

NOTIFICATION OF DECISION TAKEN – FOR PUBLICATION

PLEASE NOTE: THIS FORM MUST BE HAND DELIVERED TO THE DEMOCRATIC SERVICES TEAM WITHIN 1 WORKING DAY OF THE DECISION BEING TAKEN.

FOR USE WITH ALL PORTFOLIO AND OFFICER KEY DECISIONS

Decision taken by: Cllr. Daniel Anderson, Cabinet Member for Environment

Summary of Decision Taken Including reasons

Setting of the level of Penalty Charge Notices under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

1. To agree the level of penalty charge for a breach under the Regulations of £1,550 (full cost recovery) for the first offence, £2,500 for the second and £5,000 for the third and subsequent offence.
2. To agree NOT to adopt an early payment option for a penalty charge notice to reflect the seriousness of a breach under the Regulations.
3. To delegate authority to the Head of Regulatory Services to review penalty charge notices on representation from a landlord in accordance with Section 10 of the Regulations and to confirm, vary or withdraw the penalty charge notice following such review.
4. To approve the 'Statement of Principles' (Appendix 1) required to be published.

PLEASE SPECIFY CATEGORY OF DECISION: Not Key
If Key, please quote the Forward Plan reference number: KD

Any alternative options considered and rejected:

Please refer to paragraph 4 of the main report.

Was the decision made in Part 1 or Part 2? If Part 2 please give the relevant paragraph of the Access to Information Act. **PART 1**

Interests Declared in Respect of the Decision (and by who):

N/A

NOTE: This form must be signed and dated by the decision taker(s) – see below:

The date specified will be taken as the date that the decision was made.

Signed



Cabinet Member for Environment

Cllr Daniel Anderson
PLEASE PRINT NAME

Signed



Director - Regeneration & Environment

Ian Davis
PLEASE PRINT NAME

Date 20 / 6 / 2016

MUNICIPAL YEAR 2015/2016 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:
Cabinet Member for Environment

REPORT OF:
Director – Regeneration & Environment

Agenda – Part: 1	KD Num: N/A
Subject: Setting of the level of Penalty Charge Notices under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015	
Wards: All	

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1. EXECUTIVE SUMMARY

- 1.1 In October 2015, The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ('The Regulations') came into force. This requires all private rented accommodation to have prescribed smoke and carbon monoxide alarms in place.
- 1.2 The Regulations allows Local Housing Authorities to impose a civil penalty charge for non-compliance with a remedial notice and to determine the penalty charge levels up to a maximum of £5,000. A lower amount may be also considered if the penalty is paid within 14 days – but authorities are not required to do so. (*Section 9(2) Regulations*).
- 1.3 The Council is required to publish a Statement of Principles which it proposes to follow in determining the amount of a penalty charge.

2. RECOMMENDATIONS

- 2.1 To agree the introduction of a penalty charge prescribed by new legal duties imposed on Local Housing Authorities from 1 October 2015.
- 2.2 To agree the level of penalty charge for a breach under the Regulations of £1,550 (full cost recovery) for the first offence, £2,500 for the second and £5,000 for the third and subsequent offence.
- 2.3 To agree NOT to adopt an early payment option for a penalty charge notice to reflect the seriousness of a breach under the Regulations.
- 2.4 To delegate authority to the Head of Regulatory Services to review penalty charge notices on representation from a landlord in accordance with Section 10 of the Regulations and to confirm, vary or withdraw the penalty charge notice following such review.
- 2.5 To approve the 'Statement of Principles' (Appendix 1) required to be published.

3. BACKGROUND

3.1 Legal requirements

- 3.1.1 Local Housing Authorities have an obligation to enforce certain statutory minimum standards in housing, and have powers to exercise that function. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 places a responsibility on private sector landlords to ensure that from 1 October 2015;
- i. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.
 - ii. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance (such as a coal fire, log burning stove etc), and
 - iii. Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the new tenancy begins.
- 3.1.2 Officers in the Housing Enforcement Team, Regulatory Services will be responsible for ensuring compliance.
- 3.1.3 The Regulations do not stipulate the type of alarm to be installed (such as hard wired or battery operated). Landlords are required to make an informed decision and choose the best alarm for their tenants and premises.
- 3.1.4 The legislation applies to a tenancy or licence granted to one or more persons having the right to occupy the premises as their only or main residence. Exceptions include providers of social housing, live-in landlords, landlords of long leases (7 years or more), for those premises that are already subject to mandatory licensing, such as licensing of HMOs and discretionary licensing schemes, and others.
- 3.1.5 The Regulations place responsibility on Local Housing Authorities to ensure compliance and to take enforcement action. Guidance issued by the DCLG in September 2015 sets out the enforcement process. This includes the issue of a Remedial Notice specifying the actions the landlord must take to comply with the Regulations within 28 days. If this is not adhered to, the authority will be required to carry out the works in default (if the occupier consents) and may issue a Penalty Charge Notice up to a maximum of £5,000.
- 3.1.6 The landlord is entitled to make written representation within 28 days from the Penalty Charge Notice being served. In accordance with Section 10 of the Regulations, a review of the penalty charge notice

must be carried out by the authority to confirm, vary or withdraw the Penalty Charge Notice. If a landlord is still dissatisfied with the Council's decision following a review of the penalty charge notice, the landlord may then appeal to the First-tier Property Tribunal against the Council's review decision. An appeal to a Property Tribunal can only take place following a Council review and once the decision to vary or confirm the penalty charge has been given. Such an appeal must show that the review decision was factually incorrect, was wrong in law or was unreasonable, as set out in Regulation 11.

3.2 Setting the Penalty Charge Levels

3.2.1 The Regulations permits Local Housing Authorities to impose a penalty charge and to determine the amount up to a maximum of £5,000. They may also specify a second, lower amount to be paid if the penalty is paid within 14 days, but are not required to do so.

3.2.2 The Regulations do not specify what must be taken into account when setting the level of a penalty charge; only setting the maximum amount of £5,000. The guidance to the Regulations emphasise that the imposition of a penalty charge is the only means of recovering enforcement costs incurred. Therefore, in determining the amount, it is not unreasonable to consider the following;

- a) Any justifiable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of The Regulations, and as a minimum cover officer time and costs, preparation and service of a Remedial Notice and Penalty Charge Notice and;
- b) Cost or expected cost, of enforcing the provisions of The Regulations, including the recovery of the cost of works in default and legal costs associated with recovery of a penalty charge notice.
- c) An element of a punitive fine.

3.2.3 As part of The Regulations, the Local Housing Authority must publish a Statement of Principles which explains how the penalty charge amount has been determined. A Statement of Principles is provided in Appendix 1.

3.3 Level of Penalty Charge

3.3.1 A review of other Local Housing Authority penalty charge notice levels indicates a range of penalties from £500 to £5000 for first offence fines. Our approach in determining the penalty charge amount is considered proportionate and structured in a similar way for calculating current Penalty Charge Notices.

3.3.2 The proposed penalty charge of £1,550 covers the cost to the Council for intervention, remedial works carried out in default and enforcement. The charge for a second offence is set at £2,500 to cover costs and includes a punitive element of 61% of the 1st fine. A third or subsequent offence should attract the maximum fine of £5,000 to cover costs and includes a punitive element of 100% of the 2nd fine. This reflects the landlord's continued and persistent disregard for tenant safety and legal responsibility. The £2,500 and £5,000 penalty charge will only be imposed if the landlord fails in the first instance to comply with the remedial notice served, is served with a £1,550 penalty charge and then offends again by not providing carbon monoxide or smoke detectors.

The table below details the proposed penalty charge levels.

Offence	Level of Penalty Charge Notice
First	£1,550
Second	£2,500
Third or subsequent offence	£5,000

4. ALTERNATIVE OPTIONS CONSIDERED

This is a mandatory piece of legislation and there are no alternative options to consider on the new provisions. The only optional element is the whether to serve penalty charge notices; the penalty charge amount and whether to adopt an early payment option for a penalty charge.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Regulations must be enforced by the Local Housing Authority and the Council must publish a 'Statement of Principles' before commencing statutory enforcement.
- 5.2 We are required by the Regulations to undertake works in default if the occupier consents. If we fail to impose a penalty charge, the Council will be unable to recover any costs incurred from enforcing a breach of the Regulations. The Council cannot prosecute the landlord for non-compliance with the remedial action notice.
- 5.3 It is envisaged the process for issuing a penalty charge notice for a breach of the Regulations to be the same as for other offences for which the Council currently issues penalty notices.
- 5.4 The penalty charge is considered justifiable and proportionate. The structured and increasing level reflects a landlord's continued and persistent disregard for tenant safety and legal responsibility.

5.5 With regard to the option of setting a lower amount if the penalty is paid within 14 days, it should be remembered that a penalty notice would only have been issued following failure by the landlord to take the action require in the Remedial Notice. Therefore, the penalty therefore should full recover our costs and also act as a deterrent to non-compliance with the penalty charge notice. The setting of a lower amount for early payment may encourage payment but may not deter the unreasonable behaviour and would not cover our costs of administering the penalty notice.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 The Regulations place additional duties powers and powers on Local Housing Authorities. However, these will be delivered within existing resources.

6.1.2 The costs associated to dealing with breaches of the Regulations and Enforcement activity will be recovered through the financial penalty charges. It is considered that the proposed level of penalty charges will cover the costs incurred by the Council and contain an incremental punitive element to penalise the landlord for non-compliance.

- The proposed charge of £1,550 for the 1st offence is set at full cost recovery (Appendix 2),
- Followed by £2,500 for the 2nd offence (including 61% punitive charge of the 1st offence).
- Followed by £5,000 for the 3rd offence (including 100% punitive charge of the 2st offence).

Penalty Charge Notices - under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015				
		1st Offence	2nd Offence	3rd Offence
		£1,550	£1,550	£2,500
Punitive Charge	61%		£950	
Punitive Charge	100%			£2,500
Total PCN		£1,550	£2,500	£5,000

6.1.3 It isn't possible to estimates the expected PCN income as a result of the proposed fines. But any income/fines will be monitored and reported in the monthly financial monitoring returns.

6.2 Legal Implications

In accordance with the Regulations the issuing of a Civil Penalty Notice must be given / issued by an authorised officer of the Council. Enforcement officers are already authorised to enforce this legislation under the existing scheme of delegation. Any new enforcement officers will also be authorised to enforce this legislation.

6.3 Property Implications

None

7. KEY RISKS

- 7.1 No significant risks have been identified. The appeal provisions within the Regulations place the Council at no greater risk than the appeal provisions of other types of notices regularly served by the Council.
- 7.2 Landlords can ask for a review to be undertaken of the penalty charge notice served. The charge has been calculated in a way that is deemed reasonable to ensure that we cover the expected costs in administering and enforcing the remedial notice and penalty charge notice, plus an incremental punitive element for first, second and third and subsequent offences up to the statutory maximum of £5,000.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

- 8.1.1 The Regulations place a legal obligation on landlords to install prescribed smoke and carbon monoxide alarms from 1 October 2015. This will increase the protection and safety of all residents living in the private rented sector.
- 8.1.2 The Government has funded local fire and rescue authorities to purchase a limited number of alarms for free distribution to landlords and offer appropriate installation advice. Landlords will be advised to contact the local fire and rescue service for further information on how to obtain an alarm.

8.2 Growth and Sustainability

Application of this legislation will contribute towards creating safer accommodation for all residents living in private rented sector.

8.3 Strong Communities

Application of this legislation will contribute towards creating safer accommodation for all residents living in private rented sector.

9. EQUALITY IMPACT IMPLICATIONS

- 9.1 Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

None

11. HEALTH AND SAFETY IMPLICATIONS

None

12. PUBLIC HEALTH IMPLICATIONS

- 12.1 Working alarms save lives. In the event of a fire in a home, occupants are at least four times more likely to die if there is no working smoke alarm.
- 12.2 Civil Penalty Notices are intended to deal with those landlords who persistently disregard their legal obligations and ignore their tenant's safety and protection. Effective use of Penalty Notices will provide greater protection for those residents living in the private rented sector.

Background Papers

None

Appendix 1

Statement of Principles

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

1. Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ('The Regulations') introduces the following requirements on landlords to ensure that from 1 October 2015, when the premises are occupied under that tenancy that;

- i. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation. (A bathroom or lavatory is to be treated as a room used as living accommodation)
- ii. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance, and
- iii. Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the new tenancy begins (*and when the tenancy is renewed or if an existing assured tenancy lapses into a statutory periodic tenancy*).

2. Purpose of the 'Statement of Principles'

This statement sets out the principles that Enfield Council will apply in exercising its powers under The Regulations to impose a penalty charge on a relevant landlord who fails to comply with a remedial notice and breaches one or more of the duties imposed on them under The Regulations.

The Regulations require the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

The Council may revise its statement of principles and, where it does so, it must publish the revised statement.

3. The Regulations Framework

The Regulations provide that where the Council is satisfied, on the balance of probabilities, that the landlord on whom it has served a remedial notice is in breach of his duty under The Regulations, the Council may require the landlord to pay a penalty charge of an amount the Council may determine.

The Regulations state the amount of the penalty charge must not exceed £5,000.

The Regulations also state, where the council decides to impose a penalty charge, the Council must serve a penalty charge notice on the landlord, within six weeks of

the Council first being satisfied that the landlord is in breach of his duty under the regulations.

4. Enforcement - Remedial Notices and Penalty Charges

Where the Council has reasonable grounds to believe that a landlord is in breach of The Regulations by failing to;

- Provide suitable and sufficient smoke and carbon monoxide alarms; and/or
- Ensure the detectors were working at the start of a new tenancy,

The Council must serve on the landlord a Remedial Notice in a method prescribed in the Regulations, detailing the actions the landlord must take to comply.

The landlord has a 28 day compliance period to act in accordance with the Remedial Notice or show they have taken all reasonable steps to comply, in which case the notice can be suspended or revoked.

Where the Council is satisfied, on balance of probabilities that a landlord on whom it has served a Remedial Notice is in breach of their duties under The Regulations, the Council must take remedial action to install a prescribed alarm/s, repair or ensure an existing installed alarm/s are in proper working order.

A penalty charge, determined by the Council may also be levied on a landlord for failure to comply with a Remedial Notice. A penalty charge of up to £5,000 may be imposed.

5. Principles followed in determining the amount of a Penalty Charge

In determining the level of a penalty charge amount, the Council has considered a charge comprising the costs relating to the following;

- Officer time and costs to investigate and serve a Remedial Notice and Penalty Charge Notice
- Cost of carrying out remedial works in default
- Legal costs to recover a penalty charge amount
- Administration costs associated with the above processes
- An element of a punitive fine

The Council considers repeat offences should attract a progressively higher penalty in view of the continuing disregard for legal requirements and tenant safety.

Penalty Charge Notices - under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015				
		1st Offence	2nd Offence	3rd Offence
Punitive Charge	61%	£1,550	£1,550	£2,500
Punitive Charge	100%		£950	£2,500
Total PCN		£1,550	£2,500	£5,000

6. Level of Penalty Charge Amount

The level of the penalty charge shall be set at £1,550 for the first offence. Should the landlord not comply with future Remedial Notices then the fine shall be set according to the table below:

Offence	Level of Penalty Charge Notice
First	£1,550
Second	£2,500
Third or subsequent offence	£5,000

7. Reviews and Appeals against a Penalty Charge Notice

A review or appeal is determined on the balance of probabilities. A landlord can request a review within 28 days of the Penalty Charge Notice being served. In conducting the review, the Council will consider any representations made by the landlord and serve notice of its decision to the landlord, whether to confirm, vary or withdraw the penalty charge notice. If a landlord is still dissatisfied with the Council's decision following a review of the penalty charge notice, the landlord may then appeal to the First-tier Property Tribunal against the Council's review decision.

An appeal to a Property Tribunal can only take place following a Council review and once the decision to vary or confirm the penalty charge has been given. Such an appeal must show that the review decision was factually incorrect, was wrong in law or was unreasonable, as set out in Regulation 11.

The penalty charge notice cannot be enforced until the Appeal has been heard and disposed of.

8. Recovery of a Penalty Charge

The Council may recover the penalty charge as set out in The Regulations, and payable on the order of a Court

Recovery proceedings may not be started before the end of the period by which a landlord may give written notice for the Council to review the penalty charge notice and where a landlord subsequently appeals to the First-tier Property Tribunal against the Council's decision on review.

9. Review of the Statement of Principles

The Statement of Principles will be uploaded on the Council's website and will be reviewed approximately every 3 years, or as the need arises.

**PCN Charge Calculations
(Smoke and CO Alarms Regs 2015)**

PCN Charges Calculator :

P	Costs 2015-2016	Time (hours)	Rate/hr	Cost £
Administrative Costs				
P1	Housing Enforcement officer time to investigate breach	2	£54.97	£109.94
P2	Land Registry Search request	1	£45.80	£45.80
P3	Land Registry Search Fee			£ 75.00
P4	Admin costs; telephone calls; dealing with correspondence; Notices			£ 50.00
Housing Enforcement Investigation				
P4	Carrying out inspection on the premises & preparing a schedule of works	3	£54.97	£164.90
P5	Drafting of Remedial Notice	1	£54.97	£54.97
P6	Service of Remedial Notice	1	£54.97	£54.97
P7	Inspection to confirm compliance	1	£54.97	£54.97
P8	Drafting of PCN	1	£54.97	£54.97
P9	Service of PCN	1	£54.97	£54.97
Appeals				
P10	Costs associated in dealing with an appeal	4	£67.58	£ 270.33
P11	Review of appeal by Team Manager/ HOS	2	£67.58	£ 135.16
Works in Default				
P12	Administrative costs - 20% of the total cost of works (min charge £50)			£ 50.00
P13				£ -
Legal Action to recover PCN charge				
P14	Administrative work relating to demand for payment & associated recovery costs of PCN	4	£45.80	£ 183.22
Punitive Element				
P15	Fixed rate for breach			£ 100.00
P16	Cost of the smoke or CO detector in undertaking works in default (estimated)			£ 250.00
	Total cost			£1,553

Officer rates	
Admin officer	£45.80
Hsg Enf officer	£54.97
Manager (MM2)	£67.58

**PCN Charge Calculations
(Smoke and CO Alarms Regs 2015)**

	Cost apportioned to PCN=	
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**PCN Charge Calculations
(Smoke and CO Alarms Regs 2015)**

Sc6

S02

P02

