AGENDA ITEM NO. 2

CABINET **ENVIRONMENTAL HEALTH AND HOUSING**
1ST MARCH, 2016 **REPORT NO. EHH1605**

SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

1.0 INTRODUCTION

1.1 The purpose of this report is to advise Cabinet of this new legislation which came in to force on 1st October 2015 and to seek the appropriate delegations to operate the scheme. The regulations require all private sector landlords to fit smoke alarms and where appropriate carbon monoxide alarms in their rented properties.

1.2 The Regulations also require Local Authorities to publish a Statement of Principles, which must be used to determine the level of Penalty Charge (fine) when a Penalty Charge Notice is served. Cabinet is asked to approve this statement.

2.0 BACKGROUND

2.1 On 17th September 2015 parliament approved The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Appendix 1) which came in to force on 1st October 2015.

2.2 The Regulations require all private sector landlords to install smoke alarms on every level of their rented properties and a carbon monoxide alarm in any room containing a solid fuel-burning appliance e.g. a wood burner or open fire. It is also the landlord's responsibility to ensure that all existing alarms are in proper working order at the start of each new tenancy.

2.3 There are exemptions specified under the Regulations that are separately risk assessed under other legislation. The exemptions are:

- Social housing – communal areas (Regulatory Reform Order 2005)
- Social housing – independent flats/houses (no legislative requirement)
- Houses in multiple occupation (Housing Act 2004)
- Live in landlords (Housing Act 2004)
- Long leases where there is a freeholder (Housing Act 2004)
- Student halls of residence (Regulatory Reform Order 2005)
- Hostels and refuges (Regulatory Reform Order 2005)
- Care homes, hospitals, hospices and other NHS accommodation (Regulatory Reform Order 2005)

2.4 The responsibility for the enforcement of the Regulations lies with the Council, who is required to take enforcement action if there is a breach

3.0 DETAILS OF THE ENFORCEMENT PROCESS

3.1 If a landlord breaches the requirements of the Regulations, the Council must serve a Remedial Notice detailing what the landlord needs to do to comply with the Regulations. The landlord must take all reasonable steps to comply within 28 days from the service of the Remedial Notice

3.2 If the landlord does not comply with the Remedial Notice the Council must, subject to obtaining the consent of the occupier, arrange for remedial action to be taken, ie to provide the required alarms. There is no provision in the Regulations for the Council to redeem the cost of this work.

3.3 Hampshire Fire and Rescue Service have agreed to fit fire alarms, free of charge in properties that are occupied by vulnerable residents in order that the Council can comply with the requirements of the Regulations

3.4 Where the Council has to arrange for smoke and/or carbon monoxide alarms to be fitted because the landlord is in breach of his duty to comply with the Remedial Notice, the Council can serve a Penalty Charge Notice. The only guidance to Councils as to the level of charge is that it can be up to a maximum of £5,000. To ensure that Councils are open and transparent when calculating the charge there is a requirement for them to publish a Statement of Principles, which must detail the level of charges and how they have been determined. A copy of the Statement of Principles is attached (Appendix 2) for approval by Cabinet.

3.5 A landlord can challenge the Penalty Charge Notice and the Council must consider this and let the landlord know the outcome by serving a Notice of its decision.

3.6 If the landlord is still unhappy with the outcome, he may appeal to the First-Tier Tribunal (formerly the Residential Property Tribunal) who will review the case and give the final decision as to whether the Penalty Charge Notice is to be confirmed, varied or quashed.

4.0 FINANCIAL IMPLICATIONS

4.1 The cost of the provision and fitting of smoke and carbon monoxide alarms will fall to the Council; however, Hampshire Fire and Rescue Service have agreed to fit the alarms free of charge, for vulnerable residents, for example the elderly or those in receipt of means tested benefits.

4,2 Where Hampshire Fire and Rescue Service are unable to assist the cost will be covered from the Council's existing works in default budget.

4.3 Any funds collected from a Penalty Charge Notice will be an income to the Council and can be offset against the cost of fitting the alarms. This money will be credited to the existing works in default budget.

4.4 It is anticipated that any breaches identified will be rectified with the service of a Remedial Notice and that the likelihood of the need to serve a Penalty Charge

Notice on the landlord will be minimal, therefore there should be little or no impact on resources.

5.0 CONCLUSION

5.1 These regulations are intended to reduce the risk of injury or death caused by the effects of smoke or carbon monoxide on those living in the private rented sector.

5.2 The Council has a duty to serve a Remedial Notice on private landlords when they have failed to provide and fit smoke or carbon monoxide alarms. If the landlord does not comply with the Remedial Notice the Council must, subject to obtaining the occupiers consent, arrange for the relevant alarms to be fitted at its own cost. However, any penalty charges paid by the landlords will help to meet these costs in accordance with the Statement of Principles.

6.0 RECOMMENDATIONS

6.1 To ensure compliance with these new regulations it is recommended that Cabinet approves the Statement of Principles (Appendix 2) pursuant to Regulation 13 to be followed in determining the amount of a Penalty Charge for publication and delegates authority to revise and publish the statement in subsequent years.

6.2 It is also recommended that Cabinet agrees to delegate authority to the Head of Environmental Health and Housing to:

a) Issue Remedial Notices if a landlord breaches his duty to provide a smoke or carbon monoxide alarm in his privately rented property under Regulation 6 (1)
b) Take remedial action to arrange for the installation of the required smoke or carbon monoxide alarms as specified in the Remedial Notice under Regulation 7
c) Issue Penalty Charge Notices if a landlord fails to comply with a Remedial Notice under Regulation 8
d) Consider and determine Regulation 10 reviews

Background Papers:
Appendix 1 – Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Appendix 2 – Statement of Principles

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STATUTORY INSTRUMENTS

2015 No. 1693

ENERGY, ENGLAND

HOUSING, ENGLAND

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Made - - - - 17th September2015

Coming into force in accordance with regulation 1(1)

The Secretary of State, in exercise of the powers conferred by section 150(1) to (6) and (10) of the Energy Act 2013(**a**) and paragraph 3(a) of Schedule 4 to the Housing Act 2004(**b**), makes the following Regulations.

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 150(9) of the Energy Act 2013 and section 250(6)(f) of the Housing Act 2004.

PART 1

Introduction

Citation, commencement and application

1.—(1) These Regulations may be cited as the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and come into force on 1st October 2015.

(2) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

"authorised person" means a person authorised in writing by the local housing authority for the purpose of taking remedial action under regulation 7;

"building" includes part of a building;

"penalty charge" means a monetary penalty imposed under regulation 8;

"premises"(**c**) does not include vehicles or vessels or—

(**a**) 2013 c. 32.
(**b**) 2004 c. 34. As to the meaning of "appropriate national authority" see section 261(1).
(**c**) See the definition of "premises" in s. 150(10) of the Energy Act 2013.

(a) an HMO (as defined in section 77 of the Housing Act 2004) in respect of which a licence is required under Part 2 of that Act, or

(b) a house (as defined in section 99 of that Act) in respect of which a licence is required under Part 3 of that Act;

"prescribed alarm" means an alarm which is required to be equipped at residential premises under regulation 4(1)(a);

"remedial action" means action—

(a) to install a prescribed alarm;

(b) to repair a prescribed alarm; or

(c) to check a prescribed alarm is in proper working order;

"remedial notice" means a notice requiring the landlord on whom it is served to take such remedial action as is specified in the notice in accordance with regulation 5(2)(c);

"rent" includes any sum paid in the nature of rent;

"residential premises"(**a**) means premises (as defined above) all or part of which comprise a dwelling; and

"specified tenancy" means a tenancy(**b**) of residential premises in England which—

(a) grants one or more persons the right to occupy all or part of the premises as their only or main residence;

(b) provides for payment of rent (whether or not a market rent); and

(c) is not a tenancy of a description specified in the Schedule to these Regulations.

PART 2

Prescribed alarms

Meaning of "relevant landlord"

3.—(1) For the purposes of these Regulations, a landlord is a "relevant landlord" if the landlord—

(a) is the immediate landlord in respect of a specified tenancy; and

(b) is not a registered provider of social housing (as to which see section 80(2) of the Housing and Regeneration Act 2008(**c**)).

(2) In paragraph (1) "immediate landlord"—

(a) where the premises are occupied under a specified tenancy which is not a licence means the person for the time being entitled to the reversion expectant on that tenancy; and

(b) where the premises are occupied under a specified tenancy which is a licence means the licensor, except that where the licensor himself or herself occupies the premises under a specified tenancy which is not a licence, it means the person for the time being entitled to the reversion expectant on that tenancy.

Duties of relevant landlord in relation to prescribed alarms

4.—(1) A relevant landlord in respect of a specified tenancy must ensure that—

(a) during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—

(**a**) This definition repeats the definition of "residential premises" in s. 150(10) of the Energy Act 2013 but modifies it so that the narrower definition of "premises" in these Regulations applies.
(**b**) See the definition of "tenancy" in s. 150(10) of the Energy Act 2013.
(**c**) 2008 c. 17.

(i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;

(ii) a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and

(b) checks are made 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.

(2) For the purposes of paragraph (1)(a), a bathroom or lavatory is to be treated as a room used as living accommodation.

(3) For the purposes of paragraph (1)(b), a tenancy begins on the day on which, under the terms of the tenancy, the tenant is entitled to possession under that tenancy.

(4) In this regulation—

"new tenancy" means a tenancy granted on or after 1st October 2015, but does not include—

(a) a tenancy granted in pursuance of an agreement entered into before that date;

(b) a periodic shorthold tenancy which arises under section 5 of the Housing Act 1988(**a**) on the coming to an end of a fixed term shorthold tenancy;

(c) a tenancy which comes into being on the coming to an end of an earlier tenancy, under which, on its coming into being—

(i) the landlord and tenant are the same as under the earlier tenancy as at its coming to an end; and

(ii) the premises let are the same or substantially the same as those let under the earlier tenancy as at that time;

"room" includes a hall or landing; and

"shorthold tenancy" means an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of the Housing Act 1988.

PART 3

Remedial action

Duty of local housing authority to serve a remedial notice

5.—(1) Where a local housing authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under regulation 4(1), the authority must serve a remedial notice on the landlord.

(2) A remedial notice must—

(a) specify the premises to which the notice relates;

(b) specify the duty or duties that the local housing authority considers the landlord is failing or has failed to comply with;

(c) specify the remedial action the local housing authority considers should be taken;

(d) require the landlord to take that action within 28 days beginning with the day on which the notice is served;

(e) explain that the landlord is entitled to make written representations against the notice within 28 days beginning with the day on which the notice is served;

(f) specify the person to whom, and the address (including if appropriate any email address) at which, any representations may be sent; and

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(**a**) 1988 c. 50. Section 5 was amended by the Housing and Regeneration Act 2008 (c. 17), Schedule 11, Part 1, paragraphs 5, 6(1), (2) and (3), and by the Housing Act 2004 (c. 34), section 222(1), (2).

(g) explain the effect of regulations 6, 7 and 8, including the maximum penalty charge which a local housing authority may impose.

(3) The local housing authority must serve a remedial notice within 21 days beginning with the day on which the authority decides it has reasonable grounds under paragraph (1).

Duty of relevant landlord to comply with a remedial notice

6.—(1) Where a remedial notice is served on a landlord who is in breach of one or more of the duties under regulation 4(1), the landlord must take the remedial action specified in the notice within the period specified in regulation 5(2)(d).

(2) A landlord is not to be taken to be in breach of the duty under paragraph (1) if the landlord can show he, she or it has taken all reasonable steps, other than legal proceedings, to comply with the duty.

Duty of local housing authority to arrange remedial action

7.—(1) 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 the duty under regulation 6(1), the authority must, if the necessary consent is given, arrange for an authorised person to take the remedial action specified in the remedial notice.

(2) 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 under paragraph (1).

(3) An authorised person 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.

(4) In paragraph (1) "the necessary consent" means the consent of the occupier of the premises on which the remedial action is to be taken.

(5) 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.

PART 4

Penalty charges

Penalty for breach of the duty under regulation 6(1)

8.—(1) 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 the duty under regulation 6(1), the authority may require the landlord to pay a penalty charge of such amount as the authority may determine.

(2) The amount of the penalty charge must not exceed £5,000.

(3) 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 under paragraph (1).

Content of penalty charge notice

9.—(1) A penalty charge notice must state—

(a) the reasons for imposing the penalty charge;

(b) the premises to which the penalty charge relates;

(c) the number and type of prescribed alarms (if any) which an authorised person has installed at the premises;

(d) the amount of the penalty charge;

(e) that the landlord is required, within a period specified in the notice—

(i) to pay the penalty charge, or

(ii) to give written notice to the local housing authority that the landlord wishes the authority to review the penalty charge notice;

(f) how payment of the penalty charge must be made; and

(g) the person to whom, and the address (including if appropriate any email address) at which, a notice requesting a review may be sent and to which any representations relating to the review may be addressed.

(2) A penalty charge notice may specify that if the landlord complies with the requirement in paragraph (1)(e)(i) or (ii) within 14 days beginning with the day on which the penalty charge notice is served, the penalty charge will be reduced by an amount specified in the notice.

(3) The period specified under paragraph (1)(e) must not be less than 28 days beginning with the day on which the penalty charge notice is served.

Review of penalty charge notice

10.—(1) Paragraph (2) applies if, within the period specified under regulation 9(1)(e), the landlord serves a notice on the local housing authority requesting a review.

(2) The local housing authority must—

(a) consider any representations made by the landlord;

(b) decide whether to confirm, vary or withdraw the penalty charge notice; and

(c) serve notice of its decision to the landlord.

(3) A notice under paragraph (2)(c) confirming or varying the penalty charge notice must also state the effect of regulation 11.

Appeals

11.—(1) A landlord who is served with a notice under regulation 10(2)(c) confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.

(2) The grounds for appeal are that—

(a) the decision to confirm or vary the penalty charge notice was based on an error of fact;

(b) the decision was wrong in law;

(c) the amount of the penalty charge is unreasonable;

(d) the decision was unreasonable for any other reason.

(3) Where a landlord appeals to the First-tier Tribunal, the operation of the penalty charge notice is suspended until the appeal is finally determined or withdrawn.

(4) The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.

Recovery of penalty charge

12.—(1) The local housing authority may recover the penalty charge on the order of a court, as if payable under a court order.

(2) Proceedings for the recovery of the penalty charge may not be started before the end of the period specified under regulation 9(1)(e).

(3) Paragraph (4) applies if, within that period, the landlord gives notice to the local housing authority that the landlord wishes the authority to review the penalty charge notice.

(4) Proceedings for the recovery of the penalty charge may not be started—

(a) before the end of the period within which the landlord may appeal to the First-tier Tribunal against the local housing authority's decision on review; and

(b) where the landlord so appeals**,** before the end of the period of 28 days beginning with the day on which the appeal is finally determined or withdrawn.

(5) In proceedings for the recovery of the penalty charge a certificate which is—

(a) signed by the local housing authority's chief finance officer (within the meaning of section 5 of the Local Government and Housing Act 1989(**a**)), and

(b) states that the penalty charge has not been received by a date specified in that certificate,

is conclusive evidence of that fact, and a certificate to that effect and purporting to be signed is to be treated as being signed, unless the contrary is proved.

(6) Sums received by a local housing authority under a penalty charge may be used by the authority for any of its functions.

Information to be published by local housing authority

13.—(1) A local housing authority must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

(2) A local housing authority may revise its statement of principles and, where it does so, it must publish the revised statement.

(3) In determining the amount of a penalty charge, a local housing authority must have regard to the statement of principles which was most recently prepared and published at the time when the breach in question occurred.

PART 5

Notices

Service of notices

14.—(1) Any notice served on a landlord under these Regulations must be in writing and may be amended, suspended or revoked in writing at any time.

(2) A notice is to be taken to be 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 first class post to the landlord's last known address;

(c) the day it is delivered by hand to the landlord's last known address; or

(d) where the landlord has provided the local housing authority with an email address at which the landlord is content to accept service, the day it is sent by email to that address.

(3) The reference in paragraph (2)(b) and (c) to the landlord's last known address includes a reference to the address last provided by the landlord in accordance with section 48 of the Landlord and Tenant Act 1987(**b**) to a tenant of the landlord.

(4) If the name or address of any landlord on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be taken to be served

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(**a**) 1989 c. 42; amendments have been made to section 5 but they are not relevant to these Regulations.
(**b**) 1987 c. 31; amendments have been made to section 48 but they are not relevant to these Regulations.

on the day it is conspicuously affixed to a building or object on the premises to which the notice relates.

(5) In paragraph (2)(b) "business day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday, or a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971(**a**).

PART 6

Licences under Parts 2 and 3 of the Housing Act 2004

Amendments to Schedule 4 to the Housing Act 2004

15.—(1) In paragraph 1 of Schedule 4 to the Housing Act 2004 (licences under parts 2 and 3: mandatory conditions)—

(a) in sub-paragraph (4)—

(i) before paragraph (a) insert—

"(za) where the house is in England—

(i) to ensure that a smoke alarm is installed on each storey of the house on which there is a room used wholly or partly as living accommodation, and

(ii) to keep each such alarm in proper working order;";

(ii) in paragraph (a), at the beginning insert "where the house is in Wales,"

(iii) in paragraph (b), at the beginning insert "in either case,";

(b) after sub-paragraph (4) insert—

"(4A) Where the house is in England, conditions requiring the licence holder—

(a) to ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance;

(b) to keep any such alarm in proper working order; and

(c) to supply the authority, on demand, with a declaration by him as to the condition and positioning of any such alarm."; and

(c) after sub-paragraph (5) insert—

"(6) In sub-paragraph (4A) "room" includes a hall or landing.

(7) For the purposes of sub-paragraphs (4) and (4A), a bathroom or lavatory is to be treated as a room used as living accommodation."

(2) The amendments made by paragraph (1) apply only to licences granted or renewed on or after 1st October 2015.

Signed by authority of the Secretary of State for Communities and Local Government

Brandon Lewis
Minister of State
17th September 2015 Department for Communities and Local Government

(**a**) 1971 c. 80.

SCHEDULE

Regulation 2

Excluded tenancies

Shared accommodation with landlord or landlord's family

1.—(1) A tenancy under the terms of which the occupier shares any accommodation with the landlord or a member of the landlord's family.

(2) For the purposes of this paragraph—

(a) an occupier shares accommodation with another person if the occupier has the use of an amenity in common with that person (whether or not also in common with others);

(b) "amenity" includes a toilet, personal washing facilities, a kitchen or a living room but excludes any area used for storage, a staircase, corridor or other means of access;

(c) a person is a member of the same family as another person if—

(i) those persons live as a couple;

(ii) one of them is the relative of the other; or

(iii) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple;

(d) "couple" means two people who are married to, or civil partners of, each other or who live together as if they are a married couple or civil partners;

(e) "relative" means parent, grandparent, child, grandchild, brother, sister, aunt, nephew, niece or cousin;

(f) a relationship of the half-blood is to be treated as a relationship of the whole blood; and

(g) a stepchild of a person is to be treated as that person's child.

Long leases

2.—(1) A tenancy that—

(a) is a long lease; or

(b) grants a right of occupation for a term of 7 years or more.

(2) In this paragraph "long lease" means a lease which is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993(**a**) or which, in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be such a lease if the tenant's total share (within the meaning given by that section) were 100 per cent.

(3) A tenancy does not grant a right of occupation for a term of 7 years or more if the agreement can be terminated at the option of a party before the end of 7 years from the commencement of the term.

Student halls of residence

3.—(1) A tenancy that grants a right of occupation in a building which—

(a) is used wholly or mainly for the accommodation of students, and

(b) is a hall of residence.

(2) In this paragraph "student" has the same meaning as in paragraph 4 of Schedule 1 to the Local Government Finance Act 1992(**b**).

(**a**) 1993 c. 28.
(**b**) 1992 c. 14.

Hostels and refuges

4.—(1) A tenancy that grants a right of occupation of accommodation in a hostel or refuge.

(2) In this paragraph "hostel" means a building which satisfies the following two conditions.

(3) The first condition is that the building is used for providing to persons generally, or to a class of persons—

(a) residential accommodation otherwise than in separate and self contained premises; and

(b) board or facilities for the preparation of food adequate to the needs of those persons (or both).

(4) The second condition is that either of the following applies in relation to the building—

(a) it is managed by a private registered provider of social housing;

(b) it is not operated on a commercial basis and its costs of operation are provided wholly or in part by a government department or agency, or by a local authority;

(c) it is managed by a voluntary organisation or charity.

(5) In this paragraph "refuge" means a building which satisfies the second condition in sub-paragraph (4) and is used wholly or mainly for providing accommodation to persons who have been subject to any incident, or pattern of incidents, of—

(a) controlling, coercive or threatening behaviour;

(b) physical violence;

(c) abuse of any other description (whether physical or mental in nature); or

(d) threats of any such violence or abuse.

(6) In this paragraph "government department" includes any body or authority exercising statutory functions on behalf of the Crown.

(7) In this paragraph "voluntary organisation" means a body, other than a public or local authority, whose activities are not carried on for profit.

Care homes

5.—(1) A tenancy that grants a right of occupation in a care home.

(2) In this paragraph "care home" has the meaning given in section 3 of the Care Standards Act 2000(**a**).

Hospitals and hospices

6.—(1) A tenancy that grants a right of occupation of accommodation in a hospital or hospice.

(2) In this paragraph "hospital" has the meaning given in section 275 of the National Health Service Act 2006(**b**).

(3) In this paragraph "hospice" means an establishment other than a hospital whose primary function is the provision of palliative care to persons resident there who are suffering from a progressive disease in its final stages.

Other accommodation relating to healthcare provision

7.—(1) A tenancy—

(a) under which accommodation is provided to a person as a result of a duty imposed on a relevant NHS body by an enactment; and

(b) which is not excluded by another provision of this Schedule.

(**a**) 2000 c. 14. Section 3 was amended by the Health and Social Care Act 2008 (c.14), Schedule 5, Part 1, paragraphs 1, 4(1), (2) and (3).

(**b**) 2006 c. 41; amendments have been made to section 275 but they are not relevant to these Regulations.

(2) In this paragraph "relevant NHS body" means—

(a) a clinical commissioning group; or

(b) the National Health Service Commissioning Board.

(3) In this paragraph "enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978(**a**).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose duties on certain landlords of residential premises in respect of smoke and carbon monoxide alarms. The duties do not apply to a landlord who is a registered provider of social housing. The Regulations require local housing authorities to enforce the requirements.

Part 1 sets out preliminary matters and defines terms used in the Regulations. In particular, a "specified tenancy" is defined as a tenancy (including a licence, lease, sub-lease and sub-tenancy) of residential premises in England which grants one or more persons the right to occupy all or part of the premises as their only or main residence, provides for the payment of rent and is not of a description mentioned in the Schedule.

Part 2 sets out the requirements on a "relevant landlord".

Regulation 3 describes who is a "relevant landlord" for the purposes of these Regulations.

Regulation 4(1) requires a relevant landlord in respect of a specified tenancy to ensure that, during any period when the premises are occupied under the tenancy, a smoke alarm is equipped on every storey and a carbon monoxide alarm is equipped in any room which contains a solid fuel-burning combustion appliance. The landlord also has to ensure that any such alarm is in proper working order at the start of a new tenancy.

Part 3 places enforcement duties on local housing authorities. Where a local housing authority has reasonable grounds to believe a landlord is in breach of a duty under regulation 4(1), the authority must serve a remedial notice on the landlord (regulation 5). Regulation 6(1) makes it a duty to comply with a remedial notice. If the landlord fails to do so, the authority must arrange for remedial action to be taken at the premises (regulation 7).

Part 4 provides for a local housing authority to impose a penalty charge on a landlord who fails to comply with a remedial notice in breach of the duty under regulation 6(1). Regulations 8, 9 and 10 set out the procedure to be followed in imposing a penalty charge. A penalty charge notice must be served on the landlord. A landlord may give written notice requesting that the local housing authority review the penalty charge notice.

Regulation 11 provides for a right of appeal to the First-tier Tribunal against a local authority's decision on review. The process for bringing an appeal is governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976).

Regulation 12 provides for the enforcement of a penalty charge.

Regulation 13 requires a local housing authority to publish a statement of principles which it must have regard to in determining the amount of a penalty charge.

Part 5 contains provision about the serving of notices on landlords under these Regulations.

Part 6 makes amendments to paragraph 1 of Schedule 4 to the Housing Act 2004. These have the effect of introducing new and revised conditions, in respect of smoke and carbon monoxide alarms, which must be included in a licence under Part 2 or 3 of that Act of a house in England.

(**a**) 1978 c. 30.

Two regulatory impact assessments have been prepared in relation to these Regulations (one relating to smoke alarms and the other relating to carbon monoxide alarms). The assessments will be placed in the Library of each House of Parliament and made available on www.gov.uk. Copies may be obtained from the Department for Communities and Local Government, 2 Marsham Street, London, SW1P 4DF.

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APPENDIX 2

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of principles for determining financial penalties

Rushmoor Borough Council adopted 1st March 2016

1. Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations came in to force on 1st October 2015. The purpose of these regulations is to encourage landlords to ensure that their tenants are living in safe homes with a system of early warning in the event of a fire or carbon monoxide leak.

Regulation 13 requires all local authorities to publish a statement of principles that will be applied when exercising its powers under Regulation 8. Regulation 8 provides that the Council may impose a financial penalty (the Penalty Charge) on a landlord for non-compliance with a Remedial Notice, which is in breach of the landlords duty under Regulation 6(1). This statement will be reviewed by the Council on a bi-annual basis and the levels of Penalty Charge will increase annually in accordance with the Retail Prices Index.

2. Imposition of a Penalty Charge

The Council will apply the principles in this statement, in deciding whether or not to exercise its discretion to impose a Penalty Charge, and in determining the amount of any such penalty charge, if it is satisfied that, on the balance of probabilities, the landlord has failed to comply with a Remedial Notice served upon the landlord under Regulation 5. In deciding whether to impose any Penalty Charge, the Council will have regard to whether the landlord had any reasonable excuse for non-compliance with the Remedial Notice. If the Council considers that there was no reasonable excuse then the Council will determine the amount of such Penalty Charge in accordance with the principles set out in paragraph 7 of this statement. Failure to organise a contractor within the 28 day period or financial difficulties shall not amount to reasonable excuse. The landlord shall provide such details as are required by the Council, within 7 days of request, in the event that he claims that he has a reasonable excuse for failing to comply with the terms of a Remedial Notice.

3. Procedure for imposing a financial penalty

If the Council decides that it is appropriate to serve a Penalty Charge Notice(PCN) then the PCN must be served within six weeks from the date that the Council is satisfied that the landlord has failed to comply with the Remedial Notice in discharging his duty under Regulation 6(1).

The Penalty Charge Notice will comply with Regulation 9 which requires the Council to state:

- the reason for imposing the Penalty Charge
- the premises to which the Penalty Charge relates
- the details of the number and type of alarms installed at the premises by the Council
- the amount of Penalty Charge
- the details of how to pay the Penalty Charge
- the date by which the Penalty Charge must be paid
- details of the appeal/review process and who to send it to
- details of any discount for payment within 14 days of service of the PCN

4. Council's duty to consider a request for a review of the PCN

The Council has a duty to review a Penalty Charge upon written request from the landlord, which must be received within 28 days of service of the PCN. This review will be undertaken in accordance with the Council's Scheme of Delegation. Once the Council has considered the representations of the landlord and the review has been completed, the Council must serve a Notice of its decision whether to confirm, vary or withdraw the Penalty Charge Notice. This Notice will also state the effect of Regulation 11, which allows for a further appeal by the landlord to the First-Tier Tribunal against the Council's decision

5. Appeal to First-Tier Tribunal

The landlord may appeal the decision issued by the Council to the First-Tier Tribunal.

The appeal can be made on the following grounds:

- The decision to confirm or vary the Penalty Charge was based on a factual error
- The decision was wrong in law
- The amount of Penalty Charge is unreasonable
- The decision was unreasonable for any other reason

Once an appeal has been lodged, the operation of the Penalty Charge Notice is suspended until the appeal is determined or withdrawn.

The final decision lies with the First-Tier Tribunal who may quash, confirm or vary the Penalty Charge Notice, but not increase the amount payable.

6. Payment of Penalty Charge Notice

The Penalty Charge Notice must be paid within 28 days of it being served or it may be suspended in the event of an appeal until the appeal has been determined.

The Penalty Charge can be paid by cheque or card at the Council Offices or be paid by card over the telephone.

If the Penalty Charge is not paid, the Council may recover the amount through a court order in accordance with Regulation 12.

The Council may use the payment of the Penalty Charge to discharge any of its functions.

7. Determination of the level of the Penalty Charge

The purpose of imposing a financial penalty for non-compliance with a landlords duty as set out in a Remedial Notice is two-fold. Firstly, as a punitive measure to encourage landlords to ensure the safety of their tenants by:

- Changing landlords behaviour
- Deterring non-compliance with the Regulations
- Ensuring that the penalty reflects the severity of the potential harmful outcomes

Secondly, to reflect the cost to the Council for administering and carrying out the remedial works contributing to reimbursing the Council for the cost of:

- Taking remedial action under Regulation 7 to ensure the provisions of any Remedial Notice are complied with
- procuring contractors, as authorised persons, to carry out the installation of the required alarms
- the cost of the alarms and their installation by authorised persons

The initial penalty charge for a first breach by a landlord of the requirements of any Remedial Notice shall be set at £1,000 to reflect the above principles. The Council will offer the following reduction on the initial penalty charge:-

- a 25% reduction provided the Penalty Charge is paid within 14 days (£750 Penalty Charge).

The Penalty Charge for each subsequent breach of the requirements of any Remedial Notice by a landlord will then increase on a sliding scale, as shown in the table below. The maximum penalty charge for an offence is £5,000.

Breach	Penalty Charge
First Offence	£1,000 reduced to £750.00 if paid within fourteen days
Second Offence	£2,000
Third Offence	£3,000
Fourth Offence	£4,000
Fifth and subsequent Offences	£5,000 per offence

Statement of Principles Agreed – 1st March 2016

Date of Statement of Principles Review – 1st March 2018

Hilary Smith

Private Sector Housing Manager

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statutory Instrument 1693