

**APPENDIX – RELEVANT LAW.**

**Housing Act 2004**

**Section 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—

- Section 30 (failure to comply with improvement notice),
- Section 72 (licensing of HMOs),
- Section 95 (licensing of houses under Part 3),
- Section 139 (7) (failure to comply with overcrowding notice), or
- 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) The 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—

- The procedure for imposing financial penalties,
- Appeals against financial penalties,
- Enforcement of financial penalties, and
- 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.

**Housing Act 2004**

**Section 30 - Offence of failing to comply with improvement notice**

**(1)** Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

**(2)** For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

**(3)** A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**(4)** In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

**(5)** The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

**(6)** In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

**(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.

## **Housing Act 2004**

### **Schedule 13A – Financial Penalties under Section 249A.**

Paragraphs 1 to 9 of Schedule 13A set out the procedure for imposing financial penalties and provide (inter alia) as follows:-

#### 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

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."

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.

## **Housing Act 2004**

### **Schedule 13A – Appeals against Financial penalties.**

**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.

Paragraph 12 of Schedule 13A to the Act states that a local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions to impose financial penalties.

The Secretary of State has issued 'Guidance for Local Housing Authorities: Civil penalties under the Housing and Planning Act 2016 (April 2018) ('the Guidance').

Paragraph 3.5 of the Guidance sets out a list of factors which local housing authorities should consider when assessing the level of any penalty, these being:

- the severity of the offence;
- the culpability and track record of the offender;
- the harm caused to the tenant;
- the punishment of the offender;
- to deter the offender from repeating the offence;
- to deter others from committing similar offences; and
- to remove any financial benefit the offender may have obtained as a result of committing the offence.