

Subject: **PROPOSAL TO IMPLEMENT A FIXED CHARGE PENALTY STRUCTURE
IN RESPECT OF THE SMOKE AND CARBON MONOXIDE ALARM
(ENGLAND) REGULATIONS 2015**

Report to: Housing and Neighbourhoods Committee

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SUBJECT MATTER/RECOMMENDATIONS

This report outlines the impact on the Council of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. This legislation places a requirement on local authorities to implement an enforcement structure in respect of its duty to require private sector housing landlords to address inadequate fire detection within their properties. Where enforcement action is taken, the Regulations also allow the local authority to impose a penalty charge of up to £5000.

Recommendations:

That the attached Statement of Principles and associated penalty charge of £5000 be agreed by Council.

1. INTRODUCTION/BACKGROUND

- 1.1 On 1st October 2015, the Secretary of State introduced the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- 1.2 These Regulations impose a duty on certain landlords in the private rented sector to ensure that when a premises is under a tenancy:
 - (a) a smoke alarm is equipped on each storey of the premises where there is a room used wholly or partially as living accommodation
 - (b) a carbon monoxide alarm is equipped in any room which is used wholly or partly as living accommodation and contains a solid fuel burning appliance
 - (c) checks are made by or on behalf of the landlord to ensure each alarm is in proper working order on the day the tenancy begins

The Regulations do not apply to landlords of Houses in Multiple Occupation or Registered Social Landlords.

- 1.3 An impact assessment by the Department for Communities and Local Government suggests that the requirement for alarms to be installed on each storey of a property

will prevent up to 213 deaths and 5860 injuries over 10 years providing benefits of £606.7 million. The requirement to install carbon monoxide alarms will result in 6-9 fewer fatalities and 306-640 fewer injuries in 10 years, providing benefits of £16.8 million pounds. The purchase cost of a smoke alarm is around £5. Carbon Monoxide alarms cost around £20.

2. Local Authority statutory duties under the Regulations

- 2.1 Where Environmental Services has reasonable grounds to believe that a landlord is in breach of the duties set out in 1.2 above, the authority must serve a remedial action notice on the landlord, specifying works that the authority considers are required to achieve compliance. Notices must be served within 21 days from the date the local authority makes the decision at 1.3 and will specify a compliance period of 28 days.
- 2.2 The landlord would be entitled to make written representations against the notice within 28 days from the date of service.
- 2.3 Where a landlord does not comply with the requirements of the notice, the Council may themselves carry out works specified in the notice to achieve compliance.
- 2.4 The Council may also require the landlord to pay a penalty charge of up to £5000 for non-compliance. The requirement to pay a penalty charge may be appealed by the landlord to the First-tier Tribunal where the tribunal may quash, confirm or vary the penalty charge.
- 2.5 Non-payment of a penalty charge may be pursued by the local authority through the courts.
- 2.6 The Council must prepare and publish a 'Statement of Principles' (Appendix 1) which it proposes to follow in determining the amount of a penalty charge.
- 2.7 While the primary purpose of the Council's exercise of its regulatory powers is to protect the interests of the public, they may also have a punitive effect with a focus on prevention.
- 2.8 The Regulations prescribe a maximum charge of £5000 for non-compliance with a Remedial Notice requiring works. The Council may use its discretion while implementing a charging scheme.

3. RISK IMPLICATIONS

None

4. CONCLUSIONS

- 4.1 The Council has a responsibility to implement the Smoke and Carbon Monoxide Alarm (England) Regulations containing a charging strategy in relation to non-compliance by Landlords throughout the Borough. This will serve to safeguard tenants within the private rented sector by driving up standards and assist the work of the Private Sector Housing Team within Environmental Services.
- 4.2 The Regulations prescribe a maximum charge of £5000 for non-compliance with a Remedial Notice requiring works. The Council may use its discretion while implementing a charging scheme. The options available are:

Option 1 - Set the penalty at £5,000 in all cases (this is the recommended option)

Option 2 - Set the penalty at a lesser amount, or have a scale of charges for repeated or breaches at multiple properties

Option 3 – To make no penalty charge for non-compliance

For further reference, a discussion on the implementation of charges is contained within Appendix 2

The charge structure would be reviewed annually by Environmental Services.

5. RECOMMENDATIONS

- 5.1 That the Council adopts the attached Statement of Principles in respect of enforcement under the Smoke and Carbon Alarm (England) Regulations 2015
- 5.2 That a charge of £5000 be introduced for non-compliance in all instances.

6. BACKGROUND PAPERS

Smoke and Carbon Monoxide (England) Regulations 2015

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

Explanatory memorandum to the Smoke and Carbon Monoxide (England) Regs 2015

http://www.legislation.gov.uk/ukdsi/2015/9780111133439/pdfs/ukdsiem_9780111133439_en.pdf

APPENDIX 1 – Statement of Principles

APPENDIX 2 – Scale of Charges

Area for consideration	Comment
Monitoring Officer Consultation:	None
Section 151 Officer Consultation:	None
Existing Council Policies:	None
Financial Implications:	<p>The Regulations will be enforced using the existing resources of the Environmental Services Housing Enforcement Team. The Regulations allow the Council to use income from fixed penalty charges for any purpose but may need to recover the charge under a court Order.</p> <p>The costs of any enforcement and associated works in default carried out by the Council would be met by the fixed penalty fee</p>
Legal Implications (including human rights):	<p>The Regulations confer a mandatory duty on the Council to take action where they have reasonable grounds to believe there has been a breach.</p> <p>As the fixed penalty fee has a punitive element and is not based specifically on the recovery of officer costs, there will be a potential that notice recipients may make a legal challenge based on unfair treatment by the Council. However, the decision to serve and enforce a notice will be according to criteria contained in the Statement of Principles. This will provide officers with strict guidance on issuing notices and therefore increase transparency.</p>
Risk Implications:	None
Equality Issues/EQIA assessment:	None
Crime & Disorder:	While a failure on the part of a landlord to comply with the Regulations would not constitute a criminal offence per se, compliance will reduce the potential for the outbreak of fire in rented domestic premises which may be viewed as a criminal offence.
Every Child Matters:	None

APPENDIX 1

Great Yarmouth Borough Council

Environmental Services

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles

1. Introduction

- 1.1 This statement, published in accordance with Regulation 13 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), sets out the principles that Great Yarmouth Borough Council proposes to follow in determining the amount of penalty charge it will apply in exercising its duties under the Regulations. It will serve to complement existing housing legislation

1.2 Legal Framework

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1st October 2015.

Regulation 4 places a duty on landlords to ensure that:

- (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 on each storey of the premises on which there is a room used wholly or partly as living accommodation and contains a solid fuel combustion appliance
- (iii) Checks are made by or on behalf of the landlord to ensure that each alarm is in proper working order on the day the tenancy begins if it is a new tenancy

Regulation 5 places a duty on Local Authorities to serve a remedial notice on the landlord where they have reasonable grounds to believe that the landlord is not complying with his duties under Regulation 4

Regulation 8 gives the Local Authority the power to require a landlord to pay a penalty charge where it is satisfied, on the balance of probabilities, that the landlord is in breach of their duty under Regulation 6 to comply with a remedial notice.

2. Applicable Principles

- 2.1 The objective of the Regulations is to increase the number of homes in the private rented sector with working smoke and, if appropriate, carbon monoxide alarms. While the primary purpose of the Council's exercise of its these powers is to protect the interests of the public, they may also have a punitive effect.

- 2.2 The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord, and the lack of compliance directly impacts the safety and security of tenants, especially those that are vulnerable and those with families.
- 2.3 By imposing a fixed penalty charge of £5000, the Council will seek to:
- Lower the risks to tenants health, safety and wellbeing by ensuring properties in the Borough benefit from a safe means of escape.
 - Promote compliance of landlords in the private rented sector through education and the removal of financial gain or benefit from non-compliance
 - Recover costs incurred:
 - In determining whether any remedial action is required
 - During the preparation and service of a Remedial Notice
 - While undertaking remedial work in default
 - During the preparation and service of a Penalty Charge Notice
- 2.4 A fixed penalty charge will only be issued where consideration has been given to:
- The extent to which the circumstances from which the contravention or failure arose were within the control of the landlord.
 - The presence or absence of internal controls or procedures which were intended to prevent the breach
 - The steps that the landlord has taken since being served with remedial notice under Regulation 5.
 - Evidence provided by the landlord that affirms a statement provided by him that he was in compliance when the Regulations at the outset of the tenancy, for example, a signed inventory at the start of the tenancy, photographic evidence showing measures installed with the date and time attached.
 - Whether the landlord has been obstructed of his duty, or if tenant removal has occurred.
- 2.5 In the event of non-payment of a penalty charge, the Council may recover the penalty charge on the order of a court, as if payable under a court order.
- 2.6 Reference will be made to the current copy of the Environmental Services Enforcement Plan, when deciding on the most appropriate course of action to take in respect of a suspected breach of Regulations.

- 2.7 In line with the Council's general fire safety policy in respect of dwellings, remedial notices will generally require the installation of a mains-wired fire detection system in all properties, interlinked where there are habitable rooms on 2 or more storeys.

3 Representations and Appeals

- 3.1 Where a landlord exercises his right to request the Council to review a penalty charge notice served on him, collection of the charge will be suspended while the Council:
- Considers any representations made by the landlord
 - Decides whether to confirm, vary or withdraw the penalty charge notice
 - Serves notice of its decision on the landlord
- 3.2 Further to the review process, a landlord may appeal to the First-tier Tribunal against the Council's decision where, upon consideration, the Tribunal may quash, conform or vary the penalty charge notice. The Council will be bound by the outcome of the tribunal.

4. Review of Statement of Principles

This Statement of Principles shall be reviewed and amended to reflect any change in legislation, Corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation. A review shall take place annually should no other change have occurred.

APPENDIX 2

SCALE OF CHARGES

1. The Government has considered that a maximum penalty charge of £5000 is appropriate in respect of non-compliance with a Remedial Notice. This reflects the Government's view on the serious nature and catastrophic effect that a failure to provide smoke alarms may have on the occupants, their families and others. It should be noted that the penalty charge is set at the historic maximum in a magistrates court but that it not secured upon conviction in the court – the Local Authority are free to set the charge as they see fit and collect this outside the court system.
2. As part of the drafting process, the author has carried out a review of the charges imposed (or intended) by other Local Authorities, both nationally and locally. It is apparent that there is a wide divergence across the country in how local authorities view the use of their discretionary power to set charges. Findings are below.
 - A significant number of local authorities have opted to set the charge at the maximum £5000 for all offences
 - Suffolk Councils:
 - First Offence - £550 (reducing to £400 if paid within a set time)
 - Second Offence - £2500
 - Third Offence £5000
 - Norfolk Councils: Undecided but potentially along the lines of Suffolk
 - Others:
 - Cannock D.C - £2500 first offence - £5000 subsequent offences
 - Stafford B.C - £1000 first offence - £5000 subsequent offences
 - Tendring B.C. - £600 (first year) - £1250 second year onwards
3. Comment

The purpose of giving powers to Local Authorities to impose penalty charges is to allow the recovery of costs incurred during the enforcement process and those associated with carrying out works in compliance with a Remedial Notice. It is also suggested that a penalty charge is imposed to act as a deterrent for non-compliance.

The maximum penalty of £5000 is considered the most appropriate option for failing to comply with a remedial notice as the duty placed on the landlord is not onerous or expensive. Landlords will be given 28 days' notice in which to comply and the consequences of not complying are potentially serious injury or death.

Furthermore, Norfolk Fire Service has promoted the draft Regulations prior to their implementation and have also made available free smoke and carbon monoxide alarms to landlords throughout the Borough. Environmental Services has also promoted this campaign and has, to date, given out over 100 smoke alarms to eligible landlords.

A sliding scale of charges may cause inconsistencies and leave the Council open to individual challenges.

The message sent to rogue landlords in adopting a maximum charge cannot be underestimated. By adopting a penalty charge in excess of neighbouring authorities, Great Yarmouth Borough Council will effectively be informing irresponsible landlords that they are not welcome within the Borough and will reinforce the corporate housing objective. The ultimate aim is not to impose any charges but to achieve 100% compliance in landlords. By setting a maximum charge, landlords will have more of an incentive to comply.

Setting a lower penalty charge in line with neighbouring authorities may also result in the Council effectively being out of pocket in the event that remedial works are required due to the costs involved in installing a suitable alarm and the time associated with the enforcement process. In some cases, this would financially reward the landlord for not complying with the notice.