



**AGENDA ITEM: 25**

**COUNCIL: 24<sup>th</sup> February 2016**

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**Report of: Interim Director Community Services**

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**SUBJECT: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

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Wards affected: Borough wide

**1.0 PURPOSE OF THE REPORT**

1.1 To inform Council of the new duties and responsibilities placed on landlords and the Local Authorities under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and to put into place relevant arrangements.

**2.0 RECOMMENDATIONS TO COUNCIL**

- 2.1 That Council approves an amendment of the constitution 4.2D part (ix) Private Sector housing paragraph 18 (as outlined in Appendix 1) and authorises the Interim Director (Community Services) and officers designated by him to implement the Regulations.
- 2.2 That the Council agrees that landlords, on receipt of a Remedial Notice under the Regulations can make their written representation to the Interim Director of Community Services who will thereafter determine what (if any) action is required and notify the landlord of the decision in accordance with the Regulations.
- 2.3 That the Council agrees that landlords seeking a review of a Penalty Charge Notice under the Regulations can do so in writing to the Interim Director of Community Services who will thereafter determine what (if any) action is required and notify the landlord of the decision in accordance with the Regulations.
- 2.4 That the Council agrees that the Interim Director of Community Services, in consultation with the portfolio holder can, on behalf of the council prepare and publish the 'Statement of principles' which it proposes to follow in determining the amount of a penalty notice.
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### **3.0 BACKGROUND**

- 3.1 From October 2015 landlords in the private rented sector in England are required to ensure that a smoke alarm is installed on every storey of their rented dwelling when occupied under a tenancy, and that a carbon monoxide alarm is installed in any room which contains a solid fuel burning combustion appliance.
- 3.2 The landlord must test the alarms on the first day of the tenancy, after which the tenants are expected to take responsibility for their own safety and test all alarms regularly to make sure they are in working order. Testing monthly is generally considered an appropriate frequency for smoke alarms. If tenants find that their alarm(s) are not working it is the Landlords responsibility to repair or replace them.
- 3.3 The Regulations also amend the conditions which must be included in the licences for Houses in Multiple Occupation under Part 2 or 3 of the Housing Act 2004 (“the 2004 Act”) in respect of smoke and carbon monoxide alarms.
- 3.4 West Lancashire Borough Council is the enforcing authority and is required to serve a remedial notice on a relevant landlord where they have reasonable grounds to believe the landlord has not complied with any one of the duties set out above. A landlord who is in breach of a duty must comply with the remedial notice and if they fail to do so within 28 days of the notice being served, the local housing authority is placed under a duty (where the occupier consents) to arrange remedial action.
- 3.5 The local housing authorities are able to impose a penalty charge of up to £5000 on landlords who are in breach of their duty to comply with the remedial notice. Where a local housing authority intends to impose a penalty, it must give written notice of its intention to do so (a “penalty charge notice”). The landlord is required within the specified period, to pay the penalty charge or request a review.
- 3.6 A person served with a penalty notice may appeal to the First-Tier Tribunal if it is confirmed or varied by a local housing authority after a review. If an appeal is lodged the penalty cannot be enforced until the appeal is disposed of.
- 3.7 The penalty will be enforceable on the order of a court, and where proceedings are necessary for the recovery of the penalty, a certificate signed by the local authority’s Chief Finance Officer stating that the amount due has not been received by a date stated on the certificate, will be taken as conclusive evidence that the penalty has not been paid.
- 3.8 Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

### **4.0 PROPOSAL**

- 4.1 The proposed amendment to the Scheme of Delegation (Constitution 4.2D) (subject to Council’s agreement) reflects a delegation of authority to the Interim Director of Community Services and officers designated by him, to implement the

Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as outlined below:

- to act as Inspectors;
- to undertake the service and signing of notices;
- to authorise remedial work;
- to consider and determine any representations and objections;
- To set and impose the penalty charge for non-compliance (to a maximum of £5000);
- To prepare and publish the 'Statement of Principles' which the Local Authority will follow in determining the amount of a penalty charge;
- To recover the monetary penalty through a certificate signed by the Chief Finance Officer;
- To deal with any Appeal to a First Tier Tribunal (if necessary).

## **5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **6.0 FINANCIAL AND RESOURCE IMPLICATIONS**

6.1 The Local Authority will be under a duty to undertake works required by a Remedial Notice in cases where a landlord fails to take the appropriate action.

6.2 The Local Authority will need to ensure that the penalty charge notice is sufficient to cover the costs of the works and the administration and legal fees.

6.3 The Penalty charge must also be sufficient to act as a deterrent to landlords.

6.4 Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

6.5 The cost of implementing these regulations and in particular the cost of default works is unknown but it is anticipated that this will be cost neutral as the income generated through Penalty Charges should cover the cost of the default works

## **7.0 RISK ASSESSMENT**

7.1 The legal duty to carry out the functions contained in the Regulations provides an opportunity for the Council to increase its enforcement powers in relation to private sector housing standards. There is also the opportunity to generate income as the Council is able to set the level of the Penalty Charge Notice.

7.2 If the recommendations are not agreed, the Council would be in breach of the duty to enforce the Regulations. The level set for the Penalty Charge Notice should be carefully considered as the Council may be subject to First Tier Tribunal scrutiny if the level is deemed to be too disproportionate to the actual cost incurred by the Council.

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## **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report;

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Other references include:

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

[http://www.legislation.gov.uk/ukdsi/2015/9780111133439/pdfs/ukdsi\\_9780111133439\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2015/9780111133439/pdfs/ukdsi_9780111133439_en.pdf)

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Explanatory Booklet for Local Authorities

(September 2015 Department for Communities and Local Government)

<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-local-authorities>

These documents are published so can be found using the web links provided.

## **Equality Impact Assessment**

There is a direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required.

A formal equality impact assessment is attached as **Appendix 2** to this report, the results of which have been taken into account in the Recommendations contained within this report

## **Exempt Information**

There is no exempted information in this report.

## **Appendices**

Appendix 1

Suggested amendment to the Constitution

Appendix 2

Equality Impact Assessment

## Appendix 1

Amendment of the constitution 4.2D part (ix) Private Sector housing paragraph 18  
(note; the added amendments are in bold)

To administer relevant provisions, give authorisations, directions, serve notices, enforce, carry out work in default, raise and recover charges, **to set and impose penalty notice charges, to review and determine penalty charges where representations are made;** issue formal cautions and to lay information and complaints to Court in relation of offences in appropriate cases under the following enactments and any Act or Acts extending or amending the same or incorporating them and under any order of regulations made upon the said Act or Acts:

Public Health Act (s) 1936 and 1961  
Caravan Sites and Control of Development Act 1960  
Caravan Sites Act 1968  
Local Government Act 1972  
Local Government (Miscellaneous Provisions) Acts 1976 and 1982  
Building Act 1984  
Housing Act 1985  
Housing Act 2004 (with effect from the appropriate enactment dates for each  
Section of the Act)  
Local Government and Housing Act 1989  
Environmental Protection Act 1990  
Housing Grants, Construction and Regeneration Act 1996  
Protection from Eviction Act 1977  
Home Energy Conservation Act 1995  
Local Government Act 2000  
Regulations Reform (Housing Assistance) (England and Wales)  
Order 2002  
Town and Country Planning Act 1990 (Sections 215, 216 and 219)  
Enterprise and Regulatory Reform Act 2013  
**The Energy Act 2013** -The Smoke and Carbon Monoxide Alarm  
(England) Regulations 2015 (only)

Note - 'The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 have been implemented by The Secretary of State, in exercise of his powers conferred by section 150(1) to (6) and (10) of the Energy Act 2013(1)



**Appendix 2**

# Equality Impact Assessment Form



<b>Directorate: Community Services</b>	<b>Service: Private Sector housing</b>
<b>Completed by: Lucy Weston</b>	<b>Date: 3<sup>rd</sup> Dec 2015</b>
<b>Subject Title:</b>	

<b>1. DESCRIPTION</b>	
Is a policy or strategy being produced or revised:	<i>*delete as appropriate</i>
	No
Is a service being designed, redesigned or cutback:	
	No
Is a commissioning plan or contract specification being developed:	No
Is a budget being set or funding allocated:	No
Is a programme or project being planned:	No
Are recommendations being presented to senior managers and/or Councillors:	Yes
Does the activity contribute to meeting our duties under the Equality Act 2010 and Public Sector Equality Duty ( <b>Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations</b> ):	No
Details of the matter under consideration:	

*If you answered **Yes** to any of the above go straight to Section 3*  
*If you answered **No** to all the above please complete Section 2*

<b>2. RELEVANCE</b>	
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	<i>*delete as appropriate</i>
	Yes
If <b>Yes</b> , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered <b>Yes</b> go to Section 3</i>	Any service users requesting property inspections of Private Rented Properties can expect the new legal duties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to be enforced and implemented.
If you answered <b>No</b> to both Sections 1 and 2 provide details of why there is no impact on these three groups: <i>You do not need to complete the rest of this form.</i>	

<b>3. EVIDENCE COLLECTION</b>	
Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	Landlords and Tenants of Private Rented Properties and the Local Authority, who will be under a legal duty to comply with and implement the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
If the work being carried out relates to a universal service, who needs or uses it most? (Is there any particular group affected more than others)?	Not applicable
Which of the protected characteristics are most relevant to the work being carried out? Age Gender Disability Race and Culture Sexual Orientation Religion or Belief Gender Reassignment Marriage and Civil Partnership Pregnancy and Maternity	Not applicable <i>*delete as appropriate</i> Yes/No* Yes/No* Yes/No* Yes/No* Yes/No* Yes/No* Yes/No* Yes/No* Yes/No*
<b>4. DATA ANALYSIS</b>	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	Private rented tenants to ensure their landlords provide smoke and carbon monoxide monitors as required under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
What will the impact of the work being carried out be on usage/the stakeholders?	No additional impact to the current Private Sector Housing inspections
What are people's views about the services? Are some customers more satisfied than others, and if so what are the reasons? Can these be affected by the proposals?	Those who are aware of the service have been in contact. If we promote the new regulations we will target those properties which are most vulnerable such as HMOs / student accommodation.
What sources of data including consultation results have you used to analyse the impact of the work being carried out on users/stakeholders with protected characteristics?	None These regulations will be implemented alongside all other regulations enforced in the Private Rented Sector.
If any further data/consultation is needed and is to be gathered, please specify:	None
<b>5. IMPACT OF DECISIONS</b>	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	The provision of the service is not related to any particular protected characteristics



<b>6. CONSIDERING THE IMPACT</b>	
If there is a negative impact what action can be taken to mitigate it? (If it is not possible or desirable to take actions to reduce the impact, explain why this is the case (e.g. legislative or financial drivers etc.).	There will be no negative impact, these should only be positive impacts associated with implementing these new regulations
What actions do you plan to take to address any other issues above?	No actions <i>If no actions are planned state no actions</i>
<b>7. MONITORING AND REVIEWING</b>	
When will this assessment be reviewed and who will review it?	This service is statutory enforcement so will delivered according to need, not protected characteristics – so equality will not be reviewed