



## Private Rented Housing Enforcement Policy

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### Appendix 3 Statement of Principles – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

#### 1.0 Introduction

- 1.1 This statement sets out the principles that the London Borough of Bromley will apply in exercising its powers under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the Regulations”).

#### 2.0 Purpose

- 2.1 The Council is required under the Regulations to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge for failure to comply with a Notice.

#### 3.0 Duties

- 3.1 The Regulations impose the following duties on certain landlords (Residential Social Landlords, HMO's, long leaseholders, student halls, healthcare residences, hostels and live in landlords by agreement are excluded) of a residential property of a specified tenancy (defined in Section 2 of the Regulations), namely, to ensure that:

- a smoke alarm is installed on each storey of the premises where there is living accommodation (for these purposes living accommodation includes bathrooms and lavatories)
- a carbon monoxide alarm is installed in any room of the premises which is used wholly or partly as living accommodation and which contains a solid fuel burning combustion appliance.
- that at the start of any new tenancy, checks are made by the landlord, or someone acting on his behalf, that the alarm(s) serving the premises is/are in proper working order

- 3.2 Properties subject to Part 2 or Part 3 licensing under the Housing Act 2004 (i.e. as licensable Houses in Multiple Occupation) are exempt from the Regulations.

#### 4.0 The Legal Framework

- 4.1 Where the Council has reasonable grounds for believing that a landlord is in breach of one or more of the above duties, we have a duty to serve that person

with a Remedial Notice within 21 days detailing the actions that must be taken to comply with the Regulations.

4.2 For the purposes of this provision, 'reasonable grounds' may include being informed by a tenant, letting agent or Officer that the required alarms are not installed. The Regulations do not require that the Council enter the property or prove non-compliance in order to issue a remedial notice, however, the Council will aim to visit such properties to confirm that the required works have not been undertaken. Where the Council is satisfied on the balance of probabilities that a landlord has not taken the remedial action specified in the Notice, within the timescale stipulated in that document, the Council will:

- Arrange (where the occupier consents) to undertake the remedial action specified in the Notice within 28 days; and
- Require the landlord to pay a penalty charge of such amount as the Authority may determine, not exceeding £5,000.

### 5.0 The purpose of imposing a financial penalty

5.1 The primary purpose of the Council exercising its regulatory power is to promote and protect the public interest. The primary aims of financial penalties are to: -

- lower the risk to tenant's health and safety by ensuring that the property has a safe means of escape in the event of a fire
- eliminate any financial gain or benefit from non-compliance
- reimburse the costs incurred by the Council in enforcing the regulations
- change the behaviour of the landlord and deter future non-compliance
- penalise the landlord for not installing alarms in line with the Regulations and after being required to do so, under notice
- proportionately address potential harm outcomes and the nature of the breach.

### 6.0 Principles to be followed in determining the amount of a Penalty Charge

6.1 Any penalty charge imposed should be proportionate to the risk posed by non-compliance, the nature of the breach in the individual case and set at such a level as to sufficiently deter the offender and others. It should also cover the costs incurred by the Council in administering and implementing the legislation.

6.2 Fire and Carbon Monoxide poisoning are two of the 29 hazards prescribed by the Housing Health and Safety Rating System. These risks are real and substantial: A bulletin issued by the Home Office in 2017 (Fire Statistics: England April 2015 to March 2016) reports that: "Fires where a smoke alarm was not present accounted for 28 per cent of all dwelling fires and 33 per cent (76) of all dwelling fire-related fatalities in 2015/16" and that, "Fires where a smoke alarm was present but either did not operate or did not raise the alarm, accounted for 31 per cent of all dwelling fires...." Moreover, according to the Office for National Statistics, there were 53 deaths from accidental carbon monoxide poisoning in England and Wales in 2015.

- 6.3 The Department of Communities and Local Government conducted an impact assessment prior to the introduction of the Regulations. That assessment suggested that the cost of the requirements imposed on landlords (i.e. the purchase of smoke detectors and carbon monoxide alarms) was £25 and estimated that the provision of smoke alarms would, over ten years, prevent 231 deaths and 5860 injuries, accruing a saving of almost £607.7 million, and that the provision of Carbon Monoxide Alarms would, over the same period, prevent a total of six to nine deaths and 306 to 460 injuries, accruing a saving of almost £6.8 million.
- 6.4 The Council considers that compliance with the Regulations do not place an excessive or unreasonable burden on a landlord. The cost of the alarms is low and, in many cases, can be self-installed without the need for a professional contractor. The risk and impact on occupiers resulting from a fire or carbon monoxide poisoning event far out-weighs the cost of compliance. While the imposition of the maximum potential fixed penalty charge of £5,000 may present an excessive financial burden on some landlords, this has to be balanced against the risk, the low cost of compliance, the fact that the offender will have been given all reasonable opportunity to comply prior to any penalty charge being levied and the offenders statutory rights of appeal.
- 6.5 For all of the above reasons, and so as to ensure that there is an effective incentive for landlord's to comply with the Regulations, the Council proposes to impose a penalty charge of £5,000 for non-compliance with a Remedial Notice, with a reduction of 50% where payment is received within 14 days of service of the penalty charge notice.
- 6.6 Notwithstanding the above, the Council may, following a representation made by the landlord, exercise discretion and reduce the penalty charge further if it considers there to be extenuating circumstances.

This discretion will not however apply when:

1. The person served has obstructed the Council in the carrying out of its duties; and/or
2. The person served has previously received a penalty charge under this legislation.

## 7.0 Review and Appeals in relation to a penalty charge notice

- 7.1 If a landlord disputes the issue of a penalty charge notice, they can make a request to the Council for it to be reviewed. This request must be in writing and within the time specified in the penalty charge notice. Any representation received will be considered on its individual merit. Any extenuating circumstances will be considered by the Council in deciding whether to reduce the level of the penalty charge levied.
- 7.2 Potential mitigating factors –
- No previous convictions / charges

- Self-reporting, high level of co-operation with the investigation – where this goes beyond what would normally be expected
  - The age health and other vulnerabilities of the offender
  - Voluntary steps taken to address issue – submission of licence application
- 7.3 A landlord will not be in breach of their duty to comply with the remedial notice, if he can demonstrate that he has taken all reasonable steps to comply with the requirements of the remedial notice.
- 7.4 The Council may, on consideration of any representation and evidence, chose to confirm, vary, or withdraw a penalty charge notice and we are required to communicate that determination by issuing a decision notice on the landlord. If varied or confirmed, the decision notice must state that a further appeal can be made to a First Tier Tribunal on the following grounds:
- 1) the decision to confirm or vary the penalty charge notice was based on an error of fact.
  - 2) the decision was wrong in law.
  - 3) the amount of penalty charge is unreasonable; or
  - 4) the decision was unreasonable for any other reason
- 7.5 Where a landlord raises an appeal to the Tribunal, the operation of the penalty charge notice is suspended pending its determination or its withdrawal. The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.
- 8.0 **Recovery of Penalty Charge**
- 8.1 The Council may recover the penalty charge on the order of a court, as if payable under a court order however such proceedings may not be started before the end of the period by which a landlord may give written notice for the Council to review the penalty charge notice and where a landlord subsequently appeals to the Tribunal, not before the end of the period of 28 days beginning with the day on which the appeal is finally determined or withdrawn.