

Tendring District Council (Private Sector Housing Enforcement Team)

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of principles detailing the amount of a penalty charge to be imposed on Private Rented Sector Landlords following non-compliance with above Regulations

September 2015

1. Introduction

The purpose of this statement of principles is for determining the amount of a penalty charge for breaches of the aforementioned Regulations

- I. This statement sets out the principles that Tendring District Council (the Council) will apply in exercising their right to require a landlord to pay a penalty charge under the provisions of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, if the Council is satisfied that the landlord in question has failed to comply with the requirements of a Remedial Notice under Regulation 5. The Remedial Notice will give a time frame for compliance and detail any remedial works necessary.

The framework of policies and procedures

- II. There are a number of policies which govern how Local Housing Authorities carry out their statutory functions. As such any enforcement action taken will be in accordance with the principles set out in the Regulators' Compliance Code and Enforcement Concordat.

The legal framework

- III. Regulation 8 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 gives powers to a local housing Authority where it is satisfied, on the balance of probabilities, that a landlord on whom it served a remedial notice under Regulation 5, is in breach of their duty under regulation 6(1), the authority may require the landlord to pay a penalty charge. The penalty charge is to be determined by the said Authority.

The scope of this document

- IV. Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires a local housing Authority to prepare and publish a statement of principles to follow in determining the amount of such a penalty charge. In particular, the Authority will have regard to:

- The nature of the breach of the aforementioned Regulations

- The likely cost associated with carrying out the Remedial works if the landlord fails to comply with the requirements of the Remedial Notice
- The amount charged for non-compliance with existing Housing Act 2004 Notices
- Continued breaches of the aforementioned Regulations

2. Applicable principles

The purpose of imposing a penalty charge

- I. The primary purpose of a Local Housing Authority's exercise of its regulatory powers is to protect the interests of the public, although they may have a punitive effect.

The primary aims of financial penalties will be to:

- Recover the Council's costs in carrying out the necessary remedial work
- Lower the risk to tenants health and safety and wellbeing by ensuring the property in question benefits from a safe means of escape in the case of fire
- Promote compliance of landlords in the Private Rented Sector
- Eliminate any financial gain or benefit from non-compliance with regulation
- Educate landlords on the associated risks of non-compliance
- Be proportionate to the nature of the breach of legislation and the risk posed
- Aim to prevent future non-compliance

Criteria for the imposition of a penalty charge

- II. In deciding whether it would be appropriate to impose a penalty charge, the Local Housing Authority will take full account of the particular facts and circumstances of the breach under consideration. Factors which the Council will take into consideration include (the list is not exhaustive):

- The extent to which the circumstances from which the contravention or failure arose were within the control of the landlord
- The presence or absence of internal controls or procedures which were intended to prevent the breach
- The steps that the landlord has taken since being served a remedial notice under Regulation 5
- Whether the landlord has been obstructed in his duty, or if tenant removal has occurred

- Evidence provided that highlights compliance with any Remedial Notice served (this may include a signed inventory at the start of the tenancy, or photographic evidence showing measures installed with the date and time attached)
- A financial penalty will not normally be used if the Local Housing Authority considers that other regulatory action is more appropriate

Criteria for determining the amount of a penalty charge

III. The Regulations set a maximum penalty charge of £5000. A penalty charge will be set at a level which the Local Housing Authority considers to be proportionate to the breach and will take into account all the other circumstances of the case, which may include (the list is not exhaustive):

- The cost incurred by the Council including officer-time and the cost of carrying out the works following non-compliance
- Whether there has been repeated breaches or failure to comply
- Whether there have been breaches of other housing legislation
- Attempt to conceal the breach or failure to comply
- The likely impact on tenants and associated risk to their health and safety and wellbeing
- The absence of management controls or procedures intended to prevent the breach
- Co-operation with investigation undertaken by the Council
- Any unjustified written representations made against a Remedial Notice
- Where justified representations are made to the Council to review the penalty charge imposed
- Whether the landlord in question carries out the remedial works within the 28 days allowed for compliance in the Remedial Notice. Costs may be reduced as a consequence

Tendring District Council has initially set the charge at £600.00 for breaches of the aforementioned Regulations. The Council will review the penalty charge annually, and it will double to £1250.00 after the first year. The charge has initially been set at the current rate to allow landlords to bring properties in their portfolio up to the necessary standard and become accustomed to the Regulations. Breaches after the annual review will result in a charge of £1250.00 being levied after the first year, and subsequent increases will be set following the end of the second year of the Regulations being in place.

Procedural matters

IV. Regulations 5 – 7 impose a number of procedural steps which must be taken before the Council can impose a penalty charge.

- On receipt of a Penalty Charge Notice, a landlord can request the Council to review their decision
- The Council can confirm or vary their decision, and must serve notice on the landlord making them aware of their decision
- It is at this point, a landlord can appeal against the Council's decision to First Tier Tribunal
- The Tribunal can quash, confirm or vary the Council's decision
- No penalty charge is to be collected until the First Tier Tribunal have assessed the appeal and made a decision.

Time limits

- V. By virtue of Regulation 8 (3) the Local Housing Authority may not serve a penalty charge notice later than six weeks after it is first satisfied, on the balance of probabilities, that a landlord on whom it has served a remedial action notice is in breach of the duty under regulation 6 (1).

Revision procedure

- VI. Regulation 13 (2) provides that the Local Housing Authority may revise its statement of principles and, where it does so, it will publish the revised statement. The Council intends to review its statement of principles annually and increase the cost of Penalty Charge Notices at this time. Following a twelve month period, landlords who rent in the Private Rented Sector will have no excuse to not comply with requirements set out in the Regulations.