

## **Statement of Principles for Penalty Charges**

### **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

#### Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords to install at least one smoke alarm on each storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance such as a wood burning stove. The landlord must ensure the alarms are in working order on the first day of each new tenancy, commencing after 1<sup>st</sup> October 2015.

It is the duty of the Local Authority to serve remedial notices on any landlord that it believes to be in contravention of the regulations and to subsequently ensure that tenants are provided with the appropriate protection by carrying out any work necessary, with the consent of tenants, where a landlord has failed to act in bringing a property up to standard required by the regulations (referred to as 'work in default')

The regulations allow the local authority to issue landlords with penalty notices if they fail to comply with a Remedial Notice. In order to issue penalty notices, the local authority must publish a Statement of Principles which it will follow in determining the amount of a penalty charge.

The Statement of Principles aims to provide a clear and transparent method of charging including the levels of penalty charges based on the history of non compliance by the landlord. It details any possible mitigation that will be considered before a decision is made whether to issue an enforcement action against a landlord who has failed to comply with a Remedial Notice. The purpose of the enforcement regime is to encourage compliance.

#### Enforcement

Where local 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

The Authority must serve on the landlord within 21 days of determination, a remedial notice detailing the actions the landlord must take to comply with the Regulations. The landlord can within 28 days of service of Remedial Notice, request a written review of notice to an authorised officer.

If after 28 days the Authority is satisfied on the balance of probabilities that the landlord on whom it has served a Remedial Notice is in breach of his duty under the regulations, the authority may serve the landlord with a penalty charge, the level of

which will be determined by this Statement of Principles. The Local Authority will contact the tenant and the landlord to arrange to revisit the premises to determine if the remedial notice has been met. The penalty charge notice must be served within 6 weeks of the Authority deciding a landlord is in breach of their duty under the regulations. The Authority must carry out works in default within 28 days of breach of remedial notice with the consent of the occupiers. The regulations state the amount of the penalty charge cannot exceed £5000.

### Principles to be followed in Enforcing the Regulations

Before imposing a requirement on a landlord to pay a penalty charge, the Authority must have completed a number of procedural steps. This process includes opportunities for the landlord to request reviews of decisions. The liability of the landlord may depend on written evidence produced by the landlord in mitigation of any non-compliance which may include the inability to access a property. If the landlord can demonstrate all reasonable steps were taken, other than legal proceedings, to become compliant, they will be exempt from liability. It is expected that a landlord writes to tenants explaining the legal requirement to install the alarms for the tenant's safety.

There are a number of stages in the enforcement process, including opportunities for the landlord to ask for a review of any decision to issue a remedial notice and/or serve a Penalty Charge Notice. This ensures the process is fair and proportionate and gives the landlord the opportunity to take action. The process is summarised in the table below.

### Process Summary

<p><b>Issue of a Remedial Notice.</b> The Authority will, within 21 days of deciding it is reasonable to do so, issue a Remedial Notice on the landlord at the last known address of the landlord.</p>
<p><b>Right of Review of Remedial Notice.</b> The landlord has the right to request a review of the decision to issue the Remedial Notice. Any request must be in writing and made within the 28 days the landlord has for compliance. This request must state the grounds the landlord believes require reconsideration. Grounds for consideration would include that the alarms were in fact fitted at the time of issue of the Remedial Notice and checks were made at, or immediately prior to, a new tenancy starting or that the occupier has refused entry.</p>
<p><b>Review of Remedial Notice.</b> An authorised officer will review the decision to issue the Remedial Notice. Such review will be completed within a reasonable period of time and no longer than 35 days from the issue of the Remedial Notice.</p>
<p><b>Non-compliance with Remedial Notice.</b> No earlier than 28 days and no longer than 35 days from the service of the Remedial Notice, having received no request for a review or having completed any review and upheld the Remedial Notice, an authorised officer will visit the property to determine compliance with the Remedial Notice. If works have not been undertaken to rectify any breach of the regulations or, on the balance of probabilities giving consideration to the circumstances and any representations made by the landlord, it is likely that these works have not been undertaken; the authorised officer will refer the matter to the Environmental Health Group Leader.</p>

**Referral for Action.** The Environmental Health Group Leader will ensure that the Remedial Action specified in the Notice is carried out within 28 days of the referral.

**Penalty Charge Decision.** The Environmental Health Group Leader will consider whether it is appropriate to issue a Penalty Charge Notice. They will consider the circumstances of the matter; whether the regulations have been adhered to; whether there are any mitigating circumstances which have prevented the landlord from complying with the Remedial Notice. The decision to serve a Penalty Notice or not will be made with 28 days of any referral and if a penalty is to be issued, it will be served within 4 days of the decision.

**Penalty Charge Notice.** Where the Environmental Health Group Leader decides that it is reasonable to issue a Penalty Charge Notice, consideration will be given to the past behaviour of the landlord in relation to Remedial Notices and previous Penalty Charges, in determining the level of the Penalty Charge. A Penalty Charge Notice in accordance with the regulations will then be served on the landlord at the last known address of the landlord.

**Review of a Penalty Charge Notice.** The landlord has the right to request, in writing, a review of a Penalty Charge Notice within 28 days of the issue date. The Environmental Health Group Leader must serve a decision notice on the landlord to confirm, vary or withdraw any notice as soon as reasonably practical after any request is received. Such notice must contain information on how the landlord can appeal the decision to the First-Tier Tribunal.

**Payment of Penalty Charge.** The landlord has 28 days to pay the amount of the Penalty Charge. If payment is made within 14 days, the amount of the Penalty Charge maybe reduced by an amount determined by the Authority in accordance with the **Statement of Principles.**

**Right of Appeal.** The landlord has the right to appeal the issue of the Penalty Charge Notice in writing to the First-Tier Tribunal on the grounds that the decision is unreasonable or wrong in law of that the charge is unreasonable. A Penalty Charge Notice is suspended until the appeal is decided.

**Enforcement.** The Council can apply to a County Court for a court order to enforce a Penalty Charge Notice where the landlord has not paid within 28 days of the service of the charge notice and;

- The landlord has not made an appeal to First-Tier Tribunal; or
- Has made an appeal which has since been determined in the Authority's favour.

Any application to the court to enforce a Penalty Charge must be supported by a certificate for the Chief Finance Officer that the penalty remains unpaid.

### The Penalty Charge

The penalty charge allows a charge to be imposed on landlords who fail to comply with the regulations and the level of charge is dependant on level of non compliance.

The Authority considers that a lesser penalty will be merited on the occasion of a first failure to comply with a Remedial Notice and that prompt payment of the penalty within 14 days of service on that first occasion should attract a reduced penalty in recognition of admission of liability and savings in administration costs.

Repeated failures will attract progressively higher penalty in view of continuing disregard for legal requirements and tenant safety. If, following the service of a first penalty charge notice, further failures are identified but action to enforce was initiated

prior to the service of the first penalty charge, these separate failures will be treated as first failures and attract the lowest penalty charge if the landlord complies with the requirements. The penalty charge for a failure will increase for every previous failure by the landlord up to a maximum of £5000.

### Purpose of Imposing a Financial Penalty

The Primary purpose of the Authority in exercising its regulatory power is to protect the interests of the public.

The aims of the financial penalties are;

- To eliminate any financial gain or benefit from landlord's non-compliance with the regulations;
- To deter future non-compliance.

### Level of Penalty Charge

The Penalty Charge shall be set at £1,000 for the first failure to comply with a Remedial Notice but this will be reduced to £750 if paid within a 14 day period.

Should the landlord not comply with the future Remedial Notices then the fine shall be set according to the table below:

<b>Offence</b>	<b>Fine</b>	<b>Offence</b>	<b>Fine</b>
<b>Second</b>	£2000	Fourth	£4000
<b>Third</b>	£3000	Fifth or More	£5000

No discount will be given for prompt payment on fines arising from repeat failures.

### Appeals in Relation to a Penalty Charge Notice

The Authority may recover the penalty charge on the order of a court.

Recovery proceedings may not be started before the end of the period during which a landlord may give written notice to review the penalty charge or, where an appeal has been made, before any appeal to the First-Tier Tribunal against the Authority's decision has been finally determined or withdrawn.

The Authority may revise this Statement of Principles at any time it considers it reasonable to do so but where it does so it will publish the revised statement.

Any persons subject to the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will be directed to consider these regulations in full which will be available on the North Tyneside Council website.