

Statement of Principles for Determining the Amount of a Penalty Charge

Southend-on-Sea Borough Council Statement of Principles for Determining the Amount of a Penalty Charge

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ('the Regulations')

1. Purpose

- 1.1 The Regulations make it a legal requirement for all "relevant landlords" to install "prescribed alarms" at "residential premises". Full definitions are as laid out in the Regulations.
- 1.2 A "relevant landlord" is the immediate landlords in respect of a specified tenancy and is not a registered provider of social housing.
- 1.3 Relevant landlords have new duties to ensure that:
 - (a) During any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy:
 - (1) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation; and
 - (2) 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; and
 - (b) 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.
- 1.4 This statement of principles is not a replacement for and is to be read in conjunction with the Statutory Instrument No. 1693 <http://www.legislation.gov.uk/uksi/2015/1693/contents/made> and the Department for Communities and Local Government (DCLG) Q&A Booklet for the Private Rented Sector – landlords and tenants and the Explanatory Booklet for Local Authorities.
- 1.5 Smoke and carbon monoxide alarms are inexpensive with battery operated units widely available from a range of DIY stores and supermarkets for generally less than £20 per unit.
- 1.6 Where a penalty charge is to be imposed, the Council's policy will be to impose the maximum penalty of £5,000. An early payment discount of 50% (within 28 days of service of the Notice) reduction will apply reducing the penalty to £2,500.
- 1.7 Where recipients of penalty notices fail to make full payment, the Council will look to pursue legal means of cost recovery such as serving a statutory notice applying for

bankruptcy whereby payment can be gained via enforced sale of assets. County Court Judgements (CCJs) may also be applied which will impact on a landlord's credit record and future ability to obtain loans.

- 1.8 Payment plan: Payment plans will only be considered where the full amount cannot be paid in full within the specified time and only where specifically requested in writing, agreed by the Council, and where substantially evidenced by bank and other financial information proving an inability to pay within the initial timeframe given. Any payment plan would have a maximum compliance term of 3 months.

2. Justification for the amount of the Penalty Charge

- 2.1 Any fixed penalty charge levied will cover the cost of all works in default, officer time, recovery costs, administration fee and a penalty.
- 2.2 The provision of smoke alarms and carbon monoxide alarms does not place an excessive financial or labour intensive burden upon the landlord, and lack of compliance directly impacts the immediate safety of the tenants and visitors to the property, especially vulnerable families.
- 2.3 It is understood that the imposition of the maximum potential fine, being £5,000 under the regulations, may present a financial burden but this is balanced against the risk posed to the tenants, the low cost of installation of such equipment, the ease to comply with such requirements and the amount of opportunity given to comply.

3. Procedure

- 3.1 When the Council discovers a breach of the Regulations, the relevant landlord will receive a warning cover letter and 'Notice of Intent' (issued together). This will specify to the landlord what action they need to take and to comply within a maximum of 28 days.
- 3.2 The Landlord has 28 days to comply with remedial works requested within 'Notice of Intent' or show that they have taken 'reasonable steps' to comply with the duty, or request a Review. If the landlord does not agree with the 'Notice of Intent' they can request in writing within 28 days that the Council reviews it. The Council must then consider the representations made and decide whether to confirm, vary or withdraw the Notice of Intent and inform the landlord of its decision.
- 3.3 If after 28 days from serving the Notice of Intent the Landlord does not comply or a review fails, the Council will subsequently carry out remedial action and install the necessary smoke alarm(s) and / or carbon monoxide alarm(s) and issue a civil penalty charge under a 'Final Notice'. The Council must give written notice of its intention to issue a penalty charge which will be in the form of a Final Notice. This will include information on the amount of the charge, the reasons for the Final Notice and the timeframe within which either the penalty must be paid or an appeal lodged.
- 3.4 Within 28 days of the Final Notice, the relevant Landlord must either pay the charge or carry out any remaining remedial works. The landlord may also choose to appeal to the First Tier Tribunal (FTT) against a Final Notice. A penalty charge cannot be enforced until an appeal is disposed of. The FTT has the power to confirm, amend, suspend or revoke the Council's Notice. Information on how to appeal will be included within any Final Notice.