

THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND)
REGULATIONS 2015

STATEMENT OF PRINCIPLES
Regulation 13

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced legal requirements on private sector landlords from the 1st October 2015 in respect of premises occupied under tenancies starting on or after that date. The requirements are to:

1. Equip a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;
2. Equip a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
3. 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.

For the purposes of the legislation, living accommodation is a room that is used for the primary purposes of living or is a room in which a person spends a significant amount of time, and a bathroom or lavatory is classed within this definition.

In addition, this Statement of Principles includes the 2021/2022 planned amendments to the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 which will:

- Require social landlords to ensure at least one smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation.
- Amend the statutory guidance (Approved Document J) supporting Part J of the Building Regulations to require that carbon monoxide alarms are fitted alongside the installation of fixed combustion appliances of any fuel type (excluding gas cookers).
- Amend the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to require private and social landlords to install a carbon monoxide alarm in any room used as living accommodation where a fixed combustion appliance is used (excluding gas cookers).

Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury.

In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes. This is particularly so at night, as

without the early warning they provide, a small fire can develop unnoticed rapidly to the stage where smoke and fumes block escape routes or render a sleeping occupant unconscious. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety.

The Department of Communities and Local Government estimate that over 200 deaths and 5600 injuries could be prevented over ten years accruing a saving of almost £607.7 million by the provision of smoke alarms.

Carbon Monoxide is a colourless, odourless and extremely toxic gas. At high concentrations it can cause unconsciousness and death. At lower concentrations it causes a range of symptoms from headaches, dizziness, weakness, nausea, confusion, and disorientation, to fatigue, all symptoms which are sometimes confused with influenza and sometimes with depression. For all these reasons Carbon Monoxide is often dubbed “the silent killer”. Open fires and solid fuel appliances can be a significant source of Carbon Monoxide. Carbon Monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The Department of Communities and Local Government estimate that six to nine deaths and between 300 and 460 injuries could be prevented over ten years accruing a saving of almost £6.8 million by the provision of Carbon Monoxide alarms.

The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low, and in many cases, they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning event are far out of proportion to the cost of installing alarms.

Enforcement

In those situations where the Local Authority has reasonable grounds for believing 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. The smoke and / or carbon monoxide alarms were not working at the start of the tenancy or licence,

then the Local Authority shall, within 21 days of deciding that it has reasonable grounds to do so, serve on the landlord a Remedial Notice detailing the actions that must be

taken to comply with the regulations, and the Notice shall be in line with the requirements of the regulations.

If the Remedial Notice is not complied with 28 days after the Notice is deemed served, a Penalty Charge will be levied by means of a Penalty Charge Notice on the landlord.

Where a local housing authority 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 the balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the duty.

Where a local housing authority is satisfied, on the balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of their duty under regulation 6(1), the authority must, if the necessary consent is given from the occupier of the premises, arrange for an authorised person to take the remedial action specified in the remedial notice. The local housing authority must ensure the authorised person takes the remedial action within 28 days beginning with the day on which the authority is first satisfied that the breach has occurred.

An authorised person instructed by the Council must (a) give not less than 48 hours’ notice of the remedial action to the occupier of the premises on which it is to be taken; and (b) if required to do so by or on behalf of the landlord or occupier, produce evidence of identity and authority.

A local housing authority is not to be taken to be in breach of a duty under this regulation where the authority can show it has taken all reasonable steps, other than legal proceedings, to comply with the duty.

Standard of Alarm Provision

The type of smoke alarms to be required are alarms powered by a 10-year duration battery and where more than one alarm is required, ideally, they are to be interlinked so that all will sound on activation of any single alarm.

Carbon Monoxide alarms are to be stand-alone alarms powered by a 10-year duration battery.

Penalty Charge Principles

The Council will exercise its regulatory powers and issue a penalty charge with one or more of the following aims:

1. Reduce the risk imposed on a tenant’s health and safety
2. Reimburse the cost of remedial action and any associated administrative costs

3. Deter further offending and increase awareness of legislative requirements
4. Penalise the Landlord for failing to comply with a notice
5. Eliminate financial gain or benefit for non-compliance
6. It is in the public interest to take action

For these reasons, an effective incentive to comply with these Regulations is fully justified. It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, can present an excessive financial burden but this is balanced against the risk, the low cost of compliance, and the time period that the legislation has now been in operation. A recipient of a fixed penalty charge has a right of appeal.

Stage 1

In determining the amount, the Council will use the following table:-

Factor	Penalty	Amount £
Cost incurred by the Council in fulfilling its administrative and legal duties by arranging for a suitable person to carry out remedial work	Case specific	
Officer Time	Standard Rates	
Lack of any smoke detection	£4000	
Partial smoke detection (e.g. on one storey only)	£2000	
Lack of CO detector	£2000	
Failure to Test Alarm on First Day of Tenancy	£500	
TOTAL		£ (max. £5000)

The financial penalty must not exceed the maximum of £5,000.

Step 2

Aggravating and Mitigating Factors: Facts may come to light as part of the investigation for the offences which may warrant adjustments to be made to the Financial Penalty. Details of these factors will be included in the Penalty Notice. In addition, information may be provided in representations from a landlord as part of his request to review the Penalty Notice. Officers will have regard to these factors and adjust the penalty to increase (up to the Maximum of £5000) or to reduce the penalty as they feel appropriate. The landlord will be served a Notice after the review with an explanation of any adjustment made.

The Council does not have a prescribed list of what constitutes an aggravating or mitigating factor for these purposes, and it is not bound to deem any facts or circumstances as aggravating or mitigating and what constitutes aggravating or mitigating factors is different in every case and each case shall be given due consideration.

Stage 3

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-

compliance. It should also cover the costs incurred by the Council in administering enforcement action and conducting remedial works.

Penalty amounts will be proposed by authorised Officers and checked and confirmed by a line manager within Environmental Health, Private Sector Housing, Licensing or the Group Head of Technical services.

The Council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a representation made by the landlord. This discretion will not apply when:

1. The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
2. The person / company has previously received a penalty charge under this legislation.

Despite the above, the Council will still consider proportionality when determining the level of fine to be imposed.

Exceptions – Reasonable Steps

The Landlord

A landlord is not to be taken to be in breach of the duty if the landlord can show he has taken all reasonable steps, other than legal proceedings, to comply with the duty (Reg. 6(2)). An example of this could include, but is not limited to: the Landlord provides evidence of an inventory that was completed, signed and dated on the day that the tenancy commenced. The inventory confirms that the landlord successfully tested the smoke alarms and carbon monoxide alarms, and the tenant confirmed the test was conducted and the alarms were in working order.

The Housing Authority

A local housing authority is not to be taken to be in breach of a duty under this regulation where the authority can show it has taken all reasonable steps, other than legal proceedings, to comply with the duty (Reg. 7(5)).

Representations in relation to a Penalty Charge Notice

The landlord has a right to seek a review of the penalty charge notice by writing to the Authority (details on the Notice) within 28 days of the Notice being deemed served.

On consideration of any representation and evidence, the penalty charge notice can be confirmed, varied or withdrawn. This decision is confirmed by issuing a decision notice on the landlord. If varied or confirmed, the notice shall state a further appeal can be made to the First-Tier Property Tribunal and details given.

Any representations received from the landlord will be given due consideration and if there are deemed to be any extenuating circumstances then the Council will also consider these when conducting a review of the penalty charge notice. The Council shall not be bound to deem any particular circumstances as extenuating, what is to be considered extenuating is entirely at the discretion of the Council.

Appeals in relation to a Penalty Charge Notice

If the Council uphold or vary the Penalty Charge Notice following a review, there is a right of appeal to the First Tier Tribunal. Payment of the penalty charge notice is suspended pending the appeal.

Recovery of Penalty Charge

The Local Housing Authority may recover the penalty charge as laid out in the regulations. Due to costs incurred by the Council, any penalty charge notice shall be pursued for payment.

Review of Statement

This Statement of Principles shall be reviewed and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and in the public interest. Minor amendments or changes as a result of legislative changes will not require the amendments to be presented to Committee or Council.

Regulation 13 states that this Statement of Principles must be published (along with any subsequent changes).

Adopted: