

summary of responses from consultation on the policy and procedure for applying civil penalties under the Housing and Planning Act 2009

Response	Status of respondent	Council Response
<p>Thank you for the email below and enclosures regarding possible penalties and the charges you wish to impose on a sliding scale basis. It seems that it is only a matter of time before almost all landlords will be tripped up by yet further regulations or minor factors even if they are not aware they are not aware that they might be missing something and only to be faced with a fine. As a landlord we are just easy sitting target for the council to impose charges at will and as a HMO license holder we have even more stringent regulations to abide by compared to the rest of the rental sector.</p> <p>HMO license holders have to obtain at considerable cost just some of the following items below at the outset or at the renewal of a license :</p> <ol style="list-style-type: none"> <li>1) HMO license</li> <li>2) Smoke and Fire Alarm with maintenance contract in place</li> <li>3) Monthly Inspections and alarm tests</li> <li>3) Gas Certificates</li> <li>4) All Electrical appliance PAT tested</li> <li>5) Legionaries Assessment and certificate</li> <li>6) Additional sinks fitted into bedrooms</li> <li>7) Inspection from the council to confirm the property meets the standards and what additional new regulations have to be adhered to which is reviewed by the council as a minimum every 5 years</li> </ol>	<p>Large Portfolio Private landlord</p>	<p>Thank you for taking the time to respond to this consultation.</p> <p>Whilst I appreciate your concerns it must be remembered that this procedure can only be used as an alternative to prosecution and in this sense is not new a new regulation but a different way of enforcing existing legislation. It is for this reason that in order to impose the Civil Penalty we have to have the same burden of proof that is required for criminal prosecutions in that we need to be able to demonstrate the offence has been committed 'beyond reasonable doubt'. Furthermore we also need to have regard to the 'Code for Crown Prosecutors' to consider if our proposed action is proportionate , in the Public Interest and that the offender has not got a 'reasonable excuse' for the commission of the offence. It is clear that the Government's intention is not necessarily to see this as an easier option but as an alternative to taking cases through the law courts. It must therefore stressed that this new procedure will not result in any increase in cost to the Landlord unless they unreasonably fail to meet their legal obligations.</p> <p>Notwithstanding this the Government have also stated that any revenue raised from this procedure must be ring fenced specifically for Private Sector Housing enforcement purposes.</p>

<p>The above excludes any ongoing maintenance, repairs, tenants who either trash or stop paying rent, don't clean their rooms or bins and cause infestation and the landlord has to foot these costs too, there seems to be no balance or parity at all between what the license holder has to legally abide by compared to the tenants who are always seen as the poor victim and that's just not the case, especially in our HMO's as they are all students from middle class families.</p> <p>When are these relentless costs and penalties going to end and to stop penalising landlords such as ourselves who have maintain contracts in place and take care of our properties and tenants?</p> <p>I am not sure what any landlord can do to prevent these further charges and penalties that you want to impose other than airing our disappointment that we are going to be faced with yet further costs which ultimately goes into the council coffers.</p>		<p>I trust this addresses your concerns but please let me know if you require any more clarification.</p>
<p>The S T A T U T O R Y I N S T R U M E N T S 2015 No. 1693 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires "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".</p> <p>Page 6, 3 bullet point of the Civil Penalties doc. Issued by the Department for Communities and Local Government "Required landlords ..... to install carbon monoxide alarms in high risk rooms."</p> <p>There is no definition of a high risk room in either The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, nor in the Civil Penalties doc.</p>	<p>Small portfolio Private Landlord</p>	<p>Thank you for taking the time to reply to me.</p> <p>The purpose of my consultation was to seek comments regarding Welwyn Hatfield's proposed protocol of assessing when a civil penalty is appropriate and calculating the amount of penalty.</p> <p>However, you have commented on the apparent discrepancy between the National Regulations applying to the fitting of detectors and the guidance document issued by the relevant central government department on Civil Penalties. I had no control or input into the content of either of these two documents and agree that they could cause confusion especially as there is no definition of 'High risk Room' in the guidance document.</p>

<p>How can the Civil Penalties doc. require a higher standard than the actual Statute Law?</p> <p>This is another case of confusion instead of clarity. There must be NO confusion.</p> <p>Maybe the Civil Penalties doc. is just wrong.</p> <p>Or maybe The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 is wrong.</p> <p>One of the documents requires correction</p>		<p>By way of clarification I would say that the Regulations give an absolute legal requirement with regard to the fitting of Carbon Monoxide detectors in room where there are 'Solid fuel combustion appliances'.</p> <p>In rooms where this is not the case , for example a gas boiler then the necessity for the installation of a CO detector is really a matter of risk assessment and in Housing terms this would be assessed using the Housing Health and Safety rating system ; in particular I would refer you to page 29 onwards of this Government Document;</p> <p><a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf</a></p> <p>To take two extreme generic examples I would consider that it would not be a requirement to fit a CO detector where a balanced flue gas boiler is sited in a well ventilated kitchen , whereas a gas boiler that is not room sealed would probably require a detector , but each situation should be assessed on its own particular merits and it may also be that Gas Safe requirements over ride this : In any event the installation of a CO detector in all rooms that have any sort of combustion appliance would cover all eventualities and ambiguities.</p> <p>I hope that the contents of this email are helpful</p>
<p>I support this in general. I have one comment only. The calculation matrix is slightly unclear to me. Specifically is there discretion on awarding scores? Your money and points table implies this. Is the last row double points everywhere?</p>	<p>Small portfolio Landlord</p>	<p>Thank you for taking the time to respond to this consultation and I welcome the fact that you are generally supportive.</p> <p>In answer to your question the matrix is discretionary in completing to some extent, furthermore there is an opportunity to load the final score either up or down to take into account any mitigating or aggravating factors.</p> <p>The double points scoring only loads the forth row - the harm/potential harm - as this follows the basic principles in recognised sentencing guidelines.</p>

		I trust this answers your question but if not please do get back to me.
<p>Couple of things:</p> <ol style="list-style-type: none"> <li>1. I think at the bottom of page one, last sentence of the procedure, there is probably a word missing. I think the intention is to say that the following list should show examples of where the Council may 'not' be appropriate. The word 'not' is omitted.</li> <li>2. Matrix is I think broadly understandable, but helpful to include an example or two. One showing the 'doubling up' effect and one not.</li> <li>3. Procedure is silent on how this dovetails into existing Council practice. Specifically how this follows / dovetails into to the Councils existing policy on issuing improvement or prohibition notices. I think inclusion would give comfort that this is not an alternative to existing practice, and also allay fears of often charged accusations of things being introduced to 'simply make Councils money'. Clarity and transparency on the relationship here would greatly help with introduction, acceptance and implementation. It may also help head off possible future appeals if explained up-front.</li> </ol> <p>Apart from that - it seems to meet the intent set put centrally. A question is raised by this however. Will all Councils produce consistent guidance and matrices with that attached? If not that may again give grounds for appeal which would diminish the intent if for example the risk matrix and policy application differed from Council to Council.</p>	Small Portfolio Landlord	<p>Thank you for taking the time to respond to this consultation and I welcome the fact that you are generally supportive. Thank you spotting the 'typo' on the first page which I have now amended.</p> <p>In terms of how this relates to the existing Council procedure it is important to note that the procedure is only an alternative to prosecution and therefore the rationale and protocol for the service of Formal Notices is unchanged as the offence is only committed for non-compliance with the Notice. It is for this reason that we have to have the same burden of proof that is required for criminal prosecutions in that we need to be able to demonstrate the offence has been committed 'beyond reasonable doubt' and that we need to have regard to the 'Code for Crown Prosecutors' to consider if the action is proportionate, in the Public Interest and that the offender has not got reasonable excuse for the commission of the offence. It is clear that the Government's intention is not necessarily to see this as an easier option but as an alternative to taking cases through the law courts. Notwithstanding this the Government have also stated that any revenue raised from this procedure must be ring fenced for Private Sector Housing enforcement purposes.</p> <p>I share you concerns that the procedures will not be the same for all Local Authorities but unfortunately the Government have not produced and specific guidance other than each Council must produce and publish it's on policy. It an attempt to promote consistency on a Local basis this Policy and the matrix calculator was produced in conjunction with the Hertford and Bedfordshire specialist Housing Officers group and was adopted as a template.</p>

		I trust this addresses your concerns but please let me know if you require any more clarification
That measures appear reasonable and it is nice to have a framework in place	Managing Agent	Thank you for taking the time to respond and I appreciate you positive comments