

TITLE OF REPORT: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 - Request for Delegated Enforcement Powers and Penalty Charge Policy

REPORT OF: Paul Dowling, Strategic Director, Communities & Environment

Purpose of the Report

1. This report seeks approval for enforcement arrangements for the new legislative requirement from 1st October 2015 when all private sector landlords are required to ensure that working smoke alarms, and in some cases carbon monoxide alarms, are installed in privately rented properties in accordance with The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Background

2. 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. It is estimated that this will prevent 26 deaths and 670 injuries each year across England.
3. It is noted that people are four 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 - will, subject to Parliamentary approval, come into force on 1 October 2015.
4. The Regulations will require private landlords to ensure that there is a working smoke alarm installed on each storey of a privately rented home, a working carbon monoxide alarm is in place in each room containing a solid fuel burning combustion appliance and check that appropriate alarms are in working order at the start of each tenancy.
5. There are approximately 17,000 privately rented properties in Gateshead and it is known that through work undertaken within the Private Sector Housing Team through landlord licensing and property accreditation, approximately 2800 of these properties have had or currently have working smoke alarms installed. Data concerning the remaining private rented stock is limited. It is estimated that nationally 83% of properties in the private rented sector have one or more smoke alarms. If this were applied to Gateshead that would

equate to 2890 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. It is estimated that there a small percentage of properties containing a solid fuel burning combustion appliance that would require a carbon monoxide alarm, although this number is increasing as the installation of wood burning stoves is increasing in popularity.

6. The Local Housing Authority is the enforcing body for this statutory requirement and is required to serve remedial notices on those landlords in breach of their duty to comply. In cases where a landlord fails to comply with a remedial notice, the Authority must, if the necessary consent is given by the occupier of the premises, arrange for remedial action to be taken by undertaking works in default. It may also require the landlord to pay a civil penalty charge of up to £5000.
7. The Local Authority is required to prepare and publish a statement of principles, which it proposes to follow in determining the amount of a penalty charge and this is set out in appendix 2. There is a right of appeal to the First-Tier Tribunal for any landlord who is required to pay a penalty charge.
8. It is recognised that housing teams, already dealing with the private rented sector, would be well placed to take on the responsibility of enforcement. There has been no resource allocated from Government for the undertaking of this new function. It is proposed that Officers from within the Private Sector Housing (PSH) Team should take on this responsibility as the Team are already well placed and responsible for regulating this sector and have strong partnerships with local landlords through their work.
9. Each of England's 46 fire and rescue authorities are expected to support landlords in their own areas to meet their new responsibilities with the provision of free alarms via one off grant funding from the government.
10. The PSH team is working with the Tyne and Wear Fire Authority to ensure that landlords are aware of the proposed regulations and to facilitate the distribution and fitting of smoke alarms and carbon monoxide detectors where they are required pre October 2015. The team is also working with the Communications Team to publicise the requirements to landlords and managing agents, resulting in subsequent signposting to the Fire Authority for alarms if required.
11. The conditions within licenses for Houses in Multiple Occupation and Selective Landlord Licensing will also be reviewed and revised to bring them in line with the new regulations. This will only apply to licenses granted on or after 1st October 2015.
12. The regulations exclude student halls of residence, hostels and refuges, care homes, hospitals and hospices and other accommodation relating to health care provision.

Proposal

13. That officers based in the Private Sector Housing Team will carry out the responsibility of enforcing the requirement for landlords to install smoke alarms and carbon monoxide detectors, following authorisation from the Strategic Director, Communities and Environment.

Recommendations

14. Cabinet is recommended to:
 - (i) Approve the arrangements detailed in this report for the discharge of the Council's duty to implement and enforce the Regulations and that the Council be recommended to amend the Council's Constitution by giving the Strategic Director, Communities and Environment delegated authority to exercise the powers of the Council and to authorise officers under his control to exercise such powers under Parts 4-6 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
 - (ii) Approve the Statement of Principles and the level of penalty and penalty framework as set out in appendix 2 to the report.
 - (iii) Approve the proposed enforcement procedure and arrangements as set out in appendices 3 and 4 to the report.
 - (iv) Agree that the penalty income will fund the administration and set up costs of discharging the Council's statutory duty.

For the following reason

The Council has a duty to enforce the statutory requirement that smoke alarms and in some cases, carbon monoxide detectors are installed so that landlords operating within Gateshead are regulated correctly.

Policy Context

1. The proposal referred to in this report supports Gateshead's long-term Sustainable Community Strategy: Vision 2030, and the Council Plan. The proposal also aligns with Objective 2 of Gateshead's Housing Strategy 2013-18 and complements the Council's wider regeneration and economic development objectives.
2. The aim of The Housing Strategy 2013 – 2018 is to help people access and sustain a good quality affordable home in a sustainable community. Objective 2 relates to Housing Standards and is intended to improve the quality, condition and management of housing so that all residents benefit from safe, healthy and well-managed homes with one of the key challenges being the improvement of the private rented sector.
3. Implementing this new legislation provides an additional tool in tackling rogue agents to assist in making Gateshead a safer and more attractive place to live, with high quality housing.

Background

4. The new legislation is part of a wider effort to increase fire and carbon monoxide safety across the UK. Existing rules meant that owners of property built prior to June 1992 were not legally obliged to have smoke alarms installed. Smoke alarm coverage in privately rented accommodation stands at 83% and this is the lowest of any housing type. Between April 2013 and March 2014, 97 people died and 1900 were injured in domestic fires affecting properties where no smoke alarm was present. These statistics highlight why the Government has been so keen to redress the imbalance between protection levels for private tenants versus the rest of the housing sector.
5. In Gateshead to date there are approximately 17,000 privately rented properties, with this number continuing to grow. The Private Sector Housing (PSH) team deal with an average of 700 requests for service each year from residents concerning private property conditions, many of which are without adequate smoke and carbon monoxide detection. The team already request improved smoke detection in privately rented properties through the property accreditation scheme and landlord licensing, ensuring to date that at least 2800 properties have had, or currently have working smoke detection. The new legislation will allow officers to now insist on the installation of working smoke alarms and carbon monoxide detectors in non-accredited or non-licensed properties. In 2014 there was a fatality in Gateshead, which was the tragic outcome of a fire in a property where there was inadequate smoke detection installed. The requirements of the new legislation may have prevented this outcome.

Legal Implications

6. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires all private sector landlords to ensure that working smoke alarms and in some cases carbon monoxide alarms are installed in privately rented properties. It further requires that Local Authorities enforce compliance with this requirement.
7. The Council is therefore required to discharge the enforcement functions referred to in this report. It is also empowered to serve a remedial notice requesting appropriate action to ensure compliance, including the issuing of a penalty charge for non-compliance and the undertaking of works in default, where it has reasonable grounds to believe that a landlord is in breach of his/her duties. The proposed arrangements detailed in this report therefore discharge the Councils requirements under the above legislation.

Delegated Powers to the Strategic Director Communities and Environment

8. In order for the requirement for private landlords to provide smoke and carbon monoxide alarms, there needs to be a process for ensuring compliance and for there to be a fair and effective penalty where the requirement is not met. The Regulations make provision for the Local Housing Authority (LHA) to be the enforcer.
9. The Private Sector Housing Team within Communities and Environment have a strong working relationship with agents and landlords, with there being currently over 650 landlords registered as members of the Gateshead Private Landlords Association which is facilitated within the team. Other functions undertaken by the team locate them at the forefront of working in partnership with landlords and agents such as selective landlord licensing, accreditation and enforcement of property conditions through existing powers. In terms of housing conditions and rogue landlords the existing range of powers will continue to be used for those that fail to provide good quality accommodation and where certain properties and tenants can disrupt a local community.

Enforcement

10. Enforcement needs to be proportionate and the approach taken is designed to be cost effective by imposing a penalty greater than the actual cost of installing alarms and minimising the impact on the courts and tribunal.
11. The Regulations place a duty on a LHA, when it has reasonable grounds to believe that the landlord is in breach of their duties under Regulation 4(1), to serve a remedial notice within 21 days of becoming aware of the offence. The notice must specify the premises, specify the duties that the LHA believes the landlord is failing or has failed to comply and specify the remedial action the LHA considers should be taken within a 28 day period. The Landlord must

then undertake the remedial action specified in the notice within the specified time or they will be in breach of their duty.

12. The recipient of the remedial notice to has a right to make written representations against the notice within 28 days.
13. The proposed administration and enforcement process, for discharging the Councils statutory duty as dictated by the Regulations can be found in appendix 3.

Works in Default

14. If the landlord does not comply with the remedial notice and the LHA has reasonable grounds to believe that the landlord is in breach of their duties under Regulation 6(1), the LHA must, if the necessary consent is given from the occupier of the premises, arrange for an authorised person to take the remedial action specified in the notice within 28 days.

Penalty Charges

15. In addition, where a LHA is satisfied on the balance of probabilities that a landlord on whom it has served a remedial notice is in breach of his duty under regulation 6(1), the authority may require the landlord to pay a penalty charge of such an amount the authority may determine. The amount of the penalty charge must not exceed £5000 and is in the form of a penalty charge notice, served within six weeks beginning with the date on which the authority is first satisfied under paragraph (1).
16. Unpaid penalty charges may be recovered on the order of a court, as if payable under a court order. The Council's chief finance officer would sign a certificate that would be submitted to the courts, confirming that the penalty charge had not been received by the date specified.
17. Sums received by the Council under a penalty charge may be used by the authority for any of its functions.
18. There is a right of appeal for an agent against any penalty to the First-tier Tribunal. The appeal must be made within 28 days of the day on which the final notice was sent. If an appeal is lodged the penalty cannot be enforced until the appeal is disposed of. The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.

Proposal for Penalties

19. This section sets out the proposed penalty framework, to be applied whenever the Council decides the penalty to be imposed on individual cases. There are specific procedures and a series of stages and timescales to follow before a penalty may be imposed as set out in appendices 3 and 4.

20. In addition, Paragraph 13 of the Regulations specifies that a LHA must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. This statement is set out in appendix 2. It can be subject to review and revised when necessary. In determining the amount of penalty charge, a LHA must have regard to the statement of principles published at the time when the breach in question occurred.
21. It is the intention that the penalty set will be sufficient to meet the Council's administrative costs for discharging this statutory duty. In addition, it is intended that the penalties set under this framework, will act as an effective deterrent against non-compliance.

Consideration of Representations

22. Following the service of a penalty charge notice, a landlord may, within 28 days beginning with the day on which the notice was served make written representations against the notice.
23. Where representations are received from a landlord the LHA must;
 - consider those representations, and
 - decide whether to confirm, vary or withdraw the penalty charge notice; and
 - serve notice of its decision to the landlord
24. Following its decision, the LHA is required to serve a further notice either confirming, varying or withdrawing the penalty charge notice.
25. In examining any representations received the following circumstances will be considered:
 - The size of the landlords portfolio
 - The effect of the imposition of a penalty
 - Exceptional personal hardship
 - Having other reasonable excuse for failing to comply with the regulations (not knowing about the regulations will not in itself usually amount to reasonable excuse).
 - The landlord is able to demonstrate they have taken all reasonable steps, other than legal proceedings, to comply with the duty.
26. In some cases, if the application of the intended financial penalty will not serve the strategic goal of improving housing and management standards within the private rented sector, the penalty may be varied or even withdrawn.
27. A landlord served with a notice confirming or varying a penalty charge notice may appeal to the First Tier Tribunal against the LHA's decision.

Consultation

28. The Cabinet Members for Housing have been consulted on this report. Numerous methods of communication have been undertaken to advise landlords of their responsibilities, including making tenants aware of the new requirements to encourage contact with the team for any non-compliances. Information has been included in Council News, with links on the council website and alerts on social media. Extensive communications have also been exchanged with all 655 members of Gateshead Private Landlords Association via email alerts, information on the GPLA website, including reminder at recent training events.

Alternative Options

29. The Council must make arrangements for the enforcement of these regulations. There are no viable alternative options to ensure the Council is able to exercise its full statutory enforcement duty.

Implications of Recommended Option

30. Resources:

- a) **Financial Implications** – The Strategic Director, Corporate Resources confirms that there are no major initial financial implications for the Council as the smoke and carbon monoxide detectors will be either provided by the Fire Authority via a grant from the Government or paid for by private sector landlords.

If a landlord fails to comply with the requirements of a remedial notice, the LHA has a duty to undertake work in default. Normal cost recovery mechanisms will be used and the costs can also be entered as a land charge on the property.

The cost of defending an action at a First Tier Tribunal (which is part of HM Court's service), could be in the region of £10,000 to £15,000 and costs could also be awarded against the Council. It is difficult to quantify what costs will be without knowing how many landlords may not comply with the requirements.

- b) **Human Resources Implications** – Existing staffing resources are to be utilised within the Communities and Environment Service to initially deliver these regulations. Resource implications will also be subject to review depending upon the number of landlords and properties that are non-compliant and the resulting workload for staff in addition to their normal statutory responsibilities.

Current capacity of the PSH Team will only allow for a reactive response initially when complaints are received from private sector tenants. If future capacity allows, hot spot areas may be targeted based on trends based on area and/or landlord history. Enforcement of

the new requirement will also be incorporated into the day to day functions of the team when officers are visiting properties.

c) Property Implications - none anticipated

- 31. Risk Management Implication** – There are currently 17,000 privately rented homes in Gateshead. Current capacity within the PSH Team will restrict the enforcement of the Regulations to a reactive basis to begin with, and will currently not allow for proactive monitoring and inspection of all 17,000 properties within the private rented sector.
- 32. Equality and Diversity Implications** -.The new regulations would not discriminate against any residents in Gateshead under protected characteristics as they apply to all tenants in the privately rented properties covered by the Regulations. The new Regulations ensure that private sector tenants have equitable measures with regard to the smoke and carbon monoxide alarms as owners of newly built properties under Building Regulations.
- 33. Crime and Disorder Implications** – Whilst the monetary penalties for breaching requirements are civil rather than criminal in nature, the requirements will provide an additional means of dealing with rogue landlords who provide accommodation that does not meet the minimum legal standard.
- 34. Health Implications** – none anticipated
- 35. Sustainability Implications** - none anticipated
- 36. Human Rights Implications** - none anticipated
- 37. Area and Ward Implications** - Residents in all wards will benefit from the increased fire safety measures that the Regulations provide.

Background Information

- The Housing Strategy 2013-18
 - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ,
 - The Energy Act 2013
 - The Housing Act 2004

Appendix 2

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles.

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements for all landlords during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—

- (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 in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- (iii) 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.

Enforcement

Where the Local Housing 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.

Then the Authority shall serve on the Landlord in a method prescribed by the Regulations, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.

If after 28 days the Landlord has not complied with the Remedial Notice. a Penalty Charge shall be levied through a penalty charge notice.

Principles to be followed in determining the amount of a Penalty Charge

The Authority considers that a lesser penalty will be merited on the occasion of a first offence and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability and savings in administration costs.

The level of penalty should, however, as a minimum, cover the cost of all works in default, officer time, recovery costs, an administration fee and a fine.

Repeated offences should 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, a notice (or notices) is (are) served in respect of a further offence (or offences), but the further offence(s) arose prior to the service of the first notice, the penalty charge in respect of each notice shall be treated as a first offence penalty charge. Subsequent offences will, however, be treated cumulatively.

Level of Penalty Charge

The Penalty Charge shall be set at £1,000 for the first offence but this will be reduced to £750 if paid within a 14 day period in accordance with Paragraph 9(2).

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 after the first occasion.

Recovery of Penalty Charge

The local housing authority may recover the penalty charge as laid out in the Regulations.

Appeals in relation to a penalty charge notice

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 local housing authority review the penalty charge notice.

The local housing 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 housing authority's decision

APPENDIX 3

Procedure for the enforcement of the requirement for landlords to provide working smoke alarms and carbon monoxide detectors.

INVESTIGATION

Where information comes to the attention of the Private Sector Housing Team that there may be a non-compliance, or following identification of a non-compliance during a property inspection, an investigation will be conducted by an Officer within the team and a service request created. The Investigating Officer may be an Environmental Health Officer or a Technical Officer.

The investigation will commence in those cases where a complaint or information is received, with a visit to the property, to confirm the absence of smoke alarms and carbon monoxide detectors where appropriate. In addition non compliances may also relate to the disrepair of a prescribed alarm or the absence of checks to ensure a prescribed alarm is in proper working order. A property inspection in the course of an Officers day to day duties will already have uncovered any non-compliances.

When the Investigating Officer has completed their investigation and they are satisfied that there has been a non-compliance by the landlord of one or more duties under the regulations, they will proceed to serve a remedial notice. .

SERVICE OF REMEDIAL NOTICE

A remedial notice must be served within 21 days beginning with the day on which the authority decides it has reasonable grounds that the landlord is in breach of one or more of his duties. The notice will be served on the landlord of the property.

The remedial notice must:

- a) Specify the premises to which the notice relates
- b) Specify the duty or duties that the LHA considers the landlord is failing or has failed to comply with;
- c) Specify the remedial action the LHA considers should be taken;
- d) Require the landlord to take the action within 28 days beginning with the day on which the notice is served;
- e) Explain that the landlord is entitled to make written representations against the notice within 28 days
- f) Specify the person to whom, and the address at which any representations may be sent; and
- g) Explain the effect of regulations 6,7 and 8, including the maximum penalty charge which a LHA may impose.

The remedial notice will be served by the Investigating Officer

DETERMINING THE LEVEL OF PENALTY

Any enforcement by way of a fine imposed must be proportionate and cost effective. A graded response needs to be in place to protect the Council from legal challenge for fettering their discretion. The Regulations request that a LHA must prepare and

publish a statement of principles which it proposes to follow in determining the level of a penalty charge. The proposed statement of principles, Appendix 2, outlines the proposed penalty levels, which are based on the costs of undertaking works in default, administration costs and the amount of work that will be necessary to be undertaken by Officers.

REPRESENTATIONS & OBJECTIVES

Following the service of a penalty charge notice, a Landlord may, within 28 days beginning with the day on which the notice was served, make written representations against the notice. Any representations received in response to a penalty will be considered on a case by case basis depending on the submission made and any circumstances prevailing, as described below.

Where representations are received from a landlord the LHA must;

- consider those representations, and
- decide whether to confirm, vary or withdraw the penalty charge notice; and
- serve notice of its decision to the landlord

Following its decision, further notice either confirming, varying or withdrawing the penalty charge notice will be served.

In examining any representations received the following circumstances will be considered.

- The size of the landlords portfolio
- The effect of the imposition of a penalty
- Exceptional personal hardship
- Having other reasonable excuse for failing to comply with the regulations (not knowing about the regulations will not itself usually amount to reasonable excuse).
- The landlord is able to demonstrate they have taken all reasonable steps, other than legal proceedings, to comply with the duty.

In some cases, if the application of the intended financial penalty will not serve the strategic goal of improving housing and management standards within the private rented sector, the penalty may be varied or even withdrawn. A landlord served with a notice confirming or varying a penalty charge notice may appeal to the First Tier Tribunal against the LHA's decision.

RIGHT OF APPEAL

A landlord who is served with a notice under Regulation 10(2)(c) confirming or varying a penalty charge notice may appeal to the First Tier Tribunal against the LHA's decision. The grounds for that appeal are that-

1. the decision to confirm or vary the penalty charge notice was based on an error of fact;

2. the amount of penalty charge is unreasonable
3. the decision was unreasonable for any other reason.

Where a landlord does appeal, the operation of the penalty charge notice is suspended until the appeal is finally determined or withdrawn.

The First Tier Tribunal may:-

- ii. Quash the final notice
- iii. Confirm the final notice
- iv. Vary the final notice

But may not increase the amount of the penalty charge.

Recovering the penalty monies

If the penalty charge is not paid within the specified time on the notice, the LHA may recover the charge on the order of the court, as if payable under a court order.

Where there is a failure to pay a penalty, the matter will be referred to the Service Director, Corporate Services and Governance.

Where it is decided to commence court proceedings to recover an unpaid penalty, a certificate confirming that the amount of penalty due has not been received, signed by the Chief Finance Officer is required.

APPENDIX 4

Gateshead Council Private Sector Housing Team The Smoke Control and Carbon Monoxide Alarm (England) Regulations 2015 - Enforcement Process

