

HOUSING ACT 2004

EXPLANATORY NOTES

SCHEDULES

Schedule 8: Penalty charge notices under section 168

652. *Section 168* gives enforcement officers a power to serve penalty charge notices on someone who they believe has failed to comply with the home information pack duties in Part 5 of the Act. Schedule 8 sets out the details of the penalty charge regime.
653. A penalty charge notice may be given where it is believed that a person is committing, or has committed, a breach of duty under sections 155 to 159, 167(4) and 172(1). The penalty charge notice must specify a number of things, including a description of the alleged breach; the amount of the penalty; the name and address of the person to whom the penalty should be paid (and to whom any representations may be made); the method or methods of payment; the period for paying the penalty and the consequences of not paying the penalty within the period (paragraph 1).
654. A penalty charge notice may be served on a person if it is left at his address or delivered by post to that address. Paragraph 10 makes further provision on the service of notices to bodies corporate and partnerships.
655. The amount of the penalty charge will be prescribed in regulations made by the Secretary of State and must not be more than £500. The period for paying the penalty cannot be less than 28 days and may be extended by the enforcement authority if it wishes to do so (paragraphs 2 and 3).
656. If the recipient of a penalty charge notice requests a review within the period specified in the notice (or any extended period), the enforcement authority must consider the recipient's representations, decide whether to confirm or withdraw the notice and notify the person of their decision.
657. If the enforcement authority decides to confirm the penalty charge, they must inform the recipient of his rights to appeal at the same time that they notify him of this decision. The recipient then has 28 days to appeal to the county court against the penalty charge although the courts have power to extend this period (paragraphs 5(2) and 6(1) and (2)).
658. The enforcement authority has the discretion to withdraw a penalty charge notice at any time, but must withdraw the notice if they believe:
- That there was no breach of the duty specified in the notice;
 - The procedural requirements relating to the notice were not properly observed; or
 - That it would be appropriate to do so given the circumstances of the case (paragraphs 4 and 5(1)).
659. If a penalty charge notice is withdrawn, the enforcement authority must refund any charge already paid (paragraph 7).

These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004

660. If a penalty charge has been confirmed, an appeal can be made on one or more of the following grounds:
- The recipient did not commit the breach of duty specified in the penalty charge notice;
 - The notice was not given within the period specified, or did not comply with some other requirement of the Schedule; or
 - It was inappropriate for the notice to be given in the circumstances of the recipient's case (for example if there was a purely technical breach of duty and it was inappropriate to do anything more than give advice or a warning) (paragraph 6(3)).
661. Where an appeal is considered by the County Court, the court may either uphold the penalty charge or quash it. Where it is quashed, the enforcement authority must refund any charge already paid (paragraph 7).
662. A penalty charge that is not paid, withdrawn or quashed is recoverable as a debt by the enforcement authority. The initial penalty charge notice and any notice confirming a charge must state this fact (paragraph 1, 5(2), and 8). Paragraph 8 prescribes when an enforcement authority can seek to recover any penalty charge debt, and paragraph 9 makes provision on the evidence to be used by an authority in recovery proceedings.
663. The Secretary of State may by regulations make further supplementary or incidental provision on penalty charge notices. These regulations may also prescribe the circumstances in which fixed penalty notices may not be served, the form of the notice and methods of payment (paragraph 11).