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Dartford Borough Council - Statement of principles for determining financial penalties**The Smoke and Carbon Monoxide Alarm (England) Regulations 2015****1. Introduction**

1.1 This statement sets out the principles that Dartford Borough Council (the Council) will apply in exercising its powers to require a landlord to pay a financial penalty for non-compliance with the Regulations.

2 Purpose of the Statement of Principles

2.1 The Council is required under these Regulations to prepare and publish a statement of principles and it must follow these principles when deciding on the amount of a penalty charge.

2.2 The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.

2.3 When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

3 The legal framework

3.1 The Council's powers are derived from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), which came into force on 1 October 2015.

3.2 The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

3.3 The duty requires that landlords ensure:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015:

- that checks are made by the landlord, or someone acting on his/her behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts.

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- 3.4 Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy. This can be achieved for example by supplying dated photographs of alarms, together with installation records and by tenants signing an inventory form confirming that the alarm was tested and in working order at the start of the tenancy.
- 3.5 Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.
- 3.6 Where the Council believes that a landlord is in breach of one or more of the duties referred to in paragraph 3.3 above, the Council must serve a remedial notice on the landlord under Regulation 5 of the Regulations.
- 3.7 If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the Council can require the landlord to pay a penalty charge under Regulation 8 of the Regulations.
- 3.8 A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council at the address given at the bottom of this document, within 28 days of the date the remedial notice is served.
- 3.9 The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the requirements specified in the remedial notice within the specified timescale.

4 The purpose of imposing a financial penalty

- 4.1 The purpose of the Council exercising its regulatory powers is to protect the interests of the public.
- 4.2 The aims of financial penalties on landlords are to:
- Lower the risk to tenant's health and safety
 - Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord
 - Change the behaviour of the landlord and aim to prevent future non-compliance
 - Penalise the landlord for not installing alarms after being required to so, under notice
 - Eliminate financial gain or benefit from non-compliance with the Regulations
 - Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

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5. Criteria for the imposition of a financial penalty

- 5.1 A failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge.
- 5.2 In considering the imposition of a penalty, the Council will look at the evidence concerning non-compliance with the requirements of the remedial notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action has been undertaken by the landlord.
- 5.3 For example, landlords can demonstrate compliance with the Regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.
- 5.4 In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach under consideration.

6. Criteria for determining the amount of a financial penalty

- 6.1 The Regulations state the amount of the penalty charge must not exceed £5,000.
- 6.2 The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to the investigative costs, Council officer time, administration and any remedial works arranged and carried out by the Council's contractors.
- 6.3 The penalty charge is payable within 29 days beginning with the day on which the penalty charge notice is served.
- 6.4 The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served.

The charges are as follows:

	Penalty Charge	Early payment reduction (50%) if paid within 14 days
1st breach	£2500	£1250
Subsequent breaches	£5000 per breach	£2500

7. Procedural matters for Penalty Charge Notices

- 7.1 The Regulations impose a number of procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge.
- 7.2 When the Council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, the penalty charge notice must be served within 6 weeks.
- 7.3 Where the landlord requests a review of the Council's decision within 29 days from when the penalty charge notice is served, the Council must consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this document. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.
- 7.4 A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's review decision. Appeals should be made within 28 days from the date the notice is served.
- 7.5 Where a landlord appeals to the First-tier Tribunal, the operation of the penalty charge notice is suspended until the appeal is finally determined or withdrawn. The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.
- 7.6 If the penalty charge notice is not paid, then the Council may recover the penalty charge by an order of the court. Proceedings for recovery will not commence earlier than 31 days from the date the penalty charge notice is served.
- 7.7 However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence earlier than 30 days from the date the notice giving the Council's decision to vary or confirm the penalty charge notice is served. Where landlords appeal to the First-tier Tribunal, recovery will not commence earlier than 30 days from when the appeal is finally determined or withdrawn.

8. Remedial Action taken in default of the landlord

- 8.1 Where the Council is satisfied that a landlord has not complied with the requirements of the remedial notice within the required timescale and consent is given by the tenant, the Council is required by law to arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of

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the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

8.2 Smoke Alarms – In order to comply with the Regulations, where the property is considered to be high risk because of:

- its mode of occupancy such as a house in multiple occupation or building converted into one or more flats;
- having an unsafe internal layout where fire escape routes pass through a living rooms or kitchens; or
- is 3 or more storeys high,

as a temporary measure, smoke alarms will be installed at every storey of residential accommodation.

8.3 A full fire risk assessment will subsequently be undertaken, having regard to the Housing Act 2004 (as amended), Housing Health & Safety Rating System and LACORS Housing - fire safety guidance. Consultation with Kent Fire and Rescue Service will also be undertaken.

8.4 The full fire risk assessment will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes, including escape windows and fire separation measures such as fire doors and protected walls and ceilings. Where further works required to address serious fire safety hazards in residential property cannot be undertaken through informal agreement, the Council will use its enforcement powers under the Housing Act 2004 (as amended), in accordance with its Enforcement Policy

8.5 Carbon Monoxide Alarms – In order to comply with the Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

9. **All communications** for representations made against the Remedial Notice (Regulation 5) or the Penalty Charge Notice (Regulation 8) are to be sent to:

Marie Gerald
Housing Options & Private Sector Manager
Dartford Borough Council
Civic Centre
Home Gardens
Dartford
DA1 1DR
Or by email to: housingprivatesector@dartford.gov.uk

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