

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
15 March 2016

Subject: **SMOKE AND CARBON MONOXIDE ALARM REGULATIONS 2015**

All Wards
Portfolio Holder for Environmental and Planning Services: Councillor B Phillips

1.0 PURPOSE AND BACKGROUND:

- 1.1 The purpose of this report is to seek approval for the Statement of Principles which sets out the factors to take into consideration when levying a charge under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- 1.2 The above Regulations came into force on the 1 October 2015 and the duties contained in the legislation are enforced by the local authority, being a local housing authority, through its Residential Environmental Health Service Team.
- 1.3 The legislation requires landlords of privately rented accommodation to ensure that:-
- a) a smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation;
 - b) a carbon monoxide alarm is installed in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
 - c) checks are made to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.
- 1.4 Certain exemptions to these requirements are detailed in the legislation including:-
- registered providers of social housing,
 - registered houses in multiple occupation (which have existing similar requirements),
 - shared accommodation with a live-in landlord,
 - student halls of residence,
 - occupation under the terms of a long lease,
 - hostels and refuges and care homes, hospitals, hospices and other NHS accommodation (which also are required to comply with existing legislation).
- 1.5 If the local authority has reasonable grounds to believe a landlord is in breach of these requirements the authority must serve a Remedial Notice. The landlord has 28 days to comply with the notice. Where a landlord is in breach of the notice, the local authority must, subject to the consent of the occupier of the premises, arrange for the work to be carried out in default.
- 1.6 Where the local authority is satisfied that the landlord is in breach of the notice, they may also require the landlord to pay a penalty charge of such amount as the local authority may determine. The amount of the charge must not exceed £5,000 and is levied by means of the service of a Penalty Charge Notice.
- 1.7 The local authority must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. By this means, the various situations that arise in relation to each individual premises can be taken into account in arriving at an appropriate charge. These are identified in the Statement.

- 1.8 The purpose of the penalty charge is to:-
- Change the behaviour of the landlord;
 - Eliminate any financial gain or benefit from non-compliance with the legislation;
 - Be proportionate to the nature of the breach of the legislation and the potential harmful outcomes to tenants; and
 - Aim to deter future non-compliance.
- 1.9 The landlord, upon receipt of a penalty charge notice, is entitled to request a review of the charge by the local authority. The landlord may then, if not satisfied with the outcome of the local authority's response, make a further appeal to a Residential Property Tribunal.
- 1.10 Before levying a charge, the informal options in the Environmental Health Services' Housing Standards Enforcement Policy would be pursued in order to secure compliance in the first instance. Where a landlord does not respond to informal approaches, during which the circumstances detailed in the Statement of Principles will be investigated, the formal Remedial Notice procedure would follow. The level of penalty will be calculated by the Environmental Health Service and confirmed by the Head of Service Environment prior to service of the notice.

2.0 LINK TO COUNCIL PRIORITIES:

- 2.1 The installation of smoke and carbon monoxide alarms contributes to the Council priority of enhancing health and wellbeing by helping to reduce the likelihood of health threatening conditions within private sector rented homes.

3.0 RISK ASSESSMENT:

- 3.1 There are no significant risks associated with this report.

4.0 FINANCIAL IMPLICATIONS:

- 4.1 The penalty charge will reimburse the costs incurred by the Council in undertaking work in default.
- 4.2 This legislation can be implemented from within existing resources.

5.0 LEGAL IMPLICATIONS:

- 5.1 It is the duty of the Housing Authority to serve a Remedial Notice where it believes that a landlord is in breach of their duties under the regulations and to take remedial action if that notice is not complied with, provided consent is given by the property occupier.

6.0 EQUALITY/DIVERSITY ISSUES

- 6.1 Private sector tenants may be more vulnerable than occupiers of other types of accommodation and thereby require additional support. This legislation will ensure the security of the private rented sector tenants regardless of the circumstances of their landlord.

7.0 RECOMMENDATION:

- 7.1 That Cabinet approves and recommends to Council that the Statement of Principles attached to the report should apply when exercising its duty to secure compliance with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 by the imposition of a penalty charge.

MICK JEWITT

Background papers: Energy Act 2013
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015. Explanatory Booklet for Local Authorities. Department for Communities and Local Government. September 2015.

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HAMBLETON DISTRICT COUNCIL

THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015 STATEMENT OF PRINCIPLES

The purpose of this statement is to set out the principles that Hambleton District Council (the Council) will apply in exercising its powers to require a relevant landlord to pay a financial penalty.

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces legal requirements on all landlords, during any period beginning on or after the 1st October 2015 when the premises are occupied under the tenancy, to ensure that:

1. a smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation
2. a carbon monoxide alarm is installed 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 to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy

“Living accommodation” is defined in guidance as a room that is used for the primary purposes of living, or is a room in which a person spends a significant amount of time, and a bathroom and lavatory would be included within this definition.

Enforcement

Where the Council has reasonable grounds to believe that:

1. There are no or insufficient number of smoke and/or carbon monoxide alarms in the property as required by the regulations; or
2. The smoke and/or carbon monoxide alarms were not working at the start of the tenancy or licence

the Council must serve a Remedial Notice on the landlord, within 21 days of having reasonable grounds, detailing the actions that must be taken to comply with the regulations.

If after 28 days from when the Notice was served the Notice has expired and has not been complied with, a Penalty Charge will be levied by means of a Penalty Charge Notice on the landlord.

Penalty Charge Principles

The purpose of the penalty charge is to:

- Change the behaviour of the landlord
- Eliminate any financial gain or benefit from non-compliance with the legislation
- Be proportionate to the nature of the breach of the legislation and the potential harm outcomes to tenants
- Aim to deter future non-compliance
- Reimburse the costs incurred by the council in undertaking work in default.

The provision of smoke and carbon monoxide alarms does not place an excessive burden on a landlord, and the lack of compliance directly impacts on the safety and security of tenants, especially those that are vulnerable and those with families.

When determining the amount of a penalty charge notice, the Council will take into consideration:-

- a) a suitable financial penalty for the breach of a statutory notice as a deterrent for the future;
- b) the average cost of undertaking works in default;
- c) the type of property including number of storeys and commercial/residential mix;
- d) whether the breach is partial or full
- e) the number of tenants living in the premises
- f) whether the offence has been repeated under this landlord's ownership
- g) cost of officer time to investigate the breach, serve a remedial notice and levy the charge as assessed on a case by case basis.
- h) any specific issues relating to that individual property.

The offence will be dealt with in accordance with the Housing Standards Enforcement Policy and an opportunity will be afforded to comply prior to any penalty charge being levied.

The legislation allows the Council to exercise discretion to reduce the amount of the penalty if the notice is complied with or penalty paid within 14 days. In such cases a discount of 25% is offered on payment within 14 days of the charge being issued. This discount shall not apply when:

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

The discount shall also only apply to the one non-compliance if a number of remedial notices are served covering other premises under the persons / company control.

The maximum potential fine is £5,000 as stated in the regulations. A minimum charge of £500 will be levied.

Appeals in relation to a penalty charge notice

The landlord has a right to seek a review of the penalty charge notice by writing to the Authority (details on the Notice) within 28 days of the Notice being issued.

On consideration of any representation and evidence, the penalty charge notice can be confirmed, varied or withdrawn. This decision is confirmed by issuing a decision notice on the landlord. If varied or confirmed, the notice shall state a further appeal can be made to a Residential Property Tribunal and details given. The Tribunal may quash, confirm or vary the penalty charge notice.

Any representation shall be considered on its individual merit, and be in line with any concession policy approved by the Council.

Recovery of Penalty Charge

The Council may recover the penalty charge as laid out in the regulations. Due to costs incurred by the Council, any penalty charge notice shall be pursued for payment.

Review of Statement

This Statement of Policy 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.