

Status: Point in time view as at 12/10/2007.

Changes to legislation: Estate Agents Act 1979, SCHEDULE 4 is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 4

Section 23B(3)

PENALTY NOTICES UNDER SECTION 23B(1)

Textual Amendments

F1 Sch. 4 inserted (12.10.2007) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\), s. 66\(2\), Sch. 6 para. 4; S.I. 2007/2934, art. 3, Sch.](#)

- 1 A penalty charge notice given to a person under section 23B(1) by a duly authorised officer of an enforcement authority other than the OFT must—
 - (a) state the officer's belief that that person has committed a breach of the duty imposed by an order under section 23A(1);
 - (b) give such other particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty;
 - (c) require that person, within a period specified in the notice—
 - (i) to pay a penalty charge specified in the notice; or
 - (ii) to give notice to the enforcement authority that he wishes to review the notice;
 - (d) state the effect of paragraph 8;
 - (e) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and
 - (f) specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).
- 2 The penalty charge specified in the notice shall be of such amount (not exceeding £1,000) as may be prescribed for the time being by regulations made by the Secretary of State.
- 3 (1) The period specified under paragraph 1(c) must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.
(2) The enforcement authority may extend the period for complying with the requirement mentioned in paragraph 1(c) in any particular case if they consider it appropriate to do so.
- 4 The enforcement authority may, if they consider that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice.
- 5 (1) If, within the period specified under paragraph 1(c) (or that period as extended under paragraph 3(2)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the authority shall—

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- (a) consider any representations made by the recipient and all other circumstances of the case;
 - (b) decide whether to confirm or withdraw the notice; and
 - (c) give notice of their decision to the recipient.
- (2) A notice under sub-paragraph (1)(c) confirming the penalty charge notice must also state the effect of paragraphs 6(1) to (3) and 8(1) and (3).
- (3) If the authority are not satisfied—
 - (a) that the recipient committed the breach of duty specified in the notice;
 - (b) that the notice was given within the time allowed by section 23B(2) and complies with the other requirements imposed by or under this Schedule; and
 - (c) that in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient;
 they shall withdraw the penalty charge notice.
- 6 (1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under paragraph 5(1)(c) is given, appeal to a county court or, in Scotland, to the sheriff against the penalty charge notice.
- (2) The county court or the sheriff may extend the period for appealing against the notice.
- (3) Such an appeal must be on one (or more) of the following grounds—
 - (a) that the recipient did not commit the breach of duty specified in the penalty charge notice;
 - (b) that the notice was not given within the time allowed by section 23B(2) or does not comply with any other requirement imposed by or under this Schedule; or
 - (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.
- (4) An appeal against a penalty charge notice shall be by way of a rehearing; and the county court or sheriff shall either uphold the notice or quash it.
- 7 If the penalty charge notice is withdrawn or quashed, the authority shall repay any amount previously paid as a penalty charge in pursuance of the notice.
- 8 (1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the authority unless—
 - (a) the notice has been withdrawn or quashed; or
 - (b) the charge has been paid.
- (2) Proceedings for the recovery of the penalty charge may not be commenced before the end of the period mentioned in paragraph 5(1).
- (3) And if within that period the recipient of the penalty charge notice gives notice to the authority that he wishes the authority to review the penalty charge notice, such proceedings may not be commenced—
 - (a) before the end of the period mentioned in paragraph 6(1); and
 - (b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined.
- 9 In proceedings for the recovery of the penalty charge, a certificate which—

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- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and
- (b) states that payment of the penalty charge was or was not received by a date specified in the certificate;

is evidence of the facts stated.

10 Section 29 (service of notices etc.) applies in relation to—

- (a) any penalty charge notice which is to be given under section 23B(1) by a duly authorised officer of an enforcement authority other than the OFT; and
- (b) any notice which is to be given under paragraph 5(1)(c) of this Schedule by such an enforcement authority;

as it applies in relation to any notice which under this Act is to be given to any person by the OFT.

11 The Secretary of State may by regulations make provision supplementary or incidental to the provisions of this Schedule, including in particular provision prescribing—

- (a) the form of penalty charge notices or of any other notice mentioned in this Schedule;
- (b) circumstances in which penalty charge notices may not be given;
- (c) the method or methods by which penalty charges may be paid.

12 Any power to make regulations under this Schedule shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

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