

SCHEDULE

Section 12

ENFORCEMENT

Introduction

- 1 This Schedule applies in relation to—
- (a) the imposition by an enforcement authority of a financial penalty under section 9, and
 - (b) the making of an order by an enforcement authority under section 10.

Notice of intent

- 2
- (1) Before imposing a financial penalty on a person, or making an order against a person, the enforcement authority must serve on the person notice of its intention to do so (a “notice of intent”).
 - (2) A single notice of intent may be served on a person in respect of both a penalty and an order.
 - (3) The notice of intent must set out—
 - (a) the date on which the notice is served,
 - (b) the amount of the proposed financial penalty or the terms of the proposed order,
 - (c) the reasons for imposing the penalty or making the order, and
 - (d) information about the right to make representations under [paragraph 4](#).

Time limits for serving notice of intent

- 3
- (1) A notice of intent may not be served in respect of a breach of section 3(1) after the earlier of the following—
 - (a) the end of the period of 6 years beginning with the day the breach occurs, and
 - (b) the end of the period of 6 months beginning with the day on which evidence comes to the knowledge of the enforcement authority which the authority considers sufficient to justify serving the notice.
 - (2) For the purposes of sub-paragraph (1)(a), a breach of section 3(1) occurs—
 - (a) where the breach arises as a result of a request for a payment of a prohibited rent as mentioned in section 3(2)(a) (whether or not a payment is made), on the day of the request;
 - (b) where the breach arises as a result of a failure to refund a payment of a prohibited rent as mentioned in section 3(2)(b) in a case where no request for the payment was made, at the end of the period of 28 days beginning with the day after receipt of the payment.

Right to make written representations

- 4 A person who receives a notice of intent may, within the period of 28 days beginning with the day on which the notice of intent was served, make written representations about the proposal.

Final notice

- 5 (1) After the end of the period mentioned in [paragraph 4](#), the enforcement authority must—
- (a) decide whether to impose a financial penalty or make an order, and
 - (b) if it decides to do so, decide the amount of the penalty or the terms of the order.
- (2) If the enforcement authority decides to impose a penalty or make an order, it must serve a further notice on the person (a “final notice”) imposing the penalty or making the order.
- (3) A single final notice may be served on a person in respect of both a penalty and an order.
- (4) A final notice imposing a penalty or making an order must require the penalty to be paid, or the order to be complied with, before the end of the period of 28 days beginning with the day after that on which the final notice is served.
- (5) The final notice must set out—
- (a) the date on which the final notice is served,
 - (b) the amount of the penalty or the terms of the order,
 - (c) the reasons for imposing the penalty or making the order,
 - (d) information about how to pay the penalty or comply with the order,
 - (e) information about rights of appeal, and
 - (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

- 6 (1) The enforcement authority may at any time—
- (a) withdraw a notice of intent or final notice,
 - (b) reduce an amount specified in a notice of intent or final notice, or
 - (c) amend a notice of intent or final notice to remove—
 - (i) the proposal to impose, or the imposition of, a penalty;
 - (ii) the proposal to make, or the making of, an order.
- (2) The power in [sub-paragraph \(1\)](#) is to be exercised by giving notice in writing to the person on whom the notice was served.

Appeals

- 7 (1) A person on whom a final notice is served may appeal to the appropriate tribunal against—
- (a) the decision to impose the penalty or make the order,
 - (b) the amount of the penalty, or
 - (c) the terms of the order.
- (2) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day after that on which the final notice is served.
- (3) If an appeal is brought under this paragraph, the final notice is suspended so far as it relates to the matter which is the subject of the appeal until the appeal is finally determined, withdrawn or abandoned.

- (4) An appeal under this paragraph—
 - (a) is to be a re-hearing of the authority’s decision, but
 - (b) may be determined having regard to matters of which the authority was unaware.
- (5) On an appeal under this paragraph the appropriate tribunal may quash, confirm or vary the notice.
- (6) The final notice may not be varied so as to make it impose a financial penalty of less than the minimum financial penalty or more than the maximum financial penalty that could have been imposed in the final notice by the enforcement authority.

Recovery of financial penalty

- 8 (1) This paragraph applies if a person who is liable to pay a financial penalty under section 9 does not pay the whole or any part of the penalty in accordance with the final notice imposing it.
- (2) The enforcement authority that 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 is—
 - (a) signed by the chief finance officer of the authority that imposed the penalty, and
 - (b) states that the amount due has not been received by a date specified in the certificate,is evidence of that fact.
- (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.

Recovery of prohibited rent and interest

- 9 (1) This paragraph applies if a person who is ordered to pay an amount under section 10 does not pay the whole or any part of that amount, or any interest payable on that amount, in accordance with the final notice making the order.
- (2) The person to whom the amount or part or interest is payable may recover it on the order of the county court as if it were payable under an order of that court.

Assistance to recover prohibited rent

- 10 (1) An enforcement authority may help a person to make an application for an order under [paragraph 9\(2\)](#).
- (2) An enforcement authority may, for example, help the person by conducting proceedings or giving advice.

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

Proceeds of financial penalties

- 11 Where an enforcement authority imposes a financial penalty under this Act, it may apply the proceeds towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out its enforcement functions (under this Act or otherwise) in relation to residential leasehold property.
- 12 Any proceeds of a financial penalty imposed under this Act which are not applied in accordance with paragraph 11 must be paid—
- (a) where the penalty was imposed in relation to a lease of premises in England, to the Secretary of State, and
 - (b) where the penalty was imposed in relation to a lease of premises in Wales, to the Welsh Ministers.