

Report for: Cabinet

Item number: 11

Title: The Smoke & Carbon Monoxide Alarm (England) Regulations 2015

Report authorised by : Tracie Evans

Lead Officer: Steve Russell

Ward(s) affected: All

**Report for Key/
Non Key Decision:** Key decision

1. Describe the issue under consideration

- 1.1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the Regulations”) impose obligations on the Council to inspect premises and enforce the requirements of the Regulations against landlords to which they apply.
- 1.2. The Regulations give power to the Council to impose Penalty Charges for failure to comply with the requirements of a Remedial Notice and require the Council to publish the principles upon which it calculates any such Penalty Charge.
- 1.3. This report invites Cabinet to adopt a statement of policy for the Council’s enforcement of the Regulations, to approve the principles upon which penalty charges to be paid for non-compliance with the Regulations are to be calculated and to agree how any sums recovered as Penalty Charges are to be applied.

2. Cabinet Member Introduction

- 2.1. This legislation is mandatory and it is important to note that it applies to all rented accommodation. The 2011 census gave a figure of 33,000 private rented properties which is likely to have increased over the last five years, all are subject to this legislation. Houses in Multiple Occupation (HMO) have always had legislation specifically designated to fire protection and means of escape and that legislation will continue to be used as it provides a far higher standard. However, these regulations now incorporate a vast number of single family dwellings, which previously only warranted advice.
- 2.2. To apply this legislation is going to be onerous and resource intensive to the authority, It is important therefore to promote dialogue with private sector tenants and small landlords about their rights and responsibilities. The cost of installation

is very small and the fire service have a large number of detectors that they will allocate free of charge to meet this requirement.

2.3. It is important that we promote a communication strategy to alert all relevant landlords and agents of our new statement of principles and penalty charge process, to give them the opportunity of not being in breach of this legislation.

2.4. The legislation will need to be used for all landlords/agents who fail to take action following a communication strategy and individual warning. It would be then clear that the welfare of the occupying tenants is not important to the landlord/tenant and enforcement action should be taken. I would therefore support the adoption of the penalty charge to be fully implemented following a communication strategy for all relevant properties, I would also support the limited use of this legislation during the communication period.

2.5. The use of a sliding scale penalty charge with the added weighting factor is an effective way of reflecting all the different types of properties and occupancies that are captured within this legislation, applying a flat rate in these circumstances would therefore not be considered fair in Haringey.

3. Recommendations

That Cabinet:

3.1. Adopt the policy statement set out at Appendix 1.

3.2. Agree that Penalty Charges Notices (PCN) administered follow the Statement of Principles as set out in Appendix 3.

4. Reasons for decision

4.1 A penalty charge of up to £5000 can be imposed for failure to comply with a Remedial Notice served under these regulations. However, as per Appendix 3 and the guidance provided by the legislation we are recommending a sanction which is based on a sliding scale and an early discount for not progressing to the review and appeal stage.

4.2 In keeping with this it is our recommendation that each landlord should be charged accordingly based on each individual offence, thus averting any challenges by landlords or variations following First Tier Tribunal hearings.

4.3 Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-compliance. It should also cover the costs incurred by the Council in administering and implementing the legislation. The authority has no other means of recovering the cost of remedial action than by imposition of a penalty charge.

4.4 Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and can result in death and serious injury. In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes.

4.5 As previously stated, the provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning event are far out of proportion to the cost of installing alarms.

4.6 For these reasons, an effective incentive to comply with these Regulations must be set, as the enforcement of these regulations and the attributed penalty charge is the deterrent in these cases. It is understood that the imposition of the maximum potential fixed penalty charge, that being £5,000 under the regulations or the penalty proposed under our sliding scale, can present an excessive financial burden in relation to the low cost of the works. This is however balanced against the risk and the fact that all reasonable opportunity will have been given to landlords to comply with the regulations prior to any penalty charge being levied. A recipient of a fixed penalty charge has a right of appeal.

4.7 Having an effective penalty charge to act as a deterrent in these cases is being sought. It is however hopeful that with an effective communications strategy in place the need to use these regulations, certainly the issuing of a Fixed Penalty Notice for failing to comply should be substantially reduced .

4.8 It is proposed that a successful communications program that targets both landlords, letting agents and tenants will reduce if not eliminate the need for Council intervention under these regulations. Informing landlords and agents of their duty and through promoting the Fire Authorities free smoke detectors we hope landlords will proactively respond to such a campaign and ensure that detectors are in place and that existing detection works.

4.9 It is also essential that the communications programme is designed in such a way that it educates tenants on their rights at the same time as empowering them to also be responsible for their own safety, to take action for themselves, to check that these measure are in place, especially at the beginning of new tenancies and to confront agents and landlords who have failed in their duty themselves before involving the local authority.

5. Alternative options considered

5.1 The Regulations oblige the Council to enforce them, and to publish a statement of the principles upon which it will calculate penalty charges. It is not therefore open to the authority to opt-out.

5.2 The issuing of a civil penalty is what the Regulations provide as a sanction for non-compliance. The alternative option to be considered would be to charge the maximum sanction on each occasion non compliance takes place.

5.3 The £5000 figure is specified within the regulations as the upper figure for the penalty sanction.

5.4 This is not considered appropriate; the structure of the Regulations assumes that the amount of the penalty charge will be determined by the application of

stated principles, and the landlord affected is entitled to appeal to the First Tier Tribunal on the ground that the penalty charge imposed is unreasonable.

5.5 If it had been intended that a local authority should have power to impose the maximum penalty for any and every breach of the Regulations, then the First Tier Tribunal would not have been given power to reduce a charge as “unreasonable”.

5.6 The requirement to publish a statement of principles on the basis of which the charge will be calculated would be unnecessary if there were no requirement to take the circumstances of each case into account in calculation of the charge.

5.7 Furthermore, breaches of Housing legislation punishable as offences rarely attract, on conviction, a fine of the maximum available. The punishment is tailored to fit the crime. By analogy, so must the penalty charge.

6. Background information

6.1 The Regulations became operative for all new tenancies after 1st October 2015.

6.2 They place an obligation on landlords who are renting properties to provide smoke detectors to each floor, where there are rooms used for residential living and the installation of carbon monoxide detectors where there is solid fuel combustion. Responsibility for enforcement, including provision of detectors in default, is placed upon the authority.

6.3 This legislation joins other legislation which is already in place which also deals with fire protection and means of escape from rented properties. This legislation is mainly focussed at single family rented units and requires only the most basic fire detectors that can be purchased from any DIY store. Whereas the Housing Health and Safety Rating System would consider fire detection in a single family house as a low priority and generally advise smoke detectors, this legislation has now transformed that advice in to a statutory function.

6.4 Under this legislation the authority are under an obligation to ensure that smoke detectors are in place for certain specified tenancies, or where they are in place, that they have been checked at the start of new tenancies. The processes and responsibilities are as follows:

- Must serve a Remedial Notice within 21 days from the date that it is believed that a landlord is in breach of his duty.
- The landlord is under a duty to comply within 28 days from the date of the notice.
- The Landlord can make written representations to the authority within 28 days from date of notice and the authority must consider and respond in writing to reject or confirm them.
- If the landlord fails to comply and is in breach of the duty, the landlord must be advised in writing that the council will arrange for an authorised person to take remedial action.
- A notice of entry must be sent to the occupiers giving 48 hours notice to undertake the remedial action.

- If the occupier does not give consent, remedial action cannot be taken and the case is closed.
- Any remedial action must be taken within 28 days from the date of the breach.
- To be recoverable, a penalty charge notice (PCN) must be sent to the landlord within 6 weeks from the date that the council first became aware of the breach.
- The Landlord can request a review of the PCN and a decision letter must be sent to the landlord explaining the outcome of review.
- The Landlord can appeal to first tier tribunal regarding the review decision.
- Finally, the Council can start the process to recover the debt owed once the case has been won.

6.5 The process to enforce this legislation is onerous and resource intensive and therefore essential that the sanction focuses the landlords as to their responsibilities. The Council has no option as it is a mandatory responsibility to act, with a small amount of flexibility as to when that burden starts. The Council would not necessarily apply this to HMO's as other legislation applies and the standards expected are much higher, but may be useful in a number of cases as a short term measure.

6.6 This legislation does not apply when licensing is in place, through mandatory, additional or selective schemes as this is built in to licensing conditions.

6.7 It is essential that the sanctions are robust to ensure landlords respond immediately to install smoke and carbon monoxide alarms. Therefore, the Penalty Charge Notice is set so that the vast majority of Landlords will comply enabling officers to focus on more complex and higher risk cases of which there are many.

6.8 There are approximately 33,000 private rented units within the borough according to the census, however the figure is projected to be higher. It could be considered that 12,000 may be HMO properties, which also contain those in self contained units, leaving somewhere in the region of 20,000 that may fit this category. A sensible and strategic approach needs to be adopted to use this as one of our private sector tools for improvement. The legislation will be used when it is reasonable to do so and its enforcement will be a key task across the community safety and regulatory services frontline officers.

7. Contribution to strategic outcomes

7.1 This links to Priority 5 with emphasis on safe housing conditions and links with the Council's Housing Strategy intentions on improving the rented housing sector.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

8.1 Any Penalty Charge Notice fees collected will be credited to the Housing Services Budget. The cost of administrating and enforcing the Regulations will need to be contained within the approved budget.

Legal

8.2 The Assistant Director of Governance has been consulted in the preparation of this report and comments as follows.

8.3 The general effect of the Regulations is set out in the body of this report.

8.4 The Regulations do not make contravention a criminal offence; instead, the relevant local authority is given powers of civil enforcement, including power to impose a penalty charge “of such amount as the authority may determine”.

8.5 Regulation 13 requires the local authority to publish a statement of the principles which it will follow when determining the amount of the penalty charge.

8.6 A penalty charge notice must (among other requirements) state:

- (a) The reasons for imposing the penalty charge.
- (b) The amount of the penalty charge.
- (c) That the landlord must (within the period stated in the notice) either pay the penalty charge or give written notice that s/he wishes the landlord to review the charge.

8.7 There is a two-stage process for challenging a penalty charge; initially, an internal review, and subsequently an appeal to the First Tier Tribunal.

8.8 The appeal process is to ensure that the enforcement process is administered fairly, Regulation 11 provides landlords with a means of appeal against penalties'. A person served with a penalty notice may appeal to the First- tier Tribunal if it is confirmed or varied by a local housing authority after a review. If an appeal is lodged the penalty cannot be enforced until the appeal is disposed of.

8.9 The grounds for appeal to the First Tier Tribunal against a decision on review to confirm the amount of the penalty charge include that the amount of the penalty charge is unreasonable. The penalty charge imposed by the authority must therefore be not unreasonable; a robust statement of principles upon which the charge will be determined demonstrating that appropriate factors have been taken into account will significantly assist the authority in showing the reasonableness of the charge on challenge.

8.10 Another ground of appeal against a decision on review to confirm the penalty charge notice was based on errors of fact, law or was otherwise unreasonable. There are general advantages for example of consistent decision-making in having a robust and clear policy outlining the Council's approach to enforcement of these Regulations, Having such a policy will also assist in resisting challenges on these grounds.

Equality

- 8.11 The legislation is national and we have no option but to implement its terms. There is an impact on business as all private sector landlords will be required to buy and install the prescribed smoke alarms and check that they are working at the start of each new tenancy. The impact however is very low with the average costs of an alarm being £5.00. It is estimated that by installing an alarm up to 231 deaths and 5860 injuries over 10 years will be prevented.
- 8.12 There is no impact on landlords responsible for the social housing as they are not covered by this piece of legislation. This is due to the fact that they are asked to install greater fire safety measure within the homes that they own under other prescribed legislation and codes of practice.
- 8.13 The Regulations have a positive impact for those living in the private rented sector many of whom are forced to do so due to the financial and social economic circumstances they are faced with. Putting the onus on a landlord to install and maintain such a basic fire safety measure is a positive outcome for tenants and their families.
- 8.14 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to; tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation); advance equality of opportunity between people who share those protected characteristics and people who do not; and foster good relations between people who share those characteristics and people who do not.

9. Use of Appendices

- Appendix 1 – Smoke & Carbon Monoxide Policy Document
- Appendix 2 – Smoke & Carbon Monoxide Procedure
- Appendix 3 – Smoke & Carbon Monoxide Alarm Statement of Principles
- Appendix 4 – Draft Copy of Penalty Notice .

10. Local Government (Access to Information) Act 1985

Important Additional Guidance on Accessibility **Categories of Exemption**

APPENDIX 1

THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

POLICY STATEMENT

Introduction

From the 1st October 2015, the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the Regulations”) require relevant landlords to install smoke and Carbon monoxide alarms in rented residential accommodation and to check to ensure that the alarms are in proper working order at the start of a new tenancy.

The Regulations apply to houses and to flats. Where the relevant landlord fails to comply, the Council has a duty to serve a Remedial Notice requiring the landlord to take the necessary action to ensure compliance. The Council may also serve a penalty charge notice requiring a landlord who fails to comply with a Remedial Notice to pay a penalty charge of up to £5,000. The aim is to bring the private rented sector in line with the Building Regulations which requires all new-build properties to have a smoke alarm installed on at least each storey of the property and a carbon monoxide alarm in each room where a solid fuel burning appliance is installed.

These regulations do not cover domestic gas appliances as the risk of carbon monoxide poisoning is believed to be very low as a result of the safety features required to be incorporated into the appliance by Gas Appliances (Safety) Regulations and the gas safety certificate requirements.

Changes are also made to the licence requirements in relation to licensed houses in multiple occupation (HMOs) and the Council’s HMO licensing conditions have been amended.

General requirements

The regulations require landlords to install smoke alarms on every floor of their property, and test them at the start of every new tenancy. They also need to install carbon monoxide alarms in rooms where a solid fuel heating system is installed.

- This new legislation came into force on the 1st October 2015.
- These alarms should meet the relevant European and British Standards.
- Councils have a duty to ensure compliance with this legislation.
- Landlords will receive a penalty charge of up to £5000 if they do not comply with a Remedial Notice.

Policy and Objectives

The aim of the regulations is to address tenants’ health and safety from fire and carbon monoxide in residential premises. These are two of the hazards assessed and enforced by local housing authorities under the Housing Health and Safety Rating System and Housing Act 2004. The regulations also amend the licensing regimes for Houses in Multiple Occupation (HMOs) in respect of the requirements for fire and carbon monoxide alarms.

The Council supports the aim of the regulations *to reduce* the risk of injury or death caused by smoke or carbon monoxide in the private rented sector.

Penalty Charge Notices

The Council has discretion to serve a Penalty Charge Notice (PCN) on a landlord who is in breach of his duty to comply with a Remedial Notice. It is Council policy that a PCN will normally be issued.

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-compliance. It should also cover the costs incurred by the Council in administering and implementing the legislation.

Supporting information and Justification for PCN

Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury.

Fire

The objective of the policy is to prevent unnecessary fatalities and injuries from fire occurring in households which do not have a working smoke alarm installed. The regulations should help prevent fire fatalities and injuries to private tenants by ensuring all private rented properties have a smoke alarm installed on each floor. This is in line with current Government Fire Safety advice to install at least one device on each floor in the home.

The absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes. This is particularly so at night, as without the early warning they provide, a small fire can develop unnoticed rapidly to the stage where smoke and fumes block escape routes or render a sleeping occupant unconscious. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety.

The majority of fire deaths and injuries are preventable. According to government statistics, the value of each life saved in 2015 is £1.77m and the value of each injury avoided is £39,110. Nearly 40% of fire related deaths occur in properties without a working smoke alarm. Only 83% of properties in the private rented sector have a working smoke alarm and tenants in this sector remain less likely to be protected by working alarms than owner occupiers and social housing tenants. Therefore, increasing the percentage of private rented homes with a smoke alarm on each floor of the home should reduce the number of preventable fire deaths and injuries to private tenants.

The Department of Communities and Local Government estimate that 231 deaths and 5860 injuries could be prevented over ten years accruing a saving of almost £606.7m by the provision of smoke alarms.

Carbon monoxide

The Regulations encourage uptake of alarms in those properties where the risk of carbon monoxide poisoning is highest. The objective of the policy is to help prevent carbon monoxide fatalities and injuries to private tenants by ensuring all private rented

properties which are of higher risk to carbon monoxide poisoning have a Carbon monoxide alarm installed.

Carbon Monoxide is a colourless, odourless and extremely toxic gas. At high concentrations it can cause unconsciousness and death. At lower concentrations it causes a range of symptoms from headaches, dizziness, weakness, nausea, confusion, and disorientation, to fatigue, all symptoms which are sometimes confused with influenza and sometimes with depression. For all these reasons Carbon Monoxide is often dubbed “the silent killer”. Open fires and solid fuel appliances can a significant source of Carbon Monoxide. Carbon Monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

Each year there are around 40 deaths from accidental carbon monoxide poisoning in England and Wales and in excess of 200 non-fatal cases that require hospitalisation. A recent Department of Health (DH) estimate based on the A&E Hospital Episode Statistics database shows that approximately 4,000 attend A&E each year diagnosed with Carbon monoxide poisoning. The latest data available from the English Housing Survey shows that only 15% of homes have a Carbon monoxide alarm. Solid fuel appliances are responsible for a disproportionate number of carbon monoxide deaths and injuries compared to other combustion appliances.

The Department of Communities and Local Government estimate that six to nine deaths and 306 to 460 injuries could be prevented over ten years accruing a saving of almost £6.8 million by the provision of Carbon Monoxide alarms.

Summary

The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning event are far out of proportion to the cost of installing alarms.

For these reasons, an effective incentive to comply with these Regulations is fully justified.

It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, can present an excessive financial burden but this is balanced against the risk, the low cost of compliance and the fact that all reasonable opportunity will have been given to comply prior to any penalty charge being levied. A recipient of a fixed penalty charge has a right of appeal.

For these reasons a penalty charge of up to £5,000 is set for non-compliance based on risk on a sliding scale.

APPENDIX 2

Procedure-The Smoke and Carbon Monoxide (England) Regulations 2015

1. Where relevant landlord is in breach of one or more of the duties outlined in Regulation 4 namely,
 - (a) on or after 1 October 2015 to install smoke alarms or CO alarm where the property is occupied under a specified tenancy or
 - (b) to check such alarms are in proper working order at the start of a new specified tenancy

the Council must serve a Remedial Notice (Document 1).
2. The Council must serve the Remedial Notice within 21 days beginning with the day on which it decides that it has reasonable grounds to believe that the landlord is in breach of his duty.
3. The landlord is under a duty to comply with the requirements of the Remedial Notice within 28 days from the date on which the notice is served.
4. If the landlord makes written representations within 28 days from the day on which the notice is served, the Council must consider them and either reject or confirm them. The response must be made in writing to the landlord.
5. If, after the expiry of the period for compliance with the Remedial Notice, the Council is satisfied that the landlord is in breach of his duty to comply with the Remedial Notice, the landlord should be advised in writing of this and that the Council will arrange for an authorised person to take the remedial action required by the notice.
6. A Notice of Entry letter must be sent to the occupiers giving 48 hours' notice of the remedial action to be taken (Document 2).
7. Where the occupier does not give the necessary consent, the remedial action cannot be taken and the case should be closed.
8. The Council must ensure that the authorised person takes the remedial action within 28 days beginning with the day on which the Council is first satisfied that the landlord is in breach of his duty to comply with the requirements of the Remedial Notice.
9. A Penalty Charge Notice ("PCN") (Document 3) must be sent to the landlord within 6 weeks beginning with the day on which the Council is first satisfied that

the landlord is in breach of his duty to comply with the requirements of the Remedial Notice.

10. The Council's Finance Department must be advised of the PCN and the costs incurred and recoverable by the Council.
11. Where the penalty charge is paid by the landlord the case should be closed.
12. If the landlord serves notice on the Council requesting a review of the PCN, the Council must consider representations made and serve a Decision Review Notice (Document 4), which will confirm, vary or withdraw the PCN. Where the PCN is withdrawn, the case should be closed.
13. Where the landlord appeals against the Council's review decision (see Appenidix 5 for appeal process), the PCN is suspended until it is determined by the First-Tier Tribunal. If the appeal is dismissed, action to recover the penalty charge may not be started before the end of the period of 28 days beginning with the day on which the appeal is determined or withdrawn.
14. If the PCN is paid, the Finance Dept at the Council must be advised and the case must then be closed.
15. If the PCN is not paid (but see Paragraph 13 above in relation to an appeal to the First Tier tribunal), the officer dealing with the case should request a certificate from the Chief Finance Officer (Document 5) stating that the penalty charge has not been received by the date specified in the certificate.
16. The Council's legal department should be advised that the penalty charge has not been paid. The certificate from the Chief Finance Officer should be sent to the legal department with instructions to commence action to recover the outstanding amount.
17. Sums recovered from debt recovery should be paid into the Department's budget for use by it for any of its housing functions.
18. The landlord has a right to seek a review of the penalty charge notice by writing to the Authority (details on the Notice) within 28 days of the Notice being issued. On consideration of any representation and evidence, the penalty charge notice can be confirmed, varied or withdrawn. This decision is confirmed by issuing a decision notice on the landlord. If varied or confirmed, the notice shall state a further appeal can be made to a Residential Property Tribunal and details given.
19. Any representation shall be considered on its individual merit, and be in line with any concession policy approved by the Council. Any extenuating circumstances will be considered by the Council in deciding whether to reduce the cost of the penalty charge.
20. The Local Housing Authority may recover the penalty charge as laid out in the regulations. Due to costs incurred by the Council, any penalty charge notice shall be pursued for payment.

APPENDIX 3

THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

STATEMENT OF PRINCIPLES

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced legal requirements on private sector landlords from the 1st October 2015 in respect of premises occupied under tenancies starting on or after that date. The requirements are to:

1. Equip a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;
2. Equip a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
3. Carry out checks 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

For the purposes of the legislation, living accommodation is a room that is used for the primary purposes of living, or is a room in which a person spends a significant amount of time, and a bathroom or lavatory is classed within this definition.

Standard of Alarm Provision

The type of smoke alarms to be required are alarms powered by a 10 year duration battery and where more than one alarm is required they are to be interlinked so that all will sound on activation of any single alarm.

Carbon Monoxide alarms are to be stand-alone alarms powered by a 10 year duration battery.

Enforcement

In those situations where the Local Authority has reasonable grounds for believing that:

1. There are no or insufficient number of smoke and / or carbon monoxide alarms in the property as required by the regulations; or
2. The smoke and / or carbon monoxide alarms were not working at the start of the tenancy or licence,

then the Local Authority shall, within 21 days, serve on the landlord a Remedial Notice detailing the actions that must be taken to comply with the regulations, and the Notice shall be in line with the requirements of the regulations.

If after the given period, being 28 days, the Notice has not been complied with, then a Penalty Charge will be levied by service of a Penalty Charge Notice on the landlord.

Penalty Charge Principles

Introduction:

Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury.

In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes. This is particularly so at night, as without the early warning they provide, a small fire can develop unnoticed rapidly to the stage where smoke and fumes block escape routes or render a sleeping occupant unconscious. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety.

The Department of Communities and Local Government estimate that 231 deaths and 5860 injuries could be prevented over ten years accruing a saving of almost £607.7 million by the provision of smoke alarms.

Carbon Monoxide is a colourless, odourless and extremely toxic gas. At high concentrations it can cause unconsciousness and death. At lower concentrations it causes a range of symptoms from headaches, dizziness, weakness, nausea, confusion, and disorientation, to fatigue, all symptoms which are sometimes confused with influenza and sometimes with depression. For all these reasons Carbon Monoxide is often dubbed “the silent killer”. Open fires and solid fuel appliances can be a significant source of Carbon Monoxide. Carbon Monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The Department of Communities and Local Government estimate that six to nine deaths and 306 to 460 injuries could be prevented over ten years accruing a saving of almost £6.8 million by the provision of Carbon Monoxide alarms.

The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning event are far out of proportion to the cost of installing alarms.

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-compliance. It should also cover the costs incurred by the Council in administering and implementing the legislation. Repeat offences should incur the maximum penalty charge.

Factors to be taken into account:

Against this background, the threat of imposition of a Penalty Charge should constitute an effective incentive to comply with the Regulations. The Council acknowledges that the imposition of the fixed penalty charge, of up to £5,000 under the regulations, can

present a financial burden but against this is the risk, the low cost of compliance and the fact that all reasonable opportunity will have been given to comply prior to any penalty charge being levied.

The starting point in calculating the penalty charge – the standard charge - reflects the cost to the Council of dealing with enforcement of the Regulations (including an element of the cost of recovery) together with a punitive and deterrent element to encourage compliance. The figures to be taken account of in this part of the calculation are set out in the appended table; an example is given of a 2 storey single family property, requiring 3 detectors, where the starting point is £1,550.

To this starting point will be added a weighting reflecting the additional risks deriving from increased numbers of occupants and units in the Premises. These factors are likely to result in an increase in the rental value disproportionate to the cost of installation, thus reducing the deterrent effect of the standard charge

The Council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a representation made by the landlord. This discretion will not normally be exercised when:

1. The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
2. The person / company has previously received a penalty charge under this legislation;

Review of Statement

This Statement of Principles shall be reviewed and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and in the public interest. A review shall take place annually should no other change have occurred.

Penalty Charge Tables - Standard charge calculation

Action	Cost										
Inspection and warning letter regarding potential breach	£100										
Inspection and service of remedial notice	£100										
Re-inspections and warning letter	£100										
WID providing 10 year battery operated detectors	£100 per detector										
Service of penalty charge notice and processing of payment	£100										
Review and response process	£100										
Appeal to First Tier Tribunal	£250										
Debt recovery	£400										
Example											
Standard penalty charge for 2 storey single family property with 3 detectors	<table border="0"> <tr> <td>3 detectors (@ £100)</td> <td style="text-align: right;">£300</td> </tr> <tr> <td>Letters and notices</td> <td style="text-align: right;">£400</td> </tr> <tr> <td>Review process</td> <td style="text-align: right;">£100</td> </tr> <tr> <td>Appeal</td> <td style="text-align: right;"><u>£750</u></td> </tr> <tr> <td>Debt recovery</td> <td></td> </tr> </table>	3 detectors (@ £100)	£300	Letters and notices	£400	Review process	£100	Appeal	<u>£750</u>	Debt recovery	
3 detectors (@ £100)	£300										
Letters and notices	£400										
Review process	£100										
Appeal	<u>£750</u>										
Debt recovery											

	Total	£1,550
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A discount will be applied to those who accept the penalty awarded based on the above, therefore those who do not progress through the review and appeal process.

A weighting factor is added to the standard charge depending upon the number of detectors and the increased risk factor of size of property and increased number of occupants and units.

Weighting factors

Property Type	Weighting
2 Storey Single family home	Nil
3/4 Storey Single family home	+ 25%
2 Storey HMO- 5 or fewer persons	+ 50%
2 Storey HMO 6+ persons	+ 75%
2 Storey (s257HMO)- 2 units	Nil
2 Storey (s257HMO)- 3 or more units	+25%
3 Storey HMO 4 or less persons	+50%
4 Storey HMO 4 or less persons	+ 75%
3 Storey (s257HMO) 3 or less units	+50%
3 Storey (s257HMO) 4 or more units	+75%
4 Storey (s257 HMO) 4 or less units	+75%
4 or more Storey (257HMO) 4 or more units	+100%

An additional weighting will be added to any HMO that does not have 30 minute fire doors properly fitted within the frames with smoke seals and door closers to all doors of 100%, making a maximum possible weighting of 200%.

- Early payment reduction to outline costs if no review or appeal.
- Second offence of £5000 will be charged.

APPENDIX 4

Draft version requires L.B.H Formatting

Penalty Charge Notice

Reference:

Regulation 8 of the Smoke and Carbon Monoxide Alarm (England) Regulation 2015

Relevant Landlord:

Landlord's Address:

Postcode:

This Penalty Charge Notice relates to the property known as and located at [] ("the Property").

The London/Royal Borough of [] ("The Council"), being the local housing authority, is satisfied that you, being the relevant landlord, are in breach of your duty to comply with the Remedial Notice dated [] which was served on you. The Remedial Notice required you to take remedial action as specified in Paragraph 3 thereof and in the Schedule thereto within 28 days from the date of service.

In accordance with Regulation 7 of the Smoke and Carbon Monoxide Alarm (England) Regulation 2015 the Council has arranged for a person authorised in writing by the Council ("authorised person"), to take the remedial action specified in the Remedial Notice. On [date] the authorised person has installed [number] [prescribed alarm(s)] [in the following [storey(s)][room(s)] of the Property:] on

YOU ARE HEREBY REQUIRED to pay a penalty charge in the sum of £5,000
YOU ARE HEREBY REQUIRED within [specify period which must not be less than 28 days beginning with the day on which the penalty charge notice is served (second day after posting if sent by first class post)]:

- (a) to pay the penalty charge of £5,000 or
- (b) to give written notice to the Council that you would like the Council to review the penalty charge notice. A notice requesting a review may be sent and the representations relating to the review may be addressed to

Name:
Address:
e-mail address

If you pay the penalty charge within 14 days beginning with the day on which this penalty charge notice is served, the amount of the penalty charge will be reduced to £2,500.

Payment of the penalty charge must be made as follows:

[outline how payment must be made]

Failure to pay the penalty charge within the period specified in this notice may result in court proceedings being commenced for the recovery of the penalty charge.

Signed and dated by authorised officer:

Notes
Review of penalty charge notice

If, within the period specified in this notice, you serve a notice on the Council requesting a review the Council must—

- (a) consider any representations made by you;
- (b) decide whether to confirm, vary or withdraw the penalty charge notice; and
- (c) serve notice of its decision on you.