

**REPORT FROM: HOUSING, HEALTH AND ECONOMIC DEVELOPMENT SERVICES MANAGER**

**TO: SPECIAL BUDGET EXECUTIVE**

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## **THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015**

### **PURPOSE OF REPORT**

To authorise the Housing Health and Economic Development Services Manager to carry out enforcement under the "Smoke and Carbon Monoxide Alarm (England) Regulations", and to seek approval for the statement of principles which the local authority will follow in determining the amount of a penalty charge related to a breach of the Smoke and Carbon Monoxide Alarm (England) Regulations.

### **RECOMMENDATIONS**

The Executive recommend to Council:

- (1) That the Housing Health and Economic Development Services Manager be authorised to exercise the Council's full enforcement powers under the "Smoke and Carbon Monoxide Alarm (England) Regulations", made under section 150(1)-(6) and (10) of the Energy Act 2013 and paragraph 3(a) of Schedule 4 to the Housing Act 2004 that came into force on the 1<sup>st</sup> October 2015;
- (2) That the statement of principles which the local authority will follow in determining the amount of a penalty charge related to a breach of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 are approved
- (3) The Council's Private Sector Housing Enforcement Policy be amended to include the new regulations.

### **REASONS FOR RECOMMENDATIONS**

- (1) To ensure that the Housing Health and Economic Development Services Manager is authorised to exercise all necessary operational enforcement powers under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 in respect of smoke and carbon monoxide alarms

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| (2) | To ensure that the Local Housing Authority is able to undertake its statutory duty to serve remedial notices, to arrange remedial action and serve penalty charge notices. |
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## ISSUE

Under the Councils Scheme of Delegation, the authorisation of enforcement action in respect of housing standards is delegated to the Housing Health and Economic Development Services Manager to ensure that operational enforcement decisions can be made efficiently and in the public interest.

In March 2015, the Government laid before Parliament the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requiring all private sector landlords from October 2015 to ensure that working smoke alarms and in some cases carbon monoxide alarms are installed in privately rented properties. It is estimated that this will prevent 23 deaths and 586 injuries each year across England. It is noted that people are 4 times more likely to die in a fire in the home if there is no working smoke alarm. These regulations come with strong support after a consultation into conditions in the private rented sector.

The Regulations - made under section 150(1)- (6) and (10) of the Energy Act 2013 and paragraph 3(a) of Schedule 4 to the Housing Act 2004 came into force on 1 October 2015.

The Regulations require private landlords to ensure that there is a working smoke alarm installed on each storey of a privately rented home, whether the floor is occupied or not, that a working carbon monoxide alarm is in place in each room containing a solid fuel burning combustion appliance (open fire, wood burning or multi fuel stove) and to check that appropriate alarms are in working order at the start of each tenancy. There are approximately 7,000 privately rented properties in Pendle with no precise data of how many of these have working smoke alarms on every storey. It is estimated that nationally 90% of properties in the private rented sector have one or more smoke alarms. This would mean that 700 private rented properties across the borough are without any form of smoke alarms. It is unclear whether those who have smoke alarms, have working smoke alarms on each storey. It is estimated that there are very few properties containing a solid fuel burning combustion appliance that would require a carbon monoxide alarm.

The Regulations will be enforced by Local Housing Authorities who must serve remedial notices on those landlords in breach of their duty to comply. In any case where a landlord fails to comply with a remedial notice, the Authority must, if the necessary consent is given by the occupier of the premises, arrange for remedial action to be taken. It may also require the landlord to pay a civil penalty charge of up to £5000.

Each of England's 46 fire and rescue authorities are expected to support private landlords in their own areas to meet their new responsibilities with the provision of free alarms, with one off grant funding from government. Lancashire Fire and Rescue Authority have 12,000 smoke alarms and 1400 carbon monoxide alarms to distribute and fit for landlords.

It is the duty of the Local Housing Authority to serve a remedial notice within 21 days where it has reasonable grounds to believe that a relevant landlord is in breach of the Regulations. The landlord has 28 days to comply and if the landlord does not comply with the remedial notice, the Local Housing Authority must arrange for an authorised person to take remedial action by undertaking the works in default and fitting the necessary alarms within a 28 day period. The Authority may require the landlord to pay a penalty charge which must not exceed £5000 and it must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. There is a right of appeal to the First-Tier Tribunal (Residential Property Tribunal) for any landlord who is required to pay a penalty charge.

The Borough of Pendle as the Local Housing Authority will require the landlord to pay a penalty charge. A statement of principles to determine the amount of a penalty charge is attached at Appendix 1 and this will be published. The local authority may revise its statement of principles and where it does so, it must publish the revised statement. The reason that landlords will be required to pay a fixed penalty charge is because the local housing authority has a duty to arrange remedial action and works in default. These costs will need to be recovered. Additionally, the landlord will have already been aware of their breach and given 28 days to comply. Penalty charges are only for landlords who refuse to co-operate with the local housing authority even after they have been made aware of their breach. The costs will cover the works in default, officer time, administration charges, recovery costs and a fine. The landlord will be able to appeal to the local housing authority and then to the Residential Property Tribunal against the local housing authority's decision.

A discussion has taken place with the other East Lancashire Councils to determine the level of fixed penalty charge that we should all apply. This scale of charges is set out in the statement of principles in appendix 1 to this report.

The conditions within the licences for Houses in Multiple Occupation will also be reviewed and revised if necessary to bring them in line with the new regulations. This will only apply to licences granted on or after 1 October 2015.

The regulations exclude student halls of residence, hostels and refuges, care homes, hospitals and hospices and other accommodation relating to healthcare provision.

## **IMPLICATIONS**

**Policy:** The Council's Private Sector Housing Enforcement Policy will be revised to include the new regulations.

**Financial:** There are no major financial implications for the Council as the smoke and carbon monoxide detectors will be either provided by the Fire Authority via a grant from Government or paid for by private landlords. The enforcement will be undertaken by existing members of the Private Sector Housing Team. If a landlord does not comply with a remedial notice, the Local Housing Authority has a duty to undertake the work in default. Normal cost recovery mechanisms will be used.

**Legal:** The Councils Scheme of Delegation needed to be amended to take account of the regulations and the relevant amendments will be reported to the Annual Council Meeting in 2016 for approval.

**Risk Management:** There are 7,000 privately rented homes in Pendle. Within the existing resources of the Private Sector Housing Team it is not possible to visit every property to ensure that they are complying with the new regulations. Inspections will be made in where we are made aware of a possible breach of the regulations and during day to day work such as requests for service from tenants. There is a risk that there will still be properties within this sector which do not have adequate protection and could lead to loss of life. However, it is the landlords' responsibility and not the Council's to ensure adequate protection.

**Health and Safety:** The new regulations aim to improve the health & safety of occupants in the private rented sector

**Sustainability:** Nothing.

**Community Safety:** The new regulations will improve community safety by reducing the potential for major residential fires that can impact on adjoining properties as well as the property where the fire starts

**Equality and Diversity:** - the new regulations would not discriminate against any residents in Pendle as they apply to all tenants in privately rented properties covered by the regulations.

## **APPENDICES**

1 Statement of Principles

## **LIST OF BACKGROUND PAPERS**

*“The Smoke and Carbon Monoxide Alarm (England) Regulations 2015”*

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

## **Appendix 1**

# **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

## **Statement of Principles**

### Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements for all landlords during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—

- (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
- (iii) 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.

### Enforcement

Where the Local Housing Authority has reasonable grounds to believe that

- there are no or insufficient number of smoke alarms or Carbon Monoxide Detectors in the property as required by the regulations or;
- The Smoke Alarms or Carbon Monoxide Detectors were not working at the start of a tenancy or licence.

Then the Authority shall serve on the Landlord in a method prescribed by the Regulations, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.

If after 28 days the Landlord has not complied with the Remedial Notice. A Penalty Charge shall be levied through a penalty charge notice.

### Principles to be followed in determining the amount of a Penalty Charge

The Authority considers that a lesser penalty will be merited on the occasion of a first offence and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability and savings in administration costs.

The level of penalty should, however, as a minimum, cover the cost of all works in default, officer time, recovery costs, an administration fee and a fine.

Repeated offences should attract a progressively higher penalty in view of continuing disregard for legal requirements and tenant safety.

If, following the service of a first penalty charge notice, a notice (or notices) is (are) served in respect of a further offence (or offences), but the further offence(s) arose prior to the service of the first notice, the penalty charge in respect of each notice shall be treated as a first offence penalty charge. Subsequent offences will, however, be treated cumulatively.

### Level of Penalty Charge

The Penalty Charge shall be set at £2,500 for the first offence but this will be reduced to £1,250 if paid within a 14 day period. The Penalty charge for the second offence is set a £5,000 with a reduction to £2,500 if paid within 14 days

Should the Landlord not comply with future Remedial Notices then the fine shall be set according to the table below:

<b>Offence</b>	<b>Fine</b>
<b>Third or more</b>	<b>£5000</b>

No discount will be given for prompt payment after the second occasion.

### Recovery of Penalty Charge

The local housing authority may recover the penalty charge as laid out in the Regulations.

### Appeals in relation to a penalty charge notice

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice.

The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.