



Housing and Regeneration Act 2008

2008 CHAPTER 17

PART 2

REGULATION OF SOCIAL HOUSING

CHAPTER 7

ENFORCEMENT POWERS

Penalty

226 Overview

This group of sections allows the regulator to penalise failures on the part of [^{F1}private registered providers] by the imposition of fines.

Textual Amendments

- F1** Words in s. 226 substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), [Sch. 1 para. 58](#)

Commencement Information

- I1** S. 226 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

227 Grounds for imposition

- (1) The regulator may require a [^{F2}private registered provider] to pay a penalty if the regulator is satisfied that—
- any of the following cases applies, and
 - the imposition of a penalty is appropriate (whether or not as part of a response including other action).

Status: Point in time view as at 01/04/2016.

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- (2) Case 1 is where the registered provider has failed to meet a standard under section 193 or 194.
- (3) Case 2 is where the affairs of the registered provider have been mismanaged.
- (4) Case 3 is where the registered provider has failed to comply with an enforcement notice.
- (5) Case 4 is where the registered provider has given an undertaking under section 125 and failed to comply with it.
- (6) Case 5 is where the registered provider has failed to pay an annual fee under section [F3117(1)(b)].
- (7) Case 6 is where an offence under this Part has been committed by the registered provider.
- [F4(7A) Case 7 is where the registered provider has failed to comply with—
- (a) section 23 of the Welfare Reform and Work Act 2016,
 - (b) regulations under section 27 of that Act, or
 - (c) Part 1 of Schedule 2 to that Act.]
- (8) Where the regulator is satisfied that an offence under this Part has been committed in respect of a registered provider but by another person (such as a member, employee or agent of the registered provider)—
- (a) Case 6 applies,
 - (b) the regulator may require the other person to pay a penalty, and
 - (c) this Chapter applies with the substitution of references to that other person for references to the registered provider.
- (9) In order to rely on Case 6 the regulator must be satisfied beyond reasonable doubt that it applies.

Textual Amendments

- F2** Words in s. 227(1) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 59(2)**
- F3** Word in s. 227(6) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Registration of Local Authorities\) Order 2010 \(S.I. 2010/844\)](#), art. 1(2), **Sch. 1 para. 59(3)**
- F4** S. 227(7A) inserted (16.3.2016 for specified purposes, 1.4.2016 in so far as not already in force) by [Welfare Reform and Work Act 2016 \(c. 7\)](#), **ss. 30(3)**, 36(5); S.I. 2016/394, reg. 4

Commencement Information

- I2** S. 227 in force at 1.4.2010 by [S.I. 2010/862](#), **art. 2** (with Sch.)

228 Imposition

- (1) A penalty is imposed by the regulator giving notice (a “penalty notice”) to the registered provider.
- (2) The notice must specify—
 - (a) the grounds on which the penalty is imposed,
 - (b) the amount of the penalty,

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- (c) how the penalty must be paid,
 - (d) a period within which it must be paid, and
 - (e) any interest or additional penalty which, by virtue of section 234(2), is payable in the event of late payment.
- (3) The notice may require the registered provider to publish information about the penalty in a specified manner.
- (4) The notice must explain the effect of sections 234(1), (3) and (6) and 235.
- (5) The Secretary of State—
- (a) shall make regulations about the period under subsection (2)(d),
 - (b) may make other regulations about the form and content of a penalty notice, and
 - (c) may make regulations about the manner in which a penalty notice is given.

Commencement Information

- I3** S. 228(1)-(4) in force at 1.4.2010 by [S.I. 2010/862, art. 2](#) (with [Sch.](#))
- I4** S. 228(5) in force at 1.4.2009 for specified purposes by [S.I. 2009/803, art. 7\(c\)](#)
- I5** S. 228(5) in force at 1.4.2010 in so far as not already in force by [S.I. 2010/862, art. 2](#) (with [Sch.](#))

229 Amount

- (1) The amount of a penalty imposed on the ground specified in Case 6 of section 227 may not exceed the maximum amount [^{F5}(if any)] of fine that a magistrates' court could impose for the relevant offence.
- (2) The amount of a penalty imposed on the ground specified in any other Case of that section may not exceed £5,000.
- (3) The Secretary of State may by order amend the amount specified in subsection (2).

Textual Amendments

- F5** Words in s. 229(1) inserted (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 ([S.I. 2015/664](#)), [reg. 1\(1\)](#), [Sch. 5 para. 14](#) (with [reg. 5\(1\)](#))

Commencement Information

- I6** S. 229 in force at 1.4.2010 by [S.I. 2010/862, art. 2](#) (with [Sch.](#))

230 Warning

- (1) Before giving a penalty notice to a registered provider the regulator must give the provider a notice (a “pre-penalty warning”)—
- (a) specifying grounds on which the regulator thinks a penalty could be imposed,
 - (b) warning the provider that the regulator is considering imposing a penalty,
 - (c) including any indication that the regulator is able to give of the likely amount of any penalty, and
 - (d) explaining the effect of sections 231, 234(1), (3) and (6) and 235.

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- (2) If the regulator gives a pre-penalty warning it must send a copy to—
- ^{F6}(a)
- [^{F7}(aa) the Greater London Authority (if the pre-penalty warning is given to a registered provider who owns land in Greater London), and]
- (b) any other persons it thinks appropriate.
- (3) For the purposes of subsection (2)(b) the regulator shall consider, in particular, any person who provided information as a result of which the pre-penalty warning is given.
- (4) A pre-penalty warning must—
- (a) refer to section 125 (voluntary undertaking), and
- (b) indicate whether or to what extent the regulator would accept a voluntary undertaking instead of, or in mitigation of, a penalty.
- (5) A pre-penalty warning may be combined with notice under one or more of sections 242, 248, 250 and 252.

Textual Amendments

F6 S. 230(2)(a) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), [Sch. 16 para. 47](#), [Sch. 25 Pt. 26](#); [S.I. 2012/628](#), [art. 6\(i\)\(j\)](#) (with [arts. 911141517](#))

F7 S. 230(2)(aa) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), [Sch. 19 para. 59](#); [S.I. 2012/628](#), [art. 6\(i\)](#) (with [arts. 911141517](#))

Commencement Information

I7 S. 230 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

231 Representations

- (1) A pre-penalty warning must specify a period during which the registered provider may make representations to the regulator.
- (2) The period must—
- (a) be a period of at least 28 days, and
- (b) begin with the date on which the registered provider receives the pre-penalty warning.
- (3) Representations may concern—
- (a) whether a penalty should be imposed;
- (b) the amount of any penalty that may be imposed.
- (4) After the end of the period specified under subsection (1) the regulator shall—
- (a) consider any representations made, and
- (b) decide whether to impose a penalty.

Commencement Information

I8 S. 231 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

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F⁸232 Notifying HCA

Textual Amendments

- F8** S. 232 repealed (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), [Sch. 16 para. 48](#), [Sch. 25 Pt. 26](#); [S.I. 2012/628](#), art. 6(i)(j) (with arts. 911141517)

[F⁹232A Notifying the Greater London Authority

If the regulator imposes a penalty on a registered provider who owns land in Greater London, it must send a copy of the penalty notice to the Greater London Authority.]

Textual Amendments

- F9** S. 232A inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), [Sch. 19 para. 60](#); [S.I. 2012/628](#), art. 6(i) (with arts. 911141517)

233 Destination

- (1) This section applies where the regulator receives money by way of penalty.
- (2) The regulator may deduct a sum which represents—
 - (a) the direct costs to the regulator of imposing and enforcing the penalty, and
 - (b) a reasonable share of expenditure by the regulator which is indirectly referable to the imposition and enforcement of the penalty.
- (3) Any excess shall be paid to the HCA, to be used for purposes which appear to it to amount to investment in social housing.

Commencement Information

- I9** S. 233 in force at 1.4.2010 by [S.I. 2010/862](#), [art. 2](#) (with [Sch.](#))

234 Enforcement

- (1) A penalty shall be treated as a debt owed to the regulator.
- (2) The Treasury may make regulations authorising the regulator—
 - (a) to charge interest on penalty not paid during the period specified under section 228(2)(d);
 - (b) to impose one or more additional penalties where a penalty is not paid during that period.
- (3) Interest and additional penalty shall be treated as penalty (and may have the effect of increasing the penalty above a limit set by section 229).
- (4) Regulations under subsection (2)(a) may provide for an interest rate to be—
 - (a) set by a specified person, or
 - (b) determined in accordance with the regulations.

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- (5) A penalty notice may include provision allowing a discount if the penalty is paid on or before a date specified in the notice (falling within the period specified under section 228(2)(d)).
- (6) A person to whom a penalty notice is given on the ground in Case 6 of section 227 may not be prosecuted for the offence by reference to which the penalty notice was given.

Commencement Information

I10 S. 234(1)(3)(5)(6) in force at 1.4.2010 by [S.I. 2010/862, art. 2](#) (with [Sch.](#))

I11 S. 234(2)(4) in force at 1.4.2009 for specified purposes by [S.I. 2009/803, art. 7\(d\)](#)

I12 S. 234(2)(4) in force at 1.4.2010 in so far as not already in force by [S.I. 2010/862, art. 2](#) (with [Sch.](#))

235 Appeal

A registered provider who is given a penalty notice may appeal to the High Court against—

- (a) the imposition of the penalty,
- (b) its amount, or
- (c) both.

Commencement Information

I13 S. 235 in force at 1.4.2010 by [S.I. 2010/862, art. 2](#) (with [Sch.](#))

Status:

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