

Statement of principles for determining financial penalties

Date: 8 March 2016

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Introduction

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

Purpose of the Statement of Principles

The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.

When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015.

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of the premises where there is living accommodation
- a carbon monoxide alarm is installed in any room used as living accommodation which contains a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts.

Where the Council believes that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

If the landlord fails to take the remedial action specified in the notice within the specified timescale, the Council can require them to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of the Regulations.

The Council will impose a penalty charge where it is satisfied, on the balance of probabilities that the landlord has not complied with the action specified in the remedial notice within the required timescale, unless the landlord can demonstrate they have taken all reasonable steps to comply.

The purpose of imposing a financial penalty

The purpose of the Council exercising its regulatory powers is to protect the interests of the public.

The aims of financial penalties on landlords are to:

- Lower the risk to tenants' health and safety
- Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms after being required to so, under notice
- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

The principles to be followed in determining the amount of a penalty charge

The Council considers that a lesser penalty charge will be appropriate for a first breach. In addition, prompt payment of the penalty charge for a first breach will attract a reduced penalty in recognition of early admission of liability and savings in administration costs.

However, the level of penalty charge will, as a minimum, cover the cost of all works in default, officer time, recovery costs, an administration fee and a penalty.

Subsequent breaches will attract a higher penalty in view of continuing disregard for legal requirements and tenant safety.

Criteria for the imposition of a financial penalty

A failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge.

In considering the imposition of a penalty, the Council will look at the evidence concerning the breach of the requirements of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action had been undertaken.

For example, landlords can demonstrate compliance with the Regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords need to take steps to demonstrate that they have met the testing at the start of the tenancy requirements. Examples of how this can be achieved are by tenants signing an inventory form and that they were tested and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach.

A financial penalty charge will be considered appropriate if the Council is satisfied, on the balance of probabilities, that the landlord who had been served with remedial notice under Regulation 5 had failed to take the remedial action specified in the notice within the time period specified.

Criteria for determining the amount of a financial penalty

The Regulations state the amount of the penalty charge must not exceed £5,000.

The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to the investigative costs, officer time, administration and any remedial works arranged and carried out by the Council's contractors.

The penalty charge is payable within 29 days beginning with the day on which the penalty charge notice is served.

The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served.

The charges are as follows:

- £2,500 for the first breach to comply with a remedial notice, i.e. at any property under the control of the landlord.
- £1,250 for early payment, representing 50% reduction, for the first breach to comply with a remedial notice, regardless of the address where the breach occurred
- £5,000 for each subsequent breach to comply with a remedial notice regardless of where the breach occurred

When deciding the appropriate penalty to impose, the Council may check with other Local Authorities to determine whether a previous breach of these Regulations has occurred.

Procedural matters for Penalty Charge Notices

The Regulations impose a number of procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge.

When the Council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within 6 weeks.

Where a review is requested within 29 days from when the penalty charge notice is served, the Council will consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this document. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice. The review request will be considered by the Environmental Health Manager

A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review.

If the penalty charge notice is not paid, then recovery of the penalty charge will be by an order of the court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is finally determined or withdrawn.

Remedial Action taken in default of the landlord

Where the Council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke Alarms – In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy such as a house in multiple occupation or building converted into one or more flats,
- having an unsafe internal layout where fire escape routes pass through a living room or kitchen, or
- is 3 or more storeys high.

Carbon Monoxide Alarms – In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

Additional Action

A Housing Health and Safety Rating System assessment will subsequently be undertaken, which will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors and protected walls and ceilings.

Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy, and with regard to the Herts Fire Safety Guide, and LACORS Housing - fire safety for certain types of existing housing.

All communications

Representations made against the Remedial Notice (regulation 5) or the Penalty Charge Notice (regulation 8) are to be sent to:

Environmental Health Manager, Borough of Broxbourne, Bishops' College, Churchgate, Cheshunt, Waltham Cross, Hertfordshire. EN8 9XB

Or by email to: envhealth@broxbourne.gov.uk

Further Information

Q&A booklet for the Private Rented Sector - landlords and tenants:
<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords>

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015:

<http://www.legislation.gov.uk/ukdsi/2015/9780111133439>