

West Suffolk Council Statement of Principles for Smoke and Carbon Monoxide Regulations Penalty Determination

Statement of principles to determine the amount of a penalty charge under Part 4 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 ('the regulations')

1. Introduction

- 1.1 Section 13 of the regulations requires local housing authorities to prepare and publish a statement of principles which they propose to follow in determining the amount of a penalty charge.

2. Duties on landlords (Section 4)

- 2.1 The regulations introduced legal requirements on most private sector landlords to:
- a. equip a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation
 - b. during any period when the premises were occupied under the tenancy, to ensure that a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation, and which contains fixed combustion appliance other than a gas cooker
 - c. carry out checks by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy
 - d. where, following a report made on or after 1 October 2022 by a tenant or by their nominated representative to the landlord, a prescribed alarm is found not to be in proper working order, the alarm is repaired or replaced.
- 2.2 For the purposes of the legislation, living accommodation includes a bathroom or lavatory.

3. Remedial notice

- 3.1 Where the council has reasonable grounds to believe that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord within 21 days. The remedial notice is a notice served under Regulation 5 of the regulations. The regulations do not require the local authority to enter the property or prove non-compliance to issue a remedial notice.
- 3.2 The landlord has 28 days to comply with the notice. The landlord is entitled to make written representations against the notice within 28 days beginning with the day on which the notice is served. The notice is suspended until these

representations are considered and the Remedial Notice is confirmed or withdrawn.

4. Remedial action and penalty charge

- 4.1 If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the council must arrange for the remedial action to be taken by an authorised person (where the occupier consents). The council can also require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of the regulations. Failure to comply with each remedial notice can lead to a fine of up to £5,000. Fines will be applied per breach, rather than per landlord or property.

5. When a penalty charge will be imposed

- 5.1 The council **will** impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale and has not taken reasonable steps, other than legal proceedings, to comply with the duty.

5.2 Reasonable steps:

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. Where there is evidence, including written correspondence, of repeated and consistent efforts to obtain access to the property, with access repeatedly being prevented by the occupant(s) of the property, a landlord will not be considered to be in breach of their duty to comply with the remedial notice. A landlord will be expected to have:

- communicated the risk of harm that the lack of functioning alarms posed to all occupants in writing on multiple occasions
- requested access to comply with the remedial notice on a regular basis of no longer than every seven days in writing

- 5.3 Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy requirements. A non-exhaustive list of methods that may be used to evidence compliance with these testing requirements includes, but is not limited to:

- tenants signing an inventory form which states that they observed the alarms being tested and confirming that the alarms were in working order at the start of the tenancy

- 5.4 In considering the imposition of a penalty, the council may look at the evidence concerning the breach of the requirement of the notice. A non-exhaustive list of methods that may be used to obtain relevant evidence includes, but is not limited to:

- evidence obtained from a property inspection
- evidence provided by the tenant or agent
- evidence provided by the landlord demonstrating compliance with the regulations by supplying dated photographs of alarms, together with installation records.

6. Determining the amount of the penalty charge for a first breach

- 6.1 When determining the amount of the penalty charge, regard will be had to whether this is a first breach under the regulations.
- 6.2 The minimum amount of a penalty charge for a first breach of the regulations will be £2,500.
- 6.3 The starting level of a penalty charge for a first breach of the regulations will be £3,000. The penalty charge amount will then be varied depending on aggravating and mitigating factors.
- 6.4 Aggravating factors include, but are not limited to:
- the number of alarms not working or missing (the Regulations state there should be one per storey)
 - other fire safety concerns or defects in the property which increase the risk posed to the occupants
 - the length of time the offence is believed to have been on-going
 - the frequency of complaints by the occupiers to the landlord about the non-working or missing alarms
 - the costs of any remedial work the council have carried out in response to the breach
 - whether the property is let as an HMO (which increases the overall risk)
 - the number of occupants living in the property
 - presence of vulnerable occupiers such as elderly, children or disabled people
 - any history of previous enforcement or non-compliance of the landlord
 - attempts to obstruct the investigation.
- 6.5 Mitigating factors include, but are not limited to:
- the property being small and low-risk (for example a one-bedroom ground floor flat with a large number of fire escapes including large windows)
 - a single occupant living in the property
 - evidence that all required alarms were checked and in working order at the start of the tenancy
 - written evidence that some efforts to gain access and comply with the remedial notice were made and access was prevented by the occupant.

7. Determining the amount of the penalty charge for a subsequent breach

- 7.1 The penalty for subsequent breaches by the same landlord will be £5,000.

8. Early repayment

- 8.1 If the landlord complies with the requirement to pay the penalty charge within 14 days beginning with the day on which the penalty charge notice is served, the penalty charge will be reduced by 20 per cent.

9. Review and appeals

- 9.1 If a landlord does not agree with a penalty charge notice, they can make a request to the council for it to be reviewed. This request must be made in

writing and within 28 days beginning with the day on which the penalty charge notice was served.

- 9.2 After receiving a request for a review, the council must consider any representations made by the landlord, decide whether to confirm, vary or withdraw the notice, and serve a notice of its decision on the landlord.
- 9.3 The council in making its decision will consider the following:
- Whether the facts of the matter supported the service of the PCN.
 - Whether the decision was correct having regard to the relevant laws.
 - The amount of the penalty charge was reasonable having regard to any mitigating, aggravating or other circumstances submitted with the request for review.
- 9.4 Where the council decides to confirm or vary a penalty charge notice, the landlord will be informed that they can appeal to First-tier Tribunal. Appeals should be made within 28 days from the notice served of the council's decision on review.

More information can be found at: [GOV.UK - Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022: guidance for local authorities](#)

10. Note

- 10.1 Smoke alarms – In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. Where these are battery alarms, they may provide only a temporary solution in cases where the property is deemed to be high risk because of but not limited to:
- 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.
- 10.2 Should a property be considered high risk a full risk assessment will subsequently be undertaken, with regards to **HHSRS** and **LACORS** Housing - fire safety guidance. This 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. Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with the council's Enforcement Policy.

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