

Status: Point in time view as at 01/06/2019.

Changes to legislation: There are currently no known outstanding effects for the Tenant Fees Act 2019, SCHEDULE 3. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 8

FINANCIAL PENALTIES ETC

Interpretation

- 1 (1) In this Schedule references to a financial penalty include a reference to an amount which is required to be paid under section 10(2), (5) or (8) or 11(1).
- (2) In this Schedule references to imposing a financial penalty include a reference to requiring the payment of such an amount.
- (3) This paragraph does not apply to paragraph 4(4) (period for payment), 6(6) or (7) (appeals), 7 (recovery of financial penalty), 10 or 11 (proceeds of financial penalties).

Commencement Information

- II** Sch. 3 para. 1 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

Notice of intent

- 2 (1) This paragraph applies where an enforcement authority proposes to impose a financial penalty for a breach of section 1 (prohibitions applying to landlords) or 2 (prohibitions applying to letting agents) or Schedule 2 (treatment of holding deposit).
- (2) Before imposing the financial penalty, the enforcement authority must serve a notice on the landlord or letting agent of its proposal to do so (a “notice of intent”).
- (3) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the enforcement authority has sufficient evidence of the breach, subject to sub-paragraph (4).
- (4) If the breach is committed on that day, and the breach continues beyond the end of that 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.
- (5) The notice of intent must set out—
 - (a) the date on which the notice of intent is served,
 - (b) the amount of the proposed financial penalty,
 - (c) the reasons for proposing to impose the penalty, and
 - (d) information about the right to make representations under paragraph 3.

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Commencement Information

I2 Sch. 3 para. 2 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

Right to make representations

- 3 A person who receives a notice of intent may, within the period of 28 days beginning with the day after the day on which the notice of intent was served, make written representations to the authority about the proposal to impose a financial penalty on that person.

Commencement Information

I3 Sch. 3 para. 3 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

Final notice

- 4 (1) After the end of the period mentioned in paragraph 3 the enforcement authority must—
- (a) decide whether to impose a financial penalty on the person, and
 - (b) if it decides to do so, decide the amount of the penalty.
- (2) If the enforcement authority decides to impose a financial penalty, it must serve a notice on the person (a “final notice”) imposing that penalty.
- (3) The final notice must require the penalty to be paid within the relevant period.
- (4) In sub-paragraph (3) “the relevant period” means—
- (a) in relation to a financial penalty under section 8, the period of 28 days beginning with the day after that on which the notice is served;
 - (b) in relation to an amount which is required to be paid under section 10(2), (5) or (8) or 11(1), the period specified in the notice.
- (5) A period specified as mentioned in sub-paragraph (4)(b) must be a period of at least 7 days but not more than 14 days beginning with the day after that on which the notice is served.
- (6) The final notice must set out—
- (a) the date on which the final notice is served,
 - (b) the amount of the financial penalty,
 - (c) the reasons for imposing the penalty,
 - (d) information about how to pay the penalty,
 - (e) the period for payment of the penalty,
 - (f) information about rights of appeal, and
 - (g) the consequences of failure to comply with the notice.

Commencement Information

I4 Sch. 3 para. 4 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

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Withdrawal or amendment of notice

- 5 (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 the requirement to pay an amount which the authority required to be paid under section 10(2), (5) or (8) or 11(1).
- (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.

Commencement Information

I5 Sch. 3 para. 5 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

Appeals

- 6 (1) A person 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 that is the relevant period in relation to the penalty by virtue of paragraph 4(4).
- (3) If an appeal is brought under this paragraph, the final notice is suspended so far as it relates to the penalty 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 First-tier Tribunal may quash, confirm or vary the final notice.
- (6) The final notice may not be varied so as to make it impose a financial penalty of more than £5,000 unless section 8(3) applies.
- (7) If section 8(3) applies, the final notice may not be varied so as to make it impose a financial penalty of more than £30,000.

Commencement Information

I6 Sch. 3 para. 6 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

Recovery of financial penalty

- 7 (1) This paragraph applies if a person who is liable to pay a financial penalty under section 8 does not pay the whole or any part of that financial penalty in accordance with the final notice imposing that penalty.

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- (2) The enforcement 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 authority which 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.

Commencement Information

I7 Sch. 3 para. 7 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

Recovery of prohibited payment etc

- 8 (1) This paragraph applies if a person who is liable to pay an amount under section 10(2), (5) or (8) or 11(1) does not pay the whole or any part of that amount in accordance with the final notice requiring payment of that amount.
- (2) The relevant person may recover that amount or part on the order of the county court as if it were payable under an order of that court.

Commencement Information

I8 Sch. 3 para. 8 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

Assistance to recover prohibited payment etc

- 9 (1) An enforcement authority may help a relevant person to make an application under paragraph 8(2).
- (2) An enforcement authority may, for example, help the relevant person to apply by conducting proceedings or by giving advice to the relevant person.

Commencement Information

I9 Sch. 3 para. 9 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

Proceeds of financial penalties

- 10 Where an enforcement authority imposes a financial penalty under this Act, it may apply the proceeds towards meeting the costs and expenses (whether administrative

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or legal) incurred in, or associated with, carrying out any of its enforcement functions under this Act or otherwise in relation to the private rented sector.

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I10 Sch. 3 para. 10 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

- 11 Any proceeds of a financial penalty imposed under this Act which are not applied in accordance with paragraph 10 must be paid to the Secretary of State.

Commencement Information

I11 Sch. 3 para. 11 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

- 12 (1) In paragraph 10, “enforcement functions in relation to the private rented sector” means enforcement functions relating to—
- (a) residential premises in England that are let, or intended to be let, under a tenancy,
 - (b) the common parts of such premises,
 - (c) the activities of a landlord under a tenancy of residential premises in England,
 - (d) the activities of a person carrying on English letting agency work within the meaning of section 54 of the Housing and Planning Act 2016 in relation to such premises, or
 - (e) the activities of a person carrying on English property management work within the meaning of section 55 of the Housing and Planning Act 2016 in relation to such premises.
- (2) For the purposes of this paragraph “residential premises” has the meaning given by section 1 of the Housing Act 2004 except that it does not include social housing.
- (3) For the purposes of this paragraph, “tenancy” means—
- (a) a tenancy, whether or not the tenancy is an assured shorthold tenancy, or
 - (b) a licence to occupy.

Commencement Information

I12 Sch. 3 para. 12 in force at 1.6.2019 by S.I. 2019/857, reg. 3(bb)

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