

Item No.	Classification: Open	Date: 3 May 2019	Meeting Name: Cabinet Member for Finance, Performance and Brexit
Report title:		Implementing Fixed Penalty Notices Under the Smoke and Carbon Monoxide Alarm Regulations 2015	
Ward(s) or groups affected:		All wards	
From:		Director of Environment	

RECOMMENDATIONS

1. To approve the adoption of the Private Sector Housing – Enforcement Policy Smoke and Carbon Monoxide Alarm (England) Regulations Statement of Principles, in Appendix 1 of this report for use by the duly authorised officers.
2. To delegate authority to the Strategic Director of Environment and Leisure for enforcement of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
3. To delegate authority to the Strategic Director of Environment and Leisure to make minor amendments to the enforcement policy and statement of principles in appendix 1 to reflect any legal changes by way of regulations and/or guidance.

BACKGROUND INFORMATION

4. The regulations place a duty on the Local Authority (LA) to serve a remedial notice requiring the installation of smoke or carbon monoxide alarms. If the landlord does not comply with the notice a fixed penalty of up to £5,000 can be issued and the remedial works carried out by the LA in the landlord's default.
5. Regulation 13 requires the LA to prepare and publish a Statement of Principles to be followed in determining the amount of such a penalty charge.

KEY ISSUES FOR CONSIDERATION

6. The primary aims of financial penalties must be to:
 - a) recover the Council's costs in carrying out the necessary remedial work, under Regulation 7,
 - b) lower the risk to tenant's health & safety & wellbeing by ensuring that the property in question benefits from basic early warning in the event of a fire,
 - c) promote compliance of landlords in the Private Rented Sector,
 - d) eliminate any financial gain or benefit from non-compliance with regulation,
 - e) educate Landlords on the associated risks of non-compliance,
 - f) be proportionate to the nature of the breach of legislation and the risk posed and,
 - g) aim to prevent future non-compliance.

7. In determining the amount of the penalty charge the Regulations require the LA to consider:
 - a) the nature of the breach of the Regulations and,
 - b) continued, or repeat, breaches of the Regulations.

Criteria for the imposition of a penalty charge.

8. In deciding whether it would be appropriate to impose a penalty charge, the LA must take full account of the particular facts and circumstances of the regulation breach under consideration including:
 - a) The extent to which the circumstances giving rise to the contravention were within the control of the landlord.
 - b) The presence or absence, of internal controls or procedures on the landlord's part which were intended to prevent the breach.
 - c) The steps that the landlord has taken since being served with the remedial notice.
 - d) Whether the landlord has been obstructed in his duty, or if tenant removal of alarms has occurred.
 - e) Evidence provided that supports compliance with a Remedial Notice, (this may include a signed inventory at the start of a tenancy, or photographic evidence showing alarms installed, with a date & time stamp).

Criteria for determining the amount of a penalty charge

9. The penalty charge comprises two parts;
 - a punitive element for failure to comply with the absolute requirement to comply with a remedial notice, and
 - a cost element relating to costs incurred by the Council in complying with its duties.
10. Costs incurred by the Council could include time spent with; investigating, surveying, contacting relevant parties, administration and any remedial works arranged and carried out by the Council's contractors.
11. The Regulations set a maximum penalty charge of £5000. In determining an appropriate charge the LA must consider that it is:
 - a) proportional to the breach,
 - b) includes costs incurred by the LA in taking remedial action following non-compliance (including officer time and the cost of contractor supervision),
 - c) whether or not the breach is a landlords first breach and,
 - d) whether justified representations have been made to the LA to formally review the penalty charge imposed, under Regulation 10.
12. The Council's 'Statement of Principles' is set out in Appendix 1 of this report and takes into account all of the key issues for consideration above. The 'Statement of Principles' will form part of the Council's wider enforcement policy.
13. If the 'Statement of Principles' in appendix 1 is adopted, the Regulatory Services enforcement policy will be amended to reflect these changes, additionally the Council's website will be updated with detailed information including:

- the Enforcement Policy and ‘Statement of Principles’, and
- hyper-links to all relevant information such as the original legislation and information regarding landlords’ responsibilities.

Identified Risks and how they will be managed

14. A consequence of changes in enforcement is a likely increase in complaints about the service and formal appeals against FPNs to the First Tier Tribunal. This is to be expected and policy and procedures will be developed by the service to ensure all actions are taken in accordance with legislative requirements.
15. A further risk is the potential difficulty of recovering the financial penalties from some of the offenders as they may be limited liability companies and/or have no financial assets from which to recover the monies. However, the Council will use appropriate legal processes in order to recover as much debt as possible.

Policy implications

Southwark’s Housing Strategy to 2043

16. In January 2015 the long term housing strategy for the borough was agreed by cabinet. It contains a vision for the future of housing in the borough which consists of 4 principles:
 - Principle 1: We will use every tool at our disposal to increase the supply of all kinds of homes across Southwark;
 - Principle 2: We will demand the highest standards of quality, making Southwark a place where you will not know whether you are visiting homes in private, housing association or council ownership;
 - Principle 3: We will support and encourage all residents to take pride and responsibility in their homes and local area;
 - Principle 4: We will help vulnerable individuals and families to meet their housing needs and live as independently as possible.
17. Principle 2 of the strategy makes specific reference to improving conditions in the private rented sector. There is a commitment to ‘crack down on rogue landlords and letting agencies’ and ‘taking a zero tolerance approach to landlords where the health and safety and welfare of tenants are put at serious risk’.
18. The Council Plan 2018/19- 2021/22 presents a set of commitments with an overarching aim of delivering Southwark’s vision of a fairer future for all. The enforcement of the Smoke and Carbon Monoxide Alarm Regulations 2015 in line with the Enforcement Policy will support the Council Plan’s theme of “a place to call home” by driving up standards through addressing poor housing conditions, bad management and targeting rogue and criminal landlords.

Community Impact Statement

19. The ability to enforce the installation of basic fire and carbon monoxide alarms in single family properties would be another essential enforcement tool in addition to our existing policy to take action against all landlords who fail to ensure their properties are up to standard. It will raise the profile of the commitment to improve standards in private rented properties and the Council's robust approach to enforcement. This will have a positive impact on the wider community as it is recognised that an increase in decent home is linked to improved communities, reducing crime and improving educational achievement.

Equality Analysis

20. Poor housing has been identified as a health inequality, which adversely impacts on the health of vulnerable groups, and it is accepted that the ability to live in appropriate housing is key to other aspects of wellbeing. The private rented sector, can house many lower income households, vulnerable adults and families with children. Traditionally, the most disenfranchised sectors of the community are accommodated within this sector. The proposals are part of a wider enforcement policy which seeks to improve the quality of accommodation for occupiers in the private rented sector, reduce the impact on the wider community and make our expectations and enforcement of the conditions clear and transparent.
21. The Equalities Impact Assessment is provided in Appendix 2.

Resource Implications

22. The policy will be applied with existing staffing resources so there are no additional resources needed. Its adoption aims to target activity and create more efficient ways of working.
23. Although the regulations place an obligation to carry out any remedial works in the owners default the fixed penalty is designed to cover the council's costs of enforcement.

Legal implications

24. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 No. 1693. The Regulations are made in exercise of the powers conferred by section 150(1) to (6) and (10) of the Energy Act 2013 and paragraph 3(a) of Schedule 4 to the Housing Act 2004 which came into force on 1 October 2015.
25. The Regulations place a duty on Landlords, including freeholders and leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing and certain types of tenancies set out in the Schedule to the Regulations.
26. The Regulations also places a duty on the Council to enforce the Regulations and ensure that suitable detection is fitted into the premises. The duty requires that Landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contain a solid fuel burning appliance.

For tenancies starting from 1 October 2015:

- that checks are made by the landlord, or someone acting on his behalf, that the alarm (s) is/are in proper working order on the day the tenancy starts.
27. Where the Council believe that a Landlord is in breach of one or more of the above duties, the Council must serve a Remedial Notice on the Landlord under Regulation 5. The Remedial Notice will provide a list of remedial works to direct the Landlord on how to comply with his duty. If the Landlord then fails to take the remedial action specified in the Remedial Notice within specified timescale, the Council must do the works in default; additionally the Council can require a Landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of these Regulations.
 28. A Landlord will not be considered to be in breach of their duty to comply with the remedial notice, if he can demonstrate he has taken all reasonable steps to comply a Landlord can make written representations to the Council within 28 days of when the Remedial Notice is served to explain how he feels he has made all reasonable steps.
 29. The Council may impose a penalty charge where it is satisfied, on the balance of probabilities, that the Landlord has not satisfactorily completed the remedial works specified in the Remedial Notice within the required timescale.
 30. Landlords have the right to appeal against fixed penalties. These appeals are heard and determined by the First-tier Tribunal (FTT). There is a lack of certainty around decisions that will be made by the FTT when they consider an appeal against the imposition of a fixed penalty as this is a new piece of legislation. The FTT will have the power to quash, confirm, increase or reduce the fixed penalty.
 31. The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success. Grounds for appeal are restricted to:
 - a) the decision to impose the penalty, or
 - b) the amount of the penalty.

Financial implications

32. The overriding objective of the penalties is to act as an effective deterrent to landlords and encourage compliance with the necessary standards. The introduction of the financial penalty regime will potentially result in additional income to the council. However, any income will need to cover the cost to the council in carrying out the remedial works in the landlord's default. It is difficult to assess the financial impact arising from the adoption of the policy at this stage.
33. The financial impact of the adoption will be monitored on a regular basis as part of the departmental revenue monitoring process. Any additional income received from

the issue of civil penalties will be used to support the council's statutory functions in relation to enforcement activities covering the private rented sector.

Consultation

34. No consultation is necessary.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

35. The decision being requested falls in accordance with part 3B of the Constitution.

36. The adoption of this new enforcement policy is an operational decision.

Strategic Director of Finance and Governance (EL18/049)

37. The strategic director of finance and governance notes the recommendations in this report that the adoption of the Smoke and Carbon Monoxide Alarms Regulations Enforcement Policy and Statement of Principles be approved for use by the Private Rented Sector Housing Enforcement Team and to delegate authority to the Chief Officer for enforcement of the Smoke and Carbon Monoxide Alarms (England) Regulations 2015.

38. The strategic director of finance and governance services notes the resource and financial implications contained within the report. The strategic director also notes the potential of additional income to the council from the adoption of the policy should be offset by the fixed penalty although it is difficult to assess at this stage.

39. The cost of officer time to effect the recommendation should be recovered within the fixed penalty and should not impact the existing budgeted revenue resources.

BACKGROUND DOCUMENTS

40. There are no background documents.

APPENDICES

No.	Title
Appendix 1	Private Sector Housing Enforcement Policy - Smoke and Carbon Monoxide Alarm Regulations 2015 Statement of Principles
Appendix 2	Equality Analysis

AUDIT TRAIL

Lead Officer	Mick Lucas, Director of Environment	
Report Author	Emma Trott, Private Sector Housing Enforcement & Licensing Manager, Regulatory Services	
Version	Final	
Dated	23 April 2019	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		23 April 2019