

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 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.