

EXPLANATORY MEMORANDUM TO
THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations require landlords in the private rented sector in England to ensure that a smoke alarm is equipped on every storey of their rented dwelling when occupied under a tenancy, and that a carbon monoxide alarm is equipped in any room which contains a solid fuel burning combustion appliance. They also require landlords to ensure that such alarms are in proper working order at the start of a 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.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 150(1) of the Energy Act 2013 (c. 32) (“the Energy Act”) provides that the Secretary of State may by regulations impose duties on a relevant landlord of residential premises, in England, to ensure that the premises, when occupied under a tenancy, are equipped with smoke and carbon monoxide alarms. Section 150(3)(a) enables the Secretary of State to provide for the enforcement of any duty imposed by the regulations.

4.2 Parts 1 to 5 of the Regulations are made under the Energy Act. They do not apply to a house in multiple occupation (HMO) in respect of which a licence is required under Part 2 of the 2004 Act, or to a house in respect of which a licence is required under Part 3 of that Act. This is because the requirements for such premises will instead be imposed through the licensing regime. Part 6 of the Regulations amends the conditions which must be included in a licence under Part 2 or 3 of the 2004 Act to ensure that a smoke alarm must be equipped on every storey of the HMO or Part 3 house and a carbon monoxide alarm in any room which contains a solid fuel burning combustion appliance.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Eric Pickles, Secretary of State for the Department for Communities and Local Government, has made the following statement regarding Human Rights:

In my view the provisions of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The Regulations are intended to reduce the risk of injury or death caused by smoke or carbon monoxide in the private rented sector.
- 7.2 Smoke alarms: Nearly 40% of fire related deaths occur in properties without a working smoke alarm. Approved Document B (fire safety) which supports the Building Regulations 2010, requires all new-build properties (i.e. those built on or after 1 June 1992) to have a hard wired smoke alarm installed on at least each storey of the property. However, there is no legislation specifically requiring the installation of smoke alarms on every storey of older non licensed dwellings.
- 7.3 Successive Governments have made extensive use of non-regulatory approaches to encourage landlords to install alarms. Despite this only 83%¹ of properties in the private rented sector have a working smoke alarm and, private rented sector tenants remain less likely to be protected by working alarms than owner occupiers and renters in social housing. Installation of smoke alarms in the private rented sector has also significantly slowed rising only by 5% from 78% in 2006 to 83% in 2012/13. Given the diminishing returns from public information campaigns, it is therefore necessary to supplement them with regulations if we are to protect the tenants of the minority of private rented sector landlords who have proved resistant to non-regulatory approaches.
- 7.4 Carbon monoxide alarms: Carbon monoxide is a serious and preventable form of poisoning. Each year there are around 40 deaths from accidental carbon monoxide poisoning in England and Wales². Approved Document J (Combustion appliances and fuel storage systems), which supports the Building

¹ English Housing Survey, Fire and Fire Safety 2012-13

² Office for National Statistics

Regulations 2010, requires the installation of a carbon monoxide alarm in all properties when a solid fuel heating system is first installed. However, there is no requirement to install an alarm where the solid fuel system was installed before 1 October 2010. The Department has piloted non-regulatory approaches to help increase the uptake of carbon monoxide alarms in private rented properties. However, while this has shown to be a cost-effective means of increasing uptake, it is necessary to regulate to encourage uptake in those properties where the risk of carbon monoxide poisoning is highest.

- 7.5 Alongside these regulations, the Department intends to pursue its non-regulatory solutions more widely in order to encourage uptake in all households which do not have a carbon monoxide alarm installed.

Duties in respect of smoke and carbon monoxide alarms

- 7.6 These Regulations place duties on a “relevant landlord” of a “specified tenancy” of residential premises in England to ensure:
1. a smoke alarm is equipped on each story of the premises which is wholly or partly used as living accommodation;
 2. a carbon monoxide alarm is equipped in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
 3. the smoke and carbon monoxide alarms are in proper working order at the start of any new tenancy.
- 7.7 Part 2 of the Regulations explains that a “relevant landlord” is the immediate landlord of the premises. A registered provider of social housing (as to which see section 80(2) of the Housing and Regeneration Act 2008) is not a “relevant landlord”.
- 7.8 A “specified tenancy” is a tenancy, licence, lease, sub-lease or sub-tenancy of residential premises which grants one or more persons the right to occupy the premises as their only or main residence in return for the payment of rent. The Schedule to the Regulations excludes certain categories of letting arrangement where the accommodation is shared with the landlord or falls outside of the traditional private rented sector.
- 7.9 Paragraph 1 of the Schedule excludes agreements where the occupier shares accommodation with the landlord or landlord’s family. This is likely to arise where an owner occupier rents out a room in their own home. The Regulations are not targeted at owner occupied accommodation.
- 7.10 Paragraph 2 excludes leases which grant a right of occupation for 7 years or more without a break clause for either party. This type of arrangement is more

akin to one of home ownership than the traditional landlord / tenant relationship. A landlord's duty to carry out an annual gas safety check under the Gas Safety (Installation and Use) Regulations 1998 similarly does not apply where a lease is for a term of 7 years or more.

- 7.11 Paragraph 3 excludes agreements which grant a right of occupation in a student hall of residence.
- 7.12 Paragraph 4 excludes agreements which grant a right of occupation of accommodation in a hostel or refuge.
- 7.13 Paragraphs 5 to 7 exclude agreements which grant a right of occupation in a care home, hospital, hospice, or other accommodation provided in relation to healthcare by a relevant National Health Service Body.
- 7.14 The occupants of a number of the above exclusions, such as student halls of residence, hostels, refuges, hospitals, and care homes, benefit from existing protections under the Regulatory Reform (Fire Safety) Order 2005. Under the Order, to the extent that it is appropriate, 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.
- 7.15 In addition, in respect of 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. The codes stipulate a minimum standard of smoke alarm and regular testing.

Enforcement

- 7.16 In order for the Regulations to be effective there needs to be a process for ensuring compliance. Part 3 requires a local housing authority to serve a remedial notice on a relevant landlord, where they have reasonable grounds to believe the landlord has not complied with any one of the three duties set out above. A landlord who is in breach of a duty must comply with the remedial notice (regulation 6).
- 7.17 If a landlord fails to comply with the remedial notice within 28 days of the notice being served, regulation 7 places the local housing authority under a duty (where the occupier consents) to arrange remedial action. This is to ensure that tenants are protected by working alarms and may involve action to install a prescribed alarm, repair a prescribed alarm or to check a prescribed alarm is in proper working order.

Part 4 also enables local housing authorities to impose a civil penalty charge of up to £5000 on landlords who are in breach of their duty to comply with the remedial notice. Local housing authorities should be open and transparent regarding the civil penalty and must publish a statement of principles which they will have regard to when determining the amount of a penalty charge (regulation 13).

- 7.18 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”). A penalty charge notice 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.

Appeals

- 7.19 To ensure that the enforcement process is administered fairly, regulation 11 provides landlords with a means of appeal against penalties. A person served with a penalty notice may appeal to the First-tier Tribunal if it is confirmed or varied by a local housing authority after a review. If an appeal is lodged the penalty cannot be enforced until the appeal is disposed of.
- 7.20 Appeals can be made on the grounds that the decision of the local housing 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 ground that the amount of the penalty is unreasonable.

Recovery of the penalty

- 7.21 The penalty will be enforceable on the order of a court, as if payable under a court order. Where proceedings are necessary for the recovery of the penalty, a certificate signed by the local housing authority’s chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the penalty has not been paid.

Notices

- 7.22 Part 5 of the instrument provides for how and when notices will be taken to be served on a landlord.

Amendments to Schedule 4 to the Housing Act 2004

- 7.23 Part 6 amends Schedule 4 to the 2004 Act. Schedule 4 sets out the mandatory conditions to be included in a licence under Part 2 and 3 of the 2004 Act. Part 2 of the 2004 Act concerns licences of HMOs and Part 3 concerns selective licensing of other residential accommodation.

- 7.24 This instrument amends Schedule 4 so as to require, in England, a smoke alarm to be installed on every storey of the house (i.e. the HMO or Part 3 house) and a carbon monoxide alarm in a room with a solid fuel burning combustion appliance. These conditions will only apply to licences granted or renewed on or after the date these Regulations come into force.

Other legislative requirements

- 7.25 Landlords should be aware that these Regulations do not contain all the fire safety requirements which their premises may be subject to. There are fire safety requirements under other legislation, such as under Part 1 of the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005.

Consolidation

- 7.26 No consolidation is necessary.

8. Consultation outcome

- 8.1 A regulatory approach to the installation of smoke and carbon monoxide alarms was discussed as part of the Government's discussion paper - a "Review of Property Conditions in the Private Rented Sector". The paper was open for comment from 24 February 2014 to 28 March 2014.
- 8.2 There were 299 responses to the question on smoke alarms. A regulatory approach was supported by Fire and Rescue Authorities, industry representatives and over 96% of landlords, agents and fire officials who responded to the paper. On carbon monoxide alarms the majority (53%) of respondents to the paper were in favour of legislating. The discussion paper is available at: www.gov.uk/government/publications/review-of-property-conditions-in-the-private-rented-sector. The Government intends to publish its response imminently.

9. Guidance

- 9.1 The Government is not intending to publish new guidance on this policy. However, we plan to use a variety of methods to publicise this instrument and its new duties to both local housing authorities and landlords, including updating the How to Rent Guide.

10. Impact

- 10.1 There is an impact on business as landlords will be required to buy and install the prescribed alarms (if they are not already fitted at the premises) and check that they are working at the start of any new tenancy. Separate Impact Assessments, which have been cleared by the Regulatory Policy Committee, have been prepared on the effect of regulating to require smoke and carbon monoxide alarm installation.
- 10.2 In summary, the Impact Assessment notes that it will cost individual landlords around £5 for a smoke alarm. We estimate that requiring an alarm to be installed on each storey of a property will prevent up to 231 deaths and 5860 injuries over 10 years providing benefits of £606.7million.
- 10.3 For carbon monoxide alarms the cost of purchasing an alarm is around £20. We estimate that our targeted approach will result in 6-9 fewer fatalities and 306-460 fewer injuries over 10 years, providing benefits of £16.8million.
- 10.4 There is a minimal impact on the public sector as local housing authorities will be under a duty (where the occupier consents) to arrange remedial action where landlords have not complied with the regulations. A local housing authority will be able to impose a civil penalty when they have had to take remedial action. The proceeds of the civil penalty can be kept by the local authority making any additional burden of the policy self-financing.
- 10.5 The Impact Assessments focus on the effect of the policy on businesses. A separate new burdens assessment will be completed to assess the impact on local authorities before the regulations take effect.
- 10.6 The Government considers that these regulations strike a balance between reducing the amount of deaths / injuries caused by smoke and carbon monoxide inhalation and regulatory costs to business. The regulations will also be beneficial in increasing the standards of the private rented sector and offer local authorities an additional tool to help tackle rogue landlords.

11. Regulating small business

- 11.1 Small and micro businesses will not be exempted from the legislation because they account for a significant proportion of private rented sector landlords. Data suggests that 95%³ of all landlords own between 1 and 4 properties. This makes it highly likely that they will either be a small or micro business. Therefore, exempting them would result in the policy failing to meet its objectives of reducing fatalities and injuries.

12. Monitoring & review

- 12.1 The objective of this policy is to increase the number of homes in the private rented sector with working smoke and, if appropriate, carbon monoxide alarms. We collect data on the number of homes in the English Housing Survey with working smoke alarms and intend to continue to use this method to monitor compliance of this section of the policy. The degree to which these regulations have met their objective and their impact will be reviewed in due course.

13. Contact

- 13.1 Eleanor Smyllie at the, Department for Communities and Local Government, Tel: 0303 444 2248 email: Eleanor.smyllie@communities.gsi.gov.uk can answer any queries regarding the instrument.

³ Private Landlords Survey 2010