

Appendix 1

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles

Introduction

The Smoke and Carbon Monoxide (England) Regulations 2015 introduce the following requirements for all landlords during any period beginning on or after 1st October 2015 when a premises is occupied under a 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;
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
3. 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 Local Housing Authority has reasonable grounds to believe that;

1. There are no or insufficient number of smoke alarms or carbon monoxide alarms in the property as required by the regulations or,
2. The smoke alarms or carbon monoxide alarms were not working at the start of a tenancy

a remedial notice will be served on the landlord within 21 days. The notice will require provision of the appropriate alarms and will give the landlord 28 days to comply.

Failure to comply with the remedial notice will result in the issue of a penalty charge notice.

The purpose of this statement of principles

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.

This statement sets out the principles that Colchester Borough Council will apply in exercising its powers under the regulations to impose a penalty charge on a relevant landlord who fails to comply with a remedial notice.

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

In determining the amount of the penalty charge, the Council must have regard to the most recently published statement of principles in place at the time when the breach in question occurred.

Main principles for issuing a penalty charge:

1. Recover the Council's costs in carrying out the necessary remedial work.
2. Lower the risk to tenants health and safety and wellbeing by ensuring the property in question benefits from a safe means of escape in the case of fire.
3. Promote compliance of landlords in the Private Rented Sector .
4. Eliminate any financial gain or benefit from non-compliance with regulation.
5. Educate landlords on the associated risks of non-compliance.
6. Be proportionate to the nature of the breach of legislation and the risk posed.
7. Aim to prevent future non-compliance.

Main principles to be taken into account when setting the level of the penalty charge:

1. The seriousness of an offence. The lack of a working smoke alarm or carbon monoxide detector is a potentially life threatening deficiency. Failure to provide adequate early warning poses a significant risk to the occupants of a residential property. Carbon monoxide is a silent killer and the only effective warning system is a fully functional alarm.
2. The intention of the offender . Failure to comply within 28 days of a remedial notice being served means that there is a wilful and deliberate act not to provide alarms, thus risking the safety of the tenants.
3. Providing an defective deterrent – the large amount of the fine should act as a deterrent.
4. The level of penalty should as a minimum cover the cost of all the works in default, officer time, recovery costs, an administration fee and a fine.
5. Repeated offences should attract a higher penalty in view of continuing disregard for legal requirements and tenant safety.
6. The Authority considers that a lesser penalty will be merited on the occasion of the first offence and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability and savings in administration costs.

Level of Penalty Charge

The Penalty Charge shall be set at **£2000** for the first offence but this will be reduced to £1000 if paid within 14 day period.

For any subsequent offences the Penalty Charge will be set at the maximum of **£5000** with no reduction for early payment.

Recovery of Penalty Charge

The Council may recover the penalty charge as laid down in the regulations i.e on the order of a court, as if payable under a court order.

Sums paid may be used by the Authority under any of its functions, but in particular, will be used to assist in the enforcement and promotion of standards in private sector housing.

Review in relation to a penalty charge notice

The Landlord can request in writing that the local authority review the penalty charge notice.

The request for a review must be made within 28 days on which the penalty charge notice is served.

The local authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice.

The Head of Professional Services will be the decision maker in relation to any representations.

The Head of Professional Services, in making the decision, will consider the following:

1. Whether the facts of the matter support the service of the penalty charge notice.
2. The decision to serve the penalty charge notice was correct
3. The amount of the penalty charge was reasonable having regard to any mitigating or other circumstances submitted with the request for review.

Appeals

A landlord who is served with a notice confirming or varying a penalty charge may appeal to the First-tier Tribunal against the local authority's decision.

Review of Statement of Principles

This statement will be reviewed as a minimum annually and published with the Fees and Charges for Private Sector Housing.

The statement of principles was considered and agreed by the Portfolio Holder for Housing on 25th February 2016