

GUIDANCE ON SMOKE ALARMS AND CARBON MONOXIDE ALARMS

Introduction

From the 1st October 2015, regulations require both smoke alarms and carbon monoxide alarms to be installed in rented residential accommodation. Changes are also made to the licence requirements in relation to houses in multiple occupation (HMOs), such as shared houses and bedsits which require a licence and also in relation to properties which are subject to selective licensing. This Guidance is based on draft regulations which have been published. The Regulations apply both to houses and flats. Failure to comply can lead to a civil penalty being imposed of up to £5,000.

These provisions only apply in England; not Wales.

Who is affected

The requirements are imposed on the immediate landlord. There is an exemption for providers of social housing. A tenancy includes a licence to occupy a residential premises and it also extends to subletting for these purposes.

In the case of a licensed HMO or where there is a selective licensing it is the responsibility of the licence holder to ensure that mandatory conditions imposed in relation to the installation of alarms are complied with.

The premises affected

These duties apply to residential premises which means premises all or part of which comprise a dwelling. Thus, it will apply to a flat over a shop. If the property is a licensed HMO or subject to selective licensing there are mandatory conditions imposed on licences.

The premises must be let under a specified tenancy or a licence. This is a tenancy or licence of residential premises which grants one or more persons the right to occupy premises as their only or main residence. Rent or a licence fee must be payable.

There are various exemptions:-

- A tenancy under which the occupier shares any accommodation with the landlord or a member of the landlord's family. There must be a sharing of an amenity which includes a toilet, personal washing facilities, a kitchen or a living room but excludes any reference to storage or access.

- A tenancy which is a long lease or which grants a right of occupation of the premises, i.e. for more than 21 years.
- Student halls of residence.
- Hostels
- Care homes
- Hospitals
- Accommodation relating to health care provision

Requirement for Smoke alarms

During any period beginning on or after 1st October 2015 while the premises are occupied under a tenancy (or licence) the landlord must ensure that a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation. A living room will include a lounge dining room and kitchen as well as a bathroom or toilet. It also includes a hall or landing. This means that a smoke alarm must be provided in working order on each storey. Since the regulation relates to each storey in the premises this suggests that a separate alarm is not needed on a half landing as these would not be regarded as individually being a storey. As regards individual flats located on one floor then there will have to be at least one alarm within the flat itself or alternatively are provided outside the flat on the same floor of the building, i.e. a communal alarm.

For flats comprising more than one storey likewise there will need to be a smoke alarm on each floor.

It is the location of an alarm which sounds which is crucial; not the positioning of detectors.

The Regulations do not stipulate what kind of alarm is required. Ideally it should be a hard wired alarm system. It can, however, be a single stand alone alarm. Landlords are recommended by the RLA to fit ten year long life non tamper proof alarms, otherwise there is a problem of batteries being taken out and not being replaced.

Carbon monoxide alarms

Likewise, during any period beginning on or after 1st October 2015 when the premises are occupied under a tenancy or a licence a carbon monoxide alarm must be provided by the landlord in any room in premises which is used wholly or partly as living accommodation which contains a solid fuel burning combustion appliance. This applies to any kind of wood burning stove or an open coal fire. It will also extend to equipment such as a solid fuel Aga in the kitchen. This is already a requirement with new installations of solid fuel burning combustion appliances as under Building Regulations there is a requirement to install a carbon monoxide alarm but this is now extended to any existing appliances already in place before Building Regulations impose this requirement or where building regulations are not observed.

Checks

The landlord is specifically required to carry out a check to ensure that smoke alarms or carbon monoxide alarms installed to comply with the Regulations are in proper working order on the day a tenancy begins where it is a new tenancy. A new tenancy is a tenancy granted on or after 1st October 2015. For these purposes a new tenancy does not include a tenancy which was granted where the original agreement was entered into before 1st October 2015; nor does it include a periodic statutory tenancy which arises when a fixed term shorthold tenancy ends. It does not apply to a tenancy which starts at the end of an earlier tenancy where the landlord and tenant are the same as under the earlier tenancy and the premises are the same (or substantially the same) as those under the earlier tenancy. Therefore this express requirement to check does not apply to the renewal of a tenancy for the same premises by the same landlord to the same tenant.

In our view, landlords should not be under a false sense of security because of this provision. Our reading of the regulation is that there is an ongoing obligation to ensure that any smoke alarm or carbon monoxide alarm installed to meet these requirements is in working order. Alarms should therefore be checked periodically to see that they are working properly. There is no reason why this responsibility should not be placed on the tenant but the landlord will then have to make sure that the tenant does actually carry out the checks. If challenged, a landlord could have to show that a proper system has been put in place to check alarms regularly.

HMOs and Selectively licensed properties

As from 1st October 2015 new licence conditions will be included requiring the provision of smoke alarms and fire detectors. In the case of HMO licences they already contain provisions for alarms in any case. The regulations themselves are not applicable in this kind of accommodation.

Enforcement

The local authority is responsible for enforcement.

A local authority must serve a remedial notice within 21 days where they have reason to believe that the landlord is in breach of any of these duties relating to smoke alarms or carbon monoxide alarms. A remedial notice must specify the action to be taken within 28 days of the date of the service of the notice. It allows the landlord 28 days to make representations against the notice.

The landlord must then take the required action within the period allowed. There is an excuse for a landlord for non compliance with the notice if the landlord can show that he has taken reasonable steps to comply with the duty, but the landlord is not required to take legal proceedings. This could

cover a situation where the tenant refuses access to allow the work to be done.

If the landlord fails to take action then the local authority must, if it has the necessary consent to do so, arrange for the work required to be undertaken within 28 days of consent being obtained if consent of the occupier of the premises is required. Therefore if a local authority is also refused access by the tenant it cannot take the necessary steps itself.

Penalties

If the landlord is in breach the local authority may require the landlord to pay a penalty charge up to a maximum of £5,000. It has a discretion whether or not to impose this charge. If it intends to impose a charge it must serve a penalty charge notice within six weeks from when it is first satisfied that a breach has occurred. A right to make representations against the penalty notice is given and the local authority may reduce the charge for prompt payment.

Appeals

If the local authority uphold a penalty charge notice there is a right to appeal for the landlord to the First Tier Tribunal. The Grounds of Appeal are –

- Local authority has made an error of fact or law
- The amount of penalty charge is unreasonable
- The decision to impose a penalty is unreasonable for any other reason

Payment of the penalty is suspended pending any appeal.

Local authority penalty policy

Each local authority must publish a statement of principles which will be followed in determining the amount of any penalty charge. This statement will be taken into account in deciding on an individual penalty for a particular case.

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