

STATEMENT OF PRINCIPLES FOR DETERMINING THE AMOUNT OF A PENALTY CHARGE

Cabinet - 9 March 2017

Report of Chief Officer Environmental & Operational Services

Status: For Decision

Also considered by: Housing & Health Advisory Committee - 28 February 2017

Key Decision: No

The Executive Summary: A decision to adopt the proposed statement of principles associated with enforcing The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (SI 2015/1693)

Portfolio Holder Cllr. Michelle Lowe

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Recommendation to Housing & Health Advisory Committee: To recommend to Cabinet the statement of principles and associated penalties charges associated with the regulations, be approved.

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Reason for recommendation: Without a published policy no penalty charges can be required of landlords who are in breach of their duty.

Introduction and Background

- 1 Private sector landlords were required from 1st October 2015 to have at least one smoke alarm installed on every storey of their property and a carbon monoxide alarm in any room containing a solid fuel burning appliance. In addition they must ensure all alarms are in proper working order at the start of each new tenancy.
- 2 When the Council have reasonable grounds to believe one or more the specific requirements have not been undertaken then a remedial notice must be served. A remedial notice requires a landlord to undertake specific works (ie provide or repair an alarm) within 28 days. At this stage the penalty charge regime is also explained including the principals behind any future penalty charge appropriate for this offence.

- 3 The landlord should undertake the specified remedial works, however if this does not occur the Council has two enforcement options.

Firstly, if the occupier of the premises gives consent, the Council will arrange for an authorised person to take the necessary remedial action. We currently have a supply of approved detectors from Kent Fire and Rescue specifically for this purpose.

Secondly, after expiry of a remedial notice, the Council will decide based upon the balance of probabilities whether a breach of the notice has occurred. If it's decided a breach has occurred, then the landlord may be required to pay a penalty charge. If it's decided to impose a penalty charge a notice must be served upon the landlord explaining the reasons why such a notice has be issued and stating the penalty charge they are required to pay.

Recovery of an outstanding penalty charge is possible and obtained via an order from a court.

4. At specific points within the process a landlord has a right to make representations or after the service of penalty charge notice appeal to the First-tier tribunal. The tribunal may either quash, confirm or vary any penalty charge notice.
5. Before the Council can issue a penalty charge notice, a statement of principles including the range of financial penalties to be levied must be agreed and published.

Other Options Considered and/or Rejected

There are no other options available to ensure a penalty charge notice can be issued.

If the statement of principles is not adopted an authorised person can still undertake the remedial works, however no penalty charge can be subsequently demanded from the landlord.

Key Implications

Financial

There a no significant financial implications in terms of additional administrative or staff costs. It is expected there will be a very limited number of penalty notices issued.

Legal Implications and Risk Assessment Statement.

Publishing the statement of principles is required before the penalty charges are enforceable. Processes associated with issuing of a penalty charge, payment and appeals are clearly described within the regulations.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Conclusions

It is recommended the statement of principles be adopted to ensure a full compliment of actions and financial penalties are available, ensuring the safety of occupiers.

Appendices

Appendix A- Proposed statement of principles for determining the amount of a penalty charge

Background Papers

None

Richard Wilson

Chief Officer Environmental & Operational Services