

1 Introduction

1.1 This statement sets out the principles that the Amber Valley Borough Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty as required by Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations). The regulations provide 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) under regulation 5 has failed to take the remedial action specified in the notice within the period specified.

1.2 The scope of this document

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 Council may revise its statement of principles and, where it does so, it must publish the revised statement. Where a penalty charge is made, 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.

2 Applicable principles

2.1 The purpose of imposing a financial penalty

The Council's primary purpose in exercising its regulatory powers is to protect the interests of the public.

The aims of financial penalties will be to:

- change the behaviour of the individual landlord;
- send a strong statement about the importance of smoke and carbon monoxide detection;
- eliminate any financial gain or benefit from non-compliance with the regulations;
- deter future non-compliance by the individual landlord; and
- recover the costs incurred by the Council in undertaking work in default.

The penalties will also be proportionate to the nature of the breach of the regulations and the potential harm.

2.2 Criteria for the imposition of a financial penalty

In deciding whether it would be appropriate to impose a penalty, the Council will satisfy itself, on the balance of probabilities that the landlord on whom it has served a remedial notice under regulation 5 has failed to take the remedial action specified in the notice within the period specified, taking a full account of the particular facts and circumstances of that case.

2.3 Criteria for determining the Level of financial penalty.

Under regulation 8(2) it is specified that 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 punitive element of a penalty charge in respect of a **first offence** will be **£2,500**.
- The punitive element of a penalty charge in respect of **subsequent** offences will be **£5,000 (per offence)**.

The cost element of a penalty charge, relating to the works carried out by the Council, will be determined from the actual costs incurred 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.

If a landlord pays the penalty charge within 14 days beginning with the day on which the penalty charge notice was served, the Council will reduce the charge by 50%.

The Council may also exercise discretion where the landlord gives written notice to the Council that the landlord wishes the Council to review the penalty charge notice. In determining such a request the Council will take full account of the particular facts and circumstances of that case.

2.6 Procedural matters

The regulations impose a number of procedural steps which must be taken before the Council can impose a financial penalty.

Before imposing a requirement on a landlord to pay a penalty charge 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 reasons for imposing the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) installed at the premises;
- the amount of the penalty charge;
- the landlord's obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;

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- how payment of the charge must be made;
- the name and contact details (address) of the person that the landlord should send their written notice requesting a review.

2.7 Review.

Where the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under regulation 5 has failed to take the remedial action specified in the notice within the period specified the Council will, on written notice from the landlord served with a penalty charge notice, review the penalty charge imposed. In conducting the review, the Council will consider any representations made and take full account of the particular facts and circumstances of that case.

2.8 Appeal process.

A landlord who, having requested a review of a 'penalty charge notice' is served with a notice confirming or varying the penalty charge, may appeal to the First-tier Tribunal against the Council's decision.

2.9 Complaints procedure.

The Council has a formal complaints procedure. Landlords who are dissatisfied with the way that the Regulations have been applied or in any other aspect of the Council's service delivery may refer their complaint through the formal procedure. Details are available on the Council's website at www.ambervalley.gov.uk