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## **THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015**

To: **Cabinet – 16 June 2016**

Main Portfolio Area: **Community Services**

By: **Richard Hopkins, Housing Regeneration Team Leader**

Classification: **Unrestricted**

Ward: **All wards**

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**Summary:** Thanet District Council is now under a statutory duty to enforce new regulations which make certain requirements relating to the provision and maintenance of smoke and carbon monoxide alarms in privately rented homes. This report seeks the agreement of Cabinet to adopt the necessary enforcement arrangements.

### **For Decision**

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#### **1.0 Introduction and Background**

- 1.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the Regulations”), made under the Energy Act 2013 and the Housing Act 2004, introduced new enforcement responsibilities for Thanet District Council (“the council”).
- 1.2 Since 01 October 2015, private sector landlords have been required to ensure that at least one smoke alarm is installed on every storey of each of their rented properties, and that a carbon monoxide alarm is installed in any room which contains a solid fuel burning appliance. They are also required to ensure that such alarms are in proper working order at the start of each new tenancy.
- 1.3 As the enforcing authority for the Regulations, the council has the following statutory duties:
- Where it has reasonable grounds to believe a relevant landlord is in breach of the Regulations, it must, within 21 days, serve a notice on the landlord requiring remedial action within 28 days; and
  - Where it is satisfied that, on the balance of probabilities, a relevant landlord has failed to comply with such a notice, it must arrange for remedial action to be taken (i.e. the fitting of alarms appropriate to the premises concerned).
- 1.4 Under the Regulations, the council may impose a penalty charge of up to £5,000 on any landlord who does not comply with a remedial notice. Penalty charge notices must be served within six weeks of the date the council first becoming satisfied of non-compliance. The council is not under an obligation to impose such a penalty, but the Regulations make no other provision for the recovery of the costs associated with undertaking remedial works. The Regulations require the council to prepare and publish a statement of principles which it proposes to follow in determining the amount of any penalty charge.

## **2.0 The Current Situation**

- 2.1 The Regulations came into force on 01 October 2015. Prior to that date there was no mandatory requirement for landlords to ensure that all privately rented homes were fitted with smoke alarms or carbon monoxide alarms. However, the council could, following an inspection, require the installation of such alarms by way of enforcement action under the Housing Act 2004 where necessary.
- 2.2 On 30 September 2015, the council, in partnership with Kent Fire & Rescue Service, held a landlord event to help promote the Regulations. Free smoke alarms and carbon monoxide alarms were provided to local landlords and agents to help them become compliant with the Regulations.
- 2.3 Enforcement arrangements now need to be put in place to ensure that the council's enforcement duties under the regulations can be met.

## **3.0 Proposed Statement of Principles and Schedule of Penalty Charges**

3.1 The proposed Statement of Principles is as follows:

- Fires and carbon monoxide have the potential to cause serious injury and death.
- Non-compliance with The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ("the Regulations") is a serious matter.
- Therefore, Thanet District Council will impose penalty charges in accordance with the Regulations.
- Penalty charges should be proportionate to the potential harm arising from non-compliance.
- No penalty charge may exceed the statutory maximum of £5,000.
- Penalty charges should be punitive in nature and not just cover the cost of remedial works, officer time, recovery expenses and administration.
- All penalty charges should represent a significant financial deterrent.
- In the interests of proportionality, the first penalty charge notice served on a landlord should be at a lower level than that for any subsequent penalty charge notice served on the same landlord.
- In order to encourage prompt payment, the penalty charge should be subject to a 50% discount if paid within 14 days of the service of the penalty charge notice.

3.2 The proposed Schedule of Penalty Charges is as follows:

- First penalty charge notice: £2,500 (or £1,250 if paid within 14 days of the date of service of the notice).
- Any subsequent penalty charge notice served on a landlord who has previously been subject to such a notice: £5,000 (or £2,500 if paid within 14 days of the date of service of the notice).

3.3 Most other Kent local authorities are currently in the process of developing and adopting their own enforcement arrangements. While there are some variances, it appears that the penalty charges proposed above will be closely aligned with the majority of Kent councils. Furthermore, in December 2015, the Chartered Institute of Environmental Health (CIEH) shared Leeds City Council's schedule of charges through its Housing Policy Bulletin. Leeds City Council has adopted identical charging arrangements to those proposed above. The proposed charges therefore appear to be reasonable in the circumstances, and not unduly excessive or lenient.

## **4.0 Options**

4.1 The available options are limited as the council is under a mandatory duty to enforce the Regulations. Therefore, delegated authority must be given to the appropriate officer of the council. However, the levels of penalty charges (if penalty charges are to be imposed) are at the council's discretion.

4.2 The options are:

- (i) To adopt the Statement of Principles set out in 3.1, together with the Schedule of Penalty Charges set out in 3.2; or
- (ii) To adopt an amended Statement of Principles and/or Schedule of Penalty Charges.

## **5.0 Corporate Implications**

### **5.1 Financial and VAT**

5.1.1 Enforcement of the Regulations is not expected to be excessively onerous; however, there will necessarily be resource implications. The Housing Regeneration Team is experienced in taking enforcement action in relation to private sector housing, and this work can fit alongside this team's existing responsibilities without the need for additional staffing.

5.1.2 If the proposed Schedule of Penalty Charges is adopted, any penalty charges received will more than cover the cost of any remedial action taken by the council. If the council decides not to impose penalty charges, it would need to fund any remedial works it is obliged to carry out from other sources. Such expenses are not currently in budget.

5.1.3 Any penalty charges received by the council may be used for any of its functions. However, it is not anticipated that there will be many fines issued, as the proposed penalty charges are likely to be a significant deterrent to landlords, and a penalty charge will only become payable when a landlord has failed to comply with a 28 day remedial notice. As such, the council should not expect to receive any regular income from the issuing of penalty charge notices under the Regulations.

### **5.2 Legal**

5.2.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 01 October 2015 and introduced new enforcement responsibilities for the council.

5.2.2 Regulation 4(1) imposes certain requirements on private sector landlords relating to the provision and maintenance of smoke and carbon monoxide alarms. Under Regulation 5, the council, as the local housing authority, has a duty to serve a remedial notice requiring remedial action on a landlord if it believes that landlord to be in breach of Regulation 4(1). If a landlord is in breach of a remedial notice, the council has, under Regulation 7, a duty to carry out the remedial action specified in the notice.

5.2.3 Where a landlord is in breach of a remedial notice, the council may, by virtue of Regulation 8(1), require that landlord to pay a penalty charge which must not exceed £5,000 (Regulation 8(2)). If it decides to make such a requirement it must, under Regulation 8(3), serve a penalty charge notice on the landlord, requiring payment of the penalty charge, within a period of not less than 28 days (Regulation 9(3)).

Regulation 9(2) allows the council to reduce the amount of a penalty charge if it is paid within 14 days.

5.2.4 Under Regulation 13, the council must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

### **5.3 Corporate**

5.3.1 Housing in the private sector should be properly managed and maintained in a safe condition. The installation of working smoke and carbon monoxide alarms significantly reduces the risk of serious injury or death in the event of hazardous occurrences. The enforcement of the Regulations therefore links to the following corporate priority:

- Priority 2: Supporting neighbourhoods – Ensuring local residents have access to good quality housing, which meets people’s changing needs and aspirations that is safe and affordable.

### **5.4 Equity and Equalities**

5.4.1 The Public Sector Equality Duty requires the council, in carrying out their functions, to have due regard to the need to achieve the objectives set out under section 149 of the Equality Act 2010. The objectives are to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.4.2 The Regulations apply to all relevant landlords in England, and the council has no discretion in this matter: they must be enforced. A decision to impose penalty charges, in accordance with the Regulations, is not expected to have any adverse impacts on the protected characteristics; however, enforcement of the Regulations is likely to benefit some groups residing in privately rented accommodation.

5.4.3 Persons from vulnerable groups can sometimes have limited housing choices. In particular, families with young children, older persons and those with a disability can find themselves in poorly managed rented accommodation. Enforcement of the Regulations is more likely to change circumstances in such accommodation, which will help safeguard the health and safety of many residents with protected characteristics.

### **6.0 Recommendations**

6.1 That Cabinet adopts the Statement of Principles set out in 3.1, together with the schedule of Penalty Charges set out in 3.2.

### **7.0 Decision Making Process**

7.1 This is a non-key decision.

Contact Officer:	Richard Hopkins, Housing Regeneration Team Leader, 01843 577402
Reporting to:	Bob Porter, Interim Head of Housing Services

## Annex List

None	N/A
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## Background Papers

Title	Details of where to access copy
None	N/A

## Corporate Consultation Undertaken

Finance	Nicola Walker, Finance Manager – HRA, Capital and External Funding
Legal	Ciara Feeney, Head of Legal Services & Deputy Monitoring Officer
Communications	Hannah Thorpe, Head of Communications