

SCHEDULES

SCHEDULE 9

Section 126

FINANCIAL PENALTY AS ALTERNATIVE TO PROSECUTION UNDER HOUSING ACT 2004

- 1 The Housing Act 2004 is amended as follows.
- 2 In section 30 (offence of failing to comply with improvement notice), after subsection (6) insert—
 - “(7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
 - (8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.”
- 3 In section 72 (offences in relation to licensing of HMOs), after subsection (7) insert—
 - “(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
 - (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.”
- 4 In section 95 (offences in relation to licensing of houses under Part 3), after subsection (6) insert—
 - “(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
 - (6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.”
- 5 In section 139 (overcrowding notices), after subsection (9) insert—
 - “(10) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
 - (11) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.”
- 6 In section 234 (management regulations in respect of HMOs), after subsection (5) insert—

“(6) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.”

7 After section 249 insert—

“Financial penalties as alternative to prosecution

249A Financial penalties for certain housing offences in England

- (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person’s conduct amounts to a relevant housing offence in respect of premises in England.
- (2) In this section “relevant housing offence” means an offence under—
 - (a) section 30 (failure to comply with improvement notice),
 - (b) section 72 (licensing of HMOs),
 - (c) section 95 (licensing of houses under Part 3),
 - (d) section 139(7) (failure to comply with overcrowding notice), or
 - (e) section 234 (management regulations in respect of HMOs).
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.
- (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
 - (a) the person has been convicted of the offence in respect of that conduct, or
 - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (6) Schedule 13A deals with—
 - (a) the procedure for imposing financial penalties,
 - (b) appeals against financial penalties,
 - (c) enforcement of financial penalties, and
 - (d) guidance in respect of financial penalties.
- (7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.
- (8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.
- (9) For the purposes of this section a person’s conduct includes a failure to act.”

8 After Schedule 13 insert—

“SCHEDULE
13A

Section 249A

FINANCIAL PENALTIES UNDER SECTION 249A

Notice of intent

- 1 Before imposing a financial penalty on a person under section 249A the local housing authority must give the person notice of the authority’s proposal to do so (a “notice of intent”).
- 2 (1) The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.
(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given—
 - (a) at any time when the conduct is continuing, or
 - (b) within the period of 6 months beginning with the last day on which the conduct occurs.
- (3) For the purposes of this paragraph a person’s conduct includes a failure to act.
- 3 The notice of intent must set out—
 - (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the financial penalty, and
 - (c) information about the right to make representations under paragraph 4.

Right to make representations

- 4 (1) A person who is given a notice of intent may make written representations to the local housing authority about the proposal to impose a financial penalty.
(2) Any representations must be made within the period of 28 days beginning with the day after that on which the notice was given (“the period for representations”).

Final notice

- 5 After the end of the period for representations the local housing authority must—
 - (a) decide whether to impose a financial penalty on the person, and
 - (b) if it decides to impose a financial penalty, decide the amount of the penalty.
- 6 If the authority decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty.

Status: This is the original version (as it was originally enacted).

- 7 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 given.
- 8 The final notice must set out—
- (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

- 9 (1) A local housing 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 person to whom the notice was given.

Appeals

- 10 (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—
- (a) the decision to impose the penalty, or
 - (b) the amount of the penalty.
- (2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (3) An appeal under this paragraph—
- (a) is to be a re-hearing of the local housing authority's decision, but
 - (b) may be determined having regard to matters of which the authority was unaware.
- (4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.
- (5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Recovery of financial penalty

- 11 (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.
- (2) The local housing 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 local housing 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) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

Guidance

- 12 A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.”