Department for
Communities and
Local Government

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Explanatory Booklet for Local Authorities

September 2015
Department for Communities and Local Government

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Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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Introduction

This booklet is not an authoritative interpretation of the law, but intended as a general guide for the enforcement of the regulations.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 have been approved by parliament and will come into force as planned on 1 October 2015. Private sector landlords will be required from 1 October 2015 to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance. They also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

The requirement will be enforced by local authorities and this booklet acts as guidance for local authorities on the requirements and how to enforce them. It is designed to cover the most common situations but it cannot cover every scenario and is not a substitute for reading *The Smoke and Carbon Monoxide Alarm (England) Regulations 2015* which can be found at: http://www.legislation.gov.uk/id/uksi/2015/1693

Enforcement authorities (local authorities) are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements. The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met and can issue a civil penalty of up to £5,000.

Separate general guidance on the requirement of the regulations is available at: www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords.

Requirements

A “relevant landlord” of a “specified tenancy” of residential premises must ensure that during any period, on or after 1 October 2015, when the premises are occupied under the tenancy:

- 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

- a carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

The landlord must ensure the alarms are in proper working order at the start of any new tenancy.

Definitions

Relevant landlord

A ‘relevant landlord’ is the immediate landlord in respect of the tenancy.

Specified tenancy

A ‘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 (such as for long leases) which are explained in the next section.

New tenancy

A ‘new tenancy’ is a tenancy agreement that begins on or after 1 October 2015 and is not a renewal of a previous tenancy agreement.

There is a specific definition of “new tenancy” in regulation 4(4).

Solid fuel burning combustion appliance

Carbon monoxide alarms must be installed in rooms containing an appliance that burns some type of solid fuel, such as a coal fire, log burning stove, etc.

In the Department’s view, a non-functioning purely decorative fireplace would not constitute a solid fuel burning combustion appliance.

Living accommodation

The regulations require at least one smoke alarm to be installed on every storey of the premises on which there is a room used wholly or partly as living accommodation. A carbon monoxide alarm must be installed in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance. In general, a room is classed as “living accommodation” if it is used for the primary purposes of living, or is a room in which a person spends a significant amount of time. The regulations specifically stipulate that a bathroom or lavatory would be classed as living accommodation.

Storey

A smoke alarm must be installed on every storey on which there is a room used wholly or partly as living accommodation. “Storey” is not defined in the regulations. It should be given its ordinary meaning. In the Department’s view, for the purpose of these regulations, a mezzanine floor would not be considered a storey.

Exclusions from the Requirements

1. Social housing

Registered providers of social housing are excluded from the requirements. At present, private rented sector properties have fewer alarms installed than other types of housing tenures – these regulations are designed to ensure all privately rented homes are equipped with working smoke alarms at the start of each new tenancy, and where necessary, working carbon monoxide alarms.

2. Houses in multiple occupation (HMOs)

Licensed HMOs are exempt from the regulations; however, these regulations will apply to unlicensed HMOs. This is because the regulations also amend the HMO licensing requirements in the Housing Act 2004, imposing similar requirements through the HMO licensing scheme.

Part 6 will amend the conditions in Schedule 4 to the Housing Act 2004 which must be included in a licence granted or renewed on or after 1 October 2015. The amendments will mean landlords of licensed HMOs will have to ensure at least one smoke alarm is installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance. A landlord of a licensed HMO will be required to keep the alarms in proper working order.

3. Live-in landlords

An agreement under which the occupier shares accommodation with the landlord or landlord's family is excluded. For the purposes of the regulations, a landlord is considered to share accommodation with the tenant if they share an amenity such as a kitchen or living room. This is likely to arise where an owner occupier rents out a room in their own home.

4. Long leases

Leases which grant a right of occupation for 7 years or more without a break clause for either party are excluded. This type of arrangement is closer to one of home ownership than the traditional landlord / tenant relationship.

5. Student halls of residence

Student halls of residence are excluded from the requirements (please see number 7 for details).

6. Hostels and refuges

Hostels and refuges are excluded from the requirements (please see number 7 for details).

7. Care homes, hospitals, hospices and other NHS accommodation

Agreements which grant a right of occupation in a student hall of residence, hostel, refuge, care home, hospital, hospice, or other accommodation provided in relation to healthcare by a relevant National Health Service Body are also excluded.

The occupants of such accommodation generally benefit from existing protections under the Regulatory Reform (Fire Safety) Order 2005. Under the Order, certain premises must be equipped with appropriate fire-fighting equipment and with fire detectors and alarms. Fire and rescue authorities enforce the duties and, if there is a very serious risk to life, have powers to issue a notice preventing the premises being used as accommodation.

In addition, for student halls of residence, the three Government approved codes of practice for student accommodation stipulate requirements in respect of smoke alarms which go beyond the duties imposed by these regulations.

Enforcement Process

In order for the regulations to be effective there needs to be a process for ensuring compliance. The enforcement body for these regulations is the local authority.

Step 1: Issue a remedial notice

If a local authority has reasonable grounds to believe a landlord is in breach of the requirements in regulation 4, the authority must serve a remedial notice on the relevant landlord. The remedial notice must contain the information set out in regulation 5(2). It must inform the landlord which property it relates to, the reason it is being issued and what action the landlord needs to take next.

In the Department's view, 'reasonable grounds' would include being informed by a tenant, letting agent or housing officer that the required alarms are not installed.

The regulations do not require the enforcing authority to enter the property or prove non-compliance to issue a remedial notice. This is intelligence led enforcement.

Step 2: Landlord must comply with the notice

The landlord has 28 days beginning with the day on which the remedial notice is served to comply with the notice.

If a landlord can show they have taken all reasonable steps, other than legal proceedings, to comply with the notice, they will not be in breach of the duty to comply with the remedial notice in regulation 6.

If a landlord does not prove they have taken all reasonable steps, it is then up to the local authority to decide if they are in breach, by judging on a balance of probabilities. Whether any evidence provided confirms compliance is for the local authority to determine. Some examples of evidence could be dated photographs, confirmations by the tenant or installation records. Local authorities could also issue guidance on supplying evidence when the remedial notice is issued.

In the Department's view, if a tenant informs the local authority that no remedial action has been taken is it reasonable for the local authority to be satisfied, on the balance of probabilities, that the landlord is in breach.

Step 3: Remedial action and civil penalty

If the local authority is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the remedial notice within 28 days, the authority must arrange for remedial action to be taken (where the occupier consents). This is to ensure

that tenants are protected by working alarms and may involve installing a required alarm, repairing an installed alarm or checking an installed alarm is in proper working order. The enforcing authority can impose a civil penalty of up to £5,000 on landlords who do not comply with the remedial notice. Local authorities should be open and transparent regarding the civil penalty and publish a statement of principles which they will follow when determining the amount of a penalty charge. These principles are to be determined by the local authority. The Department recommends that the statement is published on the local authority's website.

Where a local housing authority intends to impose a penalty, it must give written notice of its intention to do so – a 'penalty charge notice'. This must set out certain required information including the reasons for the penalty, the amount of the penalty, and that the landlord is required, within the specified period, to pay the penalty charge or request a review.

The calculation of the penalty should be in line with the statement of principles, mentioned above. There is no other provision made in the regulations for enforcement authorities to redeem costs for any remedial works carried out. Collection of the civil penalty fine is the only method.

Step 4: Review

If a landlord does not agree with a penalty charge notice, they can make a request to the relevant local authority for it to be reviewed. This request must be made in writing and within the time period specified in the penalty charge notice.

If a local authority receives a request for a review, the authority 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. Where an authority decides to confirm or vary a penalty charge notice, it must inform the landlord that they can appeal to First-tier Tribunal.

Step 5: Appeals

To ensure that the enforcement process is administered fairly, landlords are provided with a means of appeal against penalties. A landlord may appeal to the First-tier Tribunal if the penalty charge notice is confirmed or varied by a local authority after a review. If an appeal is lodged, the penalty cannot be enforced until the appeal is disposed of.

Appeals can be made on the grounds that the decision of the local authority to vary or confirm the penalty charge notice was based on a factual error, was wrong in law, or was unreasonable for any other reason. Appeals can also be made on the grounds that the amount of the penalty is unreasonable.

Suspension / revocation of a notice

Any notice served on a landlord under the regulations may be amended, suspended, or revoked in writing at any time. If a remedial notice is suspended and the local authority decides to re-instate this once the compliance period has run out or is shortly about to, the Department would expect the authority to act reasonably and reissue the notice to start a new 28 day compliance period.

Frequently asked questions

Who is responsible for checking the required alarms are in working order?

The regulations require landlords to ensure alarms are installed in their properties with effect from 1 October 2015, and after that the landlord (or someone acting on behalf of the landlord) must ensure all alarms are in working order at the start of each new tenancy. Tenants should then take responsibility for their own safety by testing all alarms regularly after that. Testing monthly is generally considered an appropriate frequency for smoke alarms.

Do the regulations apply to existing tenancies?

Yes. The regulations require private sector landlords to install at least one smoke alarm on each storey of the property, and a carbon monoxide alarm in any room containing a solid fuel burning appliance, with effect from 1 October 2015.

What type of alarm should be installed?

The regulations do not stipulate the type of alarms (hard wired or battery powered) to be installed. Landlords should make an informed decision and choose the best alarms for their property and tenants.

Are carbon monoxide alarms required in rooms with gas appliances?

No. Carbon monoxide alarms are only required in rooms containing a solid fuel burning appliance (such as a coal fire, log burning stove, etc.).

How does a landlord prove they tested the required alarms at the beginning of the tenancy?

It is for the local authority to determine whether any evidence provided meets the requirements of the regulations. In separate guidance, available at https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords the Department has suggested to landlords this could be achieved by tenants signing the inventory form, agreeing that they are aware of the location(s) of the alarm(s) and the landlord has tested that they are in working order on the first day of the tenancy.

What if a landlord does not check the alarms are in working order on the first day of the tenancy?

The legislation requires that all alarms are tested on the first day of the tenancy and so in this situation the landlord would be in breach of the regulations. This is essential to achieve the objective of the regulations. If tested before the first day of the tenancy, alarms could be damaged in the interim. If tested after, tenants are at risk as they are living with alarms that may not be working.

How do the regulations relate to non licensed HMOs?

The regulations apply to unlicensed HMOs. Smoke alarms are expected to be installed on every storey of the premises on which there is a room used wholly or partly as living accommodation. If there are separate premises on the same storey of a building, the Department would expect smoke alarms to be installed in each individual premise. A carbon monoxide alarm must be installed in any room that is used wholly or partly as living accommodation and contains a solid fuel burning appliance.

The regulations require the consent of the occupier before remedial action is taken. In the case of a shared tenancy, is consent required from all occupiers?

No, consent would be required from any occupier.

We are working with our local fire and rescue authority to distribute the alarms – is there any guidance on this?

No. The Government has provided limited funding to local fire and rescue authorities to purchase the alarms. It is up to the local fire and rescue authorities to decide, at their discretion, how to distribute these among landlords.

LACORS guidance contains information about the ‘Protocol between local housing authorities and fire and rescue authorities to improve fire safety’ (Appendix 2 page 63). This can be viewed at:
http://www.cieh.org/library/Knowledge/Housing/National_fire_safety_guidance_08.pdf