

North Tyneside Council

Report to Cabinet

Date: 13 June 2016

ITEM 6(b)

Title: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Portfolio(s): Housing and Transport

Cabinet Member(s):

Councillor J Harrison

Report from Service

Area:

Environment, Housing and Leisure

Responsible Officer:

Phil Scott
Head of Environment, Housing and Leisure

(Tel: 643 7295)

Wards affected:

All

PART 1

1.1 Executive Summary:

This report seeks approval for the North Tyneside Council Statement of Principles for Penalty Charges. This will allow for the Council to levy an appropriate penalty charge where landlords have failed to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 impose duties on landlords of residential premises in respect of the installation and maintenance of smoke and carbon monoxide alarms. North Tyneside Council, as a local housing authority, has a duty to ensure that relevant landlords in the borough comply with their duties and responsibilities under the Regulations. These regulations do not apply to registered providers of social housing such as the council and housing associations.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) agree the draft Statement of Principles at **Appendix 1** of the report and its publication;
- (2) authorise the Head of Environment, Housing and Leisure in consultation with the Head of Law and Governance and the Head of Finance to revise the Statement of Principles as considered appropriate and to publish any such revised Statement;
- (3) authorise the Head of Environment, Housing and Leisure to serve Remedial Notices and Penalty Charge Notices under the Smoke and Carbon Monoxide Alarm (England)

Regulations 2015 and for him to authorise persons to take remedial action as specified in Remedial Notices; and

- (4) authorise the Head of Environment, Housing and Leisure to consider any request for a review of a Penalty Charge Notice and to decide whether to confirm, vary or withdraw the Penalty Charge Notice and serve notice of his decision on the landlord.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 14 March 2016.

1.4 Council Plan and Policy Framework

This report relates to the following priority in the 2014/18 Our North Tyneside Plan

Our People:

Our People will be cared for and kept safe if they become vulnerable. Working with partners to identify the most vulnerable and protect them from becoming victims of crime.

The Statement of Principles will set out how the Council is to utilise the new Regulations and powers to protect the safety of vulnerable persons.

1.5 Information:

1.5.1 Background

The Smoke and Carbon Monoxide Alarm Regulations 2015 (the Regulations) came into force on the 1 October 2015. From that date Officers have participated in the regionally organised North East Housing Forum, consisting of Environmental Health and Housing Officers, with the aim of achieving consistent implementation and enforcement of the Regulations.

It is the responsibility of the Authority, as a local housing authority, to ensure that relevant landlords comply with the duties and responsibilities placed on them by the Regulations. Failure by a landlord to comply with the Regulations will put tenants at risk. The Regulations permit the Authority to take an appropriate stepped approach to ensure compliance with the Regulations.

In summary, the Regulations require relevant landlords to ensure that:-

1. At least one smoke alarm is installed on each storey of their properties on which there is a room used wholly or partly as living accommodation.
2. A carbon monoxide alarm is installed in any room used wholly or partly as living accommodation containing a solid fuel burning appliance.
3. Checks are carried out to ensure that the alarms are in working order at the commencement of each new tenancy.

If a landlord is in breach of one or more of the duties, the authority must serve a remedial notice on the landlord stating the remedial action to be taken to rectify the breach within 28 days.

If a relevant landlord fails to comply with a remedial notice the Authority, with appropriate consent, must arrange for the remedial works to be undertaken. The landlord will be issued with Penalty Charge Notice which must be served within 6 weeks of the breach of duty.

In determining the level of penalty charge to be imposed on a landlord under the Penalty Charge Notice, the Authority will have regard to a Statement of Principles.

Statement of Principles

The Regulations require that an Authority must prepare and publish a Statement of Principles which it proposes to follow. The Statement of Principles sets out how the Authority will determine the amount of penalty charge to be enforced. In order to prepare a robust and comprehensive document, Officers have formed part of a regional North East Housing Group with an aim of reaching a consistent approach throughout the region. In addition to consultation with regional partners, further guidance has been received from the Department of Communities and Local Government.

The draft Statement of Principles is attached at **Appendix 1** to this report.

The delegations attached at **Appendix 2** to this report will permit the Head of Environment, Housing and Leisure to have the delegated authority to revise and publish the Statement of Principles. In addition the delegations will ensure that Remedial Notices are served and that any remedial works required to be undertaken by the Authority are undertaken by authorised persons. The Head of Service will consider any request for a review of a Penalty Charge Notice and to decide whether to confirm, vary or withdraw the Penalty Charge Notice and serve notice of his decision on the landlord.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

Agree the recommendations as set out in Paragraph 1.2

Option 2

Not agree the recommendations as set out Paragraph 1.2 and instruct officers to amend the Statement of Principles and prepare a further report to Cabinet producing an amended Statement of Principles

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

A Statement of Principles must be prepared and published by the Authority in accordance with the Regulations so that regard can be had to it when determining the level of the penalty charge to be imposed on a particular landlord. Without such a Statement it will not be permissible for the Authority to issue a Penalty Charge Notice for non compliance of remedial notice The Authority will still have a duty to carry out the remedial works.

The delegations sought in the recommendations at Paragraph 1.2 will permit the Head of Environment, Housing and Leisure to have the delegated authority to ensure that Remedial Notices are served and that any remedial works required to be undertaken by the Authority are undertaken by authorised persons.

The penalty charge on non compliant landlords is based on the statement of principles.

The amounts to be included in the Penalty Charges have been considered by the North East Housing Forum to ensure that the local housing authorities show a uniform and consistent approach.

1.8 Appendices:

Appendix 1: Statement of Principles

Appendix 2: Delegations under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

1.9 Contact officers:

Frances McClen, Environmental Health Group Leader, Tel. (0191) 6436640

Joanne Lee, Public Protection Manager. Tel. (0191) 6436901

Catherine Lyons, Regulatory Services Manager. Tel. (0191) 6437780

Alison Campbell, Senior Business Partner, tel. (0191) 643 7038

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

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

(2) The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: explanatory booklet for landlords

<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords>

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The costs of implementing the regulations in terms of officer time can be met from existing budgets within the budget managed by Capita on the Authority's behalf.

The Regulations stipulate that Penalty Charges can only be served where a Statement of Principles has been agreed and published. The amount of Penalty Charge will be set at a level based on the amount set within the statement of principles, which will not exceed £5,000.

If the Statement of Principles is not agreed no penalty charge can be placed upon non compliant landlords. The local authority has a statutory duty to carry out the works required in a remedial notice if the landlord fails to comply.

Should the landlord fail to pay, the Authority can apply for a court order for recovery of the amount due under a Penalty Charge and attempt to recover court costs. Such an order can only be created on receipt of a certificate from the Chief Finance Officer as the regulations require that a certificate signed by the Chief Finance Officer is produced for the court to confirm that the landlord has not paid the charge. Recovery of penalty charges will involve legal resources as recovery is carried out via the court system but, if successful, the Authority can ordinarily apply for court costs.

2.2 Legal

The Smoke and Carbon Monoxide Alarm Regulations 2015 place a statutory duty on local authorities as a local housing authority to enforce the provisions of the Regulations. When the Authority has reasonable grounds to believe that, a relevant landlord (which does not include a registered provider of social housing) is in breach of one or more of the duties set out in the Regulations, (fitting smoke and carbon monoxide alarms), the Authority **must** serve a remedial notice on the landlord. The Landlord has a duty to comply with that Notice.

If the Landlord does not comply with their duty to fit the alarms or ensure that they are in working order, and the Authority has reasonable grounds for so believing, if consent is given by the occupier of the premises, an authorised officer of the Authority **must** fit the alarms within 28 days of the Authority coming to the conclusion that the landlord has failed in their duty to comply with the remedial notice.

When the Authority is satisfied on the balance of probabilities that the landlord has not complied with their duty to take the remedial action set out in the remedial notice the Authority can issue a Penalty Charge within 6 weeks of being so satisfied. The Charge cannot exceed £5,000. The Regulations set out what must be included in the Penalty Charge. There are provisions in the Regulations enabling the landlord to seek a review of the Penalty Charge or to appeal against the Charge to the First-tier tribunal. If the Charge is not paid then the amount has to be recovered through the Courts.

If there is a requirement for officers to attend at Court or the First-tier tribunal then there may be officer time and some expense to the Authority in that regard. If the Authority is required to seek recovery of the unpaid penalty charge through the courts, then there will be court fees that the Authority will have to pay. If the Authority is successful in recovering the penalty charge then the Authority will ordinarily recover any court fees paid by it.

Remedial Notice

Where the Authority has reasonable grounds to believe that a relevant landlord has breached the Regulations, the Authority must serve a Remedial Notice on the landlord within 21 days. The Notice must contain the information specified by the Regulations including the remedial action that the Authority considers should be taken by the landlord. The landlord will be required to take the remedial action within 28 days of service of the Notice unless they can show that they have taken all reasonable steps to comply with the Notice.

The landlord can make a written representation against a remedial notice prior to expiry of notice to the authorised officer. The decision on the remedial notice will be given to the landlord in writing by the authorised officer.

If the Authority is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, the Authority must, if consent is given by the occupier of the premises, arrange for the remedial action to be undertaken as specified in the Notice.

Penalty Charge

If the Authority is satisfied on the balance of probabilities that the landlord has failed to comply with the requirements of the Remedial Notice, the Authority may require the landlord to pay a Penalty Charge. It is for the Authority to determine the amount to be paid under a Penalty Charge provided the amount does not exceed £5,000. When determining the level of a Penalty Charge, the Authority must follow a Statement of Principles that it has prepared and published. The draft Statement of Principles is appended to the report at **Appendix 1**.

The Regulations prescribe the information that must be included in a Penalty Charge Notice. Any payment under the charge must be made to the Authority within 28 days of service of the Notice.

A landlord does have the right to ask the Authority to review the Penalty Charge Notice within 14 days of its service. On receipt of such a request the Authority must decide whether to confirm, vary or withdraw the Penalty Charge Notice and to inform the landlord of the outcome of the review. If the landlord is aggrieved at the decision following the review of the Penalty Charge Notice, the landlord may appeal to the First-tier Tribunal against the Authority's decision. If such an appeal is made, the Penalty Charge is suspended pending the outcome of the appeal.

If the Penalty Charge is not paid by the landlord then the amount due under the Charge may be recovered through the Court.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Officers have presented details of the Regulations to the Senior Leadership Team and Members of Cabinet.

2.3.2 External Consultation/Engagement

The statement of principle has been subject to consultation with the North East Housing Group to determine fair and clear principles.

2.4 Human rights

Article 8 of the European Convention of Human Rights states that everyone's right to a private and family life must be respected. In this regard, the Authority can only undertake remedial work inside a person's home if the occupier of the premises (not the landlord) has given consent for the work to be undertaken.

Article 1 of the First Protocol of the Convention concerns the protection of property. This right is a qualified right and if interference with a landlord's property is in the public interest and is provided for by law then the Authority can interfere with a landlord's property, with appropriate consent, by installing smoke and carbon monoxide alarms. It is clearly in the interests of the tenant that the remedial work is undertaken and the Regulations clearly require the Authority to 'interfere' with the landlord's property by undertaking the remedial work if a remedial notice is not complied with.

The Regulations also protect the landlord by entitling an aggrieved landlord to have the penalty charge adjudicated upon by an independent tribunal.

2.5 Equalities and diversity

Any notice served under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will protect the most vulnerable members of society.

The regulations will be implemented in line with the aims of the 2010 Equality Act, particularly those to eliminate unlawful discrimination, victimisation and harassment, advance equality of opportunity between people who share a protected characteristic and those who do not.

2.6 Risk management

Risks associated with the service are managed via the Operational Risk Management Group.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from this report. It is ensuring a safe environment for tenants.

2.8 Environment and sustainability

There are no environment and sustainability implications arising directly from this report.

PART 3 - SIGN OFF

- Deputy Chief Executive
- Head(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy

Appendix 1- Statement of Principles

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles for Penalty Charges

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords to install at least one smoke alarm on each storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance such as wood burning stove. The landlord must ensure the alarms are in working order on the first day of each new tenancy, commencing after 1st October 2015.

It is the duty of the local authority to serve remedial notices on any landlord that it believes to be in contravention of the regulations and to subsequently ensure that tenants are provided with the appropriate protection by carrying out any work necessary, with the consent of tenants, where a landlord has failed to act in bringing a property up to the standard required by the regulations (referred to as 'work in default').

The regulations allow the local authority to issue landlords with penalty notices if they fail to comply with a remedial notice. In order to issue penalty notices, the local authority must publish a Statement of Principles which it will follow in determining the amount of a penalty charge.

This Statement of Principles aims to provide a clear and transparent method of charging including the levels of penalty charges based on the history of non compliance by the landlord. It details any possible mitigation that will be considered before a decision is made whether to issue an enforcement action against a landlord who has failed to comply with a remedial notice. The purpose of the enforcement regime is to encourage compliance.

Enforcement

Where the Local 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

the Authority must serve on the Landlord within 21 days of determination, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations. The landlord can within 28 days of service of remedial notice request a written review of notice to an authorised officer.

If after 28 days the Authority is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice is in breach of his duty under the regulations, the Authority may serve the landlord with a penalty charge, the level of which will be determined by this statement of principles. The local authority will contact the tenant and the landlord to arrange to revisit the premises to determine if the remedial notice has been met. The penalty charge notice must be served within six weeks of the Authority deciding a landlord is in breach of their duty under the regulations. The Authority must carry out works in default within 28 days of breach of remedial notice with the consent of the occupiers. The regulations state the amount of the penalty charge cannot exceed £5000.

Principles to be followed in Enforcing the Regulations

Before imposing a requirement on a landlord to pay a penalty charge the Authority must have completed a number of procedural steps. This process includes opportunities for the landlord to request reviews of decisions. The liability of the landlord may depend on written evidence produced by the landlord in mitigation of any non-compliance which may include the inability to access a property. If the landlord can demonstrate all reasonable steps were taken, other than legal proceedings, to become compliant, they will be exempt from liability. It is expected that a landlord writes to tenants explaining the legal requirement to install the alarms for the tenant's safety.

There are a number of stages in the enforcement process, including opportunities for the landlord to ask for a review of any decision to issue a remedial notice and/or serve a Penalty Charge Notice. This ensures the process is fair and proportionate and gives the landlord the opportunity to take action. The process is summarised in the table below.

Process Summary

<p>Issue of a Remedial Notice. The Authority will, within 21 days of deciding it is reasonable to do so, issue a Remedial Notice on the landlord at the last known address of the Landlord.</p>
<p>Right of Review of Remedial Notice. The landlord has the right to request a review of the decision to issue the remedial notice. Any request must be in writing and made within the 28 days the landlord has for compliance. This request must state the grounds the landlord believes require reconsideration. Grounds for consideration would include that the alarms were in fact fitted at the time of issue of the remedial notice checks were made at, or immediately prior to, a new tenancy starting or that the occupier has refused entry.</p>
<p>Review of Remedial Notice. An authorised officer will review the decision to issue the remedial notice. Such review will be completed within a reasonable period of time and no longer than 35 days from the issue of the remedial notice.</p>
<p>Non- Compliance With Remedial Notice. No earlier than 28 days and no longer than 35 days from the service of the remedial notice, having received no request for a review or having completed any review and upheld the remedial notice, an authorised officer will visit the property to determine compliance with the remedial notice. If works have not been undertaken to rectify any breach of the regulations or, on the balance of probabilities giving consideration to the circumstances and any representations made by the landlord, it is likely that these works have not been undertaken, the authorised officer will refer the matter to the Environmental Health Group Leader.</p>
<p>Referral For Action. The Environmental Health Group Leader will ensure that the remedial action specified in the notice is carried out within 28 days of the referral.</p>
<p>Penalty Charge Decision. The Environmental Health Group leader will consider whether it is appropriate to issue a Penalty Charge Notice. They will consider the circumstances of the matter; whether the regulations have been adhered to; whether there are any mitigating circumstances which have prevented the landlord from complying with the Remedial notice. The decision to serve a penalty notice or not will be made within 28 days of any referral and if a penalty is to be issued, it will be served within 14 days of the decision.</p>

Penalty Charge Notice. Where the Environmental Health Group Leader decides that it is reasonable to issue a penalty charge notice, consideration will be given to the past behaviour of the landlord in relation to remedial notices and previous penalty charges, in determining the level of the penalty charge. A Penalty Charge Notice in accordance with the regulations will then be served on the landlord at the last known address of the Landlord.

Review of Penalty Charge Notice. The landlord has the right to request, in writing, a review of a penalty charge notice within 28 days of the issue date. The Environmental Health Group Leader must serve a decision notice on the landlord to confirm vary or withdraw any notice as soon as reasonably practical after any request is received. Such notice must contain information on how the landlord can appeal the decision to the First-Tier Tribunal.

Payment of Penalty Charge. The landlord has 28 days to pay the amount of the penalty charge. If payment is made within 14 days, the amount of the penalty charge maybe reduced by an amount determined by the Authority in accordance with the **Statement of Principles.**

Right of Appeal. The landlord has the right to appeal the issue of Penalty Charge Notice in writing to the First Tier Tribunal on the grounds that the decision is unreasonable or wrong in law or that the charge is unreasonable. A penalty charge notice is suspended until the appeal is decided.

Enforcement. The council can apply to a County Court for a court order to enforce a Penalty Charge Notice where the landlord has not paid within the 28 days of the service of the charge notice and;

- The landlord has not made an appeal to First – Tier Tribunal; or
- Has made an appeal which has since be determined in the Authority’s favour.

Any application to the court to enforce a penalty charge must be supported by a certificate for the Chief Finance Officer that the penalty remains unpaid.

The Penalty Charge

The penalty charge allows a charge to be imposed on landlords who fail to comply with the regulations and the level of charge is dependant on level of non compliance.

The Authority considers that a lesser penalty will be merited on the occasion of a first failure to comply with a remedial notice and that prompt payment of the penalty within 14 days of service on that first occasion should attract a reduced penalty in recognition of admission of liability and savings in administration costs.

Repeated failures will 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, further failures are identified but action to enforce was initiated prior to the service of the first penalty charge, these separate failures will be treated as first failures and attract the lowest penalty charge if the landlord complies with the requirements. The penalty charge for a failure will increase for every previous failure by the landlord up to a maximum of £5000.

Purpose of Imposing a Financial Penalty

The primary purpose of the authority in exercising its regulatory power is to protect the interests of the public.

The aims of the financial penalties are;

- to eliminate any financial gain or benefit from landlords' non-compliance with the regulations;
- to deter future non-compliance.

Level of Penalty Charge

The Penalty Charge shall be set at £1,000 for the first failure to comply with a Remedial Notice but this will be reduced to £750 if paid within a 14 day period.

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

Offence	Fine	Offence	Fine
Second	£2000	Fourth	£4000
Third	£3000	Fifth or More	£5000

No discount will be given for prompt payment on fines arising from repeat failures.

Appeals in relation to a penalty charge notice

The landlord can request in writing a review of the penalty charge within 28 days, beginning with the day on which the penalty charge notice is served.

The local 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 authority's decision.

Recovery of penalty charge

The Authority may recover the penalty charge on the order of a court.

Recovery proceedings may not be started before the end of the period during which a landlord may give written notice to review the penalty charge notice or, where an appeal has been made, before any appeal to the First-tier Tribunal against the Authority's decision has been finally determined or withdrawn.

The Authority may revise this Statement of Principles at any time it considers it reasonable to do so but where it does so it will publish the revised statement.

Any persons subject to the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will be directed to consider these regulations in full which will be available on the North Tyneside Council website.

Appendix 2

Delegations under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Matter to be dealt with	Head of Service/ Authorised Officer	First Tier Tribunal	Cabinet
Approval of initial Statement of Principles			X
Revision of Statement of Principles	x		
Issue of Remedial Notice	X		
Review of Remedial Notice	X		
Referral of Remedial Notice breach	X		
Service of Penalty Charge Notice	X		
Review of Penalty Charge Notice	X		
Service Penalty Charge Decision Notice	X		
Appeal of Penalty Charge Decision Notice		X	