

# Appendix 8 – Statement of Principles for Smoke and Carbon Monoxide Alarm (England) Regulations 2015

## Introduction

Gloucester City Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on 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 a revised statement.

When deciding on the amount for 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), which came into force on 1 October 2015.

The Regulations place a duty on landlords (private and social housing), which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of a property where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a fixed combustion appliance other than a gas cooker.
- Where landlords are notified or an alarm is found not to be in proper working order, the alarm is repaired or replaced.

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) is/are in proper working order on the day the tenancy starts.

Where the Council believe 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 5 of the Regulations. The landlord can make a representation to the local authority with regards to the serving of the remedial notice. The remedial notice will be suspended upon receipt and consideration of a representation. A notice will be issued in 7 days of a decision being made.

If the landlord, then fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of the 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 Council within 28 days of when the remedial notice is served. Details of how to make a representation will be included with the remedial notice and supporting documentation.

Gloucester City 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 reduce health inequalities and safeguard our residents, who are affected by poor housing conditions, poor property management and unprofessional landlords.

The aims of financial penalties on landlords are to:

- Lower the risk to tenants health and safety.
- Reimburse the costs incurred by the Council in taking enforcement action and arranging remedial action in default of the landlord.
- Change the behaviour of the landlord and prevent future non-compliance.
- Penalise the landlord for not installing alarms after being required to so.
- 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

Failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge of up to £5000 per offence.

In considering the imposition of a penalty, the authority 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 agent 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 and testing 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. Examples of how this can be achieved are 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 test the alarm to ensure it is in proper working order. Once installed the landlord now has a duty to maintain the alarms 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 remedial notice under Regulation 5 had failed to take the remedial action specified in the notice within the time period specified.

## Determining the amount of a financial penalty

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

The penalty charge comprises two parts, a punitive element for failure to comply with the requirement to comply with a remedial notice and a cost element relating to the 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.

As these regulations have now been in force for some time and Landlords should therefore be aware of their obligations, the fines Gloucester City Council will apply are as follows:

- £5000 for the first offence and each subsequent offence of failing to comply with a remedial notice and the requirements of the Regulations.

## Procedural matters for Penalty Charge Notices

The Regulations set out the 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 must be served within 6 weeks.
- Where a landlord serves a notice of representation requesting a review of the decision within one month from when the penalty charge notice is served, the council will consider any representations made by the landlord and either confirm or withdraw the penalty and serve a notice of its decision.
- A landlord who has made a representation 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. The penalty charge notice will be suspended until the case has been determined.

Details of how to make a representation and appeals will be included with the remedial notice and supporting documentation. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

To ensure fairness and transparency and following a review, every decision to confirm a Penalty Notice will be subject to approval by the Team Leader or Manager.

If the penalty charge remains unpaid then the charges and administrative costs will be raised as a charge against the property whilst repayment opportunities and debt recovery methods are exhausted. However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 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 29 days from when the appeal is 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. In these circumstances, battery operated alarms will be installed as a quick and immediate response. Wherever possible consultation will also be sought with the GFRS.

## Smoke Alarms

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

- 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 a living rooms or kitchens, or
- is 3 or more storeys high.

A full fire risk assessment will subsequently be undertaken, with regards to LACORS Housing - fire safety guidance and the HHSRS profile for Fire hazard. 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 and protected walls and ceilings. Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with each Council's Regulating Housing Standards Policy.

## Carbon Monoxide Alarms

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

## Further Guidance

[Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022: guidance for landlords and tenants - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/smoke-and-carbon-monoxide-alarm-amendment-regulations-2022-guidance-for-landlords-and-tenants)

[The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2015/1633/contents/make)

[The Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2022/123/contents/make)