

is conclusive evidence that the amount has not been received by that date.

(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed, unless the contrary is proved.

(5) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989(7).

Proceeds of financial penalties

7.—(1) Where a local housing authority imposes a financial penalty under these Regulations, it may apply the proceeds to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

(2) Any part of any financial penalty recovered which is not to be applied in accordance with sub-paragraph (1) must be paid into the Consolidated Fund.

(3) In sub-paragraph (1)—

“enforcement function” means, in relation to a local authority—

(a) any of its functions—

(i) under these Regulations;

(ii) under Parts 1 to 4 of the Housing Act 2004; or

(iii) under Part 2 of the Housing and Planning Act 2016; or

(b) in a case not covered by paragraph (a), any of its functions—

(i) connected with an investigation of, or proceedings relating to, a contravention of the law relating to housing or landlords and tenants; or

(ii) connected with the promotion of compliance with the law relating to housing or landlords and tenants; and

“private rented sector” means—

(a) residential premises in England that are let, or intended to be let by a private landlord under a tenancy;

(b) the activities of a private landlord under a tenancy of residential premises in England.

(7) 1989 c. 42. Relevant part amended by Schedule 22(4), paragraph 1 of the Marine and Coastal Access Act 2009 (c. 23); words inserted by section 132(2) of the Greater London Authority Act 1999 (c. 29), Schedule 16(13), paragraph 202(6)(a) of the Police Reform and Social Responsibility Act 2011 (c. 13), and Schedule 1(2), paragraph 63(4)(a) of the Policing and Crime Act 2017 (c. 3).