



The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Enforcement Procedure

1.0 INTRODUCTION

1.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on the 1st October 2015.

1.2 From the 1st October 2015, all private sector landlords must ensure that:

- at least one smoke alarm is installed on every storey of the property 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 appliance.

1.3 The landlord must ensure that each alarm is in proper working order at the start of each new tenancy. It is recommended that the landlord provides the tenants with a form to sign indicating that they are aware of the location(s) of the alarm(s) and that the landlord has tested that they are in working order on the first day of the tenancy.

1.4 The tenant is responsible for testing the alarms on a regular basis and reporting any faults to the landlord.

2.0 DEFINITIONS

2.1 What is classed as a 'new tenancy'?

- A new tenancy is a tenancy agreement that begins on for after 1st October 2015 and is not a renewal of a previous tenancy.

2.3 Solid fuel burning combustion appliance

- The appliance must burn some type of solid fuel such as a coal fire, log burning stove etc.
- There is no requirement to have a carbon monoxide alarm in rooms that only contain gas appliances.

2.4 Living accommodation

- A room is classed as 'living accommodation' if it is used for the primary purpose 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.

3.0 EXCLUSIONS FROM THE REQUIREMENTS

- **Social Housing:** registered providers of social housing are excluded from the requirements

- **Houses in multiple occupation (HMOs):** licences HMOs are exempt from the requirements but they do apply to unlicensed HMOs (the regulations amend the Housing Act 2004 to allow the requirement to be inserted into the licence conditions)
- **Live-in landlords:** where the occupier shares accommodation with the landlord or landlord's family, the agreement is excluded from the requirements
- **Long leases:** leases granting a lease of 7 or more years without a break clause for either party are excluded
- **Student halls of residence:** there are existing codes of practice that go beyond the duties imposed by the regulations
- **Hostels and refuges**
- **Care homes, hospitals, hospices and other NHS accommodation:** the occupants of such accommodation are protected by the Regulatory Reform (Fire Safety) Order 2005

4.0 ENFORCEMENT PROCESS

4.1 Where the Council has reasonable grounds to believe there has been a breach of duty by a relevant landlord (reasonable grounds include being informed by a tenant, letting agent or housing officer that the required alarms are not installed), the following procedure must be followed.

1. **Inspect:** visit the property to carry out an inspection to confirm the non-compliance.

Although there is no requirement to enter the property to prove non-compliance, it would be good practice to do so. Officers should also use the visit to carry out a HHSRS inspection to ensure there are no other issues.

2. **Serve a Remedial Notice:** If the visit confirms non-compliance, a Remedial Notice must be served on the landlord within 21 days of the breach being identified. The landlord has 28 days beginning on the day the notice is served to comply.

If the landlord provides written representation within the 28 day compliance period stating that all reasonable steps have been taken to comply with the remedial notice (other than legal proceedings) but it has not been complied with, the Council will review the case and a **Review Notice** will be issued with a decision to confirm, vary or withdraw the notice. If the notice is confirmed or

varied, the review notice will re-affirm the date the remedial notice must be complied with.

If after 28 days the landlord has not complied and cannot show they have taken all reasonable steps to do so, the Council must decide if the landlord is in breach by judging on a balance of probabilities.

3. **Remedial Action:** if the Council is satisfied that the landlord has breached the duty to comply, the Council must arrange for remedial action to be taken within 21 days to ensure that the tenants are protected by working alarms. Remedial action can be:

- Repairing an installed alarm
- Checking an installed alarm is in proper working order

The Council cannot recover the cost of carrying out any remedial works; collection of a civil penalty fine is the only method of recovery.

Before carrying out works in default the Council must send a letter to seek **consent from the occupier and to provide 48hrs notice of entry**. If consent or access is not provided the Council is no longer under a legal duty to carry out the remedial works.

4. **Penalty charge notice:** the Council can serve a civil penalty of up to £5,000 on landlords who do not comply with the remedial notice by serving a penalty charge notice. The PCN must be served within 6 weeks of the landlords' failure to comply with the remedial notice.

The landlord has 28 days from the date the notice is served to either pay the charge or appeal the notice.

A notice will be considered to have been served on a landlord on:

- a) The day it is given to the landlord in person
- b) The second business day* after it is sent by 1st class post to the landlords last known address
- c) The day it is delivered by hand to the landlords last known address; or
- d) where the landlord has provided the Council with an email address and has consented to accept service by email, the day it is sent by email to that address

*business day is any day other than Saturday, Sunday, Christmas Day, Good Friday or any official bank holiday

If the landlords address cannot be found after reasonable enquiries, the notice will be considered served on the day it is fixed to the property to which the notice relates.

You must completed a certificate of service form and attach it to the relevant worksheet.

A sundry debtor request must be completed to raise an invoice and the invoice must be enclosed with the PCN.

The landlord has the right to appeal the PCN. Where an appeal is lodged, the Private Sector Housing Administration Officer shall make a note on the payment system regarding the appeal and explain the unpaid invoice.

The Council has set the penalty fine as follows:

1 st offence:	£1,000
2 nd and subsequent offences:	£5,000

There is no reduction for early payment.

5.0 SUSPENSION/REVOCAION OF A NOTICE

5.1 Any notice served may be amended, suspended or revoked in writing at any time. The Council can re-instate a suspended notice once the compliance period has expired but the reissued notice should give a new 28 day compliance period.

6.0 RECOVERY OF THE PENALTY CHARGE

6.1 Where the landlord fails to either pay the penalty charge or appeal the penalty charge notice, the Council can recover the amount through the Courts.

6.2 The penalty charge notice allows the landlord 28 days to either pay the charge or appeal. The process of recovering the amount cannot start before the end of this 28 day period.

7.0 APPEAL PROCESS

Internal Review

7.1 The landlord can request a review of the Remedial Notice or Penalty Charge Notice (PCN). This appeal must be in writing to the Director of Leisure and Wellbeing and within the time period set within the respective notice (currently 28 days from the date of the notice).

- 7.2 If made in time, the Council must consider any representations and decide whether to confirm, vary or withdraw the notice. The Council must serve a **Review Notice** to the landlord outlining the decision whether to confirm, vary or withdraw the notice. If the notice is varied or confirmed, the review notice must also state the date the notice expires or the charge that must be paid.
- 7.3 Where the review relates to a PCN, the Private Sector Housing Administration Officer must be notified of the decision and must notify Revenues and Payments that the invoice is to be amended or withdrawn.

First Tier Tribunal Appeal

- 7.4 Where the Council decides to confirm or vary a PCN, the landlord must be informed of their right to appeal to the First Tier Tribunal (FTT). Appeals can be made on the grounds that the Council's decision was based on a factual error, was wrong in law or was unreasonable for any other reason. The PCN cannot be enforced until the FTT has dealt with the appeal.
- 7.5 The Private Sector Housing Administration Officer will note on the payment system that the invoice remains in dispute and will update Revenues and Payments once the tribunal has reached a decision.