

CABINET – 23 SEPTEMBER 2015

THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

Report of the Executive Director of Commercial Development

1. Purpose of the Report

- i) To seek approval to amend the Council's Constitution for the following purpose:

to authorise the Executive Director of Commercial Development to exercise the Council's full enforcement powers under the Draft "Smoke and Carbon Monoxide Alarm (England) Regulations";
- ii) to ensure that the Council, as Local Housing Authority, is able to undertake its statutory duties in relation to the said Regulations; and
- iii) To seek approval for the statement of principles which the local authority will follow in determining the amount of a penalty charge related to a breach of the Smoke and Carbon Monoxide Alarm (England) Regulations.

2. Description of Decision (Recommendations)

- 2.1 That Cabinet recommend to Full Council that the Council's Delegation to Chief Officers in Part 3 of the Constitution be amended as follows as from the date upon which the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 come into force:-

Section 2 – Executive Director of Commercial Development - Paragraph 2.46 to be amended to read as follows:- "To exercise the functions of the Council under the Building Act 1984, the Public Health Acts 1936 and 1961, Caravan Sites and Control of Development Act 1960, Environmental Protection Act 1990, Health and Safety at Work etc Act 1974, Local Government (Miscellaneous Provisions) Acts 1976 and 1982, Prevention of Damage by Pests Act 1949, and *The Smoke and Carbon Monoxide Alarm (England) Regulations 2015* in so far as they relate to housing conditions and to the management of housing."

- 2.2. It is recommended that Cabinet approve the statement of principles which the local authority will follow in determining the amount of a penalty charge related to a breach of the Smoke and Carbon Monoxide Alarm (England) Regulations.

3. Introduction/Background

- 3.1 Under the Office of the Chief Executive's Delegation Scheme, the authorisation of enforcement action in respect of housing standards and enforcement is delegated to the Executive Director of Commercial Development to ensure that operational enforcement decisions can be made efficiently and in the public interest.

- 3.2 In March 2015, the Government laid before Parliament the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requiring all private sector landlords from October 2015 to ensure that working smoke alarms and in some cases carbon monoxide alarms are installed in privately rented properties. It is estimated that this will prevent 26 deaths and 670 injuries each year across England. It is noted that people are 4 times more likely to die in a fire in the home if there is no working smoke alarm. These regulations come with strong support after a consultation into conditions in the private rented sector. The Regulations - made under section 150(1)-(6) and (10) of the Energy Act 2013 and paragraph 3(a) of Schedule 4 to the Housing Act 2004 - will, subject to Parliamentary approval, come into force on 1 October 2015.
- 3.3 The Regulations will require private landlords to ensure that there is a working smoke alarm installed on each storey of a privately rented home, that a working carbon monoxide alarm is in place in each room containing a solid fuel burning combustion appliance and to check that appropriate alarms are in working order at the start of each tenancy. There are approximately 15,000 privately rented properties in Sunderland with no precise data of how many of these have working smoke alarms on every storey. It is estimated that nationally 90% of properties in the private rented sector have one or more smoke alarms. If this were applied to Sunderland that would equate to 1500 properties without any form of smoke alarms. It is unclear though whether those who have smoke alarms, would have working smoke alarms on each storey. It is estimated that there are very few properties containing a solid fuel burning combustion appliance that would require a carbon monoxide alarm.
- 3.4 The Regulations will be enforced by Local Housing Authorities who must serve remedial notices on those landlords in breach of their duty to comply. In any case where a landlord fails to comply with a remedial notice, the Authority must, if the necessary consent is given by the occupier of the premises, arrange for remedial action to be taken. It may also require the landlord to pay a civil penalty charge of up to £5000.
- 3.6 Each of England's 46 fire and rescue authorities are expected to support private landlords in their own areas to meet their new responsibilities with the provision of free alarms, with one off grant funding from government. The Tyne and Wear area Fire and Rescue Authority have 8000 alarms to distribute and fit for landlords.

4. Current Position

- 4.1 The Constitution requires updating to enable the Executive Director of Commercial Development to exercise additional powers in relation to The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 once those Regulations have been brought into force.

Part 3, Section 2 of the Constitution – Executive Director of Commercial Development – requires paragraph 2.46 to be amended to read as follows:- “To exercise the functions of the Council under the Building Act 1984, the Public Health Acts 1936 and 1961, Caravan Sites and Control of Development Act 1960, Environmental Protection Act 1990, Health and Safety at Work etc Act 1974, Local Government (Miscellaneous Provisions) Acts 1976 and 1982, Prevention of Damage by Pests Act 1949, and *The Smoke and Carbon Monoxide Alarm (England) Regulations 2015* in so far as they relate to housing conditions and to the management of housing”.

- 4.2 Practical enforcement of The Smoke and Carbon Monoxide Alarm (England) Regulations will be undertaken by the Housing and Neighbourhood Renewal Team. The team is working with the Tyne and Wear Fire Authority to ensure that landlords are aware of the proposed regulations and to facilitate the distribution and fitting of smoke and carbon monoxide alarms where they are required pre October 2015. The Local Housing Authority is working with the Communications Team to get the key messages to landlords and managing agents and to sign post them to the Fire Authority if they require smoke or carbon monoxide alarms fitted.
- 4.3 Once the Regulations are approved (proposed to be 1 October 2015), it will be the duty of the Local Housing Authority to serve a remedial notice within 21 days where it has reasonable grounds to believe that a relevant landlord is in breach of the Regulations. The landlord has 28 days to comply and if the landlord does not comply with the remedial notice, the Local Housing Authority must arrange for an authorised person to take remedial action by undertaking the works in default and fitting the necessary alarms within a 28 day period. The Authority may require the landlord to pay a penalty charge which must not exceed £5000 and it must prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. There is a right of appeal to the First-Tier Tribunal for any landlord who is required to pay a penalty charge.
- 4.4 Sunderland Local Housing Authority will require the landlord to pay a penalty charge. A statement of principles to determine the amount of a penalty charge is attached at Appendix A and this will be published. The local authority may revise its statement of principles and where it does so, it must publish the revised statement. The reason that landlords will be required to pay a fixed penalty charge is because the local housing authority has a duty to arrange remedial action and works in default. These costs will need to be recovered. Additionally, the landlord will have already been aware of their breach and given at least 49 days to comply. Penalty charges are only for landlords who refuse to co-operate with the local housing authority even after they have been aware of their breach. The costs will cover the works in default, officer time, administration charges, recovery costs and a fine. The landlord will be able to appeal to the local housing authority and then to a First-tier Tribunal against the local housing authority's decision.
- 4.5 The conditions within the licences for Houses in Multiple Occupation will also be reviewed and revised if necessary to bring them in line with the new regulations. This will only apply to licences granted on or after 1 October 2015.

- 4.6 The regulations exclude student halls of residence, hostels and refuges, care homes, hospitals and hospices and other accommodation relating to healthcare provision.

5. Reasons for the Decision

- 5.1 To ensure that the Executive Director of Commercial Development is authorised to exercise all necessary operational enforcement powers under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 in respect of smoke and carbon monoxide alarms.
- 5.2 To ensure that the Local Housing Authority is able to undertake its statutory duty to serve remedial notices, to arrange remedial action and serve penalty charge notices.

6. Alternative Options

There are no viable alternative options to ensure the Council is able to exercise its full statutory enforcement powers in respect of smoke and carbon monoxide alarms as it is a statutory duty.

7. Impact Analysis

- (a) **Equalities** - the new regulations would not discriminate against any residents in Sunderland under protected characteristics as they apply to all tenants in privately rented properties covered by the regulations. See attached Equality Impact Assessment at Appendix 2.
- (b) **Privacy Impact Assessment** – there are no foreseen privacy risks. Landlords and tenants will be made aware of the new regulations through a national public marketing campaign by the Fire and Rescue Service and a local campaign by the Council. It is anticipated that Landlords will be written to through the Housing Benefits Team to make them aware of their duties under the new Regulations and asking them to contact the Fire Authority. Landlords are classed as businesses for data protection purposes but their addresses will not be given to the Fire Service or advertised publically.
- (c) **Sustainability** – the regulations have no significant impact on sustainability or the environment.
- (d) **Reduction of Crime and Disorder – Community Cohesion / Social Inclusion** – there are no implications for crime and disorder, community cohesion or social inclusion

8. Other Relevant Considerations / Consultations

- (a) **Co-operative Values** – The decision ensures that the tenants within the private rented sector have equitable measures with regard to smoke and carbon monoxide alarms as owners of newly built properties under Building Regulations. Landlords will have responsibility for having alarms and maintaining them.

- (b) (i) Financial Implications** – There are no major financial implications for the Council as the smoke and carbon monoxide detectors will be either provided by the Fire Authority via a grant from Government or paid for by private landlords. The enforcement will be undertaken by existing members of the Housing and Neighbourhood Renewal Team. If a landlord does not comply with a remedial notice, the Local Housing Authority (or its agent) has a duty to undertake the work in default. Normal cost recovery mechanisms will be used.
- (ii) Risk Analysis** – There are 15,000 privately rented homes in Sunderland. Within the existing resources of the Housing and Neighbourhood Renewal Team it is not possible to visit every property to ensure that they are complying with the new regulations. Inspections will be made in “hot spot” areas and during day to day work such as requests for service from tenants and accreditation inspections. There is a risk that there will still be properties within this sector which do not have adequate protection and could lead to loss of life. It is however, the landlords’ responsibility and not the Council’s to ensure adequate protection. Marketing campaigns will be undertaken to mitigate this risk so landlords in the private rented sector are aware of their duties with regards to the new regulations.
- (iii) Employee Implications** – The enforcement duties of the Local Housing Authority will be undertaken within the existing resources of the Housing and Neighbourhood Renewal Team. This will be undertaken within normal day to day work and in “hot spot” areas but does not allow for proactive monitoring and inspection of all 15,000 properties within the private rented sector.
- (iv) Legal Implications** – The Head of Law and Governance has been consulted with regard to the new Regulations.
- (v) Policy Implications** – The Council’s Housing and Neighbourhood Renewal Team Enforcement Policy will be revised to include the new regulations.
- (vi) Implications for Other Services** – There are no implications on other parts of the Council but the Housing and Neighbourhood Renewal Team is working with the Communications Team to relay the key messages to landlords and tenants. The Acting Director of Public Health has been consulted and the Housing and Neighbourhood Renewal Team will explore any links with the City’s Accident Prevention Group.
- (vii) The Public / External Bodies** – The Tyne and Wear Fire and Rescue Authority has been consulted. The key duties within the new regulations have also been communicated to landlords and tenants.

9. Glossary

No acronyms or abbreviations have been used in this Report that have not been written out in full.

10. List of Appendices

Appendix 1 – Statement of Principles – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Appendix 2 Equality Impact Assessment

11. Background Papers

“The Smoke and Carbon Monoxide Alarm (England) Regulations 2015”
<http://www.legislation.gov.uk/ukdsi/2015/9780111133439/contents>