



Derby City Council

COUNCIL CABINET
7 September 2016

Report of the Cabinet Member for Urban
Renewal

ITEM 10

Approval of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 Statement of Principles

SUMMARY

- 1.1 A new regulatory duty came into force on 1 October 2015 requiring certain private sector landlords to provide smoke alarms in private rented property. The duty extends to provision of carbon monoxide alarms where solid fuel appliances are present.
- 1.2 A breach of the above requirements requires enforcement action by the Council which will be undertaken by the Housing Standards Team.
- 1.3 Where a landlord fails to comply with a remedial notice served by the Council under these regulations the Council must undertake the works in default and may require the landlord to pay a penalty charge for non-compliance.
- 1.4 As required by the regulations, a statement of principles to determine the amount of penalty charge is to be published on the Council website.

RECOMMENDATIONS

- 2.1 To approve the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 Statement of Principles attached at Appendix 2 and the penalty charge structure contained therein.

REASONS FOR RECOMMENDATION

- 3.1 Regulation 8(1) states that where a local authority is satisfied that a landlord on whom it has served a remedial notice has failed to comply with that notice the authority may require the landlord to pay a penalty charge of such amount as the authority may determine.
- 3.2 The purpose of this 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 for the tenants; and

- Aim to deter future non-compliance.

3.3 Regulation 13 requires a local housing authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. The authority may revise its statement of principles and, where it does so, it must publish the revised statement. In determining the amount of a penalty charge, it must have regard to the statement of principles which was most recently prepared and published at the time when the breach in question occurred.

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| SUPPORTING INFORMATION |
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- 4.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 have been approved by Parliament and came into force on 1 October 2015.
- 4.2 Private sector landlords are required to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy. The underlying purpose of the legislation is to ensure tenant safety.
- 4.3 There are prescribed stages of enforcement within the regulations. The first action is to serve a remedial notice on the landlord, requiring the provision of the required alarms. If the landlord fails to comply with this remedial notice the Council is required to carry out the works in default.
- 4.4 Where the Council is satisfied that a landlord has failed to comply with a remedial notice, a charge may then be levied following service of a penalty charge notice. The level of penalty charge is to be determined by the Council up to a maximum of £5,000; this charge includes the costs of any remedial works carried out in default of the landlord.
- 4.5 It is proposed that a first offence will attract a penalty charge of £3,000. Subsequent offences by the same landlord, even if they occur at different properties, will each attract a penalty charge of £5,000 to deter further non-compliance. As well as being punitive, it is intended that the penalty charge will cover the cost of the remedial work carried out in default by the Council.
- 4.6 The landlord is permitted to give written notice to the Council that they wish the Council to review the penalty charge notice.
- 4.7 On receiving the decision of the review by the Council, the landlord may appeal to the First-tier Tribunal.
- 4.8 Decisions of the First-tier Tribunal will help develop enforcement of the regulations and inform any review of the statement of principles in determining the amount of a penalty charge.

- 4.9 As required by the regulations, a statement of principles to determine the amount of penalty charge is to be published on the Council website. This is attached at Appendix 2 for consideration.

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| OTHER OPTIONS CONSIDERED |
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- 5.1 Not applicable.

This report has been approved by the following officers:

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| Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s) | Lucie Keeler, Litigation Solicitor Amanda Fletcher, Head of Finance - Communities and Place - - - Michael Kay, Head of Service for Housing Standards |
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| For more information contact: Background papers: | Rob Rylott 01332 642366 rob.rylott@derby.gov.uk The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: |
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| <p>List of appendices:</p> | <p>explanatory booklet for local authorities. https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-local-authorities Appendix 1 – Implications Appendix 2 – Derby City Council Statement of Principles - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015</p> |
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| IMPLICATIONS |
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Financial and Value for Money

- 1.1 The change in regulations has placed additional duties on the Council but it is anticipated that the cost of these can be managed from within existing resources and from any income generated from fines.

Legal

- 2.1 As set out in the report and appendices.
- 2.2 There may be, on occasions, appeals against penalty charges by landlords to the First Tier Tribunal which will require the support of the legal team.

Personnel

- 3.1 None directly arising from this report.

IT

- 4.1 None directly arising from this report.

Equalities Impact

- 5.1 None directly arising from this report.

Health and Safety

- 6.1 None directly arising from this report.

Environmental Sustainability

- 7.1 None directly arising from this report.

Property and Asset Management

- 8.1 None directly arising from this report.

Risk Management and Safeguarding

9.1 None directly arising from this report.

Corporate objectives and priorities for change

10.1 The proposals will support the priority outcomes of **Protecting vulnerable children, young people, adults and older people, Promoting health and well-being** and **Improving housing, supporting job creation and regenerating the city.**

Derby City Council

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles

(Insert Publication Date)

Contents

1. Background
2. Explanatory Note
3. How the Council will determine the amount of the penalty
4. Revision of the Statement of Principles
5. Further contact information

Introduction

1. Background

- 1.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the Regulations”) impose duties on certain landlords of residential premises in respect of smoke and carbon monoxide alarms. The duties do not apply to a landlord who is a registered provider of social housing.
- 1.2 Regulation 14 of the Regulations require Derby City Council as the local housing authority (“the Council”) to prepare and publish a statement of principles it proposes to follow in determining the amount of penalties imposed by the Council under the Regulations.
- 1.3 By virtue of regulation 13(3) of the Regulations, Derby City Council must have regard to the statement for the time being in force when setting the amount of any penalty under the Regulations.

2. Explanatory Note

- 2.1 The Council has powers under the Regulations to impose on Landlords of residential properties a penalty charge notice when they are in breach of the Regulations. This Statement of Principles has been published to show the Council’s approach to setting penalties to ensure that the Council can impose penalties at the appropriate level, effectively to deter contraventions of the Regulations.
- 2.2 All Landlords of residential properties should operate in compliance with the Regulations, taking into account any relevant guidelines where appropriate. As such, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to deter the Landlords from contravening regulatory requirements.
- 2.3 In particular, the level of the penalty must be sufficiently high to have the appropriate impact on the Landlord. It should incentivise the Landlord to change their conduct and bring it into compliance. The level of the penalty should be high enough that the Landlord recognises that it is not more profitable for them to break the law and pay the consequences, than it is

to comply with the law in the first instance, and that it should therefore discourage bad conduct and encourage good practices and a culture of compliance across the private housing sector.

3. How the Council will determine the amount of a penalty

- 3.1 The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the non-compliance.
- 3.2 As well as being punitive, the penalty will cover the cost of remedial work.
- 3.3 The penalty charge will be graduated:
 - a) A first offence will attract a penalty of £3,000 inclusive of the cost of remedial work.
 - b) Subsequent offences will each attract a penalty of £5,000 inclusive of the cost of remedial work.
 - c) The period within which the penalty charge is payable is 30 days beginning with the day on which the penalty charge notice is served.

4. Revision of the Statement of Principles

- 4.1 Regulation 13 (2) of the Regulations provides that Council may from time to time revise our statement as we think fit. When it does so the Council must publish the revised statement.
- 4.2 This statement will be reviewed in the light of experience in applying it over time.

5. Further contact information

- 5.1 Further information about the contents of this policy can be obtained from Derby City Council's Housing Standards Team by telephone on 01332 642367 or email housing.standards@derby.gov.uk