

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles for determining financial penalties

November 2015

Summary

This statement sets out the principles that Waverley Borough Council (the Council) will apply in exercising its powers to require a relevant landlord to pay a financial penalty.

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) introduces the following requirements for landlords during any period beginning on or after 1st October 2015 when the premises are occupied under a 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.

Note: The Regulations do not apply to registered providers of social housing, licensed houses in multiple occupation, live-in landlords, leases of seven or more years, student halls of residence, hostels and refuges or NHS accommodation.

Where the local housing authority has reasonable grounds to believe that:

- there are no or an 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 of licence.

Then the Authority must serve on the landlord (this may include the letting agent if they are the immediate landlord) in a method prescribed by the Regulations, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations. It is a statutory duty on the Council to serve the Remedial Notice.

If the local authority is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the Remedial Notice within 28 days, the authority must arrange for remedial action to be taken (where the occupier consents).

Under Regulation 8, the Council may also require the landlord to pay a penalty charge if the Council is satisfied on the balance of probabilities that the landlord on whom it has served a Remedial Notice (the notice) has failed to take the remedial action specified in the notice within the period specified.

Background

Regulation 13 of the regulations requires the Council to prepare and publish a statement of principles, which it proposes to follow in determining the amount of a penalty charge.

Where a penalty charge is made, the Council 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.

The aim of financial penalties will be to:

- deter non-compliance;
- eliminate any financial gain or benefit from non-compliance with the regulations;
- reimburse the costs incurred by the Council in undertaking works in default.

Charging a Financial Penalty

Under Regulation 8, a failure to comply with the requirements of a Remedial Notice allows the Council to require payment of a penalty charge.

Where the Council is satisfied on the balance of probabilities that the landlord on whom it has served a Remedial Notice has failed to take the remedial action specified in the notice within the period specified, the landlord will be required to pay a penalty charge.

Procedure for Charging a Financial Penalty

Under the regulations, the Council is required to follow a number of procedural steps before requiring a financial penalty to be paid.

The penalty can only be charged where a Remedial Notice has been served, which will give 28 days to take action (for example, to install alarms).

The Council 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 following:

- the reasons for the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) installed at the premises;
- the amount of the penalty charge;
- the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- how payment of the charge must be made; and
- the name and address of the person to whom a notice requesting a review may be sent.

The Financial Penalty

Regulation 8(2) states the penalty charge must not exceed £5,000.

In determining the level of the penalty charge, the Council has considered the following factors:

- The penalty needs to be at a level which is significant to deter non-compliance ;
- The cost of compliance with the regulations is minimal;
- The consequences of non-compliance can be fatal for tenants;
- The landlord should already have complied with the requirements of the Regulations prior to service of the Remedial Notice:
- The landlord will have been given the opportunity to comply with the Regulations following service of the Remedial Notice;
- There is a defence under the Regulations that the landlord has taken all reasonable steps to comply with the duty.

However in the interests of proportionality, the Council considers that a lesser penalty will be merited on a first offence only and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability.

It has been decided that the penalty charge shall be set at £2,500 for the first offence, which shall be reduced to £2,000 if payment is made within 14 days of service of the Notice. For further offences by the same landlord the level of charge shall be £5,000 with no reduction for prompt payment.

The period within which the penalty charge is payable is 28 days beginning with the day on which the Penalty Charge Notice is served.

The Council may, in exceptional circumstances, exercise discretion where the landlord gives written notice to the Council that the landlord wishes the authority to review the Penalty Charge Notice. This request must be made within 28 days beginning on the day on which the Penalty Charge Notice was served.

In conducting the review, the Council 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.

A landlord who is served with a notice confirming or varying the Penalty Charge Notice may appeal the Council's decision to the First-tier Tribunal.