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## **Statement of Principles for the Issue of Civil Penalty Charges Under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

### 1. Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“The Regulations”), Statutory Instrument 2015 No. 1693 came into force on the 1 October 2015. The regulations require private sector landlords from that date to have at least one smoke alarm installed on every storey of their premises and a Carbon Monoxide alarm in any room containing a solid fuel burning appliance, for example a coal fire or wood burning stove. After that, the landlord must ensure all alarms are in working order at the start of each new tenancy.

Tonbridge & Malling Borough Council (“The Council”) as an enforcing authority under the Regulations can impose a civil penalty charge of up to £5,000 on landlords who do not comply with the Regulations. The Council is required under the Regulations to prepare and publish (for example on the Council website) a statement of principles (regulation 13) and it must have regard to these when determining the amount of a penalty charge.

### 2. Overview of the Regulations

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty (regulation 4) requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a Carbon Monoxide alarm is installed in any room of premises used as living accommodation, which contain a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

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

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice under regulation 5 of the Regulations on the landlord.

If the landlord fails to take the remedial action specified in the notice within the specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty is under regulation 8 of the Regulations.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council within 28 days of when the remedial notice is served.

The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

### 3. The purpose of imposing a financial penalty

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

The aims of financial penalties for landlords are to:

- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the Council in arranging remedial works 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 after being required to do so under notice
- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes given the nature of the breach and the cost benefit to comply with these legal requirements.

#### 4. Overview of each stage of the civil penalty process

Step	Decision	Description
1	Issue a remedial notice	If the Council has reasonable grounds to believe there is a breach of the requirements of regulation 4 it must serve a remedial notice on the landlord.
2	Breach	The landlord has failed to comply with the remedial notice within the relevant period of 28 days and the Council has arranged for remedial action to be taken.
3	Decision	<p>Decision is made on liability for the civil penalty charge.</p> <p>The civil penalty process starts when the Council is satisfied on the balance of probabilities that a landlord on whom it has served a remedial notice has failed to comply with the terms of that notice (regulation 6(1)). If there is a reasonable excuse for non-compliance, for example tenants not co-operating, no further action will be taken. In deciding whether it would be appropriate to impose a civil penalty charge the Council will take full account of the particular facts and circumstances of the breach into consideration.</p> <p>The penalty charge comprises two parts, a punitive element for failure to comply with the remedial notice and a cost element relating to the investigative costs, officer time, administration and any remedial works arranged and carried out by contractors instructed by the Council.</p>
4	Payment	<p>Payment of penalty or request for review.</p> <p>Penalty charges are to be paid in full within the period specified (this will not be less than 28 days) in the penalty charge notice unless within that specified period the landlord has given written notice to the Council that the penalty charge notice be reviewed.</p> <p>The Council may reduce the specified charge under an early payment option which reduces the amount of the civil penalty by 50 percent if payment is received in full within 14 days of the civil penalty notice being served. The reduced penalty amount and the final date by which it must be paid will be clearly shown on the civil penalty notice.</p>
5	Review	Penalty notice is confirmed, varied or withdrawn. Review decision notice issued together with appeal information. If the landlord requested a review within the required penalty charge notice period they will continue to be eligible for the early payment option under the review decision notice.
6	Payment	Payment of penalty or appeal to First-tier Tribunal.
7	Appeal	First-tier Tribunal will determine if the penalty charge notice is quashed, confirmed or varied.
8	Enforcement of debt recovery	Enforcement action to recover the debt may be taken if payment is not received within the required time frame. This may include action in the civil court to recover the unpaid debt. This action may have an adverse impact on the landlord's ability to obtain future credit and act in the capacity of a company director.

## 5. The amount of financial penalty

The Regulations state the amount of the penalty charge must not exceed £5,000.

The charges are as follows:

- £2,500 for the first breach to comply with a remedial notice
- £1,250 for early payment, representing 50 percent reduction, for the first breach to comply with a remedial notice
- £5,000 for each subsequent breach to comply with a remedial notice
- £2,500 for early payment, representing 50 percent reduction, for each subsequent breach to comply with a remedial notice

## 6. Remedial action

Where the Council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

In order to comply with these Regulations a Carbon Monoxide alarm will be installed in every room containing a solid fuel combusting appliance or smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy such as a house in multiple occupation or a building converted into one or more flats;
- having an unsafe internal layout where fire escape routes pass through living rooms or kitchens; or
- is three or more storeys high.

Any further works required to address serious fire safety or Carbon Monoxide hazards in residential property, that are not undertaken though informal agreement will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy.

## 7. Information regarding this statement

The Council has prepared and published this statement in line with its duties under regulation 13. This statement may be revised and where this happens any revised statement will be published.

When determining the amount of a penalty charge the Council will have regard to the most recent prepared and published statement of principles at the time when the breach in question occurred.