

SCHEDULE

Regulation 10

Procedure for and appeals against financial penalties

Notice of intent

1.—(1) Before imposing a financial penalty on a property agent for a breach of regulation 3 or 4, a local authority must serve a notice on the agent 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 has sufficient evidence of the 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 property agent 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 authority about the proposal to impose a financial penalty on the agent.

Final notice

3.—(1) After the end of the period mentioned in paragraph 2 the local authority must—

- (a) decide whether to impose a financial penalty on the property agent; 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 agent, it must serve a notice on the agent (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 authority may at any time—

- (a) withdraw a notice of intent or final notice; or

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

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

Appeals

5.—(1) A property agent 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 property agent 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.

(5) On an appeal under this paragraph the First-tier Tribunal may quash, confirm 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—

- (a) £30,000, in respect of a breach of regulation 3; or
- (b) £5,000, in respect of a breach of regulation 4.

Recovery of financial penalty

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

(2) The local 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 is—

- (a) signed by the chief finance officer of the local 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 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⁽¹⁾.

Proceeds of financial penalties

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

(1) 1989 c. 42.

(2) Any part of any financial penalty recovered which is not to be applied in accordance with 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⁽²⁾; or
 - (iii) under Part 2 of the Housing and Planning Act 2016; or
- (b) where paragraph (a) does not apply, any of its functions—
 - (i) connected with an investigation of, or proceedings relating to, a contravention of the law relating to housing or landlord and tenant; or
 - (ii) connected with the promotion of compliance with the law relating to housing or landlord and tenant; and

“private rented sector” means—

- (a) residential premises in England that are let, or intended to be let, under a tenancy;
- (b) the activities of a landlord under a tenancy of residential premises in England;
- (c) the activities of a person carrying on English letting agency work in relation to such premises; or
- (d) the activities of a person carrying on English property management work in relation to such premises,

and for the purpose of this definition “residential premises” has the meaning given by section 1 of the Housing Act 2004 except that it does not include social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008⁽³⁾.

(2) 2004 c. 34.

(3) 2008 c. 17.