

Appendix A: New Legislation for the Private Rented Sector

The new requirements are:

1. for property managers and agents to register with a redress scheme, and the Council's duty to enforce the legislation, are introduced by The Enterprise and Regulatory Reform Act 2013 and The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.
2. for letting agents to publish the fees and the Council duty to enforce the legislation is introduced by the Consumer Rights Act 2015.
3. for relevant landlords to install Smoke and Carbon Monoxide Detectors to enforce the legislation is introduced by The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Elsewhere in this appendix these pieces of legislation are referred to together as, 'the law'.

It is not a criminal offence if a landlord or agent does not comply with the regulations. However we have a duty to enforce compliance where it is satisfied, on the balance of probabilities, that a person who has not complied with the above legislation and in such cases the Council can apply a monetary penalty up to a limit of £5,000

There are notice processes that the Council must follow before imposing a penalty, giving the recipient the right to raise objections. Where the Council decides to apply a penalty there is a right of appeal to the first –tier tribunal. Where the Council decision is not appealed, or if appeal is not upheld, the Council may recover the penalty. If necessary, the Council may apply to the civil court for recovery.

There is no limit to the number of penalties that may be imposed on an individual letting agent, so further penalties can be applied if they continue to be in breach of the legislation

The proposed administration process for discharging the Council's statutory duties under the laws are set out below

General

Letting Agents/Property Agents

It is our intention to proactively implement the regulations relating to Letting Agents and Property Management Companies, ensuring that they are compliant with the regulations which have been in force for several months.

The **first letter** will provide information and advice on the schemes and the financial penalties for not joining a redress scheme/publishing fees, a form will be included in the letter which will request details of which redress scheme they have joined and how they have fulfilled their duty to publish fees, allowing 21 days for its return.

If a satisfactory response is not received, to ensure compliance with the Council's general enforcement policy, a second letter will be sent allowing 14 days to contact the investigating officer to discuss the matter or to submit written representations. The second letter will explain that if an unsatisfactory response/no response is received that the issue will be formally investigated

Landlords

To prepare Landlords, in particular those who own a few properties, for the new regulations regarding the implementation of smoke and carbon monoxide detectors across the wider rented sector (some 15,000+ properties). The approach will focus on having a campaign with North Yorkshire Fire Rescue who have been provided with a limited number of detectors of both types to promote the installation of the detectors within the sector and advising tenants to contact the service where the landlord doesn't make arrangements to install them.

1) Investigation of non compliance by Letting Agents/Agents

Where information comes to the attention of the Housing Standards and Adaptations team (team) that there may be non-compliance, an investigation will be conducted by an officer from the team (the Investigating Officer). Information may be received from the public, external organisations or any other person, or arise from a proactive investigation.

When the Investigating Officer has completed his/her investigation he/she will need to decide on the balance of probabilities, whether he/she is satisfied that there has been non-compliance by the letting agent or property manager. Where he/she has decided that there has been non-compliance, he/she will serve a Notice of Intent.

A Notice of Intent

In line with the law and our enforcement policy a Notice of Intent will be served within 28 days of the date the Investigating Officer making (on the balance of probabilities) that the letting agent or property manager has failed to comply with the requirement to belong to a redress scheme. The notice will be served on the letting agent or property manager.

The Notice of Intent must include:

- (a) the reasons for imposing the monetary penalty;
- (b) the amount of the penalty to be paid;
- (c) information as to the right to make representations and objections within 28 days beginning with the day after the date on which the Notice of Intent was sent.

A Notice of Intent will be served by the Investigating officer.

Representations and objections:

A person on whom a Notice of Intent is served has 28 days beginning with the day after the date on which the notice was sent, to make written representations and objections to the enforcement authority in relation to the proposed monetary penalty.

After the end of the period, the decision of the Investigation Officer, that there was non-compliance with the redress scheme requirements and the penalty imposed, will be reviewed by a more senior officer (the Reviewing Officer).

The Reviewing Officer, will have regard to any representations and objections made by the recipient of the notice.

The Reviewing Officer can be any of the following officers:

- where the Notice of Intent was served by Enforcement Officer it will be reviewed by the Senior Officer
- where the Notice of Intent was served by a Senior Officer by the Team Manager.

The Reviewing Officer having taken into account any representations or objections made, will decide on the balance of probabilities whether or not to confirm the Investigation Officer's decision that there was a failure to comply with the redress scheme requirements. If he/she confirms the decision that there was non-compliance with either of the scheme requirements, he/she will need to decide whether or not to confirm the decision to impose the financial penalty set in the Notice of Intent, with or without modifications.

Where representations or objections are received from a person who has been served a Notice of Intent, and the Reviewing Officer is satisfied from the information provided that, on a balance of probabilities, there are exceptional circumstances, and that as a consequence, the application of the full financial penalty will not serve the strategic goal of improving housing or management standards within the private rented sector in the city, he may impose a reduced penalty. Such circumstances could, for example include, but are not be limited to:

- the agent or manager not having set out to engage in property management, or estate agency, as a course of business,
- exceptional personal hardship, or
- having other reasonable excuse for failing to comply with the property redress scheme regulations (not knowing about the regulations will not itself usually amount to reasonable excuse).

Where the Reviewing Officer is satisfied, on a balance of probabilities, that a Letting Agent or Property Manager is being obstructive, in failing to answer reasonable questions put to them regarding their compliance with the requirement to register, or answers such questions falsely, or otherwise hinders the reasonable investigations of officers in relation to compliance, this will be taken into account where the Council is considering reducing the financial penalty and may be weighed, by the Reviewing Officer against any factors in favour of reducing the financial penalty.

Where the decision to impose a penalty is confirmed, a Final Notice will be served on the recipient of the Notice of Intent.

A Final Notice

Where it is decided to impose a financial penalty, a Final Notice will be served on the recipient of the Notice of Intent.

The Final Notice must include:

- (a) the reasons for imposing the monetary penalty;
 - (b) information about the amount of the penalty to be paid;
 - (c) information about how payment may be paid;
 - (d) information about the period in which the payment must be made, which must not be less than 28 days;
 - (e) information about rights of appeal; and
 - (f) information about the consequences of failing to comply with the notice.
- The Final Notice may be served by a Senior Officer or Team Manager, but cannot be served by the Investigating Officer.

2) Investigation of non-compliance by landlords

On receiving a complaint an officer will investigate as to whether there has been breach of the landlord's duties to install a smoke alarm on each storey of the building and a carbon monoxide alarm in any room which contains a solid fuel burning combustion appliance. Where an officer has reasonable grounds to believe that a landlord is in breach of this duty the officer will serve a remedial notice on the landlord requiring the landlord to take action within 28days of the notice is served.

The Remedial notice must:

- (a) specify the premises to which the notice relates
- (b) the specific duty that the Council considers the landlord is failing
- (c) the remedial action and to take action within 28days
- (d) information as to the right to make representations and objections within 28 days beginning with the day after the date on which the Notice of Intent was sent.
- (e) information about the consequences of failing to comply with the notice including the penalty charge.

If the landlord fails to comply with the notice

- (a) The council will arrange for remedial action to be taken at the premises
- (b) Will impose a penalty charge on the landlord – see below re recovery of money

A landlord may give a written notice that the council reviews the penalty charge notice.

Withdrawing or amending a Notice of Intent or Final Notice or Remedial Notice

The Council, at any time, where it receives or becomes aware of information, not considered when it decided to serve a Notice of Intent or Final Notice or Remedial Notice, may review the decision. Where it decides on a balance of probabilities, that the recipient of the notice had complied with the redress scheme requirements or that he was not subject to the requirements, it may withdraw the notice. Further, where, upon review, the Council decides that there has been none compliance with the redress scheme requirements, but considers that the penalty should be reduced; it may reduce the amount specified in the notice. The decision to carry out a review, and the carrying out of that review, will be taken by a more senior officer to the officer who made the original decision to serve the notice in line with the service requirements above

First tier Tribunal Appeal

All three pieces of legislation provide for right of appeal to the First-tier tribunal against a Council decision. The process for bringing an appeal is governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976). Where the Council receives from the First-tier Tribunal notice that a recipient of Final Notice has made an appeal to it, the fine will not be enforced until the appeal is disposed of

Recovering the penalty monies

The monies will be recovered by using the council's existing debt recovery processes. However, if the person subject to the penalty fails to pay the monies owed, the Council may choose to pursue court proceedings. Where there is a failure to pay a penalty, the matter will be consider in line with our Enforcement Policy, to decide whether enforcement action will be taken and if so, what form that action will take, including court proceedings.