

# **FOR PUBLICATION**

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

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MEETING: 1. CABINET  
2. CABINET MEMBER FOR HOUSING

DATE: 1. 8 MARCH 2016  
2. 29 FEBRUARY 2016

REPORT BY: HOUSING SERVICE MANAGER - BUSINESS  
PLANNING AND STRATEGY

WARD: ALL

COMMUNITY ASSEMBLY: ALL

KEY DECISION REFERENCE  
(IF APPLICABLE): 609

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FOR PUBLICATION

BACKGROUND PAPERS FOR PUBLIC REPORTS:

TITLE: The Smoke and Carbon Monoxide Alarm  
(England) Regulations  
2015      LOCATION: Business Planning and Strategy  
– Housing Services

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### **1.0 PURPOSE OF REPORT**

- 1.1 To advise Cabinet of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 which came into force on the 1 October 2015 and to provide an update as to how these regulations will affect the Authority.
- 1.2 To seek approval to amend the Council's Constitution to authorise the Private Sector Housing Manager to exercise the Council's full enforcement powers under the "Smoke and Carbon Monoxide Alarm (England) Regulations 2015".

- 1.3 To seek approval for the Statement of Principles which the local authority will follow in determining the amount of a penalty charge related to a breach of the Smoke and Carbon Monoxide Alarm (England) Regulations.

## **2.0 RECOMMENDATIONS**

- 2.1 That Cabinet note the introduction of the new regulations and the duty these regulations now place on the Local Authority.
- 2.2 That Cabinet approve an amendment to the Councils Constitution to delegate authorisation to the Private Sector Housing Manager as from the 1 October 2015.
- 2.3 That Cabinet approve the fee structure the Authority proposes to introduce in relation to fixed penalty notices that can be served in accordance with the regulations.
- 2.4 That Cabinet approve the “Statement of Principles” that the Authority has a duty to produce in accordance with the new regulations.
- 2.5 That Cabinet approve the minor amendments to sections 4.4 and 4.5 of the existing licence conditions, relating to licences issued under Parts 2 or 3 of the Housing Act 2004.

## **3.0 BACKGROUND**

- 3.1 In March 2015, the Government laid before Parliament the ‘Smoke and Carbon Monoxide Alarm (England) Regulations 2015’ requiring all private sector landlords to ensure that working smoke alarms and in some cases carbon monoxide alarms are installed in privately rented properties from October 2015.
- 3.2 It is estimated that this will prevent 26 deaths and 670 fire related injuries each year across England, as it is noted that people are 4 times more likely to die in a fire in the home if there is no working smoke alarm. These Regulations come with strong support after a consultation into conditions in the private rented sector. The Regulations - made under section 150(1)-(6) and (10) of the Energy Act 2013 and paragraph 3(a) of Schedule 4 to the Housing Act 2004 – came into force on 1 October 2015.

- 3.3 Each of England's 46 Fire and Rescue Authorities are expected to support private landlords in their own areas to meet their new responsibilities with the provision of free alarms, with one off grant funding from Central Government. Derbyshire Fire and Rescue Authority have been given a limited supply of battery alarms by Central Government and landlords can at present apply for alarms to fit in up to ten rented properties. They have also made it clear that the issue of battery smoke detectors is an interim measure and that they should be replaced by hard wired detectors as soon as possible.
- 3.4 The principle legislation used for enforcing basic housing conditions within private sector housing is the Housing Act 2004, using an assessment tool called the Housing Health and Safety Rating System. The HHSRS requires that a property is assessed against 29 separate hazards. If Category 1 hazards are found the Authority has a **duty** to take action, whereas if category 2 hazards are found the Authority has a **power** to take action. Fire Safety is one of the 29 hazards. However, unlike the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, where only provision of basic smoke detection can be enforced, with the Housing Act 2004, a broader suite of fire safety measures can be required which take into account the overall fire safety issues within the property including prevention and early warning of fire and means of escape in event of a fire.
- 3.5 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on the 1 October 2015. From this date the regulations require Private Sector Landlords to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance.
- 3.6 The Regulations also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy.
- 3.7 The Regulations place a duty on local authorities to serve a remedial notice on the landlord or a property where they have reasonable grounds to believe that the landlord has breached one or more of the requirements of the Regulations.

- 3.8 Where a remedial notice is served on a landlord who is in breach of the requirements of the Regulations the landlord must take the remedial action specified within the period specified in the notice.
- 3.9 The Local Authority are under a duty to arrange remedial action themselves within 28 days of being satisfied that the landlord on whom a remedial notice was served has breached the terms of the notice, provided that the necessary consent is given by the occupier of the premises.
- 3.10 Where the Local Authority is satisfied that a landlord on whom it has served a remedial notice has breached the requirements of the notice, they may require the landlord to pay a penalty charge not exceeding £5,000.
- 3.11 The Local Authority must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.
- 3.12 In addition these Regulations amend the conditions which must be included in a licence under Parts 2 or 3 of the Housing Act 2004 (**Appendix 1**) in respect of smoke and carbon monoxide alarms. The amendments now place a requirement on landlords to provide and maintain smoke and carbon monoxide alarms in licenced premises.
- 3.13 The landlord has provision within the Regulations to appeal the Local Authorities decision to serve the remedial notice and/or the penalty charge issued at the First Tier Tribunal (Residential Property Tribunal).
- 3.14 The Regulations **do not** apply to registered providers of social housing, accommodation shared with a landlord, long leases, student halls of residence, hostels and refuges, care homes, hospitals and hospices and other accommodation relating to healthcare provision.

#### **4.0 PROPOSAL**

- 4.1 The enforcement of these Regulations will be carried out by existing members of the Private Sector Housing Team.
- 4.2 Enforcement of these Regulations will be upon notification to the Authority that a possible breach in the regulations has occurred. The regulations do not require the Authority to “proactively” survey their district.

4.3 Although an “Explanatory Booklet for Local Authorities” (**Appendix 2**) has been issued by the Department for Communities and Local Government (DCLG) with regard to the enforcement of the regulations, no specific guidance has been released on calculation of a fixed penalty fee structure or the Statement of Principles that the Authority must publish. As such the Authority has worked with other local authorities within Derbyshire to ensure a consistent approach is taken with regard to enforcement of the Regulations.

4.4 A fee structure has been prepared for the “fixed penalty” notices that can be issued in relation to a breach of an enforcement notice. The fee structure is in line with other authorities within the Derbyshire area.

4.5 A “statement of principles” (**Appendix 3**) has been prepared in relation to the fee structure, which is in line with other authorities within the Derbyshire area to ensure a consistent approach.

## 5.0 CONSIDERATIONS

5.1 In writing this report we have considered the following standard corporate issues;

- Risk Management
- Financial Implications

## 6.0 RISK MANAGEMENT

Description of the Risk	Impact	Likelihood	Mitigating Action	Impact	Likelihood
Within the existing resources of the Private Sector Housing Team it will not be possible to visit every property within the district to ensure that they are compliant with the new regulations.	M	H	Inspections will be made during day to day work such as requests for service from tenants, requests from landlords. Advice campaigns and events will also be held to advise landlords of their responsibilities and to advise tenants of their rights within the legislation.	M	M
There is a risk that there will still be properties within this	M	H	The Private Sector Housing Team will enforce the legislation	M	M

sector which do not have adequate protection and could lead to loss of life.			on a reactive basis through requests for service from tenants or private sector landlords. Marketing campaigns will be undertaken to mitigate this risk so landlords in the private rented sector are aware of their duties with regards to the new regulations. It is however, the landlords' responsibility to ensure adequate protection.		
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## **7.0 FINANCIAL CONSIDERATIONS**

**7.1** There are no major financial implications for the Council. All administration and enforcement of this legislation will be carried out within the existing resources of the Private Sector Housing Team. The penalty for non-compliance is issue of a penalty notice, as detailed in the “statement of principles” (**Appendix 3**). There is no provision within the legislation for further legal action such as prosecution.

7.2 For a limited period of time, landlords can apply to Derbyshire Fire and Rescue Service for free of charge smoke detectors for up to 10 rented properties per landlord.

7.3 If a landlord does not comply with a remedial notice, the Local Authority has a duty to undertake the work in default and normal cost recovery procedures will be used.

7.4 Where the Local Authority is satisfied that a landlord on whom it has served a remedial notice has breached the requirements of the notice, the local authority may require the landlord to pay a penalty charge of the following amount:

- The specified period for early payment is within 14 days beginning with the day on which the penalty charge notice was served.
- For a first offence the fine applied will be £2,500 and an early payment will attract a discount of 50% making it £1,250

- For subsequent offences the penalty will be £5,000 to deter continued non-compliance and an early payment will attract a discount of 50% making it £2,500

The penalty charges have been outlined in the attached Statement of Principles which will be published in accordance with the requirements of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

- 7.5 It should be noted that whilst a fixed penalty notice can be issued in relation to a breach of an enforcement notice, there is not expected to be any significant income stream generated for the Authority through the use of fixed penalty notices in these circumstances.

## **8.0 EQUALITIES IMPACT ASSESSMENT (EIA)**

The new regulations would not discriminate against any residents within the borough under the protected characteristics listed below, as the regulations apply to all tenants living in a privately rented property. The equalities impacts of the proposals in this report for race, disability, gender, sexual orientation, age and religion have been considered and assessed (**Appendix 4**).

## **9.0 RECOMMENDATIONS**

- 9.1 That Cabinet note the introduction of the new regulations and the duty these regulations now place on the local authority.
- 9.2 That Cabinet approve an amendment to the Councils Constitution to delegate authorisation to the Private Sector Housing Manager as from the 1 October 2015.
- 9.3 That Cabinet approve the fee structure the authority proposes to introduce in relation to fixed penalty notices that can be served in accordance with the regulations.
- 9.4 That Cabinet approve the “Statement of Principles” that the Authority has a duty to produce in accordance with the new regulations.

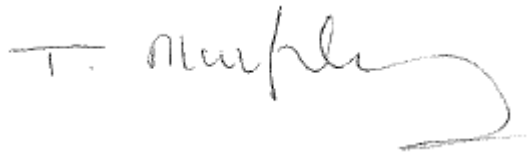
**10.0 REASON FOR RECOMMENDATIONS**

- 10.1 To ensure that the Private Sector Housing Manager is authorised to exercise all necessary operational enforcement powers in respect of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- 10.2 To ensure that the Chesterfield Borough Council (the local housing authority) is able to undertake its statutory duty to serve remedial notices, to arrange remedial action and serve penalty charge notices.

ALISON CRAIG  
HOUSING SERVICES MANAGER – BUSINESS PLANNING AND  
STRATEGY

You can get more information about this report from Sarah Watts Tel: 01246  
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Officer recommendation supported.



Signed:

Date: 29 February, 2016

Cabinet Member