

Statement of principles for determining financial penalties in relation to the Smoke and Carbon Monoxide Alarm (England) Regulations as amended

Introduction

This document sets out the principles that the Council will apply in exercising our powers to require a relevant landlord to pay a financial penalty and explains the requirements of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended.

Purpose of the statement of principles

The Council is required under the Smoke and Carbon Monoxide Regulations to prepare and publish a statement of principles which we must follow when deciding on the amount of a penalty charge. We may revise the statement of principles at any time, but when we do, we must publish a revised statement. When deciding on the amount for the penalty charge, we will have regard to the statement of principles published at the time the breach occurred.

Legal framework

The powers are contained in the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended in October 2022. The Regulations apply to all homes rented by private landlords, freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence and now to registered providers of social housing. Some tenancies are excluded and are detailed in the Regulations e.g. shared accommodation with a landlord, long leases, hotels and care homes.

The duty contained in Regulation 4 requires all relevant landlords to ensure that:

- At least one smoke alarm is installed on each storey of the premises where there is living accommodation;
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a fixed combustion appliance (excluding gas cookers);
- smoke alarms and carbon monoxide alarms are repaired or replaced once the landlord has been informed and found that they are faulty.

The landlord or someone acting on his/her behalf is required to make checks that the alarm(s) is/are in proper working order on the day that a tenancy starts. Repairs or replacements must be carried out as soon as is reasonably practicable.

Where the Council believes that a landlord is in breach of one or more of the above duties, we must serve a remedial notice on the landlord, under Regulation 5. If the landlord fails to take the remedial action specified in the notice within the specified timescale, we can require the landlord to pay a penalty charge under Regulation 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. This would also apply where the landlord is prevented from entering the premises. In these circumstances, the landlord can make written representations to us (see page 6 for details) within 28 days of the service of the remedial notice.

We will impose a penalty charge where we are satisfied, on the balance of probabilities, that the landlord has not complied with the remedial notice within the required timescale.

Purpose of financial penalty

The purpose of exercising regulatory powers is to protect the interests of the public. The aims of issuing financial penalties to landlords are to:

- lower the risk to the tenant's health and safety;
- reimburse the costs incurred by the Council in arranging remedial action in default;
- change the behaviour of the landlord and aim to prevent future non-compliance;
- penalise the landlord for not installing alarms after being required to do so;
- 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 of compliance.

Criteria for imposition of a financial penalty

A failure to comply with the requirements of a remedial notice allows us to require payment of a penalty charge. When considering a penalty charge, we will look at the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action had been undertaken.

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.

Landlords need to take steps to demonstrate that they have met the requirements to test alarms at the start of the tenancy. For example, the tenant could sign an inventory form that they were tested and in working order. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

In deciding whether it would be appropriate to impose a penalty, we will take full account of the particular facts and circumstances of the breach under consideration. A penalty charge will be considered appropriate if we are satisfied, on the balance of probabilities, that the landlord who had been served with a remedial notice had failed to take the remedial action specified within the time period specified.

Criteria for determining amount of financial penalty

The Regulations state 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 a remedial

notice, and a cost element relating to the investigative costs, officer time, administration and any remedial works arranged and carried out by the Council's contractors. The penalty charge is payable within 29 days beginning with the day on which the penalty charge notice is served.

We have 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:

- £2,500 for the first breach to comply with a remedial notice;
- £1,250 for early payment, representing 50 per cent reduction, for the first breach to comply with a remedial notice within 14 days;
- £5,000 for each subsequent breach to comply with a remedial notice;
- £2,500 for early payment, representing 50 per cent reduction, for each subsequent breach to comply with a remedial notice within 14 days.

Procedural matters for penalty charge notices

The Regulations impose a number of procedural steps which must be taken. When we are satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within six weeks.

Where a review is requested within 29 days from when the penalty charge notice is served, we must consider any representations made by the landlord and the remedial notice is suspended until a decision is made. All representations must be sent to the Private Sector Housing Manager at the address on page 6. We will notify the landlord of our decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

A landlord who has requested a review of a penalty charge notice and who has been served with a notice confirming or varying the penalty charge notice may appeal to the First-tier Tribunal. Appeals should be made within 28 days from the notice served of the Council's review. The Tribunal's contact details are on page 6.

If the penalty charge notice is not paid, then recovery will be by an order of the court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is finally determined or withdrawn.

Remedial action taken in default of landlord

Where we are satisfied that a landlord has not complied with a specification described in the remedial notice within the required timescale and consent is given by the occupier, we will arrange for remedial works to be undertaken in default within 28 days of being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate interim response.

Further guidance

Further guidance on the Regulations is available from the Ministry of Housing, Communities and Local Government by the following link:

[smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords](#)

Who to contact

Representations

Representations should be sent to:

Private Sector Housing Manager

Tel no 01892 554241

E-mail privatesectorhousing@tunbridgewells.gov.uk

Appeals

The contact details for the First-tier Tribunal are:

First-tier Tribunal (Property Chamber) Residential Property

Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire, PO9 2AL

E-mail rpsouthern@justice.gov.uk

Telephone 01243 779 394

Review

This policy will be reviewed annually and updated if necessary to take into account legislative and policy changes.