

Cabinet Meeting		Agenda Item: 7
Meeting Date	25 May 2016	
Report Title	The Smoke and Carbon Monoxide Alarm (England) Regulations	
Cabinet Member	Cllr John Wright, Cabinet Member for Housing	
SMT Lead	Kathryn Carr Director of Regeneration	
Head of Service	Amber Christou	
Lead Officer	Philip Garland	
Recommendations	<ul style="list-style-type: none"> i. Members note the legal requirements of the Regulations and Agree the Statement of Principles regarding enforcement and penalty charges. ii. The Head of Resident Services, in consultation with Cabinet Member for Housing, be delegated to consider any representations from a landlord and decide whether to confirm, vary or withdraw the penalty charge notice. iii. That the Scheme of Delegation be amended to add the new powers and duties conferred by the Smoke and Carbon Monoxide Alarm (England) Regulations to the Head of Resident Services' delegations in order to provide effective delegation to officers. 	

1 Purpose of Report and Executive Summary

- 1.1 To inform Members of new legislation, and agree the Statement of Principles regarding enforcement and penalty charges.
- 1.2 That the Scheme of Delegation be amended to add the new powers and duties conferred by the Smoke and Carbon Monoxide Alarm (England) Regulations to the Head of Resident Services' delegations, in order to provide effective delegation to officers to operate the regulations.

2 Background

- 2.1 The Smoke and Carbon Monoxide Alarm Regulations came into force on 1 October 2015. The Regulations are to be enforced by the Local Housing Authority i.e. Swale BC.
- 2.2 These regulations require that smoke alarms are provided in most privately rented housing and, where there is a solid fuel combustion appliance, a carbon monoxide alarm is also required.

- 2.3 The alarms are to be tested at the start of each new tenancy to ensure they are working, and thereafter the government believes the tenant should take some responsibility for routine testing. But if during the tenancy the alarms develop a fault or the date expire, it remains the responsibility of the landlord to replace them under the regulations.
- 2.4 As part of the implementation of the regulations, joint presentations have taken place throughout Kent by the Fire & Rescue Service, which included the distribution of free alarms supplied by the Government to help promote the new regulations. Swale's presentation took place at the Landlord Forum on 27 October 2015.
- 2.5 Where the Council has reasonable grounds to believe that there are no or insufficient number of alarms in the property as required by the regulations, they shall serve on the landlord a Remedial Notice, detailing the actions the landlord must take to comply with the regulations.
- 2.6 If after 28 days the landlord has not complied with the Remedial Notice, the Council must issue a Penalty Charge levied through a Penalty Charge Notice (PCN). The Council also has a duty to carry out work in default where the landlord does not carry out such remedial works.

3 Proposal

- 3.1 The Council is required to prepare and publish a Statement of Principles which the Council proposes to follow in determining the amount of the penalty charge. Attached in Appendix I is the proposed Statement of Principles, as part of a wider policy statement about how the regulations will be applied in Swale, including the level of penalty charge levied.
- 3.2 Under the regulations it is expected that most landlords will comply and only a small proportion of Private Sector interventions will result in fines being levied. The level of fine must include a punitive element for failure to comply, and be of sufficient level to encourage compliance of the Regulations.
- 3.3 Therefore, the main principles taken into account when setting the charge will be:
- the level of penalty should cover the cost of all the works in default, officer time, recovery costs, an administration fee, and a fine.
 - repeated offences should attract a higher penalty in view of continuing disregard for legal requirements and tenant safety; and
 - the Council considers 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.
- 3.4 Given these principles, it is recommended that the following penalty scheme is adopted:

	Level of PCN	Reduction for prompt payment
First offence	£1,500	£1,000
Second offence	£2,500	None
Third and subsequent offence	£5,000	None

3.5 A review of these penalties will be undertaken once enough cases have been dealt with to form an accurate picture of the costs of administration and the deterrent effect of the potential penalty, but in any case in enough time to inform the annual review of fees and charges for the 2018/19 financial year.

3.6 It is also recommended that the Scheme of Delegation be amended to add the new powers and duties conferred by the Smoke and Carbon Monoxide Alarm (England) Regulations to the Head of Resident Services' delegations, in order to provide effective delegation to officers to operate the regulations.

4 Alternative Options

4.1 There are broadly three alternative options.

4.2 **Option 1:** Charge a higher amount or the maximum penalty of £5,000 in all cases. This approach would be open to challenge on appeal to the Tribunal that the amount is unreasonable, which would be hard to defend.

4.3 **Option 2:** Charge a lesser amount or not charge a fixed penalty at all. However, this approach may risk not covering work in default expenses and would discourage compliance with the regulations.

4.4 **Option 3:** Give no reduction or lesser amount for initial offence. There are merits in offering a reduced fine for first offence, as set out in principles above, both in ensuring future compliance and reducing staff time in recovering the fine without redress to court action.

5 Consultation Undertaken or Proposed

5.1 Landlords were informed of the new legislation at the landlord forum held in October 2015, and our accredited landlords have been consulted on the proposed Statement of Principles.

6 Implications

Issue	Implications
Corporate Plan	This Policy supports the aim of the Corporate Plan to make Swale a Community to be proud, by working to help communities to be safe.
Financial, Resource and	The Regulations will be enforced using the existing resources of the Private Sector Housing Team.

Property	<p>The Regulations place a duty on the Council to take remedial action where a landlord fails to install prescribed alarms.</p> <p>The cost of installation cannot be directly recovered from the landlord, but a Penalty Charge Notice can be issued to offset the costs. Given the low cost of compliance to the landlord against the potential significant penalty for non-compliance, the number of penalty charge notices is expected to be low.</p> <p>Therefore the implementation of the Regulations is not expected to have significant financial implications for the Council, and the cost of works in default will be met by the penalty charge.</p> <p>A small grant of £835 has been received from DCLG to assist in the enforcing of these regulations in 2016/17.</p>
Legal and Statutory	As set out in the report.
Crime and Disorder	None .
Sustainability	None.
Health and Wellbeing	The Regulations will help reduce risk of serious injury as early warning will allow a longer evacuation period.
Risk Management and Health and Safety	None specific.
Equality and Diversity	None specific.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Proposed Statement of Principles

8 Background Papers

8.1 Smoke and Carbon Monoxide Alarm Regulations 2015 can be viewed at www.legislation.gov.uk/ukdsi/2015/9780111133439/contents

Smoke and Carbon Monoxide Alarm Regulations 2015: Proposed Statement of Principles

Under the regulations it is expected that most landlords will comply and only a small proportion of Private Sector interventions will result in fines being levied. The level of fine must include a punitive element for failure to comply, and be of sufficient level to encourage compliance of the Regulations.

Therefore, the main principles taken into account when setting the charge will be:

- the level of penalty should cover the cost of all the works in default, officer time, recovery costs, an administration fee, and a fine.
- repeated offences should attract a higher penalty in view of continuing disregard for legal requirements and tenant safety; and
- the Council considers 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.

Level of Penalty Charge

Should the Landlord not comply with a remedial notice then the Penalty Charge shall be set as follows:

	Level of PCN	Reduction for prompt payment
First offence	£1,500	£1,000
Second offence	£2,500	None
Third and subsequent offence	£5,000	None

Note: Penalties apply in relation to the same dwelling.

Recovery of Penalty Charge

The Council may recover the penalty charge as laid down in the regulations i.e. on the order of a court, as if payable under a court order.

Review in relation to a penalty charge notice

The Landlord can request in writing that the local authority review the penalty charge notice.

The request for a review must be made within 28 days, beginning with the day on which the penalty charge notice was served.

The Head of Resident Services, in consultation with the Cabinet Member for Housing (or Member substituted by him/her), will consider any representation, and decide whether to confirm, vary or withdraw the penalty charge notice.

Appeals

A landlord who is served with a notice confirming or varying a penalty charge may appeal to the First-tier Tribunal against the local authority's decision.