

Report title	Implementation of The Smoke and Carbon Monoxide Alarm (England) Regulations in the Private Rented Sector	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Peter Bilson City Assets and Housing	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All Wards	
Accountable Director	Kate Martin, Director of City Housing	
Originating service	Private Sector Housing	
Accountable employee	Ravi Phull Tel Email	Service Manager Private Sector Housing 01902 552812 ravi.phull@wolverhampton.gov.uk
Report to be/has been considered by	Housing Leadership Team	2 April 2019

Recommendations for decision:

The Cabinet is recommended to:

1. Adopt penalty charges for breaches of the regulations.
2. Approve the penalty charge levels as set out in Appendix 2 to this report.
3. Delegate the authority to enforce the requirements of the Energy Act 2013 section 150 and any Regulations or Orders made thereunder (and specifically the Smoke and Carbon Monoxide Alarm (England) Regulations) to the Director of City Housing.

Recommendations for noting:

The Cabinet is recommended to:

1. Note that the Council has a duty to respond to the discovery or suspicion of significant residential hazards under the Housing Act 2004. These regulations introduce a new requirement to serve a remedial notice where smoke or carbon monoxide alarms are absent or defective.

2. Note that the Local Housing Authority must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge (attached at Appendix 2 to the report).

1.0 Purpose

- 1.1 To request agreement for the implementation of penalty charges and set a penalty charge level under the Smoke and Carbon Monoxide Regulations.

2.0 Background

- 2.1 The widespread introduction of smoke alarms from the late 1980s onwards has coincided with a dramatic reduction in deaths and injuries from domestic fires. However, there still remains 10% of homes across all tenures that do not have smoke detection.
- 2.2 In the Private Rented Sector that proportion is almost double at 18% (English Housing Survey 2011). It is not uncommon to find that rented property has no or substandard fire detection when surveyed.
- 2.3 Death from fire is four times more likely in an unprotected home than one fitted with smoke alarms. In addition, there is a substantial cost to society where fires are not detected quickly.
- 2.4 Since the introduction of the Housing Act in 2004 there has been a requirement that dwellings are safe from fire (amongst other hazards) and should have smoke alarms fitted.
- 2.5 Carbon monoxide (CO) is sometimes referred to as the "silent killer". Every year in the UK, over 200 people go to hospital with suspected carbon monoxide poisoning, which leads to around 40 deaths. CO is colourless and has no smell and the symptoms of poisoning are similar to many other illnesses. It is considered to be significantly under reported. It can be produced from incomplete combustion of fossil fuels. More risk is associated with burning of solid fuels.
- 2.6 The Private Rented Sector has doubled in size both nationally and locally in the last ten years. Private renting has now overtaken social renting as the second largest tenure type (behind owner occupation). Demand for all accommodation is strong. Given the restricted number of social rented properties and the cost of home ownership, demand for private rentals has been steadfastly robust.
- 2.7 This is also reflected at the worst end of the market. Whilst there are many good private rented homes in use, the latest English House Condition Survey reports that one third of private rentals fail the decent home standard and one fifth contain a category 1 hazard (significant risk to safety or health).
- 2.8 Some landlords are ignorant of their responsibilities and some choose to ignore them.

3.0 Progress

- 3.1 The Smoke and Carbon Monoxide Alarm (England) Regulations made under the Energy Act 2013 introduce an enforcement regime aimed at reducing the risks from fires and of carbon monoxide poisoning in privately rented properties.

- 3.2 The regulations require a smoke alarm on every habitable floor of a property and a carbon monoxide detector is required in any room that contains a solid fuel appliance eg wood burner or coal fire/stove. They are not required for gas/oil installations.
- 3.3 Landlords (or their agent) are also required to test alarms at the commencement of any new tenancy.
- 3.4 There are some exemptions for certain types of accommodation and certain landlords e.g. Licensed Houses in Multiple Occupation, lodgings, student halls, care homes, hostels and social landlords. Normally other specific safety law exists.
- 3.5 Where alarms are missing or defective the housing authority are required to serve a remedial notice which instructs the landlord to install alarms within twenty eight days. If this is not done the Council must get the alarms installed and may issue a penalty charge notice. The maximum permitted charge is £5000.
- 3.6 The Council are required to produce a statement of principles which determines the amount of penalty charge, attached as Appendix 2.
- 3.7 It is proposed that where it is considered that there has been unreasonable non-compliance the first penalty charge should be £2500. If – within 14 days of service of the notice, a first offender makes representations; or notifies the Council that they agree to work with the Council and register themselves and all properties within their portfolio, onto the Rent with Confidence star rating scheme; or pays the penalty charge can be reduced to £1000. Any subsequent failures by the same landlord would be fined at £5000.
- 3.8 The Regulations require that the Council offer an opportunity for review by a named officer. If that review confirms the penalty charge, then there is a further appeal available to the First Tier Tribunal.

4.0 Evaluation of alternative options

- 4.1 Current legislation for lack of smoke and carbon monoxide detection under the Housing Act 2004 carries fines of up to £30,000 per offence by way of civil penalty or criminal prosecution. These are used by the service and will continue to be used.
- 4.2 The adoption of these regulations will underpin existing powers as the service moves towards a more robust, proactive and targeted approach to criminal landlords in the City.

5.0 Reason for decisions

- 5.1 The adoption of the regulations will complete the full suite available to local authorities for dealing with non-compliant landlords.

6.0 Financial implications

- 6.1 There are no significant financial implications arising, as the cost of enforcing these regulations will be absorbed into the existing service.

- 6.2 It is not anticipated that this course of action will generate any substantial income to the Council as there is a 28 day compliance period. It is anticipated that the threat of a penalty charge will motivate most to comply at first opportunity.
- 6.3 Any income generated will be returned to the PSH budget to support the enforcement effort.

[JM/07022019/H]

7.0 Legal implications

- 7.1 The Regulations require the Council publish a statement of principles including the penalty charge fee and to serve a remedial notice where smoke or CO alarms are not present or defective.
- 7.2 The Regulations are made under Section 150 of Energy Act 2013 and delegated authority will be required based on the Council's constitution.
- 7.3 Regulation 5, titled "Duty of local housing authority to serve a remedial notice" makes it clear the Council has no discretion in this process and that the threshold is very low, a remedial notice must be served if alarms are not present and initial checks have not been done:

"Reg 5(1) Where a local housing authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under regulation 4(1) [ie the premises must have a smoke alarm on all storeys used for residential purposes and a carbon monoxide alarm is present in all rooms with a solid fuel burning combustion appliance and they must be checked on the start of any new tenancy], the authority must serve a remedial notice on the landlord."
- 7.4 In the same way, the landlord has a duty to comply to the said notice within 28 days of service, under regulation 6.
- 7.5 Again, the Local Housing Authority has a duty to arrange for remedial action under regulation 7, if the landlord has not complied with the remedial notice within 28 days of service, with consent of the occupiers; works have to have been completed within 28 days of the LHA being satisfied that the landlord is in breach of the notice;
- 7.6 In addition to remedial works, the Local Housing Authority can however also impose a penalty charge under regulation 8 ; this penalty charge can be up to £5,000 and the Local Housing Authority needs to set its level;
- 7.7 If the Local Housing Authority decides to go down the route of a Penalty Charge, it must serve a Penalty Charge Notice on the landlord within 6 weeks of being satisfied the landlord is in breach of the remedial notice;
- 7.8 Adopting this process will therefore require sleek processes in order not to miss deadlines, which would leave the Council open to challenge;

- 7.9 Regulation 9(2) provides for a possible reduction in the amount of the penalty charge if payment is made within 14 days of service or if written notice is provided by the recipient of the notice to the Local Housing Authority that they want the matter to be reviewed, notice again to be provided within 14 days;
- 7.10 An appeal of the review decision, to the First Tier Tribunal, is provided under regulation 11, preserving the independence of the final decision;
- 7.11 Recovery of unpaid penalty charges is dealt with under regulation 12, and is treated as a civil debt rather than a prosecution;
- 7.12 Once the legislation has been adopted, if penalty charges are also adopted, the Local Housing Authority must prepare and publish a statement of principles which it will follow to determine the amount of a penalty charge, which is attached at appendix 2;
- 7.13 Cabinet is therefore required to adopt the legislation, decide whether to adopt the use of penalty notices, if so set the level of the penalty charge, decide whether and when a discount is to be provided and set the amount of this discount.
- 7.14 Cabinet is also required to agree (then publish) a statement of principle, a draft of which is attached at appendix 2.

[LW/270219/N]

8.0 Equalities implications

- 8.1 There are no equalities implications arising from this report.

9.0 Environmental implications

- 9.1 There are no environmental implications arising from this report.

10.0 Human resources implications

- 10.1 There are no human resources implications arising from this report as the enforcement of these Regulations will be incorporated within the resources used to enforce breaches of the Housing Act 2004.

11.0 Corporate landlord implications

- 11.1 There are no corporate landlord implications arising from this report.

12.0 Health and Wellbeing implications

- 12.1 The provision of decent homes, which are free from hazards such as carbon monoxide poisoning and fire; are directly linked with the health and well being of occupants. The successful implementation of these regulations will improve people's living conditions in the private sector; where people are sometimes exposed to some of the most unhealthy and dangerous conditions. This will in turn improve mental health and well-being.

13.0 Appendices

Appendix 1 - [The Smoke and Carbon Monoxide Alarm \(England\) Regulations](#)

Appendix 2 - City of Wolverhampton Council Statement of Principles February 2019