

Agenda Item No: 7
Report To: Cabinet
Date of Meeting: 9th March 2017



Report Title: **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 - Statement of Principles**

Report Author & Job Title: Julian Watts
Senior EHO – Private Sector Housing

Portfolio Holder Cllr. Clokie
Portfolio Holder for: Housing

Summary:

The council is required under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to prepare and publish a statement of principles

This report seeks approval to implement a Statement of Principles to allow the council to address fire safety and prevent incidents of carbon monoxide poisoning within the private rented sector.

Implementing the Statement would allow the council to issue fixed penalty notices of up to £5,000 for landlords who fail to provide smoke and carbon monoxide alarms within their rented properties in accordance with the Regulations.

Key Decision: NO

Significantly Affected Wards: All wards

Recommendations: **The Cabinet is recommended to:-**

- To approve the Statement of Principles – attached **Appendix 2**

Policy Overview: The Statement of Principles stems from the Smoke and Carbon Monoxide Alarm Regulations 2015, which came into force on 1st October 2015. The Regulations allow the council to issue fixed penalty notices of up to £5,000 for landlords who fail to comply with a compliance notice.

Financial Implications: Setting a penalty charge should deter landlords from providing properties which do not have satisfactory provisions for smoke and carbon monoxide alarms.

Legal Implications Landlords are expected to be compliant with the Regulations from the 1st October 2015. .

Officers within Private Sector Housing will be delegated to issue the compliance notices and where necessary prepare cases for any appeals brought by landlords.

Successful penalty charges would be brought to the attention of our finance department to pursue for payment.

Equalities Impact Assessment An Equality Impact Assessment has been completed and is attached at **Appendix 1**

Other Material Implications: Adopting the statement would not affect staff terms and conditions, staff resources or structures.

Exempt from Publication: **YES**
The Statement of Principles once agreed will become a public document, and will be available to view on our Website.

Background Papers: **N/A**

Contact: Julian.watts@ashford.gov.uk – Tel: (01233 330339)

Report Title: Statement of Principles

Introduction and Background

1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1st October 2015. Local Councils are responsible for enforcement of the regulations. Landlords who do not have smoke detectors and carbon monoxide detectors fitted and which are in full working order will be subject to remedial work by the Council and a penalty charge of up to £5000.
2. From 1st October 2015 landlords of privately rented homes are required to:
 - I. Fit at least one smoke alarm on each storey of their rental property , which is used as living accommodation, and
 - II. Fit a carbon monoxide alarm in any room used as living accommodation where solid fuel is used.
 - III. Check that all alarms are working at the start of each new tenancy starts

The above also applies to flats (living accommodation only), but not to the communal areas, as this is covered by separate legislation.

3. The council only require reasonable grounds to believe a breach has occurred to issue a remedial notice requiring the landlord to install and or test alarms (Smoke or Carbon Monoxide) within 28 days.
4. If a landlord fails to comply with a remedial notice the council can issue a civil penalty charge, which can be appealed at a Property Tribunal
5. The council is required under the above Regulations to prepare and publish a statement of principles and must follow this guide when deciding on the amount of penalty charge.
6. The council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.
7. When deciding on the amount for a penalty charge, the council will need to have regard to the statement. Without a written statement the council will be unable to issue any penalty charges.
8. This report seeks approval for the Statement of Principles, attached at **Appendix 2.**

Proposal/Current Position

9. Currently the council does not have a written statement, which has been agreed by Cabinet and therefore we are unable to charge landlords who fail to undertake works to improve fire safety within their properties.
10. Implementing the Statement would be in accordance with the council's Five Year Corporate Plan: Priority 2 – Improving the quality of housing and homes for all.
11. Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-compliance. It should also cover the costs incurred by the Council in administering and implementing the legislation.
12. The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning event are far out of proportion to the cost of installing alarms. For these reasons, an effective incentive to comply with these Regulations is fully justified.
13. It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, can present an excessive financial burden but this is balanced against the risk, the low cost of compliance and the fact that all reasonable opportunity will have been given to comply prior to any penalty charge being levied. A recipient of a fixed penalty charge has a right of appeal.
14. A penalty charge of £5,000 is set for non-compliance with a Remedial Notice. A reduction of 50% will apply in respect of a person / company who has not previously received a penalty charge under this legislation and payment is received within 14 days of service of the penalty charge notice. There is no reduction for early payment offered to a person / company who has previously received a penalty charge under this legislation.
15. The Council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a representation made by the landlord.
 - I. This discretion will not apply when:
 - II. The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
 - III. The person / company has previously received a penalty charge under this legislation;
 - IV. The sums received by the Council under the penalty charge will offset any remedial works undertaken by the Council and the balance may be used by the authority for any of its functions.

- V. Issuing penalty charges provides a potential source of income.

Implications and Risk Assessment

16. The primary aims of the financial penalties will be to:

- I. Ensure landlords take proper responsibilities for their properties
- II. Eliminate any financial gain or benefit from non-compliance with the regulations
- III. Be proportionate to the nature of the breach of the regulations and the potential harm outcomes
- IV. Aim to deter future non-compliance
- V. Reimburse the costs incurred by the council in undertaking works in default
- VI. Lower the risk to tenants' health and safety.

17. It is not expected that implementing penalty charges will generate much revenue for the council. However, most landlords are aware of their responsibilities with regard to providing alarms and maintaining them. And landlords will have up to 28 days to undertake works, which in most cases would only require installing a battery smoke alarm to be compliant. The cost of an average battery smoke alarm is £5, which is minimal cost in relation to a potential penalty charge for failing to comply with a notice.

18. To date no fixed penalty charges have been issued by any local authorities in Kent.

Equalities Impact Assessment

19. Members are referred to the attached Assessment, at **Appendix 1** No significant issues have been identified in relation to implementing the Statement of Principles. The Statement will not discriminate against any disadvantage or vulnerable people.

Consultation Planned or Undertaken

20. The Statement of Principles has been reviewed by legal and discussed and agreed by the Portfolio Holder and Head of Housing before submitting to Cabinet for approval.

Other Options Considered

21. The charges are deemed to be fair and transparent.

22. The Regulations allow for charges to be reviewed if necessary.

23. Currently the Smoke and Carbon Monoxide Regulations 2015 allow us to deal with properties that do not have any basic fire precautions. Prior to its introduction we had limited options to enforce landlords to act.

Reasons for Supporting Option Recommended

24. Without a Statement of Principles we are unable to issue any penalty charge notices on landlords who fail to provide the most basic safety requirements to improve fire safety within their properties. Having a statement which is a public document will hopefully deter landlords from renting properties in Ashford without any smoke alarms.

25. Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System, which can result in death and serious injury. In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes

26. It is proposed that the Statement of Principles is included on the council's website and will be promoted at the next landlord event.

Next Steps in Process

27. Approving the Statement of Principles will give the council additional powers to deal with landlords who do not provide working smoke alarms within their properties.

Conclusion

28. Implementing the Statement of Principles will provide a means to deal with properties that don't have any smoke alarms and would act as a deterrent for landlords who are failing to comply with the Regulations.

Portfolio Holder's View

29. I am supportive of the proposed implementation of the Statement of Principles. It is a small cost to landlords to comply, but could be an important factor in saving lives.

Contact and Email

30. Mr Julian Watts, Senior EHO, Private Sector Housing -
julian.watts@asford.gov.uk

Attached:

Appendix 1: Equalities Impact Assessment
Appendix 2: Statement of Principles

Appendix 1

Equality Impact Assessment

Lead officer:	Julian Watts Senior EHO Private Sector Housing
Decision maker:	Cabinet
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	<p>Cabinet to agree to implement a Statement of Principles to allow the council to consider issuing penalty charge notices to landlords who fail to comply with a compliance notice.</p> <p>Under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 such charges can be issued for landlords failing to provide smoke and in some cases carbon monoxide alarms in their rented properties.</p>
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	9 th March 2017
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	<p>A Statement of Principles (SP) will act as deterrent for landlords who fail to take proper responsibilities for their properties regarding fire safety and carbon monoxide poisoning. Failing in meeting their duties could lead to significant penalty charges being issued of up to £5,000</p> <p>The council is required under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to prepare and publish a statement of principles. Without one the council is unable to issue a penalty charge notice.</p> <p>The SP will apply to landlords/agents in the private rented sector.</p>
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Consultation: <ul style="list-style-type: none"> • What specific consultation has occurred on this 	The wording of the Statement of Principles has been discussed and agreed with by Housing

<p>decision?</p> <ul style="list-style-type: none"> • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	<p>Managers, Portfolio Holder (Cllr Clokie) and Legal Services (Samantha Clarke)</p>
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Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	Medium	Positive (Minor)
Middle age	Low	Positive (Minor)
Young adult	Low	Positive (Minor)
Children	Medium	Positive (Minor)
<u>DISABILITY</u> Physical	Medium	Positive (Minor)
Mental	Low	Neutral
Sensory	Low	Neutral
<u>GENDER RE-ASSIGNMENT</u>	Low	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	Low	Neutral
<u>PREGNANCY/MATERNITY</u>	Low	Neutral
<u>RACE</u>	None	Neutral

<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u>	None	Neutral
Men		
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral

Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.	
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Is the decision relevant to the aims of the equality duty? Guidance on the aims can be found in the EHRC's <i>Essential Guide</i> , alongside fuller <i>PSED Technical Guidance</i> .	
Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	N/A
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	N/A
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N/A

Conclusion:	
<ul style="list-style-type: none"> Consider how due regard has been had to the equality duty, from start to finish. There should be no unlawful discrimination arising from the decision (see guidance above). Advise on whether the proposal meets the aims of the equality duty 	<p>Implementing the Statement of Principles will not discriminate against any disadvantage or vulnerable people. The SP will provide the council with additional enforcement powers to deal with landlords who fail to keep their properties up to standard.</p>

<p>or whether adjustments have been made or need to be made or whether any residual impacts are justified.</p> <ul style="list-style-type: none">• How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?	
EIA completion date:	6/2/2017

Appendix 2

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of principles for determining financial penalties

Date: 9 March 2017

Introduction

This statement sets out the principles that Ashford Borough Council (the Council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

Purpose of the Statement of Principles

The Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement

When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015.

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation

- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm (s) is/are in proper working order on the day the tenancy starts.

Where the Council has reasonable grounds to believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

If the landlord, then fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of these Regulations

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps, other than legal proceedings to comply. This can be done by making written representations to the Council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

Ashford Borough Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

The purpose of imposing a financial penalty

The primary purpose of the Council's exercise of its regulatory powers is to protect the occupants' safety within a dwelling in the event of a fire.

The primary aims of financial penalties will be to:

- ensure landlords take proper responsibility for their properties
- eliminate any financial gain or benefit from non-compliance with the regulations.
- be proportionate to the nature of the breach of the regulations and the potential harm outcomes.
- aim to deter future non-compliance.
- reimburse the costs incurred by the Council in undertaking work in default.
- Lower the risk to tenant's health and safety

Criteria for the imposition of a financial penalty

A failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge.

In considering the imposition of a penalty, the authority will look at the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action had been undertaken.

For example, landlords can demonstrate compliance with the Regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords need to take steps to demonstrate that they have met the testing at the start of the tenancy requirements. Examples of how this can be achieved are by

tenants signing an inventory form and that they were tested and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

In deciding whether it would be appropriate to impose a penalty, the authority will take full account of the particular facts and circumstances of the breach under consideration.

A financial penalty charge will be considered appropriate if the Council is satisfied, on the balance of probabilities that the landlord who had been served with remedial notice under Regulation 5 had failed to take the remedial action specified in the notice within the time period specified.

Principles for determining the amount of a financial penalty

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-compliance. It should also cover the costs incurred by the Council in administering and implementing the legislation.

Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury. In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes.

This is particularly so at night, as without the early warning they provide, a small fire can develop unnoticed rapidly to the stage where smoke and fumes block escape routes or render a sleeping occupant unconscious. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety.

The Department of Communities and Local Government estimate that 231 deaths and 5860 injuries could be prevented over ten years accruing a saving of almost £607.7 million by the provision of smoke alarms.

Carbon Monoxide is a colourless, odourless and extremely toxic gas. At high concentrations it can cause unconsciousness and death. At lower concentrations it causes a range of symptoms from headaches, dizziness, weakness, nausea, confusion, and disorientation, to fatigue, all symptoms which are sometimes confused with influenza and sometimes with depression. For all these reasons Carbon Monoxide is often dubbed "the silent killer". Open fires and solid fuel appliances can be a significant source of Carbon Monoxide. Carbon Monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The Department of Communities and Local Government estimate that six to nine deaths and 306 to 460 injuries could be prevented over ten years accruing a saving of almost £6.8 million by the provision of Carbon Monoxide alarms.

The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact

on occupiers, damage to property and financial costs resulting from a fire or Carbon Monoxide poisoning event are far out of proportion to the cost of installing alarms.

For these reasons, an effective incentive to comply with these Regulations is fully justified.

It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, can present an excessive financial burden but this is balanced against the risk, the low cost of compliance and the fact that all reasonable opportunity will have been given to comply prior to any penalty charge being levied. A recipient of a fixed penalty charge has a right of appeal.

For these reasons a penalty charge of £5,000 is set for non-compliance with a Remedial Notice. A reduction of 50% will apply in respect of a person / company who has not previously received a penalty charge under this legislation and payment is received within 14 days of service of the penalty charge notice. There is no reduction for early payment offered to a person / company who has previously received a penalty charge under this legislation.

The Council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a request for a review made by the landlord in writing.

This discretion will not apply when:

1. The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
2. The person / company has previously received a penalty charge under this legislation;

The regulations state that the period for payment of the penalty charge must not be less than 28 days.

The sums received by the Council under the penalty charge will offset any remedial works undertaken by the Council and the balance may be used by the authority for any of its functions.

Procedural matters

The Regulations impose a number of procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge

When the Council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within 6 weeks.

Where a review is requested within 29 days from when the penalty charge notice is served, the council will consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this document. The

Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review.

If the penalty charge notice is not paid, then recovery of the penalty charge will be by an order of the court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is finally determined or withdrawn.

Remedial Action taken in default of the landlord.

Where the Council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke Alarms – In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy such as a house in multiple occupation or building converted into one or more flats,
- having an unsafe internal layout where fire escape routes pass through a living rooms or kitchens, or
- is 3 or more storeys high.

A full fire risk assessment will subsequently be undertaken, with regards to Leeds City Council Fire Safety Principles and LACORS Housing - fire safety guidance. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors and protected walls and ceilings. Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy.

Carbon Monoxide Alarms – In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

All communications for requests for review or representations made against the Remedial Notice (regulation 5) or the Penalty Charge Notice (regulation 8) are to be in writing and sent to:

Julian Watts
Senior EHO
Private Sector Housing
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford
Kent
TN23 1PL
Or by email to: Julian.watts@ashford.gov.uk