



Housing Enforcement Policy

Appendix 2: Statement of Principles for determining a penalty charge

The Smoke & Carbon Monoxide Alarm (England) Regulations 2015

The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

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Introduction

Mendip District Council (the Council) is required under the [Smoke & Carbon Monoxide Alarm \(England\) Regulations 2015](#) to prepare and publish a statement of principles which it proposes to follow when deciding on the penalty charge amount for failing to comply with a remedial notice served under these regulations.

The Council may revise its statement of principles at any time and where it does the revision will be published. The statement of principles will be published on the Council website and made available on request.

The Private Sector Housing Team will also have regard to this statement of principles when applying financial penalties under The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

This statement sets out the principles that the Council will apply in exercising powers to impose a financial penalty for failing to meet certain legislative requirements. 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 a remedial notice within the required timescale.

Legal requirement

This statement is required under Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) and relates to matters that the Council must have regard to in determining the amount of any penalty charge issued under Regulation 8.

Under Regulation 4, a relevant landlord in respect of a specified tenancy must ensure that—

- (a) during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—
 - (i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
 - (ii) a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- (b) 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.

More details on the requirements, definitions and exemptions can be found in the Regulations and Government guidance (links at the end of this document).

Where the Council has reasonable grounds to believe that there are no or an insufficient number of smoke or carbon monoxide alarms in the property or; the smoke or carbon monoxide alarms were not working at the start of a tenancy or licence, then the Authority shall serve a Remedial Notice under Regulation 5 requiring the landlord to take action to comply with the Regulations within 28 days.

If the Landlord has not complied with the Remedial Notice, the Authority must take remedial action and may require the landlord to pay a penalty charge by serving a penalty charge notice under Regulation 8.

Statement of principles

The purpose of imposing a financial penalty

The Council's primary purpose is to protect the public, although in exercising its regulatory powers they may have a punitive effect.

The primary aims of financial penalties will be to:

- change the behaviour of the landlord;
- eliminate any financial gain or benefit from non-compliance with the regulations;
- be proportionate to the nature of the breach of the regulations and the potential harm outcomes;
- aim to deter future non-compliance;
- reimburse the costs incurred by the Council in undertaking remedial work and carrying out its functions.

Criteria for issuing a financial penalty

- Failure to comply with the requirements of a remedial notice gives the Authority the power to require the landlord to pay a penalty charge. In considering the imposition of a penalty charge, the authority will have regard to the available evidence of a breach of the remedial notice.
- In deciding whether it would be appropriate to impose a penalty charge, the authority will take full account of the particular facts and circumstances of the breach under consideration.
- The authority must be satisfied that on the balance of probabilities, the landlord on whom it has served a remedial notice under regulation 5 has failed to take the remedial action specified in that notice within the period specified.
- A financial penalty allows the council, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be

considered appropriate in circumstances where the landlord has failed to comply with the requirements of a remedial notice.

Criteria for determining the amount of a financial penalty charge

Regulation 8(2) states 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 (subject to any representation made by a landlord to the council) and a cost element relating to the works carried out by the Council.

The period within which the penalty charge is payable is 28 days beginning with the day on which the penalty charge notice is served. The Council has a discretion to specify that if a landlord pays the penalty charge within 14 days beginning with the day on which the penalty charge notice was served (early payment), a reduction in the penalty charge may be applied.

Proposed fine levels

- £2,500 for a first offence of failing to comply with a remedial notice; early payment reduction of 50% making it £1,250.
- £5,000 for subsequent offences of failing to comply with a remedial notice to deter continued non-compliance; early payment reduction of 50% making it £2,500.

Having been served with a penalty charge notice, the landlord may give written notice to the Council requesting a review. When reviewing the penalty charge notice, the Council will have regard to this Statement of Principles, including:

- The level of cooperation provided by the landlord,
- any history of previous contraventions of Housing or Housing related legislation,
- the level of risk created by the non-compliance,
- the cost incurred by the Council in enforcing the relevant provision,
- any other circumstances specific to the case.

Rationale for fine levels

The cost of a battery operated smoke detector is in the region of £10 while a Carbon monoxide detector typically costs less than £20. The cost of complying with the legislation in an average 2 storey property is likely to be less than £50. Therefore, compliance with a Remedial Notice within the required 28 days is not financially burdensome and there is seldom an excuse for a landlord not installing the alarms to comply with a notice.

Smoke and carbon monoxide detectors are a cheap and effective way of saving lives. The fine is therefore set to deter landlords from failing to install potentially

lifesaving detection and to be punitive for rogue landlords who refuse to comply with the law.

Procedural matters

The regulations impose a number of procedural steps which must be taken before the council can impose a financial penalty. Before imposing a requirement on a landlord to pay a penalty charge the council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- the reasons for imposing the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) installed at the premises;
- the amount of the penalty charge;
- the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- how payment of the charge must be made; and
- the name and address of the person to whom a notice requesting a review may be sent.

A landlord may request in writing, a review of the penalty charge imposed. In conducting the review, the council will consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord.

Having requested a review, the landlord can further appeal to the First-tier Tribunal against the Council's decision.

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.

Redress scheme for letting and managing agents

Under [The Redress Schemes for Letting Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc.\) \(England\) Order 2014](#), it is a legal requirement for all letting agents and property managers to join a Government-approved redress scheme. This gives tenants and landlords with property agents and managers in the private rented sector the facility to complain to an independent person about the service they have received.

Where the council is 'satisfied on the balance of probabilities' that a person has failed to belong to a redress scheme as required by article 3 or 5 of the above Order, it may by notice require that person to pay a 'monetary penalty'.

The amount of the monetary penalty must not exceed £5,000.

The Council will comply with the procedure for the imposition of a monetary penalty stipulated within the Order including provisions for the submission of representations and objections and the appeal procedures.

A monetary penalty will be recoverable on the order of a court, as if payable under a court order.

The standard monetary penalty for breach of duty under article 3 or 5 will be set initially at £5,000. The monetary penalty will be reduced by 50% if paid within 14 calendar days of the date of issue of the monetary penalty.

While this monetary penalty is set as a standard the order makes provision for a Letting Agent to make representations or objections. The Council will refer to this statement of principles in considering representations or objections received.

Reviews will be conducted by a Senior Officer in The Private Sector Housing Team.

Associated documents

- Housing Enforcement Policy
- [The Smoke & Carbon Monoxide Alarm \(England\) Regulations 2015](#)
 - [Explanatory Booklet for Local Authorities](#)
 - [Q&A booklet for the private rented sector – landlords and tenants](#)
- [Lettings agents and property managers: redress schemes](#)

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This document is also available on our website at www.mendip.gov.uk