

Statement of Principles.	 www.croydon.gov.uk
<u>Private Housing Enforcement Team - Smoke and Carbon Monoxide (England Regulation 2015.</u> Last updated 1st January 2017	

Introduction:

The Council is required under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge.

The Council may revise its statement of principles at any time, but where it does so, it must publish the revised statement. The current statement of principles is to be used when deciding on the amount for the penalty charge.

Duties on Landlords

The Regulations require that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm(s) are in proper working order on the day the tenancy starts.

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

Enforcement

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a Remedial Action Notice (RAN) on the landlord under Regulation 5. This will list the remedial works and direct the Landlord on how to comply with his duty.

If the Landlord then fails to take the remedial action, specified in the RAN, within specified timescale, the Council must do the works in default. The Council can then reclaim all reasonable costs incurred.

In addition to the RAN the Council can require a Landlord to pay a penalty charge under Regulation 8, where it is satisfied that on the balance of probabilities, that the Landlord has not satisfactorily completed the remedial works within the required timescale.

Criteria for determining the amount of a financial penalty

The Regulations state the amount of the penalty charge must not exceed £5,000.

The penalty charge comprises two parts;

- a punitive element for failure to comply with the absolute requirement to comply with a remedial notice, and
- a reasonable cost element relating to costs incurred by the Council in complying with its duties (including completing the works).

The reasonable costs incurred by the Council could include time spent with; investigating, surveying, contacting relevant parties, administration and any remedial works (labour and materials) arranged and carried out by the Council's contractors. This cost element is unlikely to exceed £500.

The penalty charge is payable within 28 days beginning with the day on which the Penalty Charge Notice is served; (subject to representations being made).

The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served; (subject to representations being made). A £1,000 early payment reduction has been built into the charging structure for the first offence only.

The penalty charge (below) is the sum of the punitive charge and costs:

	Payment period	Penalty Charge	
		Punitive Charge	(and) Costs
First Offence	Within 28 days	£2,500	Reasonable costs plus 30% administrative charge
	Early Payment	£1,500	
Second and subsequent offences	Within 28 days	£4,500	Reasonable costs plus 30% administrative charge

The early payment period is 14 days from service of the Penalty Charge Notice. A review requested within the 14 day period will enable the Landlord to be eligible for the early payment fee; dependent on the decision of the review.

The Purpose of Imposing a Financial Penalty Charge:

The purpose of the Council in exercising its regulatory powers is to protect the interests of the public.

The aims of financial penalties on landlords are to:

- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms in line with the Regulations and after being required to so, under notice
- Eliminate financial gain or benefit from non-compliance with the Regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

Criteria for the Imposition of a Financial Penalty (Punitive Element):

In deciding whether a financial penalty is appropriate, the Council will take full account of the particular facts and circumstances of this breach and past breaches. The expectation is that a landlord is proactive with complying with his duties in order to protect the tenant from fire. The Remedial Action Notice (RAN) offers the landlord additional time in which to comply.

The penalty charge notice will be issued unless on the balance of probabilities the landlord has looked to comply with his duties. To determine this the Council will look at the evidence concerning the breach of the requirements of the notice and what action the landlord has taken to try to comply with his duties both at the start of a tenancy and/ or in response to the RAN.

The evidence the Council will collect includes that from a property inspection, or from information provided by the tenant, landlord or agent on whether any remedial action had been undertaken and satisfactory compliance has been achieved.

Landlords can demonstrate compliance with their duty to install by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords can demonstrate compliance with their duty to undertake testing at the start of the tenancy. This could be achieved by tenants signing an inventory form and that they were tested and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should then test the alarm to ensure it is in proper working order.

Appeals of Penalty Charge Notices

The Landlord can request in writing that the local authority review the penalty charge notice. The request for a review must be made within 28 days on which the penalty charge notice is served.

The local authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. The Council in making decision will consider the following:

1. Whether the facts of the matter supported the service of the penalty charge notice.
2. The decision was correct having regard to the relevant laws.
3. The amount of the penalty charge was reasonable having regard to any mitigating or other circumstances submitted with the request for review.

Remedial Works to comply with Regulations

To comply with these Regulation the type of smoke alarm deemed acceptable is either a mains powered alarm or one operated with a battery with a 10 year life with one fitted on each floor. This are deemed reasonable in order to comply with these Regulations.

It is important to remind landlords that a full fire risk assessment should be undertaken to ensure that this level of detection meets the risk within the premises. The Council can assess risk using the Housing Act 2004 and this may require additional detection. Such circumstances include mode of occupation, nature of tenants, property layout or height of building.

Carbon Monoxide Alarms – In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

All communications for representations made against the Remedial Notice (Regulation 5) or the Penalty Charge Notice (Regulation 8) are to be sent to:

Shayne Coulter
Public Protection Manager
Croydon Council
Place department – Safety division
Housing standards & enforcement team
Bernard Weatherill House
6th floor - Zone D 8 Mint Walk Croydon CR0 1EA

Web: www.croydon.gov.uk
Telephone: 0208 726 6100

Or by email to: hsg-privatehousing@croydon.gov.uk