

Statement of Principles for determining a penalty charge under the Smoke and Carbon Monoxide Alarm Regulations 2015 and related legislation

1. Introduction

This statement sets out the principles that South Somerset District Council (the Council) will apply in exercising powers to impose a financial penalty for failing to meet certain legislative requirements for which they are the enforcing authority.

2. The Council's power to impose financial penalties.

Legislation has been introduced which has provided the Council with a power to impose and charge a financial penalty in certain prescribed circumstances.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, are two such enactments that are specifically referred to in this document.

3. The purpose of imposing a financial penalty

The Council's primary purpose is to protect the public, although in exercising its regulatory powers they may have a punitive effect. The primary aims of financial penalties will be to:

- change the behaviour of the landlord;
- eliminate any financial gain or benefit from non-compliance with the regulations;
- be proportionate to the nature of the breach of the regulations and the potential harm outcomes;
- aim to deter future non-compliance;
- reimburse the costs incurred by the Council in undertaking remedial work and carry out its functions.

In determining the amount of financial penalty to be charged the Council may in general have regard to the following:

- The level of cooperation provided by the landlord,
- The available evidence of a breach of the remedial notice
- any history of previous contraventions of Housing or Housing related legislation,
- the level of risk created by the non-compliance,
- the cost incurred by the Council in enforcing the relevant provision,
- any other circumstances specific to the case.
- The Council's Private Sector Housing Enforcement policy

4. The Scope of this document

Regulation 13 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, requires the Council to prepare and publish a 'Statement of Principles' to which it will have regard in determining the amount of a penalty charge it will apply where a landlord is in breach of the duties under those Regulations.

The Council acknowledges that such a statement represents good practice and has produced this document in order to publicise the principles that will be applied with regard to these Regulations and in any other housing related legislation that permits the Council to impose a financial penalty. Included here is legislation on the Redress Scheme for Letting and Property Management Work.

5. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) includes to the following matters;

Under Regulation 4, a relevant landlord in respect of a specified tenancy must ensure that—

- (a) during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—
 - (i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
 - (ii) 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.

More details on the requirements, definitions and exemptions can be found in the Regulations and in Government guidance on line.

Where the Council has reasonable grounds to believe that there are no or an insufficient number of smoke or carbon monoxide alarms in the property or; the smoke or carbon monoxide alarms were not working at the start of a tenancy or licence, then the council can serve a Remedial Notice under Regulation 5 requiring the landlord to take action to comply with the Regulations within 28 days.

If the Landlord has not complied with the Remedial Notice, the Authority must take remedial action and may require the landlord to pay a penalty charge by serving a penalty charge notice under Regulation 8.

6. Criteria for determining the amount of a financial penalty charge

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

The Council will comply with the requirements of the legislation regarding the information to be contained within any penalty charge notice, including provisions for a review, and the appeal procedures. A penalty charge will be recoverable on the order of a court, as if payable under a court order.

The standard penalty charge for breach of duty under regulation 6(1) non-compliance with a Remedial notice will normally be up to £1,500 for a first failure. An offer will usually be made on a first occurrence penalty charge for it to be reduced by 50% if paid within 14 calendar days of the date of issue of the penalty charge notice.

Should a landlord repeatedly not comply with such Remedial Notices, the penalty charge will normally be up to £3,000 for a second occurrence, and normally be up to £5,000 (maximum) for any additional occurrences. There will usually be no discount offered for early payment of a penalty charge, for failure to comply with a Remedial notice on the second and additional occurrences.

7. The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Where the council is 'satisfied on the balance of probabilities' that a person has failed to belong to a redress scheme as required by article 3 or 5 of the above Order, it may by notice require that person to pay a monetary penalty.

The amount of the monetary penalty must not exceed £5,000.

The Council will comply with the procedure for the imposition of a monetary penalty stipulated within the Order including provisions for the submission of representations and objections and the appeal procedures. A monetary penalty will be recoverable on the order of a court, as if payable under a court order.

The standard monetary penalty for breach of duty under article 3 or 5 will be set initially at £1500. The monetary penalty will normally be reduced by 50% if paid within 14 calendar days of the date of issue of the monetary penalty.

The EH Lead Specialist will be authorised to agree further reductions in both of the cases referred to above where there are mitigating circumstances in line with the principles laid down in section 3 of this document.