

Smoke and Carbon Monoxide (England) Regulations 2015 Financial Penalties

Harborough District Council Statement of Principles

Introduction

This statement sets out the principles that Harborough District Council will apply when exercising its powers to require a landlord (relevant landlord) to pay a financial penalty.

Purpose of the statement of principles

The council is required under these regulations to prepare and publish a statement of principles, which must follow this guide when deciding on the amount of a penalty charge.

The council may revise this statement of principles at any time, but where it does so, we must publish a revised statement.

When deciding on the amount of the penalty charge, the council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015.

The regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The regulations exclude registered providers of social housing.

The duty requires 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 contains a solid fuel burning appliance

Also for tenancies starting from 1 October 2015:

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

Where the council believes that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord. The remedial notice is a notice served under regulation five of these regulations.

If the landlord then fails to take the remedial action specified in the notice within the timescale, the council can require the landlord to pay a penalty charge. The power to charge a penalty arises from regulation eight of these regulations.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to The Environment Team, Harborough District Council, The Symington Building Adam & Eve Street Market Harborough Leicestershire LE16 7AG or complete our on line contact form, representation must be made within 28 days of when the remedial notice is served.

The council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

The purpose of imposing a financial penalty

The purpose of the council 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 after being required to do 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

The financial penalty - criteria and amount

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 look at the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agency that no remedial action had been undertaken.

For example, landlords can demonstrate compliance with the regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords need to take steps to demonstrate that they have met the testing at the start of the tenancy requirements. Examples of how this can be achieved are by tenants signing an inventory form confirming that they were tested by the landlord or landlords agent and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

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

A financial penalty charge will be considered appropriate if the council is satisfied on the balance of probabilities that, the landlord who had been served with the remedial notice under regulation five, had failed to take the remedial action specified in the notice within the time period specified.

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

The penalty charge comprises two parts, a punitive element (punishment) for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to the investigation (investigative) costs, officer time, administration and any remedial works arranged and carried out by the council's contractors.

The penalty charge is payable within 28 days beginning with the day on which the penalty charge notice is served.

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. Should a subsequent appeal be made the discount will be removed.

The charges are as follows:

- £2,500 for the first breach to comply with a remedial notice: £1,250 for early payment (33% reduction)
- £5,000 for each subsequent breach to comply with a remedial notice: £2,500 for early payment, (33% reduction)

Steps taken to impose penalty charge notices

The regulations impose a number of procedural steps which must be taken before the council can impose a requirement on a landlord to pay a penalty charge.

When the council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within six weeks.

Where a review is requested within 28 days from when the penalty charge notice is served, the council will consider any representations made by the landlord. All representations are to be sent to The Environment Team, Harborough District Council, The Symington Building, Adam & Eve Street Market Harborough Leicestershire LE16 7AG or complete our contact form. The council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the council's decision. Appeals should be made within 28 days from the notice served of the council's decision on review.

If the penalty charge notice is not paid, then recovery of the penalty charge will be in accordance with the council's debt recovery policy.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 28 days from the date of the notice served giving the council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 28 days from when the appeal is finally determined or withdrawn.

Remedial action taken in default of the landlord

Where the council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke alarms

In order to comply with these regulations, smoke alarms will be installed on every storey of residential accommodation. This may only provide a temporary solution as the property may be a high risk due to:

- Its mode of occupancy such as a house in multiple occupation or building converted into one or more flats
- Having an unsafe internal layout where fire escape routes pass through living rooms or kitchens
- It being three or more storeys high

A full housing health and safety rating system inspection will be carried out at this point also taking into consideration Local Authorities Co-ordinators of Regulatory Services (LACORS) Housing and fire safety guidance. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors, protected walls and protected ceilings. Any further works required to address serious hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with our Enforcement Policy.

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.

For more detailed information, including the LACORS fire safety guide provisions for certain types of existing housing, please visit [fire safety law and guidance documents for business \(GOV.UK\)](#)

All communications for representations made against the Remedial Notice (regulation five) or the Penalty Charge Notice (regulation eight) are to be sent to:

Environment Team

Harborough District Council

Adam & Eve Street

Market Harborough

Leicestershire

LE16 &AG

Or by using our contact form