

SCHEDULES

SCHEDULE 4

Offences, penalties, enforcement and other matters

PART 2

Penalties

Criminal penalties

3.—(1) A person who commits an offence under these Regulations is punishable on summary conviction—

- (a) in England and Wales by a fine or (in the case of an individual) by imprisonment for a term not exceeding three months, or by both, or
 - (b) in Scotland or Northern Ireland by a fine not exceeding level 5 on the standard scale or (in the case of an individual) by imprisonment for a term not exceeding three months, or by both.
- (2) But an offence is not punishable under this paragraph if—
- (a) the enforcement authority has required a person to pay a penalty in respect of that offence under paragraph 4, and
 - (b) that penalty has been paid to the enforcement authority.

Civil penalties

4.—(1) The enforcement authority may require a person to pay a penalty if the enforcement authority is satisfied, on a balance of probabilities, that the person has committed an offence mentioned in paragraph 1(1), (3), (4) or (5).

- (2) But the enforcement authority may not require a person to pay a penalty if—
- (a) the person shows that there was a reasonable excuse for committing the offence, or
 - (b) criminal proceedings have been instituted against the person in respect of the same offence.
- (3) A penalty imposed under this paragraph may not exceed £50,000 per offence.
- (4) The penalty is payable to the enforcement authority on demand.

Notification of penalty decision

5.—(1) If the enforcement authority decides to require a person to pay a penalty under these Regulations, the enforcement authority must give the person a penalty notice.

- (2) A penalty notice must—
- (a) be in writing,
 - (b) state the enforcement authority's reasons for deciding to require the person to pay a penalty,
 - (c) state the amount of the penalty,

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- (d) specify the date on which it is given,
- (e) specify the date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid,
- (f) specify how a penalty must be paid,
- (g) include an explanation of the steps that the person may take if the person objects to the penalty (including specifying the manner and form in which any notice of objection must be given to the enforcement authority), and
- (h) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

Objection to penalty decision

6.—(1) The recipient of a penalty notice (the “recipient”) may object to the penalty notice by giving a notice of objection to the enforcement authority.

(2) A notice of objection must—

- (a) give the reasons for the objection,
- (b) be given to the enforcement authority in the manner and form specified in the penalty notice, and
- (c) be given before the end of the period of 28 days beginning with the date specified in the penalty notice as the date on which it is given.

(3) Where the enforcement authority receives a notice of objection, the enforcement authority must consider it and—

- (a) cancel the penalty,
- (b) reduce the penalty,
- (c) increase the penalty, or
- (d) determine not to alter the penalty.

(4) After reaching a decision as to how to proceed under sub-paragraph (3), the enforcement authority must notify the recipient of the decision in writing.

(5) A notification under sub-paragraph (4) must be given before the end of the period of 70 days beginning with the date specified in the penalty notice as the date on which it is given, or such longer period as the enforcement authority may agree with the recipient.

(6) A notification under sub-paragraph (4), other than one notifying the recipient that the enforcement authority has decided to cancel the penalty, must—

- (a) state the amount of the penalty following the enforcement authority’s consideration of the notice of objection,
- (b) state the enforcement authority’s reasons for the decision under sub-paragraph (3),
- (c) specify the date, at least 28 days after the date on which the notification is given, before which the penalty must be paid,
- (d) specify how the penalty must be paid,
- (e) include an explanation of the recipient’s rights of appeal, and
- (f) include an explanation of the steps the enforcement authority may take to recover any unpaid penalty.

(7) A notification under sub-paragraph (4) notifying the recipient that the enforcement authority has decided to cancel the penalty must state the enforcement authority’s reasons for the decision under sub-paragraph (3).

Civil penalties: appeals

7.—(1) A person (the “appellant”) may appeal to the court against a decision to require the person to pay a penalty under these Regulations.

(2) An appeal may be brought only if the appellant has given a notice of objection and the enforcement authority has—

- (a) reduced the penalty under paragraph 6(3)(b),
- (b) increased the penalty under paragraph 6(3)(c), or
- (c) determined not to alter the penalty under paragraph 6(3)(d).

(3) An appeal must be brought within the period of 28 days beginning with the date on which the person is notified of the enforcement authority’s decision on the notice of objection under paragraph 6(4).

(4) On appeal, the court may—

- (a) allow the appeal and cancel the penalty,
- (b) allow the appeal and reduce the penalty, or
- (c) dismiss the appeal.

(5) An appeal—

- (a) is to be a re-hearing of the enforcement authority’s decision to impose a penalty, and
- (b) may be determined having regard to matters of which the enforcement authority was unaware.

(6) Sub-paragraph (5)(a) has effect despite any provision of rules of court.

(7) In this paragraph, a reference to “the court” is a reference—

- (a) in England and Wales, to the county court,
- (b) in Scotland, to the sheriff, and
- (c) in Northern Ireland, to a county court.

(8) But—

- (a) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this paragraph to the High Court, and
- (b) the sheriff may transfer proceedings under this paragraph to the Court of Session.