



# City of Westminster Cabinet Member Report

<b>Decision Maker:</b>	Councillor Rachael Robathan Cabinet Member for Housing
<b>Date:</b>	14 <sup>th</sup> March 2017
<b>Classification:</b>	General Release
<b>Title:</b>	Smoke and Carbon Monoxide Alarm (England) Regulations 2015
<b>Wards Affected:</b>	All
<b>City for All Summary</b>	Inform businesses of their responsibilities, target those acting irresponsibly (CITY FOR ALL - CHOICE)  Support every neighbourhood to remain a great place to live, work and visit. (CITY FOR ALL - HERITAGE)
<b>Key Decision:</b>	No
<b>Report of:</b>	Ian Hennessy, Head of Residential Services, Public Protection and Licensing

## 1. Executive Summary

- 1.1 The **Smoke and Carbon Monoxide Alarm (England) Regulations 2015** (“the Regulations”) have been approved by Parliament and came into effect on the 1st October 2015.
- 1.2 The Regulations impose duties upon private sector landlords (as defined in the Regulations) in relation to the installation and maintenance in proper working order of smoke and carbon monoxide alarms in premises which are occupied under a tenancy.
- 1.3 The Regulations also impose duties on the local housing authority to take action where it is satisfied that a landlord has failed to comply with one or more of those duties.

1.4 The Regulations also empower a local housing authority, in certain circumstances, to require a landlord who has failed to comply with his duty to pay a penalty charge of up to £5000. The amount of the penalty charge is determined by the local housing authority. The amount of the penalty charge must be determined by the local housing authority in accordance with a statement of principles which it must prepare and publish.

## **2. The Legal Framework**

2.1 Regulation 4 of the Regulations require private sector landlords, during any period when the premises are occupied under a specified tenancy, which is defined by the Regulations.

- (a) to install at least one smoke alarm in every storey of their property on which there is a room used wholly or partly as living accommodation;
- (b) to install a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance

The regulations do not state whether these should be hard wired or battery smoke alarms.

2.2 Landlords are required to ensure that all such alarms are in proper working order at the start of each new tenancy.

2.3 Regulation 5 of the Regulations require local housing authorities to issue a remedial notice where they have reasonable grounds to believe that, in relation to premises situated within their area, a landlord has not complied with one or more of the requirements in Regulation 4 (the fitting and testing of the required alarms). A remedial notice will require a landlord to take remedial action which the local housing authority considers should be taken.

2.4 Regulation 6 of the Regulations provides that the landlord must take the remedial action specified in the notice within 28 days from the day on which the notice is served.

2.5 If the local housing authority is satisfied that the landlord has failed to take the remedial action specified in the notice

- (a) it must arrange for an authorised person to take the said remedial action, if the occupier of the premises consents (Regulation 7); and
- (b) it may require the landlord to pay a penalty charge of such amount as the authority may determine, that amount of the penalty charge must not exceed £5000, by serving a penalty charge notice on the landlord (Regulation 8).

- 2.6 If the penalty charge is not paid the local housing authority may recover the penalty charge on the order of a court, as if payable under a court order. Sums received by a local housing authority under a penalty charge may be used by the authority for any of its functions.
- 2.7 Regulation 13 requires the local housing authority to publish a **Statement of Principles** which it proposes to follow in determining the amount of a penalty charge. The local housing authority may revise its statement and where it does so, it must publish the revised statement.
- 2.8 In determining the amount of a penalty charge, a local housing authority must have regard to the statement of principles which was most recently prepared and published at the time when the breach in question occurred.
- 2.9 A statement of principles has been prepared by Westminster City Council as required by Regulation 13. It sets out the framework which Westminster City Council will follow in determining the amount of the penalty charge. Westminster City Council will publish this statement of principles on its website.

### 3. Recommendations

- 3.1 That the Cabinet Member for Housing approves the Statement of Principles for determining financial penalties under these Regulations.
- 3.2 That the Statement of Principles be uploaded to the website and included in publication lists for the authority.
- 3.3 That the Statement of Principles is reviewed on a regular basis or as the need arises from factors such as First Tier Property Tribunal appeals.
- 3.4 The full proposed Statement of Principles is enclosed as **Appendix A** for your consideration and a summary table of the proposed charges shown here:

<b>Proposed Charges</b>	<b>Level Of Penalty Charge</b>	<b>Reduction for early payment ( within 14 days)</b>
First Offence	<b>£2500</b>	50% = £1250
Subsequent Offences	<b>£5000</b>	0% (not available)

- 3.5 That recommendations, if approved, will be implemented from the 13th February 2017.

#### **4. Reasons for Decision**

- 4.1 Prior to any penalty charge being issued by the local authority, the landlord will have been afforded the opportunity to comply with his duty under the Regulations through the service of a formal remedial notice. The landlord has the opportunity to make written representations against the notice within the 28 day period of compliance, which the Department will consider.
- 4.2 If the Council is satisfied that the formal notice has not been complied with within 28 days from the date of service of the notice, then the local authority has a statutory duty under the Regulations to carry out remedial works (the installation of the required alarms).
- 4.3 There are no specific provisions in the Regulations which enable the authority to recover the costs of undertaking these works. The Regulations provide that the authority may require the landlord to pay a penalty charge where he has failed to comply with the requirements of the remedial notice.
- 4.4 Any penalty charge will include the cost of all the works in default, officer time, recovery costs, administration costs and the penalty or non-compliance. There are a number of properties exempt from these regulations and these are listed in **Appendix B**.
- 4.5 Repeated offences will attract a higher penalty in view of the continuing disregard for the legal requirements and tenant safety by the landlord.
- 4.6 A provisional benchmarking exercise was undertaken of a number of local authorities across the country that determined that charges for first offences ranged from £500 to the maximum of £5000 (with 50 % discount being offered for early payment – in line with legislation requirements).
- 4.7 If the landlord does not agree with the civil penalty charge they can write to the Council and request a review within 28 days. After that if they remain dissatisfied they can appeal to the First Tier Tribunal. Appeals can be made on the grounds that the decision of the authority to vary or confirm the penalty charge notice was based on factual error, it was wrong in law or was unreasonable for any other reason. The appeal can also be made on the grounds that the amount charged was unreasonable

#### **5. Financial Implications**

- 5.1 The Penalty Charge Notice process is not expected to be a significant source of income to the Council as every landlord must be given 28 days to act under a formal 'Remedial Notice' and install the required smoke or carbon monoxide alarms. It is expected that compliance rates will be high to ensure avoidance of incurring a penalty charge notice.

5.2 Arrangements have been made with a partnered contractor of the Council to conduct any works in default during the enforcement process. The costs of these works have been agreed as below.

	<b>Works in Default</b>	<b>Proposed charge £'s</b>
1.	Charge for supplying and fixing alarm devices	Smoke Alarm £36 per unit CO Alarm £128 per unit
	Charge for site attendance by authorised contractor, including any abortive visits and expenses	£30

If you have any queries about this report, please contact:

Ian Hennessy, Head of Residential Services, Public Protection and Licensing  
[ihennessy@westminster.gov.uk](mailto:ihennessy@westminster.gov.uk)

For completion by the **Cabinet Member for Housing**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: **Councillor Rachael Robathan, Cabinet Member for Housing**  
\_\_\_\_\_

State nature of interest if any .....  
.....  
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*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendations in the report entitled **Smoke and Carbon Monoxide Alarm (England) Regulations 2015** and reject any alternative options which are referred to but not recommended.

Signed .....

Councillor Rachael Robathan, Cabinet Member for Housing

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment: .....  
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

## **Appendix A**

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

#### **Statement of Principles for determining the amount of the Penalty Charge**

##### **Introduction**

The purpose of this Statement of Principles is to set out a framework for determining the amount of a penalty charge to be imposed for breaches of the above Regulations.

This statement sets out the principles that Westminster City Council (the Council) will apply in exercising their right to require a landlord to pay a fixed 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 breached his duty under Regulation 6(1) to comply with the requirements of a Remedial Notice under Regulation 5.

##### **The Legal Framework**

Regulation 8 provides that where a local housing Authority 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 compliance duty under Regulation 6(1), the Authority may require the Landlord to pay a penalty charge. The amount of the charge is to be determined by the Authority, up to a statutory maximum of £5000.

##### **The scope of this document**

Regulation 13 requires a local housing authority to prepare and publish a Statement of Principles to be followed in determining the amount of such a penalty charge. In particular the council will have regard to:-

- The nature of the breach of the Regulations
- Continued, or repeat, breaches of the Regulations.

The primary aims of financial penalties will be to:

- Recover the Council's costs in carrying out the necessary remedial work, under Regulation 7.
- Lower the risk to tenant's health & safety & wellbeing by ensuring that the property in question benefits from basic early warning in the event of a 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**

- In deciding whether it would be appropriate to impose a penalty charge, the Council will take full account of the particular facts and circumstances of the regulation breach under consideration. Factors which the Council will take into consideration include, but are not limited to:-
- The extent to which the circumstances giving rise to the contravention were within the control of the landlord.
- The presence or absence, of internal controls or procedures on the landlord's part which were intended to prevent the breach.
- The steps that the landlord has taken since being served with the remedial notice,
- Whether the landlord has been obstructed in his duty, or if tenant removal of alarms has occurred.
- Evidence provided that supports compliance with a Remedial Notice, (this may include a signed inventory at the start of a tenancy, or photographic evidence showing alarms installed, with a date & time stamp).

### **Criteria for determining the amount of a penalty charge**

The Regulations set a maximum penalty charge of £5000. A penalty charge will be set at a level which the council considers is proportional to the breach and will take into account all the other circumstances of the case, which may include (the list is not exclusive):-

- The charge will include the costs incurred by the Council in taking remedial action following non-compliance, including officer time and the cost of contractor supervision.
- Whether or not the breach under consideration is a first-time breach.
- Where justified representations have been made to the Council to formally review the penalty charge imposed, under Regulation 10.

Westminster City Council has set the penalty charge as follows:-

First-time breach **£2,500**. An early payment of the penalty charge, within 14 days from penalty charge notice service, will attract a discount of 50%. (to **£1,250**)

Subsequent breaches by the same landlord **£5,000**. No early payment discount will be available in this case.

The Council will exercise discretion, and may not make, or may reduce, any penalty charge where the Landlord is a housing charity providing housing services for vulnerable persons.

The Council will enforce penalty charges, to include obtaining a Court Order for payment, where necessary.

### **Review of Penalty Charge Notice & Appeals**

On receipt of a Penalty Charge Notice a landlord can, within 28 days from Notice service, make a written request to the Council to review their decision.

The Council will review the facts of the case and can confirm or vary their decision, and will serve notice giving the result of their review.

A landlord can then appeal against the review decision to the First Tier Tribunal; the Tribunal can then quash, confirm, or vary the Penalty Charge Notice (but cannot increase the penalty charge).

The operation of the Penalty charge notice is suspended until the Tribunal has determined the appeal.

## **Appendix B**

### **Properties exempt from the Regulations**

The following types of housing are exempt from the requirements of the Regulations;-

- Registered Social Housing properties
- Licensed HMOs
- Live-in landlords
- Properties held on a lease of 7 years length or more
- Student Halls of Residence
- Hostels and refuges
- Care homes, hospitals, hospices and other NHS accommodation