

Statement of Principles for determining financial penalties

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Summary

This statement sets out the principles that Guildford Borough Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) requires landlords who let properties under a tenancy to provide and undertake the following:-

- (i) a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- (ii) a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- (iii) 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.

Enforcement

Where the Council has reasonable grounds to believe that:

- the smoke alarms or Carbon Monoxide Detectors required by the regulations have not been provided, or;
- The Smoke Alarms or Carbon Monoxide Detectors were not working at the start of a tenancy or licence,

It is a statutory duty on the Council to serve the Remedial notice on the Landlord (this may include the letting agent if they are the immediate landlord), detailing the actions the landlord must take to comply with the Regulations.

If we are satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the remedial notice within 28 days, we must arrange for remedial action to be taken (where the occupier consents).

Under Regulation 8 the Council may also 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) has failed to take the remedial action specified in the notice within the period specified.

Background

Regulation 13 requires the Council to prepare and publish a statement of principles, which it proposes to follow in determining the amount of a penalty charge.

The aim of financial penalties is to:

- deter non-compliance.
- eliminate any financial gain or benefit from non-compliance with the regulations.
- reimburse the costs incurred by the Council in undertaking works in default.

Charging a Financial Penalty

If a landlord fails to comply with the requirements of a remedial notice then a penalty charge notice can be served.

Where the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice has failed to take the remedial action specified in the notice within the period specified, the landlord will be required to pay a penalty charge.

Procedure For Charging a Financial Penalty

Under the regulations, the Council is required to follow a number of procedural steps before requiring a financial penalty to be paid.

The penalty can only be charged where a remedial notice has been served, which will give 28 days to take action (for example, to install alarms)

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 following:

- the reasons for the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) to be 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.

The Financial Penalty

Regulation 8(2) states the penalty charge must not exceed £5,000.

Charging the maximum £5000 for non-compliance with a remedial notice may appear an excessive financial burden it is considered necessary for the following reasons:-

- To protect the health and safety of tenants as the consequences of non-compliance could have serious implications for tenants.
- By imposing the maximum penalty, it reflects the seriousness of the matter.
- The penalty needs to be at a level, which is significant enough to deter non-compliance.
- The cost to comply with the regulations is minimal compared to the cost of non-compliance.
- The landlord will have been given 2 opportunities to comply with the regulations prior to the penalty charge notice being served.

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 may in exceptional circumstances exercise discretion where the landlord gives written notice to the Council that the landlord wishes the authority to review the penalty charge notice. This request must be made within 28 days beginning on the day which the penalty charge notice was served.

In conducting the review, we will need to 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.

A landlord who is served with a notice confirming or varying the penalty charge notice may appeal the Councils decision to the first-tier tribunal.

Approved by The Executive, 22 March 2016.