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Last Modified May 09, 2025



The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by the Smoke and Carbon Monoxide Regulations 2022

Statement of principles under regulation 13

Introduction

This statement sets out the principles that Blackpool Council (the council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

Purpose of the statement of principles

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

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

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.

The legal framework

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide (Amendment) Regulations 2022 introduces requirements that a 'relevant landlord' of a 'specified tenancy' of residential premises must ensure that during any period, on or after 1st October 2022, when the premises are occupied under the tenancy that:

1. A smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation; and
 2. A carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a fixed combustion appliance; and
 3. where, following a report made on or after 1 October 2022 by a tenant or by their nominated representative to the landlord, a smoke or carbon monoxide alarm is found not to be in proper working order, the alarm is repaired or replaced; and
 4. Where a report is made of a smoke or carbon monoxide alarm not being in proper working order, both the determination (following a report) as to whether the smoke or carbon monoxide 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
 5. Checks are made by or on behalf of the landlord to ensure that each smoke and carbon monoxide alarm is in proper working order on the day the tenancy begins if it is a new tenancy
- 'Relevant landlord' is the immediate landlord in respect of a specified tenancy
 - 'Specified tenancy' is a tenancy, licence, lease, sub-lease or sub-tenancy of residential premises that gives somebody the right to occupy all or part of the premises as their only or main residence in return for rent. There are some exemptions

- 'New tenancy' means a tenancy granted on or after 1 October 2022
- 'A fixed combustion appliance' is a fixed apparatus where fuel of any type (including gas, oil, coal, wood) is burned to generate heat, e.g. gas or oil burners, log-burning stoves. The regulations specifically excluding gas cookers. Government guidance (Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022: guidance for landlords and tenants - GOV.UK (www.gov.uk)) states a non-functioning purely decorative fireplace would not constitute a fixed combustion appliance

Where the council have reasonable grounds to believe that:

1. There are no or insufficient number of smoke and/or carbon monoxide alarms in the property as required by the regulations, or
2. Any smoke or carbon monoxide alarm reported as not in proper working order was not repaired or replaced as soon as reasonably practicable, or
3. The smoke and/or carbon monoxide alarms were not working at the start of a specified tenancy

Then the council must serve, within 21 days, a remedial notice on the relevant landlord in a method prescribed by the regulations. The remedial notice will detail the actions the landlord must take to comply with the Regulations. The landlord has 28 days to comply with the notice.

The landlord is entitled to make written representations against the notice within 28 days of the notice is served. If written representation are made, the remedial notice is suspended. The council must consider any representations and inform the landlord in writing whether they confirm (with or without amendment) or withdraw the remedial notice. If the remedial notice is confirmed, the remedial notice is no longer suspended and the landlord must comply with the notice within 21 days beginning with the day the landlord is informed that the remedial notice is no longer suspended.

If the notice has not been complied with the council will arrange for the remedial action specified in the notice to be taken (where the occupier consents) and impose a penalty on the landlord.

If the landlord, then fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from regulation 8 of these regulations.

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 when the remedial notice is served.

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.

The purpose of imposing a financial penalty

The purpose of the council exercising its regulatory powers is to protect the interests of the public.

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

Criteria for the imposition of a financial penalty

A failure to comply with the requirements of a remedial notice allows the council to require payment of a penalty charge.

In considering the imposition of a penalty, the authority 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.

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.

Landlords need to take steps to demonstrate that they have met the testing at the start of the tenancy requirements. Examples of how this can be achieved are by tenants signing an inventory form and that they were tested and were in working order at the start of the tenancy. 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, the authority will take full account of the particular facts and circumstances of the breach under consideration.

A financial penalty charge will be considered appropriate if the council is satisfied, on the balance of probabilities, that the landlord who had been served with remedial notice under regulation 5 had failed to take the remedial action specified in the notice within the time period specified.

Criteria for determining the amount of a 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 the absolute requirement 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 28 days beginning with the day on which the penalty charge notice is served.

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:

- £2,500 for the first breach to comply with a remedial notice
- £1,250 for early payment if paid within 14 days, representing 50% reduction, for the first breach to comply with a remedial notice
- £5,000 for each subsequent breaches of penalty charge notices by same landlord within five years

Procedural matters for penalty charge notices

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.

When the council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within 6 weeks.

Where a review is requested within 28 days from when the penalty charge notice is served, the council will consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this document and the details will be included in the penalty charge notice. The Council will notify the landlord of its 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 has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review.

Any unpaid penalty charge shall be pursued for payment

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 28 days from the date of the notice served giving the council's decision to vary or confirm the penalty charge notice.

Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 28 days from when the appeal is finally determined or withdrawn.

Remedial action taken in default of the landlord

Where the council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the council will 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 the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke Alarms – In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may 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

A full fire risk assessment is required to be undertaken in accordance with the Fire Safety Order 2005 and LACORS Housing - fire safety for 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.

Carbon Monoxide alarms – In order to comply with these regulations, a carbon monoxide alarm will be installed in every room which contains a fixed combustion appliance.

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

Housing enforcement
Blackpool Council
3rd Floor Municipal Buildings
Blackpool
FY1 1NA

Or by email to: housingenforcement@blackpool.gov.uk

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Blackpool Council

Municipal Buildings
Corporation Street
Blackpool
FY1 1NF

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