



Statement of Principles.	 www.croydon.gov.uk
<u>Private Sector Housing Team</u> <u>Smoke and Carbon Monoxide Alarm</u> <u>(England) Regulations 2015.</u>	

Introduction:

The London Borough of Croydon (“Council”) is required under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the 2015 Alarm Regulations”) to prepare and publish a Statement of Principles which it must follow when determining 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 the revised statement. The current statement of principles is to be used when deciding on the amount of the penalty charge.

Duties on Landlords

The Regulations require that landlords ensure that:

- a smoke alarm is installed on each storey of premises on which there is a room used wholly or partly as living accommodation.
- a carbon monoxide alarm is installed in any room of premises which is used (wholly or partly) as living accommodation and contains a solid fuel burning combustion appliance.

AND for tenancies starting from 1 October 2015

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

Properties subject to licensing under Part 2 or Part 3 of the Housing Act 2004 are exempt from the 2015 Alarm Regulations although compliance is achieved through an additional clause in the property licensing conditions.

Enforcement

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a Remedial Action Notice (“RAN”), within 21 days, on the landlord under Regulation 5. This will list the remedial works and direct the landlord on how to comply with their duty.

If the landlord then fails to take the remedial action specified in the RAN, within the specified timescale, the Council must do the works in default (provided the consent of the occupier is obtained). The Council can then reclaim all reasonable costs incurred.

In addition to the RAN, the Council can require a landlord to pay a penalty charge under Regulation 8, where it is satisfied that, on the balance of probabilities, that the landlord has not satisfactorily completed the remedial works within the required timescale.

Criteria for determining the amount of a penalty charge.

The 2015 Alarm Regulations state the total amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts;

- a punitive charge element for failure to comply with the absolute requirement to comply with a remedial notice, and / or
- a reasonable cost element relating to costs incurred by the Council in complying with its duties (including completing the works).

The reasonable costs incurred by the Council could include time spent with; investigating, surveying, contacting relevant parties, administration and any remedial works (labour and materials) arranged and carried out by the Council's contractors. This cost element is unlikely to exceed £500.

The penalty charge is payable within 28 days beginning with the day on which the Penalty Charge Notice is served; (subject to representations being made).

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. For penalties issued for offences committed on or after 1st February 2020, the option of an early payment will be offered for first offences that reduces the punitive element of the penalty charge by one penalty point in line with the charging structure which is displayed in Table 2.

Table 1: The penalty charge (below) is the sum of the punitive charge and / or costs incurred by the Council:

Breach	Payment period	Penalty Charge ²	
		Punitive Charge	(and) Costs ³
Breach of regulation 6(1)	Within 28 days	£5,000 ¹	Reasonable costs plus 30% administrative charge

Note:

1. The maximum penalty charge is £5,000. The level of the punitive element of the penalty is to be determined using the Statement of Principles in conjunction with the policy 'Determining the Penalty and Banding the Offence'.
2. An early payment opportunity is available for this penalty charge structure as permitted by Paragraph 9(2) of the 2015 Alarm Regulations.
3. There is no other provision made in the regulations for enforcement authorities to redeem costs for any remedial works carried out. Collection of the civil penalty fine is the only method.

The Purpose of Imposing a Penalty Charge:

The purpose of the Council in exercising its regulatory powers is to protect the interests of the public.

The aims of issuing penalty charges to landlords are to:

- Lower the risk to a tenant health and safety from exposure to uncontrolled fire or CO;
- 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 in line with the Regulations and after being required to so, by 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.

Criteria for the Imposition of a Financial Penalty (Punitive Element):

In deciding whether a financial penalty is appropriate, the Council will take full account of the particular facts and circumstances of the breach and past breaches. Reference will be made to the proposed Council policy “Determining the Penalty and Banding the Offence” in determining whether a penalty or wider sanction(s) is the best course of action.

If a penalty charge is the selected sanction, the policy framework allows the banding of the penalty charge across 16 penalty scores within four bands. The penalty ranges from £250 to £30,000. Where the assessed score falls at band 2 and a penalty score of 7 or greater the maximum penalty of £5,000 will be applied; regardless of the charge for the costs element.

Table 2: The penalty score falls has sixteen levels of fine over four bands.

Penalty band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2,000	£4,000	£6,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

For first offences, the reduced amount for the punitive element will be the determined penalty score reduced by one point, applied as a ‘mitigating factor’ and this amount will be specified in the notice. Where the PC is Band 2, 7 penalty score or greater, the reduced amount will be Band 2, 6 points at £4,000.

The costs incurred will be added to any penalty not determined as being at its maximum following the determination of the punitive element.

The expectation is that a landlord will be proactive with complying with their duties in order to protect the tenant from fire risk. The Remedial Action Notice (RAN) offers the landlord additional time in which to comply with their duties,

makes him aware of their responsibilities and that a penalty charge can be issued for failing to comply.

The penalty charge notice will be issued unless, on the balance of probabilities, the landlord has taken all reasonable steps to comply with their duties. To determine this the Council will look at the evidence concerning the breach of the requirements of the notice and what action the landlord has taken to try to comply with their duties both at the start of a tenancy and/ or in response to the RAN.

The evidence the Council will collect includes that from a property inspection, or from information provided by the tenant, landlord or agent on whether any remedial action had been undertaken and satisfactory compliance has been achieved.

Landlords can demonstrate compliance with their duty to install by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords can demonstrate compliance with their duty to undertake testing at the start of the tenancy. This could be achieved 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 then test the alarm to ensure it is in proper working order.

Appeals of Penalty Charge Notices

The landlord can request in writing that the local authority review the penalty charge notice. The request for a review must be made within 28 days on which the penalty charge notice is served.

The local authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. The Council in making decision will consider the following:

1. Whether the facts of the matter supported the service of the penalty charge notice.
2. That the decision was correct having regard to the relevant laws.
3. That the amount of the penalty charge was reasonable having regard to any mitigating or other circumstances submitted with the request for review.

Remedial Works to comply with 2015 Alarm Regulations

To comply with these Regulation the type of smoke alarm deemed acceptable is either a mains powered alarm or one operated with a battery with a 10 year life with one fitted on each floor. These are deemed reasonable in order to comply with these Regulations.

It is important to remind landlords that a full fire risk assessment should be undertaken to ensure that this level of detection meets the risk within the premises. The Council can assess risk using the Housing Act 2004 and this may require additional detection. Such circumstances include mode of occupation, nature of tenants, property layout or height of building.

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.

Government Consultation on the Smoke and Carbon Monoxide Alarm Regulations 2015.

On the 17th November 2020 the Ministry for Housing, Communities and Local Government [“MHCLG”] commenced an open consultation entitled ‘Domestic smoke and carbon monoxide alarms: proposals to extend regulations’ with a closing date of the 11th January 2021 [[LINK](#)]. The consultation seeks views on proposed amendments to the 2015 Alarm Regulations to:

- a) require social landlords to ensure at least one smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation.
- b) amend the statutory guidance (Approved Document J) supporting Part J of the Building Regulations to require that carbon monoxide alarms are fitted alongside the installation of fixed combustion appliances of any fuel type (excluding gas cookers).
- c) require private and social landlords to install a carbon monoxide alarm in any room used as living accommodation where a fixed combustion appliance is used (excluding gas cookers).

In the selective licensing designation [CPRPL 2015] the Council recommended the installation of carbon monoxide alarms in rooms with a fixed combustion appliance in line with current Government guidance to landlords and tenants [[LINK](#)] which stated;

“However, as gas appliances can emit carbon monoxide, we would expect and encourage reputable landlords to ensure that working carbon monoxide alarms are installed in rooms with these”.

Government statistics show that in 2019/20, fire and rescue services attended nearly 30,000 dwelling fires in England and sadly there were nearly 200 fire-related fatalities. Around 20 people die from accidental carbon monoxide poisoning every year (excluding those relating to accidental exposure to smoke, fire and flames, with more than 4,000 presentations to hospitals estimated to be related to carbon monoxide.

Other Documents.

This Statement of Principles should be read in conjunction with the proposed policy “Determining the Penalty and Banding the Offence” to set the Level of the Financial Penalty (of Penalty Charge). February 2021.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 Explanatory Booklet for Local Authorities [[LINK](#)]. September 2015

All communications for representations made against the Remedial Notice (Regulation 5) or the Penalty Charge Notice (Regulation 8) are to be sent to:

Head of Public Protection and Licensing
Croydon Council
Place Department –
Public Realm Division,
Private Sector Housing Team,
Bernard Weatherill House,
6th floor - Zone A,
8 Mint Walk,
Croydon
CR0 1EA.

Website: www.croydon.gov.uk

Public telephone: 020 8760 5476 (direct dial with monitored answerphone)

Minicom: 020 8760 5797

Email: hsg-privatehousing@croydon.gov.uk

The representations against the penalty charge notice will be reviewed by this post holder, or a person of equivalent grade.