

EXPLANATORY MEMORANDUM TO
THE SMOKE AND CARBON MONOXIDE ALARM (AMENDMENT)
REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Smoke and Carbon Monoxide Alarm (England) Regulations 2015¹ (“the 2015 Regulations”), to bring social landlords into scope of the existing requirements and extend mandatory requirements for carbon monoxide alarms in private and socially rented homes. Where carbon monoxide alarms were previously only required in rooms with solid-fuel burning appliances, this instrument creates a new requirement for landlords to provide alarms in any room with any fixed combustion appliance (excluding gas cookers), and this instrument also creates a new obligation on landlords, following a report from a tenant, to repair or replace alarms as soon as reasonably practicable when they are found to be faulty. A new duty is placed on Local Housing Authorities to consider any written representations made by the landlord against a remedial notice, which includes provisions relating to the suspension of the notice and obligations to inform the landlord of the outcome of the consideration.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The 2015 Regulations were previously reported by the Joint Committee on Statutory Instruments for doubtful vires, defective drafting and unexpectedly limited use of powers in its Second Report of Session 2015-16². This instrument directly addresses the matters of defective drafting, namely: (1) regulation 3 of this instrument amends the 2015 Regulations to make clear that the amendments to the Housing Act 2004 made by those Regulations apply to both England and Wales, and (2) this instrument amends the 2015 Regulations so that they now deal fully with the end of a suspension of a remedial notice. The unexpectedly limited use of powers report related to the lack of a review provision under section 28(2)(a) of the Small Business, Enterprise and Employment Act 2015. A review clause has now been added to the 2015 Regulations and will apply to the whole of those Regulations.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.

¹ <https://www.legislation.gov.uk/ukdsi/2015/9780111133439/contents>

² <https://publications.parliament.uk/pa/jt201516/jtselect/jtstatin/29/29.pdf>

- 4.2 The territorial application of this instrument is England, except that regulation 3 applies to England and Wales.

5. European Convention on Human Rights

- 5.1 Eddie Hughes, Parliamentary-Under-Secretary of State at the Department for Levelling Up, Housing and Communities, has made the following statement regarding Human Rights:

“In my view the provisions of the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 150 of the Energy Act 2013 gives powers to the Secretary of State to impose duties on landlords of residential premises to provide smoke and carbon monoxide alarms, and to make provisions for the enforcement of those duties. The 2015 Regulations currently require landlords in the private rented sector in England to ensure that a smoke alarm is equipped on each storey of their premises on which there is a room used wholly or partly as living accommodation, and that a carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a solid fuel-burning combustion appliance. Landlords must ensure that checks are made to ensure alarms are in proper working order on the day the tenancy begins if it is a new tenancy. The Regulations are enforced by Local Housing Authorities, who can issue fines of up to £5000 for non-compliance.

7. Policy background

What is being done and why?

- 7.1 This instrument amends the 2015 Regulations. It imposes new duties on both private and social landlords to provide smoke and carbon monoxide alarms.
- 7.2 Specifically, it requires social landlords to provide a smoke alarm on every storey of their properties where there is a room used wholly or partly as living accommodation. It also requires both social and private landlords to provide carbon monoxide alarms in any room of their properties used wholly or partly as living accommodation where a fixed combustion appliance is present (excluding gas cookers). The change (from a requirement for carbon monoxide alarms in rooms with a combustion appliance which burns solid fuels to accommodation with a fixed combustion appliance which uses any fuel type) extends, and simplifies, the requirement.
- 7.3 The instrument also creates a new obligation on landlords to repair or replace any alarm which is found to be faulty during the period of a tenancy. The Regulations currently only oblige landlords to check that alarms are in working order on the first day of a new tenancy, so this new requirement provides greater protection for residents, and clarity over the legal position in the event that an alarm becomes faulty.
- 7.4 Landlords must repair or replace alarms as soon as reasonably practicable. There is no specific timeframe in which they must do this, and enforcement bodies should make reasonable judgements about what a reasonable timeframe is, taking into account the facts of each individual circumstance. Enforcement bodies should consider factors such as the local availability of alarms, whether the resident has provided access to repair or replace the alarm, or whether there are any exceptional circumstances which may mean it has not been possible to repair or replace the alarm promptly.

- 7.5 Smoke alarms and carbon monoxide alarms are shown to save lives. The 2015 Regulations require only landlords of private rented properties to provide alarms. Private landlords are required to install smoke alarms on every storey of their homes used as living accommodation, and carbon monoxide alarms in every room used as living accommodation with a solid fuel-burning appliance present, such as a log-burning stove. There are no such legal obligations on social landlords. This was widely seen as unfair; over 90% of respondents to the Social Housing Green Paper³ told us that safety standards between the rented sectors should be aligned.
- 7.6 During 2018 Government carried out a review of carbon monoxide alarm requirements, which found evidence to support the case to extend requirements for carbon monoxide alarms to include social rented homes, and to rooms with all fixed combustion appliances, excluding gas cookers. Gas cookers have been excluded from requirements because data shows that they are responsible for fewer incidents of carbon monoxide poisoning than gas boilers, and it would therefore not be proportionate to require alarms to be installed in rooms with gas cookers as well as boilers. More detail can be found in the consultation document⁴. The Regulations are not intended to make provision for owner-occupied accommodation and so low-cost home ownership homes (for which there may be a landlord as part of the arrangement) are excluded.
- 7.7 This instrument also makes changes to improve the procedure to be followed when a Local Housing Authority serves a remedial notice on a landlord, in particular when the landlord submits written representations. The amendments provide a set timetable for considering such representations and informing the landlord of the outcome, and a period of 21 days for the landlord to comply with the notice if the notice is confirmed following those representations.

Amendment of Schedule 4 to the Housing Act 2004

- 7.8 This instrument also amends Schedule 4 to the Housing Act 2004. Schedule 4 sets out the mandatory conditions to be included in a licence under Parts 2 and 3 of the 2004 Act. Part 2 of the 2004 Act concerns licenses of HMOs and Part 3 concerns selective licensing of residential accommodation.
- 7.9 This instrument amends Schedule 4 so as to require, in England, a carbon monoxide alarm to be installed in any room with any fixed combustion appliance (excluding gas cookers). These conditions will only apply to licenses granted on or after these Regulations come into force.
- 7.10 The 2015 Regulations also amended Schedule 4 of the 2004 Act and made reference to such amendments only applying to licenses ‘granted or renewed’ after those Regulations came into force. In contrast, the provision in this instrument provides for the amendments to apply to licenses ‘granted’ after this instrument comes into force. The use of different language (‘granted’ rather than ‘granted or renewed’) does not indicate an intended difference in effect. On review for the purposes of this instrument, the conclusion was that licenses are not “renewed” under the Housing Act 2004 – a renewal will be a grant of a licence.

³ <https://www.gov.uk/government/news/social-housing-green-paper-a-new-deal-for-social-housing>

⁴ <https://www.gov.uk/government/consultations/domestic-smoke-and-carbon-monoxide-alarms/domestic-smoke-and-carbon-monoxide-alarms-proposals-to-extend-regulations>

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument amends The Smoke and Carbon Monoxide Alarm (England) Regulations 2015. There is no plan for consolidation at this time.

10. Consultation outcome

10.1 A public consultation⁵ was launched on 17 November 2020, which was open for responses for 8 weeks, closing on 11 January 2021. It sought views on amending the requirements for the provision of smoke and carbon monoxide alarms in rented homes as outlined in The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

10.2 161 responses were received from individuals and organisations, including social and private landlords & their representative bodies, residents, housing charities, local authorities, industry professionals and fire and rescue representatives. The Government response to the consultation⁶ was published on 23 November 2021 and contains a detailed analysis of the responses submitted.

10.3 All of the proposals were supported by a majority of respondents. The main proposals, to extend requirements for smoke alarms and carbon monoxide alarms in private and socially rented homes, were supported by 92% and 87% of respondents respectively. Other questions included a proposal to oblige landlords to repair or replace faulty alarms which over 90% supported and commencing the requirements as soon as possible once the Regulations had been made in Parliament, which 79% supported.

11. Guidance

11.1 The Department for Levelling Up, Housing and Communities will issue non-statutory guidance for landlords, residents and local authorities on the new duties on smoke and carbon monoxide alarms to which this instrument gives effect.

11.2 The guidance will be published before the Regulations come into force to give those affected time to prepare for the changes.

12. Impact

12.1 The majority of housing associations are registered as non-profit organisations with charitable status. There is an impact on housing associations who will be required to buy and install the prescribed alarms (if they are not already fitted at the premises), check that they are working at the start of any new tenancy and repair or replace alarms when necessary. This regulatory provision has been certified as meeting the exemption to the business impact target because it relates to the safety of tenants, residents and occupants.

12.2 There is an impact on local authorities. Local authority landlords will be required to buy and install the prescribed alarms (if they are not already fitted at the premises),

⁵ <https://www.gov.uk/government/consultations/domestic-smoke-and-carbon-monoxide-alarms/domestic-smoke-and-carbon-monoxide-alarms-proposals-to-extend-regulations>

⁶ <https://www.gov.uk/government/consultations/domestic-smoke-and-carbon-monoxide-alarms/outcome/domestic-smoke-and-carbon-monoxide-alarms-proposals-to-extend-regulations-government-response>

check that they are working at the start of any new tenancy and repair or replace alarms where necessary. Local housing authorities will be under a duty (where the occupier consents) to arrange remedial action where landlords have not complied with the regulations.

- 12.3 An assessment of impact for these regulations was prepared and published alongside the consultation⁷ in November 2020. In the Department's view, this assessment remains valid as there has been no significant change to any of the data used. The assessment of impact shows that the average cost of a smoke alarm is £8, and that alarms are expected to last for 10 years. Total costs to social landlords are estimated to be £21 million over a 10-year period, which includes the costs of inspection, the smoke alarm, time cost of installation and replacement costs. Benefits are estimated to be £68 million over 20 years, calculated through the monetised value of deaths and injuries prevented. For carbon monoxide alarms, the average cost of an alarm is assumed to be £10.80, with an estimated lifespan of 7 to 10 years. Costs to private landlords are estimated to be £147 million over 10 years, while for social landlords they are estimated to be £128 million. The costs are slightly higher in the private sector because private landlords tend to manage fewer properties, meaning they do not benefit from economies of scale in the same way many social landlords do. Total monetised health benefits for the policy are estimated to be £224 million over 20 years.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. Because the majority of private landlords have small portfolios, with an estimated 62% owning a single rented property, this policy does impact on small businesses. We are therefore not proposing to exempt small and micro businesses as this would result in the policy failing to meet its objectives of protecting tenants from unsafe conditions.
- 13.3 The basis for the final decision on what action to take to assist small businesses was settled through consultation. Private landlords with small portfolios had the opportunity to provide their views on this policy through the consultation. The proposals were strongly supported and in almost all cases will result in a relatively small burden for landlords who have to purchase and install relatively inexpensive alarms in a small number of homes.

14. Monitoring & review

- 14.1 This instrument adds a statutory review clause to the 2015 Regulations. The review clause requires a review of the regulatory provisions in the 2015 Regulations (as amended) to be conducted from time to time and a report published setting out the conclusions of the review. The conclusions of the first review must be set out in a report to be published by 1st October 2027 (which is five years from this instrument coming into force). Reviews must be carried out and reports published within intervals of less than five years.

⁷ <https://www.gov.uk/government/consultations/domestic-smoke-and-carbon-monoxide-alarms/domestic-smoke-and-carbon-monoxide-alarms-proposals-to-extend-regulations#annex-b-analysis-of-impact>

15. Contact

- 15.1 Isobel Ames at the Department for Levelling Up, Housing and Communities [0303 444 1904; isobel.ames@communities.gov.uk] can be contacted with any queries regarding the instrument.
- 15.2 Ruhena Ahmed, Deputy Director for Social Housing Quality, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Eddie Hughes, Parliamentary-Under-Secretary of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.