

Procedure for Establishing Levels of Financial Penalty

Smoke Alarm and Carbon Monoxide Regulations 2015

(as amended by the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

("the regulations")

A landlord must ensure that during any period when the premises are occupied under a tenancy

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a fixed combustion appliance other than a gas cooker
3. Checks are made 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, and
4. Where, following a report made on or after 1st 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. The determination (following a report) as to whether the prescribed alarm is in proper working order and any required repair or replacement must be carried out by or on behalf of the landlord as soon as reasonably practicable.

Unless the landlord can show that he, she or it has taken all reasonable steps, other than legal proceedings, to comply with the duty to comply with a remedial notice, the Council may require the landlord to pay a penalty charge of such amount as the authority may determine not exceeding £5,000.

Regulation 13 requires the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. The Council may revise its statement of principles and, where it does so, it must publish the revised statement.

The principles which the Council will follow when exercising its powers under Regulation 8 of these Regulations are set out the Private Housing Enforcement Policy, to which this procedure is appended.

If the Council decides to impose a penalty charge, the authority must serve notice of that fact on the landlord ("a penalty charge notice") within six weeks beginning with the day on which the authority is first satisfied, on the balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the duty to comply with the remedial notice.

If the landlord served with a penalty charge notice requests a review the Council must consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge. Where the landlord makes written representations the remedial notice is suspended from the beginning of the day following the day on which the representations were received until the local housing authority has (within 7 days beginning with the day specified in paragraph 3. namely 28 days beginning with the day on which this notice is served)

- a. considered the representations and
- b. where the outcome of the consideration is to confirm the remedial notice, has informed the landlord in writing that the remedial notice is confirmed (with or without amendment) or
- c. where the outcome of the consideration is to withdraw the remedial notice, has informed the landlord in writing that the remedial notice is withdrawn.

A landlord who, having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal against the Council's decision.

The process for determining the financial penalty to be imposed has two steps.

Step 1:

Band of the offence (the more serious the offence the higher the penalty).

Decide which seriousness band the offence sits within, according to the chart

Offence	Band 1	Band 2	Band 3
Smoke Alarm and Carbon Monoxide Regulations	Alarms are present but missing on one storey; <u>or</u> alarms present but were not checked to be in working order on first day of a new tenancy but were repaired within 7 days of start of new tenancy	Alarms present but missing on more than one storey; <u>or</u> alarms not checked to be in working order on first day of a new tenancy but were repaired within 7 to 14 days of start of new tenancy	No alarms present; alarms present but not checked to be in working order on first day of new tenancy and <u>not</u> repaired within 14 days of start of tenancy
Level of severity			
Low	£1,000	£2,500	£4,000
Medium	£1,500	£3,000	£4,250
High	£2,000	£3,500	£4,500
Very high	£2,500	£4,000	£5,000

Step 2:

Follow the process in Appendix to determine the level of severity of the offence within the band:

- Low
- Medium
- High or
- Very high

The level of severity within the allotted band determines the level of the financial penalty

Appendix

Step 2:

Procedure to determine the level of severity of the offence within the band

The level of severity within the allotted band determines the level of the financial penalty

Points will be allocated from 1 (low) to 4 (high) for each of the 6 categories from a. to f. below. The total of these points (minimum 6 maximum 24) will determine the severity level:

Severity score	Level
6 - 10	1. Low
11-15	2. Medium
16-20	3. High
21-24	4. Very high

a) Culpability:

1 = Offence was not deliberate non-compliance, error of omission only and may have been shared responsibility

2 = Offence was careless or negligent and not deliberate non-compliance - sole responsibility *Default score in the absence of evidence to the contrary*

3 = Offence was deliberate failure to comply with obligations but may have been shared actions or responsibility

4 = Offence was deliberate action or failure to act by a sole person who was or should have been aware of their legal obligations

b) Offence History:

1 = No previous history of contravening any provision of the law relating to housing or of landlord and tenant law ("previous history") *Default score in the absence of evidence to the contrary*

2 = Previous history for a contravention of any provision of the law relating to housing or of landlord and tenant law

3 = Previous history for more than one contravention of any provision of the law relating to housing or of landlord and tenant law

4 = Previous history for a contravention of any provision of the law relating to housing or of landlord and tenant law, including a financial penalty or conviction

c) Harm to tenants:

- 1 = Little or no actual impact on occupiers or third parties
- 2 = Effect on occupiers or third parties was primarily inconvenience, financial loss, stress or anxiety *Default score in the absence of evidence to the contrary*
- 3 = Effect on occupiers or third parties was primarily physical or mental harm; also as per 2 but more than 4 persons affected
- 4 = Effect on occupiers or third parties was medically diagnosed illness or injury; also as per 3 but more than 4 persons affected

d) Mitigating Factors:

- 1 = Significant (such as serious illness, bereavement)
- 2 = More than a little (such as minor illness, stress; belated attempts to remedy)
- 3 = A little (such as let down by a third party)
- 4 = None *Default score where landlord does not respond to enquiries or the response is hostile or unco-operative*

e) Proportionality:

- 1 = Subject only has one rented property
- 2 = Small business or subject has two or three properties *Default score in the absence of evidence to the contrary*
- 3 = Medium size business or subject has more than three properties
- 4 = Subject has a large portfolio of rented properties (six or more)

f) Financial Impact on Landlord

- 1 = Significant (eg subject in administration or near bankrupt)
- 2 = More than some (eg subject has serious financial problems)
- 3 = Some (eg subject comfortably well off) *Default score in the absence of evidence to the contrary*
- 4 = Minor (eg subject is wealthy)