

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Statement of principles for determining financial penalties
December 2015

1 Introduction

The purpose of this statement of principles for determining financial Penalties

- 1.1 This statement sets out the principles that the East Riding of Yorkshire Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

The legal framework

- 1.2 Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) provides that the Council may require the landlord to pay a penalty charge if the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under regulation 5 has failed to take the remedial action specified in the notice within the period specified.

The scope of this document

- 1.3 Regulation 13 of the regulations requires the Council to prepare and publish 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.

Where a penalty charge is made, the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.

In particular the Council will have regard to:

- Satisfying the balance of probabilities that the landlord has failed to take the remedial action required in the notice.

- 1.4 This document sets out the principles which the Council will apply and will have regard to when exercising its powers under regulation 8 of the regulations.

2 Applicable principles

The purpose of imposing a financial penalty

- 2.1 The primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public, although they may have a punitive effect. The primary aims of financial penalties will be 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 undertaking work in default

Criteria for the imposition of a financial penalty

- 2.2 By virtue of regulation 8, a failure to comply with the requirements of a remedial notice allows the authority to require payment of a penalty charge. In considering the

imposition of a penalty the authority has regard to:

- the evidence of a breach of the requirement of the notice.

2.3 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. Factors which the authority will take into consideration are:

- the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under regulation 5 has failed to take the remedial action specified in the notice within the period specified.
- whether extenuating circumstances apply such as;
 - i. death of landlord where estate is in probate or landlord has died intestate,
 - ii. hospitalisation or placement of landlord in care were there are considerations in relation to the individual's mental capacity.

Note this list is not exhaustive

2.4 A financial penalty allows the council, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be considered appropriate in the following circumstances:

The landlord has failed to comply with the requirements of a remedial notice.

Criteria for determining the quantum of a financial penalty

2.5 Regulation 8(2) states the amount of the penalty charge must not exceed £5,000. 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 the works carried out by the Council.

2.6 The period within which the penalty charge is payable is 30 days beginning with the day on which the penalty charge notice is served. The Council has a discretion to specify that if a landlord pays the penalty charge within a specified earlier period a reduction in the penalty charge may be applied.

2.7 The Council may also exercise a similar discretion where the landlord gives written notice to the Council that the landlord wishes the authority to review the penalty charge notice.

2.8 Of these two discretions, the Council will, as a matter of course, exercise the discretion to reduce the penalty charge in relation to payment within a specified "early payment" period.

- The specified period for early payment is within 14 days beginning with the day on which the penalty charge notice was served.
- For a first offence the fine applied will be £2,500 and an early payment will attract a discount of 50% making it £1,250.
- For subsequent offences the penalty will be £5,000 to deter continued non-compliance and an early payment will attract a discount of 50% making it £2,500.

Procedural matters

- 2.9** 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 the Remedial Notice, serve a penalty charge notice setting-out:
- the reasons for imposing the penalty charge;
 - the premises to which the penalty charge relates;
 - the number and type of prescribed alarms (if any) installed at the premises;
 - the amount of the penalty charge;
 - the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
 - how payment of the charge must be made; and
 - the name and address of the person to whom a notice requesting a review may be sent.
- 2.10** Where the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under regulation 5 has failed to take the remedial action specified in the notice within the period specified the council will, on written notice from the landlord served with a penalty charge notice, review the penalty charge imposed. In conducting the review, the council will consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord.
- 2.11** A landlord who, having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal against the Council's decision.