

Regulation and Enforcement – Enforcement Policy
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Statement of Principles

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 impose duties on certain landlords of residential premises in respect of smoke and carbon monoxide alarms. These regulations are enforced by local housing authorities and allow for the imposition of a penalty charge if a landlord fails to comply with a remedial notice served by the authority.

Local Housing Authorities are required to prepare and publish a Statement of Principles which they must have regard to in determining the amount of a penalty charge.

Birmingham City Council will have regard to this statement when determining the amount of a penalty charge and may review, revise and republish the statement when necessary.

Duties on Landlords

Regulation 4(1) requires that a landlord must ensure that:

a) During any period beginning on or after 1 October 2015 when the premises are occupied under the tenancy:

- i) A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- ii) A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel- burning combustion appliance; and

b) Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Properties subject to Part 2 or Part 3 licensing are exempt from the 2015 Regulations although compliance is achieved through an additional clause within the property licensing conditions.

Remedial Action

Birmingham City Council has a duty to serve a Remedial Notice within 21 days where it has reasonable grounds to believe that a landlord is in breach of one or more of the duties under regulation 4(1).

'Reasonable grounds' would include being informed by a tenant, letting agent or housing officer that the required alarms are not installed. The regulations do not require the enforcing authority to enter the property or prove non-compliance in order to issue a remedial notice, however, the City Council will aim to visit such properties to confirm that the required works have not been undertaken.

The landlord must take the remedial action specified in the notice within 28 days beginning with the day on which the notice is served.

Penalty Charge

Where this authority is satisfied, on the balance of probabilities, that a landlord has not taken the remedial action specified in the notice within 28 days, the authority will:

- Arrange for a person authorised by the authority to undertake the remedial action specified in the notice within 28 days; and
- Require the landlord to pay a penalty charge of such amount as the authority may determine, but which must not exceed £5,000.

The following points are '**Principles to be applied in determining the imposition of a Penalty Charge**'.

1. The purpose of imposing a penalty charge

The primary aims of financial penalties will be to:

- Recover the costs incurred by the City Council in investigating the matter, taking action and in arranging any necessary remedial work.
- Recover the City Council's costs of the actual remedial work
- Reduce the risk to tenants' health and safety by ensuring that 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 with legal standards.
- 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.

2. Criteria for the imposition of a penalty charge

In deciding whether it would be appropriate to impose a penalty charge, we will take account of the circumstances under consideration. Factors which the Council will take into consideration include, but are not limited to:

- 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 with a Remedial Notice under Regulation 5.
- Whether the landlord has been obstructed in his duty, or if the tenant has removed detectors.
- Evidence of compliance with the legislation g. 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 City Council considers other regulatory action is more appropriate.

3. Criteria for determining the amount of a penalty charge

The Regulations set a maximum penalty charge of £5000. In determining the amount of penalty to be applied, each case will be treated on its merits and will take account of the following:

- That the landlord will have been served with a Remedial Notice and will, therefore, have been provided with sufficient time in which to put matters right.
- That, by not complying with the requirements of the remedial notice, the landlord is demonstrating a clear disregard for their tenant's safety and for compliance with the legislation.
- Whether works are undertaken by the landlord or, in default, by the Council.
- The cost incurred by the Council including officer-time and the cost of carrying out the works following non-compliance.
- Whether there have 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.
- Representations to the Council to review the penalty charge which are considered to be justified.
- Any other relevant matters.

In the absence of mitigating factors, Birmingham City Council will apply the maximum charge of £5,000.

4. Time limits

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).

5. Review of a Penalty Charge Notice

If a landlord does not agree with a penalty charge, they can make a request to the authority for it to be reviewed. This request must be in writing and within the time period specified in the penalty charge notice.

Senior Officers of the City Council (not previously involved in the case) will consider any representations and will decide whether to confirm, vary or withdraw the penalty charge notice. A landlord may appeal to the First-tier Tribunal if the penalty charge notice is confirmed or varied by the City Council after a review. The Tribunal can then quash, confirm or vary the Council's decision.

In considering any representations, the Council will have regard to:

- Whether the provisions of the legislation have been correctly applied.
- Whether the provisions of this policy have been followed.
- Any other relevant matters, including, but not limited to, the criteria for determining the amount of a penalty charge (section 3).

Review requests should be made in writing and addressed to the

Private Rented Sector Operations Manager either by email to PRS@birmingham.gov.uk or by post to:

Birmingham City Council,
Regulation and Enforcement Division Services,
Private Rented Sector
Units 1-3 Ashted Lock Way,
Birmingham,
B7 4AZ

6. Recovery of a Penalty Charge

Subject to the determination of any appeal, the City Council will recover any unpaid penalty charge, plus legal costs, through court proceedings.

7. Revision of statement of principles

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.

Further guidance for landlords can be found at:

<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-qa-booklet-for-the-private-rented-sector-landlords-and-tenants>

Created: 22/03/22