

## **Private Sector Housing Enforcement Policy**

### **APPENDIX A**

#### **Smoke and Carbon Monoxide Regulations Policy**

##### **Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

#### **The scope of this document**

Regulation 13 of the regulations requires the Council to prepare and publish a Statement of Principles to follow in determining the amount of a penalty charge.

The Council may revise its statement of principles and, where it does so, must publish the revised statement.

Where a penalty charge is to be imposed, the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.

This document sets out the legal framework, and the principles which the Council will take into account and apply when exercising its powers under regulation 8 of the regulations.

This document contains the Statement of Principles required under the Regulations, for the assessment of the Financial Penalty which will be imposed in various circumstances.

#### **The legal framework**

The Regulations require landlords of certain premises to:

1. Install smoke alarms on each floor of their rented property, and
2. Install a Carbon Monoxide alarm in each room where there is a solid fuel burning appliance, and
3. Carry out checks to ensure that all alarms are present and in working order at the start of each new tenancy.

Where non-compliance with the duties is identified; the Local Housing Authority must, within 21 days, serve a Remedial Notice (*the Notice*) (Regulation 5), on the landlord; requiring that all non-compliance is remedied within 28 days.

In the event that the landlord fails to fully comply with the Remedial Notice within the time for compliance, the Local Authority has a duty to carry out the required remedial works, within a further 28 days.

The Regulations, exempts the landlord or the Local Authority from being in breach of their duties where an occupying tenant refuses to allow access for remedial works to be carried out.

Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 provides that the Council may 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, and has not taken all reasonable steps to do so.

### *Procedural matters*

The Regulations require that six weeks from the time at which the council is satisfied that there has been a failure to comply with a Remedial Notice the council must serve a Penalty Charge Notice setting out:

1. the reasons for imposing the penalty charge;
2. the premises to which the penalty charge relates;
3. the number and type of prescribed alarms (if any) installed at the premises in default of the landlord;
4. the amount of the penalty charge;
5. the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
6. how payment of the charge must be made; and
7. the name and address of the person to whom notice requesting a review may be sent.

Where the landlord makes a written request within the specified time for the Penalty Charge to be reviewed, the Local Authority must review that decision and serve a further Decision Notice informing the landlord of its final decision.

A landlord may then appeal to the First-Tier Tribunal against the Council's review decision.

### *The purpose of imposing a financial penalty*

The primary aims of financial penalties are to:

- Change the behaviour of the landlord.
- Eliminate any financial gain or benefit arising out of 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 works in default.

### **Statement of Principles**

This statement sets out the principles that the Swindon Borough Council (*the Council*) will apply in exercising its powers to require a relevant landlord (*the landlord*) to pay a Penalty Charge.

If, on the balance of probabilities, the landlord has failed to take the remedial action specified in the notice within the period specified, and/or has not taken all reasonable steps to comply with the duty, a penalty charge will be considered appropriate in all circumstances.

### *Criteria for determining the quantum of a financial penalty*

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

The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial notice (subject to any representation made by a landlord to the council) and a cost element relating to the works carried out by the Council.

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 has discretion to specify that, if a landlord pays the penalty charge within 14 days; a reduction in the penalty charge may be applied (an 'early payment').

The Council may also exercise a similar discretion where the landlord gives written notice, within 14 days, to the Council that the landlord wishes the authority to review the penalty charge notice.

Swindon Borough Council will, as a matter of course, exercise the discretion to reduce the penalty charge in relation to an 'early payment' if paid in full within the specified 14 day period.

## The Penalty Charge

**For a first offence the penalty charge will be half of the maximum permissible charge (£2500 at 01/03/2018), and an early payment will attract a discount of 50%, reducing the charge for charges paid in full within 14 days.**

**For a second offence, committed by the same landlord or property manager, the penalty charge will be 75% of the maximum (£3750 at 01/03/2018), and no early payment discount will apply.**

**For third and subsequent offences committed by the same landlord or property manager, the penalty charge will be the maximum permissible (£5,000 at 01/03/2018), and no early payment discount will apply.**