

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of principles for determining financial penalties



Serving People **Improving Lives**

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1.0 The purpose of this statement of principles for determining financial penalties

- 1.1** This statement sets out the principles that Gedling Borough Council (“the Authority”) will apply in determining the amount of penalty charge payable by a landlord when that landlord breaches their duties as set out in The Smoke and Carbon Monoxide, Alarm (England) Regulations 2015 (“the Regulations”).

2.0 The legal framework

- 2.1** The Regulations introduce the following requirements for all landlords during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—

(i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;

(ii) a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and

(iii) checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy

- 2.2** Where the Authority has reasonable grounds to believe that:

- There are no or insufficient number of smoke alarms or carbon monoxide detectors in the property as required by the Regulations or;
- The smoke alarms or carbon monoxide detectors were not working at the start of a tenancy or licence;

Then the Authority shall serve on the Landlord in a method prescribed by the Regulations, a remedial notice (“the notice”) detailing the actions the landlord must take to comply with the Regulations, such action to be taken within 28 days from the date the notice is served.

- 2.3** Where the Authority are satisfied on the balance of probabilities that a landlord on whom a remedial notice has been served has failed to comply with the notice the Authority must undertake the remedial action specified in the notice.

- 2.4** Regulation 8 provides that the Authority may require the landlord to pay a penalty charge if the Authority is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice under regulation 5 has failed to take the remedial action specified in the notice within the period specified. The penalty charge is payable within 28 days of the penalty charge notice being served on the landlord.

3.0 The scope of this document

- 3.1** Regulation 13 requires the Authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.
- 3.2** The Authority may revise its statement of principles and, where it does so, it must publish the revised statement.
- 3.3** Where a penalty charge is made, the Authority must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.
- 3.4** In particular the Authority will have regard to satisfying the balance of probabilities that the landlord has failed to take the remedial action required in the notice.
- 3.5** This document sets out the principles which Gedling Borough Council will apply and will have regard to when exercising its powers under Regulation 8.

4.0 The purpose of imposing a financial penalty

- 4.1** The primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public, although they will also have a punitive effect. The primary aims of financial penalties will be to:
- change the behaviour of the landlord.
 - eliminate any financial gain or benefit from non-compliance with the regulations.
 - be proportionate to the nature of the breach of the regulations and the potential harm outcomes.
 - aim to deter future non-compliance.
 - reimburse the costs incurred by the Authority in undertaking work in default

5.0 Criteria for the imposition of a financial penalty

- 5.1** The Authority will need to be satisfied on the balance of probabilities that the landlord on whom a remedial notice has been served has failed to take the remedial action specified in the notice, only then can a financial penalty be issued.
- 5.2** In deciding whether it would be appropriate to impose a penalty, the Authority will take full account of the particular evidence, facts and circumstances of the breach under consideration.

6.0 Principles for determining the amount of a financial penalty

6.1 Regulation 8(2) states the amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts:

- 1) a punitive element for failure to comply with the absolute requirement to comply with a remedial notice (subject to any representation made by a landlord to the Authority) and
- 2) a cost element relating to the works carried out by the Authority.

6.2 It is important that landlord's understand the importance of installing and maintaining the correct alarms to ensure their tenants' safety. The punitive element of the penalty aims to hold those landlords who breach the regulations to account and ensure that the duties are taken seriously for the protection of tenants.

6.3 There is no other provision made in the regulations for enforcement authorities to redeem costs for any remedial work which they are required to carry out when a landlord fails to comply with a remedial notice. The collection of the financial penalty is the only method by which any recovery of the costs of the remedial works can be recovered. The level of remedial works required will vary depending on the circumstances of each case. For clarity, the Authority have set a fixed rate for its penalty charges which aims to recover all costs incurred with remedial works including officer time, materials and cost of actual works, together with a punitive element to deter landlords from non-compliance. The penalty charge is the only opportunity for the Council to penalise the landlord for non-compliance or recover associated costs.

6.4 The period within which the penalty charge is payable is 28 days beginning with the day on which the penalty charge notice is served.

6.5 Regulation 9 (2) states that if a landlord pays the penalty charge within 14 days beginning with the day on which the penalty charge notice is served, the penalty charge will be reduced by an amount specified in the notice.

6.6 The Authority may also review the penalty charge if the landlord serves a notice on the local housing authority requesting a review.

6.7 The Authority will, in accordance with the legislation reduce the penalty charge in relation to payment within a specified "early payment" period. The specified period for early payment is within 14 days beginning with the day on which the penalty charge notice was served.

6.8 For a first offence the fine applied will be £1,000 and an early payment will attract a discount of 25% making it £750.

6.9 For subsequent breaches of duty to comply with a remedial notice by the same landlord, the penalty will be £5,000 to deter continued non-compliance and an early payment will attract a discount of 50% making it £2,500.

7.0 Procedural matters

7.1 The regulations impose a number of procedural steps which must be taken before the Authority can impose a financial penalty. Before imposing a requirement on a landlord to pay a penalty charge the Authority must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the remedial notice, serve a penalty charge notice setting-out:

- the reasons for imposing the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) which an authorised person has installed at the premises;
- the amount of the penalty charge;
- that the landlord is required, within a period specified in the notice—
 - (i) to pay the penalty charge, or
 - (ii) to give written notice to the local housing authority that the landlord wishes the authority to review the penalty charge notice;
- how payment of the penalty charge must be made; and
- the person to whom, and the address (including if appropriate any email address) at which, a notice requesting a review may be sent and to which any representations relating to the review may be addressed.

7.2 A penalty charge notice must be paid within 28 days beginning with the day on which the notice is served, unless the Authority receives written notice from the landlord that they wish the Authority to review the penalty charge notice. However if the payment of the penalty charge is made within 14 days beginning with the day on which the penalty notice is served, the penalty charge will be reduced by an amount specified in the notice.

8.0 Review of penalty charge notice

8.1 In accordance with the provisions of Regulation 10 the Authority will on receipt of a written notice requesting a review from the landlord consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord. Any such written notice must be received by the Authority not less than 28 days after the day on which the penalty charge notice is served.

8.2 In conducting the review, the Authority will consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord.

8.3 A landlord who, having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal against the Council's decision. The grounds for appeal are set out in Regulation 11(2) and can also be found on the back of the penalty charge notice.

9.0 Remedial Action

9.1 It is the decision of this authority that the smoke alarms to be fitted within the premises where remedial action is undertaken are to be battery smoke alarms. However, these are to be tamper-resistant alarms with a minimum ten year battery life.

9.2 Where the penalty charge is not paid the Authority may recover the penalty charge on the order of a court, as if payable under a court order.