

SCHEDULES

SCHEDULE 9

Section 87

DUTY OF LETTING AGENTS TO PUBLICISE FEES: FINANCIAL PENALTIES

Notice of intent

- 1 (1) Before imposing a financial penalty on a letting agent for a breach of a duty imposed by or under section 83, a local weights and measures authority must serve a notice on the agent of its proposal 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 agent’s breach, subject to sub-paragraph (3).
- (3) If the agent is in breach of the duty 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.
- (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 letting agent may, within the period of 28 days beginning with the day after that on which the notice of intent was sent, make written representations to the local weights and measures 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 weights and measures authority must—
 - (a) decide whether to impose a financial penalty on the letting 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 sent.
- (4) The final notice must set out—

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- (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 weights and measures authority may at any time—
- (a) withdraw a notice of intent or final notice, or
 - (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 letting agent on whom the notice was served.

Appeals

- 5 (1) A letting agent on whom a final notice is served may appeal against that notice to—
- (a) the First-tier Tribunal, in the case of a notice served by a local weights and measures authority in England, or
 - (b) the residential property tribunal, in the case of a notice served by a local weights and measures authority in Wales.
- (2) The grounds for an appeal under this paragraph are that—
- (a) the decision to impose a financial penalty was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the financial penalty is unreasonable, or
 - (d) the decision was unreasonable for any other reason.
- (3) An appeal under this paragraph to the residential property tribunal must be brought within the period of 28 days beginning with the day after that on which the final notice was sent.
- (4) If a letting agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (5) On an appeal under this paragraph the First-tier Tribunal or (as the case may be) the residential property 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 £5,000.

Recovery of financial penalty

- 6 (1) This paragraph applies if a letting 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 weights and measures 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.

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- (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 weights and measures 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) A local weights and measures authority may use the proceeds of a financial penalty for the purposes of any of its functions (whether or not the function is expressed to be a function of a local weights and measures authority).
- (6) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.