ENFORCEMENT OF SMOKE AND CARBON MONOXIDE ALARM REGULATIONS 2015

As amended 2022

INTRODUCTION

The Smoke and Carbon Monoxide Alarm Regulations came into force on 1 October 2015 and were updated in 2022. These regulations require that smoke alarms are provided in most privately rented housing, and where there is a fixed combustion appliance other than a gas cooker, a carbon monoxide alarm is also provided. These alarms are to be tested at the start of each tenancy and once reported as not in proper order the alarm is to be repaired or replaced.

Enforcement of the regulations is initially by service of a "Remedial Notice", and should this fail, by carrying out the work in default of the landlord and the imposition of a variable penalty charge. This policy sets out how these regulations are to be applied.

Regulation 13 requires that we provide, and publish, a "statement of principles which the Council proposes to follow in determining the amount of a penalty charge". This policy sets out these principles which will be published on the Council's web pages. The policy also sets out the Council's interpretation of the regulation where this is not explicitly stated either in the regulations or Government guidance.

These regulations do not directly apply to licensed houses in multiple occupation (HMOs). However, they do amend the statutory regime for licensed HMOs to include similar requirements. These are enforced as mandatory conditions of licences granted from 1 October 2015. As such, this policy excludes licensed HMOs.

The Government has issued guidance for both landlords and local authorities; this document reflects that guidance.

THE REGULATIONS

Application

The regulations make a number of exemptions. Broadly speaking these relate to:

- licensed HMOs.
- housing where the landlords are Registered Providers.
- housing where residents occupy as long leaseholders.
- housing where "lodgers" share amenities with the residential owner or a member of their family.
- some halls of residence, care homes, hospices, hospitals and NHS accommodation.
- Low cost ownership homes.

Requirements for smoke alarms

The regulations place duties on the landlord to provide a smoke alarm on each storey of the premises. The explanatory guidance indicates that this can be satisfied by using commonly available nine volt battery fittings. The landlord has obligations throughout the tenancy to ensure that the alarm(s) remain present. The landlord must ensure that the alarms are present, and working, on the date that every new tenancy commences and, the landlord must ensure that smoke and carbon monoxide alarms are repaired or replaced once informed and found to be faulty. This could include replacing batteries.

These requirements are more complex in multi occupancy properties. This is due to the increased number of tenancies and the potential for a number of premises to be housed in the same property.

Requirements for carbon monoxide alarms

The regulations place duties on the landlord to provide a carbon monoxide alarm in a room, compartment, hall or landing where there is a "fixed combustion appliance other than a gas cooker" within the premises. The landlord has obligations throughout the tenancy to ensure that the alarm remains present, and working, on the date that every new tenancy commences. The landlord must ensure that smoke and carbon monoxide alarms are repaired or replaced once informed it is faulty. This could include replacing batteries or the whole unit

Landlords should follow the individual manufacturer's instructions when installing the alarms.

However, in general, carbon monoxide alarms should be positioned at head height, either on a wall or shelf, approximately 1-3 metres away from a potential source of carbon monoxide.

Our duties

The regulations place duties on the Council to enforce the provisions by service of "Remedial Notices". These must be served where we have "reasonable grounds to believe" that the landlord is in breach of the requirements; it is not necessary to prove that that such a breach has occurred. Where the notice has not been complied with, the Council must (subject to the consent of the occupier) carry out appropriate remedial works. There is a set timetable for this process.

Enforcement

Initially the Council would usually enforce the requirements by carrying out the relevant works. However, the Council may also issue a Penalty Charge to the landlord (whether or not the occupier consents to us carrying out those works). The Penalty Charge is a maximum of £5000; it can only be levied for the breach of failing to comply with the Remedial Notice. The landlord may ask us to review the level of the Penalty Charge and follow this by formal appeal to the First Tier Tribunal. There is no specified mechanism for recovering the costs incurred in either inspection or works to the property.

The proceeds of the Penalty Charge may be used for any purpose which the Council decides.

The following factors are relevant in considering the principles we will apply in setting penalty charges:

- there is a defence that the landlord has taken all reasonable steps, other than legal proceedings, to comply with the notice. Where we are satisfied that this is the case the Council cannot levy any Penalty Charges no breach has occurred.
- the maximum permitted Penalty Charge is £5000. This reflects the risk of severe injury which may arise from the occupiers being unaware of a fire or carbon monoxide release.
- the Government has not issued guidance on setting the level of the Penalty Charge However, a comparison with other legislation may be helpful. Its guidance for the enforcement of the letting agent redress scheme recommends imposition of the maximum Penalty Charge of £5000 in all but extenuating circumstances. We have adopted this guidance in our policy for enforcing the letting agent redress scheme. The redress scheme relates to businesses (whereas many landlords only let one property and would not consider themselves as businesses). However, the failure to belong to a redress scheme would not normally impose the same level of risks as might be found in the case of fire and carbon monoxide.
- it may be more relevant to consider the penalty charge applied by the magistrates' courts for failure to comply with equivalent safety requirements.
    - In cases of failure to comply with an Improvement Notice or the management regulations for houses in multiple occupation (HMO) the penalty charge is typically less than £1000. The maximum penalty charge is now unlimited having been increased from £5000. . It is to be expected that the Courts will raise their fine in in line with Government expectation

  - In cases of failure to comply with the requirement to licence an HMO penalty charge can be substantially higher. However, there is frequently a "rogue landlord" element in cases where an HMO operates without the required licence.
  - Penalty charges for offences under the Fire Safety Regulatory Reform Order also tend to be higher; however such cases may have arisen following a serious fire incident

- the cost of compliance to landlords is minimal.
- although landlords should be aware of these regulations this may not in fact be the case. The House of Lords debate on the regulations suggests that the implementation of these regulations could have been improved. However regardless of this, no Penalty Charge can be levied without the landlord being notified of their obligations in the Remedial Notice and had the opportunity to make representations against this.
- renting residential property is a complex matter. Letting impinges on numerous legal frameworks, and landlords need to have the appropriate resources, skills and knowledge to effectively and appropriately conduct this business. The Council will give advice which will reflect the equalities needs of the landlord where these are identified. However where a Landlord continues to breach these requirements there are likely to be other problems with poor property management. In these circumstances it may be desirable, for all parties, if the landlord ceases the business of property letting.
- most landlords only own one or two properties, and many operate their letting business on a part time basis. They may not consider that this activity is in fact a business. In some cases, imposition of the maximum Penalty Charge could present an excessive financial burden. However, it is neither possible nor appropriate to determine a landlord's letting income, other income or capital at the time of the assessment of the Penalty Charge.
- extenuating circumstances may apply; however in most cases these will be unknown at the time of service of the penalty notice. These can be properly examined, when presented as representations, in any review of the notice. They can be further examined on formal legal appeal to the First Tier Tribunal. By their nature, it is difficult to define extenuating circumstances in a policy (or statement of principles as required under Regulation 13).
- there may be cases where the landlord could not reasonably have known of the service of notice, despite notice having been properly served. However, regardless of them not receiving the notice, they should still have been aware of their duties under this legislation. They should also have had some means of contact to address any emergency issues which might arise.
- the regulations allow for a prompt payment discount. This can be used to reduce the administrative costs associated with recovering the debt. The regulations specify that this is an option and accordingly it should be considered.
- the requirements of the legislation will usually mean that (where a breach has occurred) the Council will have carried out the appropriate remedial works before serving the Penalty Charge Notice. In rare situations this may not be the case, and it could be argued that the penalty charge should be reduced if the landlord complies with the Remedial Notice after service of the Penalty Charge Notice. The policy for the enforcement of the redress scheme refers to an analogous situation; in that case it was determined that such action was not an exceptional circumstance that warranted the waiving or reduction of the penalty charge. However there may be other factors associated with this delayed action which could be relevant.
- Government has not made funds available for carrying out the function of applying these regulations. Nor has it set out a process for recovery of the costs of providing, testing and replacing alarms. Instead, it appears to be the intent of the regulations that the costs are recoverable from the Penalty Charges levied.
- the monies collected from Penalty Charges will be used to pay for the costs the Council incur in defending our actions at tribunal. A higher level of Penalty Charges may encourage more

appeals and their associated administrative costs. Equally, some clients may contest our actions regardless of the level of Penalty Charge applied.

Interaction with other legislation etc.

These regulations improve housing to the standard of the current Building Regulations in respect of carbon monoxide safety. However, the standard of fire warning is substantially less than would be required for new housing.

Part One of the Housing Act 2004 (Housing Health and Safety Rating System) can be used to apply improvements to fire and carbon monoxide safety; however for single household premises the new regulations provide a valuable, and relatively easy, means of improvement.

The situation is far more complex in respect of fire in multi occupancy housing (the vast majority of which does not require licensing). In these cases there are the competing demands of the Regulatory Reform (Fire Safety) Order 2005 (administered by the Devon and Somerset Fire and Rescue Service), the Building Regulations, the "HMO management regulations" and Part one of the Housing Act 2004.

The above legislation may detail considerably higher standards than would be required by the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. In addition to enforcing these regulations we will also advise clients of a standard which will meet all the fire safety requirements appropriate to the property. Where the circumstances justify this may lead to enforcement of these higher standards.

The Council has adopted the principle of informal resolution to problems before taking formal actions. As such, we should normally attempt a preliminary discussion with landlords prior to service of notice; any such discussion must be completed within the timescale set out in the regulations. Our Enforcement Policy applies to these regulations as it does to other matters.

POLICY

Enforcement

Specified Officers within the Housing Improvement Team, in accordance with the Council's Scheme of Delegation have delegated authority to serve notices, assess Penalty Charges and carry out works.

In our correspondence (accompanying Remedial Notices) we will make it clear that landlords have a defence of taking all reasonable steps except legal proceedings. We will also advise them to keep appropriate records to demonstrate that they have taken these steps in the event that they need to rely on this as a defence. We will ask for these records when we determine whether there has been a breach (for which a penalty charge may be levied).

The Service Director of Community Connections will consider any representations landlords may wish to make about Remedial Notices served.

The level of (any) penalty charge will be set by the case officer in conjunction with their line manager. The following principles will apply:

- generally we will serve a Penalty Charge Notice where we are satisfied that, on the balance of probabilities, the landlord is in breach of their duty to comply with a Remedial Notice
- the Penalty Charge will generally be £5000
- a prompt payment reduction of 25% will be given where:
  - payment is made within 14 days of the service of notice (as defined in the regulations) or
  - a representation is received within 14 days of the service of the notice and the payment is received within the period of 14 days following the service of our notice of review of the charge (service dates as defined in the regulations)

- the discount will be reduced or removed where it would result in the penalty being less than the cost of remedial works undertaken by the Local Authority.

- where we are aware of any extenuating circumstances these will be considered. However, by their nature, such circumstances cannot be fully defined in a policy. They will probably be unknown at the time that the Penalty Charge Notice is served but the landlord can provide these as a part of any representation against it

- generally, the Penalty Charge Notice will not be reduced or withdrawn in cases where the landlord complies with the Remedial Notice after the expiry date of that Remedial Notice

The Service Director of Community Connections will consider any representations landlords may wish to make about the level of penalty charge assessed.

The proceeds of Penalty Charge will be used to administer the regulations (including inspection of property and payment for works in default). Any residue will be used to support the other functions of the Housing Improvement Team.

Standards

For the purposes of this guidance, the word "tenancy" can also include references to licences. Please note that there are a number of exemptions to the requirements of the regulations.

Smoke alarms

The regulations require that a smoke alarm is fitted to each storey of the premises used wholly or partly for living accommodation. In this context:

- a storey which solely comprises a staircase need not have a smoke alarm as there is no living accommodation present.
- a bathroom or lavatory is considered as living accommodation.
- the premises may refer individual units of accommodation within the building.
- a self-contained flat refers to a part of the building which contains bathing, lavatory and kitchen facilities in addition to the living/bedroom areas, all of which are separated from the rest of the building such that access to the flat is via a single flat entrance door.

In single tenancy property we will require a smoke alarm on each storey of the building. This also applies where there is a single shared tenancy.

In multi tenancy property we will require a smoke alarm in each storey of each tenancy. The following are examples of how this will apply:

- in single storey self-contained flats (including studio flats); within each such flat (whether the building is an HMO or otherwise)
- in multi storey self-contained flats and maisonettes; within each flat, one smoke alarm on each storey of such a flat (whether the building is an HMO or otherwise)
- in buildings comprising both self-contained flats and other living accommodation; a smoke alarm on each storey where there is non self-contained living accommodation. This is in addition to those alarms located within self-contained flats
- in buildings where all the accommodation is non self- contained; a smoke alarm on each storey
- in hotel or bed and breakfast style accommodation being used to house residential occupiers; a smoke alarm on each storey where there is living accommodation used for this purpose

The smoke alarm must detect smoke. It's recommended that alarms meet the requirements of BS5839-6. Fittings which detect heat (heat detectors) are not acceptable. The smoke alarm may incorporate its own sounder, or alternatively a separate sounder may be provided within the area covered by the smoke detection unit.

Subject to the above requirement, for the purposes of these regulations the minimum standard for these fittings is that of a nine volt battery unit. However fittings/systems of a higher standard (that is 10 year battery smoke alarms, (part of) a 240 volt alarm system (grade D), or part of a "panel" alarm system (grade A) are also acceptable provided they comply with the above criteria.

Landlords should note that there may be higher standards applicable to their property under other legislation. In particular, for HMOs, a panel system (grade A) or interlinked 240 volt system (grade D) will usually be appropriate.

Carbon monoxide alarms

The regulations apply to "fixed combustion appliance other than a gas cooker". This term means a fixed apparatus where fuel of any type is burned to generate heat and includes gas boilers, solid fuel boilers, wood burning stoves, cooking appliances and fire grates used for combustion. Fire grates which are purely decorative and are not intended for combustion purposes are excluded; however landlords are advised to make this explicit in the terms of the tenancy. Alarms should be compliant with BS 50291.

The regulations apply to all such appliances where they are located in a room in the premises. The term "room" includes halls and landings as well as other areas.

The regulations require a carbon monoxide alarm to be fitted in the "room" within which the appliance is located.

Testing

The regulations explicitly state that alarms are to be tested on the day the new tenancy begins. The regulations are specific about this date; it is recommended that landlords obtain documentary evidence of this (for example the tenants' signatures to this effect).

Where a fire alarm system (see preceding paragraphs) is provided that part which relates to the new tenancy (see preceding paragraphs) must be tested to confirm that it is operable as of the date of commencement of that tenancy.

Checks are to be carried out to ensure that the alarm is in proper working order. Testing is to be by:

- (In the case of a Grade A system) (a) checking the control panel to ensure that the power light is illuminated and that no fault lights are present and (b) testing at a call point and ensuring that the sounders are working.
- (In the case of Grade D and battery smoke alarm/carbon monoxide systems) checking for the presence of the alarm unit and any visible evidence of non-functionality and (b) using the test button provided.

In both cases appropriate remedial action is to be taken where faults are found.

Exemptions

The regulations make a number of exemptions. Broadly speaking these relate to:

- licensed HMOs.
- housing where the landlords are Registered Providers.
- housing where residents occupy as long leaseholders.
- housing where "lodgers" share amenities with the residential owner or a member of their family.
- some halls of residence, care homes, hospices, hospitals and NHS accommodation.
- Low cost ownership homes.

Review

This is new legislation; the Government may issue further guidance and we expect that the tribunals will clarify matters further when they consider appeals. We will update this guidance accordingly.

Publication

The enforcement section of this policy will be published on the Council webpages in order to comply with the duty imposed by Regulation 13 to publish, a "statement of principles which the Council proposes to follow in determining the amount of a penalty charge". The standards section of this policy will be similarly published along with the Government guidance.

Review

Date of Review	Lead Officer
07/06/2024	Andrew Elvidge Community Connections Technical Lead (Housing Improvement)

The Service Director of Community Connections is authorised to revise the "Standards" section of this policy in the light of further Government guidance or tribunal decisions or other information.