

REPORT TO CABINET

Open		Would any decisions proposed :		
Any especially affected Wards	Mandatory and Discretionary elements	(a) Be entirely within cabinet's powers to decide NO		
		(b) Need to be recommendations to Council		YES
		(c) Is it a Key Decision		
		No		
Lead Member: Cllr Adrian Lawrence E-mail: cllr.alistair.beales@west-norfolk.gov.uk		Other Cabinet Members consulted:		
		Other Members consulted:		
Lead Officer: Sheila Farley E-mail: Sheila.farley@west-norfolk.gov.uk Direct Dial: 01553 616714		Other Officers consulted: Lyn Ibbitson, Duncan Hall, Ray Harding, Jo Furner		
Financial Implications YES	Policy/Personnel Implications YES	Statutory Implications YES	Equal Impact Assessment NO If YES: Pre-screening/ Full Assessment	Risk Management Implications YES

Date of meeting: 12 January 2016

SMOKE AND CARBON MONOXIDE ALARMS IN PRIVATE RENTED PROPERTIES

Summary

From 1 October 2015 the Smoke and Carbon Monoxide Alarm (England) Regulations came into force. This report outlines the impact of these regulations, the role of the Council as enforcing authority and the power to impose a penalty charge of up to £5,000 in cases of non-compliance.

Recommendation

- i) Cabinet note the report
- ii) Cabinet recommend the approval of the statement of principles in relation to determining the amount of the penalty charge as detailed in Appendix A to Council

Reason for Decision

To note the new duties placed upon the Council and adopt a policy in relation to the power to impose a penalty charge supported by a statement of principles

Background

From 1 October 2015 the Smoke and Carbon Monoxide Alarm (England) Regulations came into force via Section 150(1) of the Energy Act 2013, this allowed the Secretary of State to impose duties on certain (i.e. the immediate landlord) private landlords of residential premises to ensure that the premises when occupied under a tenancy (when rent is payable), are equipped with smoke alarms on each storey where there is living accommodation and carbon monoxide alarms where a room is used as living accommodation and contains a solid fuel combustion appliance. Section 150(3)(a) enables the Secretary of State to provide for the enforcement of any duty imposed by the regulations. BCKLWN is the enforcing authority.

It is a Building Regulations requirement that homes built on or after 1 June 1992 have a hard wired smoke alarm installed on at least each storey of the property. However, there is no legislation specifically requiring the installation of smoke alarms on every storey of older non licensed dwellings.

In addition to these requirements, there is existing housing legislation that covers some circumstances e.g. mandatory licensed Houses in Multiple Occupation, and where a housing hazard exists.

Fire safety issues

People are at least 4 times more likely to die in a fire in the home without a working smoke alarm, this equates to 40% of fire related deaths (Fire safety in the home, DCLG 2013). The Government estimate the new regulations will result in up to 36 fewer fatalities and 1,529 fewer injuries over a 10 year period. These regulations come with strong support from relevant agencies and stakeholders after a national consultation into conditions in the private rented sector.

There are approximately 10,000 privately rented properties in the West Norfolk area (2011 Census) 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. If this were applied to the Borough that would equate to 1,000 properties without any form of smoke alarms. It is unclear though whether those who have smoke alarms, would have working smoke alarms on each storey.

Carbon monoxide (CO)

CO is a serious and preventable form of poisoning. Each year there are around 40 deaths from accidental CO poisoning in England and Wales (Office for National Statistics).

There is a Building Regulations requirement to install a CO alarm in all new properties (post 1st October 2010) when a solid fuel heating system is first installed. However, there is no such requirement for existing homes.

The requirements

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), require the provision of smoke alarms and carbon monoxide alarms in certain tenanted properties.

If the Borough Council of King's Lynn and West Norfolk (the Council) has reasonable grounds to believe that there has been a breach of these regulations it **must** serve a Remedial Notice on the landlord (regulation 5) requiring the landlord to comply with the regulations and fit/repair alarms within 28 days from the date of service . The landlord has a duty to comply with the Remedial Notice (regulation 6).

If the landlord fails to comply with the Remedial Notice, i.e. they are in breach of their duty, the Council **must** arrange for the remedial action specified in the Remedial Notice to be undertaken within 28 days from when the Council is satisfied that landlord was in breach of this duty (regulation 7).

Furthermore, where a landlord has failed to comply with the Remedial Notice, the Council has the power to impose a penalty charge. This must be imposed by way of a Penalty Charge Notice within 6 weeks from when the Council is satisfied that landlord has not complied with the Remedial Notice (regulation 8).

Where the Council has served a Penalty Charge Notice, the landlord has a right to request a review of the Penalty Charge Notice with the period specified in the Penalty Charge Notice (not less than 28 days) (regulation 10).

If after an internal review the landlord is still not satisfied, they may appeal to the First-Tier Tribunal against the Council's decision (regulation 11).

Imposition of a financial penalty

By virtue of regulation 8, a failure to comply with the requirements of a remedial notice allows the authority to impose a penalty charge. Before the Council may impose a penalty charge the Council must be satisfied on the balance of probabilities that the landlord on whom it has served a Remedial Notice has failed to take the remedial action specified in the Remedial Notice within the specified period.

Furthermore, in deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach under consideration, and what evidence is available to prove the Remedial Notice was not complied with.

The Regulations allow for the Council to impose a penalty charge of up to £5000, although any financial penalty must be imposed in accordance with a published statement of principles (Statement of Principles). However, in order for the imposition of such penalty charges, the Council must have in place a Statement of Principles.

The purpose of the 'Statement of Principles' is to provide information about the considerations to be undertaken by the local authority in setting a penalty charge. The primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public.

There is no specific Government Guidance as to how a Council should draft the Statement of Principles. Officers have drafted the proposed Statement of Principles for BCKLWN having regard to the Corporate Enforcement Policy and the public interest considerations that govern the Regulatory Framework,

The proposed Statement of Principles is attached at Appendix A to this report.

It is proposed to set the charge at £550.00 for the first offence but this will be **reduced to £400 if paid within a 14 day period** from the date of service. A second

offence would incur a penalty charge of £2,500 and a third and subsequent offence £5,000.

In setting penalty charges regard has been had to those adopted by other Councils and a comparison is contained at Appendix B. The proposed Penalty Charge mirrors the charges set across Suffolk.

The charges reflect the potential seriousness of the breach of regulations compared to the low cost of remedying the breach. It is the Council's intention to encourage landlords to meet their obligations without the need to impose a Penalty Charge or undertake works in default. However, the ability to impose such a Penalty Charge is likely to be a deterrent and encourage compliance.

Action to date

The Government has invested £3.2 million on purchasing smoke detectors and carbon monoxide detectors to give away to landlords. The Council has been given 800 smoke detectors and 140 Carbon Monoxide detectors to allocate; some still remain in stock.

The Council has

- Provided information on the Council website;
Issued a press release in September 2015 before the Regulations came into force and a further press release during Carbon Monoxide Awareness Week
- Issued nearly 600 free alarms and 100 CO detectors
- Explained the Regulations to 75 landlords who attended our recent Landlords' Forum, when free alarms were made available;
- Arranged for visiting officers to look for smoke and carbon monoxide detectors and to share information with Housing Standards.
- Developed mechanisms for undertaking any works in default that may be necessary if remedial notices are disregarded by recipients.

Exemptions from these requirements

- Houses in Multiple Occupation (HMOs) subject to mandatory licensing (these are already covered by different legislation)
- Registered providers of social housing, e.g. Freebridge Community Housing.
- Landlords who take up to 2 lodgers in their home.
- Long leases of 7 years without a break clause for either party
- Student halls of residence * and
- Hostels, refuges, care homes, hospitals, hospices and other NHS accommodation *

* occupants already benefit from existing protection under the Regulatory Reform (Fire Safety) Order 2005, enforced by Fire and Rescue Authorities.

Policy Implications

To impose a penalty charge the Council must prepare and adopt a Statement of Principles. This is explained in the report and a proposed Statement is included at Appendix A.

Financial Implications

There are no major financial implications for the Council as the smoke and carbon monoxide detectors as we have in stock have been provided by the government via Norfolk Fire and Rescue Service, or will be paid for by private landlords.

Normal cost recovery mechanisms will be used. The Council is permitted to retain any revenue from penalty charges/monetary penalties for any of its functions.

Cost of remedial work and recovery will be monitored and reviewed if necessary in the future

Staffing implications

The enforcement will be undertaken by existing members of the Housing Standards Team. If a landlord does not comply with a remedial notice, the Borough Council, as the Local Housing Authority (or its agent) has a duty to undertake the work in default.

Statutory Considerations

The report relates to the Smoke and Carbon Monoxide Alarm Regulations (England) that came into force on 1 October 2015 which places a duty on the Council to enforce these regulations.

Equality Impact Assessment (EIA)

The new regulations do not impact on any particular equality group in the West Norfolk area as they apply to all tenants in privately rented properties covered by the regulations. These regulations are prescriptive and a duty on the Council.

Risk Management

Risk Analysis – There are 10,000 privately rented homes in West Norfolk. Within the existing resources of the Housing Standards Team it is not possible to visit every property to ensure that they are complying with the new regulations.

Investigation and inspections will be made during day to day work such as requests for service to housing standards team from tenants. Officers in other departments have been asked to report back to Housing Standards if they identify rented properties without smoke alarms. Information and awareness of the Regulations has been promoted as detailed in the report and this will continue.

There is a risk that there will still be properties within this sector which do not have adequate protection and this could lead to loss of life.

Whilst the landlord is responsible for meeting these regulations, information campaigns have been undertaken to mitigate this risk so they should be aware of their duties with regards to the regulations.

Appendix A

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles

1. Introduction

This statement sets out the principles that the Borough Council of King's Lynn and West Norfolk (the council) will apply in exercising powers to impose a financial penalty for failing to meet any legislative requirement for which they are the enforcing authority.

2. The Council's power to impose financial penalties.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) provides the enforcing authority, the Council, with a power to impose and charge a financial penalty in prescribed circumstances.

3. The Scope of the document

Regulation 13 of The Regulations 2015 requires the Council to prepare and publish a 'statement of principles' which it proposes to follow in determining the amount of a penalty charge.

The Council acknowledge that such a statement represents good practice and have produced this document in order to publicise the principles that will be adopted in any circumstance that permits the imposition of a financial penalty.

The Council may revise its statement of principles and, where it does so, it will publish the revised statement.

Where a financial penalty is charged the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty.

4. General principles applied to the imposition of a financial penalty.

The primary purpose of the council's exercise of its regulatory powers is to protect the interests of the public.

The primary aim of any financial penalty will therefore be to:

- Change the behaviour of the landlord concerned.
- Deter future non-compliance by landlords.
- 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.
- Reimburse the cost incurred by the Council in undertaking work in default and fulfilling its enforcement duties.

In determining the amount of any financial penalty to be charged the Council will consider:

- The extent to which the non-compliance was the result of direct acts or omissions of the landlord.

- Whether the non-compliance was deliberate or resulted from a matter of which the landlord should reasonably be aware.
- Whether any other body has or is likely to apply sanctions associated with the non-compliance.
- The level of cooperation provided by the landlord concerned.
- Any history of previous contraventions of the Regulations.
- The level of financial gain achieved by the non-compliance.
- The level of risk created by the non-compliance.
- The degree of responsibility held by the landlord for the non-compliance.
- The cost incurred by the Council in enforcing the relevant provision.
- Any additional aggravating or mitigating factors that may warrant an increase or decrease in the financial penalty.

5. Financial penalties applicable to the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Where the Council have reasonable grounds to believe that the requirements have not been met by a landlord there is a duty to serve a Remedial notice (regulation 5) on the landlord. Failure to comply with a remedial notice imposes a further duty upon the Council to arrange remedial action (regulation 7) and a power to require payment of a penalty charge (regulation 8).

The amount of the penalty charge cannot not exceed £5,000 (regulation 8(2)).

The Council will comply with the requirements of the Regulations regarding the information to be contained within any penalty charge notice, including provisions for a review, and the appeal procedures.

6. Level of Penalty

	Level of Penalty Charge Notice	Reduction for early payment
First offence	£550.00	-£150.00
Second offence	£2,500.00	None
Third and subsequent offence	£5,000.00	None

The level of penalty charge is made up of two parts:

- 1) the cost of all works in default, officer time, and an administration fee; and
- 2) a fine.

The Council considers that in the interests of proportionality, a lesser penalty will be merited on the occasion of a first breach. Furthermore, prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability.

Thus, the penalty charge for breach of duty under the Regulations will be set initially at £500 for a first breach, but this will be reduced to £350 if paid within 14 days of service of the penalty charge notice.

Having considered proportionality, the Corporate Enforcement Policy and the interests of better regulation, the Council considers that repeated breaches should attract a progressively higher penalty in light of a landlords continuing disregard for the legal requirements and tenant safety.

Thus, should a landlord repeatedly not comply with Remedial notices the penalty charge will be £2,500 for a second occurrence, and £5,000 for any additional occurrences. There will be no discounts offered for early payment for repeat occurrences.

The charges reflect the potential seriousness of the breach of regulations compared to the low cost of remedying the breach. It is the Council's intention to encourage landlords to meet their obligations without the need to impose a Penalty Charge or undertake works in default. However, the ability to impose such a Penalty Charge is likely to be a deterrent and encourage compliance.

While these charges are set as a standard the regulations make provision for a landlord to seek a review of a penalty charge notice. The Council will refer to this statement of principles in considering any request for a review, and the review will be conducted by an officer not directly involved in the service of the original notice. The discount will apply to any revised charge set should payment be within 14 days of service of the revised notice.

A penalty charge will be recoverable on the order of a court, as if payable under a court order.

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 Council review the penalty charge notice.

The Council 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 then appeal to the First Tier Tribunal against the local housing authority's decision. The Tribunal may quash, confirm or vary the PCN but it may not increase the charge amount.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Summary

Regulation 4

The landlord of most tenanted residential premises (see regulations 1-3 and the schedule for definitions and exemptions) , when the premises are occupied is under a statutory obligation to ensure that:

1. A smoke alarm is equipped on each story of the premises on which there is a room used wholly or partly as living accommodation.
2. 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
3. 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.

Regulation 5

If the Council has reasonable grounds to believe that there has been a breach of these regulations it **must** serve a Remedial Notice on the landlord requiring him to comply with the regulations and fit alarms within 28 days from the date of service of the Remedial Notice.

Regulation 6

The landlord has a duty to comply with the Remedial Notice.

Regulation 7

If the landlord fails to comply with the Remedial Notice, i.e., he is in breach of his duty, the Council **must** arrange for the remedial action specified in the Remedial Notice to be undertaken within 28 days from when the Council is satisfied that landlord was in breach of this duty.

Regulation 8

Where a landlord has failed to comply with the Remedial Notice, the Council has the power to impose a penalty charge. This must be imposed by way of a Penalty Charge Notice within 6 weeks from when the Council is satisfied that landlord is in breach of his duty.

Regulation 10

Where the Council has served a Penalty Charge Notice, the landlord has a right to a review of the Penalty Charge Notice with the period specified in the Penalty Charge Notice (not less than 28 days).

The Council shall review the decision, taking into account any representations by the landlord, confirm, vary or withdraw its decision and then serve a notice of its decision on the landlord.

Regulation 11

If after an internal review the landlord is still not satisfied, he may appeal to the First-Tier Tribunal against the Council's decision, on the following grounds:

- a) The decision to confirm or vary the penalty charge notice was based on an error or 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.

Appendix B

Comparison of PCNs with other authorities:

All Suffolk Authorities	Level of PCN	Reduction for early payment
First offence	£550	- £150
Second offence	£2,500	None
Third and subsequent	£5,000	None
North Norfolk	Process under review	
South Norfolk		
First offence	£550.00	-£150.00
Second offence	£2,500.00	None
Third and subsequent offence	£5,000.00	None
Breckland		
	<i>On a case by case basis</i>	
Great Yarmouth BC		
First offence	£1,000	None
Second offence	£2,500	None
Third and subsequent offence	£5,000	None
Broadland		
All offences	<i>Charging at cost only</i>	<i>Poorly managed properties charged more</i>
Tendring District		

Council		
Year 1	£600	None
Year 2	£1,250	
Cornwall	Level of PCN	Reduction for early payment
	£5,000	
Sunderland Council		
First offence	£1,000	-£750.00
Second offence	£2,000.00	None
Third offence	£3,000	None
Fourth offence	£4,000	None
Fifth or more offence	£5,000	None
Leicester Council		
First offence	£2,500	-£1,250
Any subsequent offences	£5,000	-£2,500
Wychavon D.C.		
	<i>On a case by case basis, ie deterrent/cost/ partial or full breach/no. tenants/repeat offence/ officer time, etc</i>	
Maldon D.C.		
First offence	£1,000	-£250
Subsequent offences	£5,000	None
Harrow		
First offence	£5,000	-£2,500
Subsequent offences	£5,000	None

Three Rivers	Level of PCN	Reduction for early payment (14 days)
All offences	£2,500	None
Stafford		
First offence	£1,000	-£500
Subsequent offences	£5,000	-£2,500

Appendix c

Statutory Requirements