

Telford and Wrekin Council

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

Order of Contents

Introduction and the legislation
Enforcement procedure
Statement of principles for determination of penalty charge

Contact information:-

Environmental Health
Health, Well Being and Public Protection
Addenbrooke House
Ironmasters Way
Telford
TF3 4NT

environmental.health@telford.gov.uk

01952 381818

Please note that you must take your own legal advice if you wish to check any aspect of The Smoke and Carbon Monoxide (England) Regulations 2015. This document is only intended to be a guide as to how Telford and Wrekin Council will investigate any possible breach of the regulations.

Introduction and the legislation

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ("the regulations") came into force on 1st October 2015 and state under Regulation 4 that:-

A relevant landlord in respect of a specified tenancy must ensure –
During any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy –

A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;

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

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.

Telford and Wrekin Council (the Council) are the enforcing authority of the regulations and where it is found that a landlord has failed to comply with the requirements of the regulations a remedial notice will be issued to ensure compliance.

General guidance on the requirement of the regulations for landlords and tenants is available at: www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords.

Some useful definitions from the legislation:-

Relevant landlord

A relevant landlord is the immediate landlord in respect of a specified tenancy. Please see Part 2, Regulation 3 of the Regulations.

Specified tenancy

A specified tenancy means a tenancy of residential premises in England which –
grants one or more persons the right to occupy all or part of the premises as their only or main residence;
provides payment of rent (whether or not a market rent); and
is not a tenancy of a description specified in the Schedule to these Regulations.

New tenancy

A 'new tenancy' means a tenancy granted on or after 1 October 2015. For a full definition, including exclusions please refer to Regulation 4(4).

Solid fuel burning combustion appliance

Carbon monoxide alarms must be installed in rooms containing an appliance that burns some type of solid fuel, such as a coal fire, log burning stove, etc.

Living accommodation

Regulation 4(2) states that a bathroom or lavatory is to be treated as a room used as living accommodation.

Enforcement procedure

1. Identify a breach of the regulations

During the course of investigating a service request of any nature, an officer of the Council will identify that a breach of the regulations has occurred, either through an absence of a smoke alarm where required; absence of a carbon monoxide alarm where required and / or the failure to check the operation of each prescribed alarm is in proper working order on the day the tenancy began.

The Council must have reasonable grounds to believe that the landlord is in breach of the regulations. 'Reasonable grounds' can include being informed by a tenant, a representative of the tenant, letting agent, housing officer or other professional officer in the course of their duty, that the prescribed alarms are not installed and / or were not in proper working order on the day the tenancy began.

The regulations do not require the enforcing authority to enter the property or prove non-compliance to issue a remedial notice. This is intelligence led enforcement of the regulations.

2. Issue a remedial notice

As defined in Part 3, Regulation 5 of the regulations, where the Council has reasonable grounds to believe a landlord is in breach of the requirements in regulation 4, the Council must serve a remedial notice on the relevant landlord. The remedial notice must contain the information set out in regulation 5(2) and must be served within 21 day beginning with the day on which the Council decides it has reasonable grounds under Paragraph 1.

3. Compliance with the remedial notice

The landlord has 28 days beginning with the day on which the remedial notice is served to comply with the notice.

If a landlord can show they have taken all reasonable steps, other than legal proceedings, to comply with the notice, they may not be in breach of the duty to comply with the remedial notice in regulation 6. However, this will depend upon the nature of the evidence provided and the counter evidence which the Council may already hold in relation to the alleged breach.

If a landlord does not or cannot prove they have taken all reasonable steps, it is then up to the Council to decide if they are in breach, by judging on a balance of probabilities. Whether any evidence provided confirms compliance is for the Council to determine. Some examples of evidence could be dated photographs, installation records, signed and dated property inventory documents etc.

If a tenant informs the Council that no remedial action has been taken is it reasonable for the Council to be satisfied, on the balance of probabilities that the landlord is in breach.

4. Remedial action

If the Council is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the remedial notice within 28 days, the Council is under a duty to arrange for remedial action to be taken. This is to ensure that tenants are protected by working alarms and may involve installing a required alarm, repairing an installed alarm or checking an installed alarm is in proper working order.

Remedial action must be taken within 28 days beginning with the day on which the Council is first satisfied under Regulation 7(1).

5. Penalty Charges

The Council can impose a civil penalty of up to £5,000 on landlords who do not comply with a remedial notice. The Council will be open and transparent regarding the civil penalty and a statement of principles is contained within this document. The Council will follow the statement of principles when determining the amount of a penalty charge and these principles are to be determined by the Council.

Where the Council intends to impose a penalty, it must give written notice of its intention to do so on the landlord, in the form of a 'penalty charge notice'. This must set out certain required information as contained in Regulation 9 of the regulations.

The calculation of the penalty will be in line with the Council's published statement of principles.

6. Review

As outlined in Regulation 10 of the regulations, if a landlord does not agree with a penalty charge notice, they can make a request to the Council for it to be reviewed. This request must be made in writing and within the time period specified in the penalty charge notice.

If the Council receives a request for a review, the Council must consider any representations made by the landlord, decide whether to confirm, vary or withdraw the notice, and serve a notice of its decision on the landlord. Where the Council decides to confirm or vary a penalty charge notice, it must inform the landlord that they can appeal to First-tier Tribunal.

The Council may amend, suspend, or revoke a remedial notice in writing at any time. If a remedial notice is suspended and the Council decides to re-instate this once the compliance period has run out or is shortly about to, the Council will re-issue a new remedial notice, starting a new 28 day compliance period.

7. Appeals

To ensure that the enforcement process is administered fairly, landlords are provided with a means of appeal which is detailed in Regulation 11 of the regulations. A landlord may appeal to the First-tier Tribunal if the penalty charge notice is confirmed or varied by a Council after a review. If an appeal is lodged, the penalty cannot be enforced until the appeal is disposed of.

Appeals can be made on the grounds that the decision of the Council to vary or confirm the penalty charge notice was based on a factual error, was wrong in law, or was unreasonable for any other reason. Appeals can also be made on the grounds that the amount of the penalty is unreasonable.

8. Recovery of penalty charge

As detailed in Regulation 12 of the regulations, the Council may recover the penalty charge on the order of a court, as if payable under a court order.

Statement of principles for determination a penalty charge under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the regulations”)

Introduction

Under Regulation 13 of the regulations, Telford and Wrekin Council (“the Council”) must prepare and publish a statement of principles which it will follow in determining the amount of a penalty charge.

The Council can revise its statement of principles and where it does so, it must publish the revised statement.

In determining the amount of the penalty charge, the Council must have regard to the statement of principles which was most recently prepared and published at the time when the breach in question occurred.

The purpose of this statement of principles for determining financial penalties

This statement sets out the principles that the Council will apply in exercising its powers to require a relevant landlord (landlord) to pay a penalty charge.

The Council will have regard to satisfying the balance of probabilities that the landlord has failed to take the remedial action required in the remedial action notice (the notice), served under Regulation 5 of the regulations.

This document sets out the principles which the Council will apply and will have regard to when exercising its powers under Regulation 8 of the regulations.

The legal framework

Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 provides that the Council may require the landlord to pay a penalty charge if the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial action notice under Regulation 5 has failed to take the specified remedial action within the prescribed period.

Applicable principles

The purpose of imposing a financial penalty

The primary purpose of the Council’s exercise of its regulatory powers is to protect the interests of the public, although they may have a punitive effect.

The primary aims of financial penalties will be to:

- change the behaviour of the landlord.
- eliminate any financial gain or benefit from non-compliance with the regulations.
- be proportionate to the nature of the breach of the regulations and the potential harm outcomes.
- aim to deter future non-compliance.
- reimburse the costs incurred by the Council in undertaking work in default

Criteria for the imposition of a financial penalty

By virtue of Regulation 8, a failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge. In considering the imposition of a penalty the Council will regard to the evidence of a breach of the requirement of the notice.

In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach under consideration.

The Council will consider, and be satisfied on the balance of probabilities, that the landlord on whom it has served a remedial notice (the notice) under Regulation 5 has failed to take the remedial action specified in the notice within the period specified.

A financial penalty allows the council, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be considered appropriate where the landlord has failed to comply with the requirements of a remedial notice.

Criteria for determining the quantum of a financial penalty

Regulation 8(2) states 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 (subject to any representation made by a landlord to the Council) and a cost element relating to the works carried out by the Council.

The period within which the penalty charge is payable is 30 days beginning with the day on which the penalty charge notice is served.

The Council has a discretion to specify that if a landlord pays the penalty charge within a specified earlier period a reduction in the penalty charge may be applied.

The Council may also exercise a similar discretion where the landlord gives written notice to the Council that the landlord wishes the authority to review the penalty charge notice.

Of these two discretions, the Council will, as a matter of course, exercise the discretion to reduce the penalty charge in relation to payment within a specified "early payment" period by 50%. The specified early payment period is 14 days beginning with the day on which the penalty charge notice was served.

For all offences the penalty will be £2500 to deter landlords from non-compliance. Reducing to £1250 if an early payment is made

Payment will be required within 30 days beginning with the day on which the penalty charge notice was served. Payment of the penalty charge will be accepted by cheque, made payable to Telford and Wrekin Council or by credit or debit card which can be accepted over the telephone or at Darby House, Addenbrooke House or Wellington Civic Centre. The penalty charge notice will be credited against DEAF R9243

Procedural matters

The regulations impose a number of procedural steps which must be taken before the Council can impose a financial penalty and all landlords must familiarise themselves with the contents of The Smoke and Carbon Monoxide Alarms (England) Regulations 2015 and / or

seek legal advice. The procedure undertaken by the Council is detailed at the start of this document.

Before imposing a requirement on a landlord to pay a penalty charge the council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- the reasons for imposing the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) which an authorised person has installed at the premises;
- the amount of the penalty charge;
- that the landlord is required, within a period specified in the notice-
 - to pay the penalty charge
 - to give written notice to the local housing authority that the landlord wishes the authority to review the penalty charge notice;
- how payment of the penalty charge notice must be made; and
- the person to whom, and the address (including if appropriate any email address) at which, a notice requesting a review may be sent and to which any representations relating to the review may be addressed.

Where the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under Regulation 5 has failed to take the remedial action specified in the notice within the period specified the Council will, on written notice from the landlord served with a penalty charge notice, review the penalty charge imposed. In conducting the review, the Council will consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord.

A landlord who, having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal against the Council's decision.

The contact details for the purpose of appeal are:-
First-Tier Tribunal (Property Chamber - Residential Property)
15th Floor, Centre City Tower,
5 – 7 Hill Street, Birmingham
B5 4UU
Tel: 0121 600 6270 Fax: 01264 785 122
Email: rpmidland@hmcts.gsi.gov.uk

Procedure for the enforcement of the Smoke & Carbon Monoxide Alarm (England) Regulations 2015



