The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

**Statement of principles**

1. **Introduction:**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the regulations”) imposes the following duties on relevant landlords (“the landlord”) of a residential property of a specified tenancy, to ensure that:

1. 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;

1. 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
2. **The purpose of this statement of principles:**

This statement sets out the principles that Sefton Council (“the Council”) will apply in exercising its powers under the regulations to impose a penalty charge on a relevant landlord who fails to comply with a remedial notice and breaches one or more of the duties imposed on them under the regulations.

The regulations require the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

The Council may 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 most recently published statement of principles in place at the time when the breach in question occurred.

1. **The legal framework:**

The regulations provide that where the Council is satisfied, on the balance of probabilities, that the landlord on whom it has served a remedial notice is in breach of his duty under the regulations, the council may require the landlord to pay a penalty charge of such amount as the Council may determine.

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

The regulations also state, where the council decides to impose a penalty charge, the council must serve a penalty charge notice on the landlord, within six weeks of the council first being satisfied that the landlord is in breach of his duty under the regulations.

1. **The purpose of imposing a financial penalty:**

The primary purpose of the Council exercising its regulatory power is to protect the interests of the public.

The primary aims of financial penalties are 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 applying the regulations.

1. **Principles to be followed in determining the amount of a Penalty Charge:**

The regulations impose a number of procedural steps which must be taken before the council can impose a financial penalty. 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 a remedial notice, serve a penalty charge notice.

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 officer time, recovery costs, travel, administration and service of any notice and work carried out in default by the Council.

The period within which the penalty charge is payable must not be less than 28 days beginning with the day on which the penalty charge notice is served.

A notice is taken to be served on a landlord on the day it is either given to the landlord in person; delivered by hand to the landlord’s last known address; on the day the notice is sent via email to an address provided by the landlord for such; or on the second business day if the notice is sent by first class post to the landlords last known address.

The regulations provide the Council with discretion to reduce the amount of the penalty charge, if within 14 days of the service of the penalty charge notice, the landlord either pays the penalty charge “early payment” or provides written notice requesting a review of the penalty charge notice.

For a first offence the fine applied will be £1,000 and an early payment will attract a discount of 50%, thus reducing the penalty charge to £500.

Where a landlord submits a written request for a review of the penalty charge, early payment discount will not apply.

To deter continued non-compliance, any further offence will be subject to a penalty charge of £5,000, for which an early payment discount will not be eligible.

1. **Appeals against a penalty charge notice**

Where a landlord has been served with a penalty charge notice, they may request a review of the penalty charge, providing the landlord puts his request in writing to the council within 28 days, beginning with the day on which the penalty charge notice is served.

In conducting the review, the council will consider any representations made by the landlord, and serve notice of its decision to the landlord, whether to confirm, vary or withdraw the penalty charge notice.

If a landlord is still dissatisfied with the Council’s decision following a review of the penalty charge notice, the landlord may then appeal to the First-tier Tribunal against the Council’s review decision.

1. **Recovery of penalty charge**

The council may recover the penalty charge on the order of a court.

Recovery proceedings may not be started before the end of the period by which a landlord may give written notice for the council to review the penalty charge notice and where a landlord subsequently appeals to the First-tier Tribunal against the council’s decision on review, not before the end of the period of 28 days beginning with the day on which the appeal is finally determined or withdrawn.

**8. Houses in Multiple Occupation (HMOs)**

While the regulations do not apply to ‘Licensed HMOs’ (i.e. those subject to ‘Mandatory’, ‘Additional’ or ‘Selective’ Licensing Schemes) ……they are however applicable to **all** currently unlicensed types of HMO.

These would include all non-licensable HMOs as defined under sections 254 to 257 of the Housing Act 2004.

Such premises would include:

* Houses divided into flats or bedsits, comprising no more than 2 occupied storeys (not including any commercial storey) and where some amenities are shared
* Houses occupied on a shared basis, comprising no more than 2 occupied storeys (not including any commercial storey) where occupiers have their own bedrooms but share kitchen, bathroom, lounge and other amenities.
* Building or parts of buildings converted entirely to self-contained flats, where the conversion did not meet the standards of the 1991 or later Building Regulations and where more than one third of the flats are let on short term tenancies (i.e. Sec 257 HMO)
* B&B Hotels (or any part of) housing long term residents as their only or main residence and comprising no more than 2 occupied storeys (not including any residential storey)

In addition to these ‘non-licensable’ HMOs, the regulations also extend to other multi-occupied premises such as self-contained flats situated within purpose-built blocks, where they are let on short term tenancies.

The above list of multi-occupied premises covers a wide and diverse range of accommodation types / styles. Some of these might already have adequate fire precautions in line with current national guidance (i.e. ‘LACORs’ and ‘Purpose Built Block Guides’). However, in the case of those converted or existing residential premises that do not have adequate fire precautions, there may be a need to provide an actual ‘Automatic Fire Detection & Alarm System’ (AFDS) in accordance with the risk at the premises concerned, rather than just individual smoke alarms.

In these cases, provision of battery operated smoke alarms should therefore be seen as the minimum mandatory standard of protection until an appropriate grade of AFDS is fitted.

It is therefore suggested that a basic interim arrangement for smoke alarm provision should be adopted for each multi-occupied premises type, namely:

|  |  |
| --- | --- |
| **Premises** | **Smoke Alarm Provision** |
| Tenanted flat within purpose built block or post 1991 converted block. | Smoke Alarm in entrance hall / circulation area.  Also at each storey within the flat for Duplex or Maisonette type accommodation.  No smoke alarms on common parts |
| Tenanted flat within pre 1991 converted block | Smoke Alarm in entrance hall / circulation area.  Also at each storey within the flat for Duplex or Maisonette type accommodation.  Also at each storey level, on the common parts - but only in those premises which meet with the definition of a ‘section 257 HMO’ |
| ‘Shared House’ type HMO | Smoke alarm at each storey level on the ‘common parts’  Also within every unit of accommodation (i.e. bedroom / bed-sitting room / letting room) |
| ‘Bedsit’ type HMO | Smoke alarm at each storey level on the ‘common parts’  Also within every bed-sitting room |
| Tenanted room within ‘B&B Hotel’ | Smoke alarm at each storey level on the ‘common parts’  Also within every tenanted room  Note: not required if premises has with AFDS with smoke detection within rooms and on escape route. Smoke alarm/s will however be required if AFDS provides heat detection only. |

**9. Application of the Penalty Charge in relation to Multi-Occupied Premises**

In applying the regulations to these various types of multi-occupied premises, it is likely that there will be not only be a need for a greater number of smoke alarms but also that that responsibility for providing those alarms, might well fall to a number of parties.

For example, where tenanted flats have different landlords and / or where common parts are the responsibility of a separate freeholder.

So in circumstances where it has been necessary to serve multiple ‘Remedial Notices’ in respect of a building that comprises several ‘premises’ and where there has subsequently been a failure to comply (resulting in the requirement to serve ‘Penalty Charge’ Notices) then it is suggested that any individual contravention in respect of that building would need to be regarded as a ‘first offence’ and so be eligible for the ‘early payment discount’ (as detailed in 5. above) and a reduced level of fine.

Obviously this will only apply to the first offence relating to that building or individual notice recipient. Any subsequent Penalty Charge would be for the full amount with no discount available for early payment.