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| <b>Report of:</b> | Director of Adult Social Care and Healthcare Integration<br>Mayor Andy Preston, Executive member for Adult Social Care and Public Health |
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| <b>Submitted to:</b> | Single Executive Member Meeting October 5 <sup>th</sup> , 2021 |
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|                 |   |
|-----------------|---|
| <b>Subject:</b> | To seek approval for the Statement of Principles for the penalty charge structure associated with the enforcement of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 |
|-----------------|---|

**Summary**

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| <b>Proposed decision(s)</b>  |
| Approval of the proposed Statement of Principles for the penalty charge structure for the enforcement of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, in accordance with the Financial and Contractual Procedure Rules. |

| <b>Report for:</b> | <b>Key decision:</b> | <b>Confidential:</b>              | <b>Is the report urgent?<sup>1</sup></b> |
|--------------------|----------------------|-----------------------------------|--|
| Decision           | Yes                  | This is not a confidential report | No                                       |

| <b>Contribution to delivery of the 2018-22 Strategic Plan</b>   |  |   |
|---|--|---|
| <b>Business Imperatives</b>   | <b>Physical Regeneration</b>   | <b>Social Regeneration</b>  |
| The proposals in the report will ensure that the council operates efficiently and effectively, so that physical and social regeneration outcomes are maximised. | The proposals will ensure that housing standards are enforced in Middlesbrough to provide safe housing for residents | Effective enforcement of smoke and carbon monoxide alarm regulations will have a positive impact on our communities and the lives of Middlesbrough residents. |

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| <b>Ward(s) affected</b>   |
| This will affect all wards, ward members have not been consulted. |

<sup>1</sup> Remove for non-Executive reports

## **What is the purpose of this report?**

1. The purpose of the report is to seek approval for the proposed Statement of Principles for the penalty charge structure for offences committed by landlords under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

## **Why does this report require a Member decision?**

2. This report falls within the Terms of Reference of this Committee as the policies proposed will impact on all wards within the Borough and represents a change in the approach to Housing enforcement policy, which requires a Member decision.

## **Report Background**

3. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced an obligation for all landlords to provide a smoke alarm, at the start of the tenancy, on each storey of their tenanted accommodation, where there is a room used as living accommodation. There is also a requirement for a carbon monoxide alarm to be fitted in any room used as living accommodation which contains a solid fuel burning combustion appliance. Landlords must ensure the alarms are in proper working order at the start of any new tenancy.
4. When Local Authority officers carry out inspections of privately rented residential accommodation they check that a smoke and carbon monoxide alarm is provided, in accordance with the Regulations. Where a landlord fails to comply with the Regulations the local authority must serve a remedial notice on the landlord. This notice gives the landlord a period of 28 days in which to comply. The landlord can make representation to the council during this time.
5. After 28 days if the landlord has not complied with the remedial notice, and not made representations, the local authority must arrange for the remedial works to be carried out, with the consent of the occupier.
6. The Regulations provide Local Authorities with a power to charge up to £5000 for offences when a landlord has failed to comply with a remedial notice. The level of penalty charge shall be determined having regard to the cost of the works in default, officer time, recovery costs, an administration fee and a fine. It is considered that repeated offences should attract a progressively higher penalty.
7. The Regulations require local housing authorities to publish a Statement of Principles which it proposes to follow in determining the amount of penalty charge. (Appendix 1)
8. The proposed penalty charge is in line with those adopted by neighbouring local authorities. It is proposed that the penalty charge shall be set at £1000 for the first offence, to be reduced to £750 if paid within a 14 day period. Should the landlord not comply with further remedial notices then the fine shall be set according to the table below

| <b>Offence</b> | <b>Fine (£)</b> |
|----------------|-----------------|
| First          | 1000            |
| Second         | 2000            |
| Third          | 3000            |
| fourth         | 4000            |
| Fifth or more  | 5000            |

9. The landlord can request, in writing within 28 days of issue, that the local authority reviews the penalty charge. The local authority must consider this and decide whether to confirm or vary the charge. The landlord can then appeal the local authority's decision to the First Tier Tribunal.
10. Failure to pay a penalty charge will result in action by the local authority to recover the penalty charge on the order of a court.
11. Cleveland Fire Brigade provide a service in Middlesbrough and neighbouring authorities where they will install free smoke alarms and carbon monoxide detectors in privately rented properties, when requested by landlords or tenants or when referrals are made by others such the local authority or a Selective Landlord Licensing team. Referral to the Fire Service has provided an effective means to ensure that smoke alarms are installed in private rented properties.

#### **What decision(s) are being asked for?**

12. That the Executive Member approves the proposed Statement of Principles for the penalty charge structure for enforcement of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

#### **Why is this being recommended?**

13. Where the local authority has reasonable grounds to believe that an offence has been committed under the provisions of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, the local authority has a statutory duty to serve a remedial notice on the landlord. Should the landlord not comply with the remedial notice then the local authority may serve a penalty charge notice, the level of penalty charge is required to be locally determined and approved. The purpose of the penalty charge is to recover the cost of the enforcement action and to act as a deterrent to ensure that landlords provide and maintain smoke and carbon monoxide alarms in their properties to protect the safety of their tenants.
14. The Regulations require local housing authorities to publish a Statement of Principles which it proposes to follow in determining the amount of penalty charge
15. The proposed levels of penalty charge is consistent with other local authorities.

#### **Other potential decisions and why these have not been recommended**

16. The legislation places a statutory duty, since 1<sup>st</sup> October 2015, on local authorities to take action against landlords who fail to install smoke and carbon monoxide alarms correctly. To date regulatory action under this legislation has not been necessary as the free service provided by Cleveland Fire Brigade to landlords and tenants to install smoke and

carbon monoxide alarms has addressed any compliance issues. Whilst the Cleveland Fire Service free service will continue, it is important for Middlesbrough Council to have the option of using their regulatory powers, should it be considered necessary, and a statement of principles is required.

17. The authority could decide not to adopt a Statement of Principles, and maintain the current position. However should compliance issues arise requiring the service of a fixed penalty charge, this may be legally challenged on the basis that there is no Statement of Principles in place for the charging structure. This could undermine the legal process.

### **Impact(s) of recommended decision(s)**

#### ***Legal***

18. The Local Authority is responsible for enforcing The Smoke and Carbon Monoxide Alarm (England) Regulations 2015. Part 4 of the Regulations Part 4 enables local housing authorities to impose a civil penalty charge of up to £5000 on landlords who are in breach of their duty to comply with the remedial notice
19. Local housing authorities should be open and transparent regarding the civil penalty and must publish a statement of principles which they will have regard to when determining the amount of a penalty charge

#### ***Financial***

20. There will be minimal additional costs associated with implementing the Regulations relating to Smoke alarms and Carbon monoxide. Housing inspections are already being undertaken and action taken in relation to the absence of smoke alarms and carbon monoxide alarms. It is considered that the requirement to take enforcement action against landlords will be infrequent whilst Cleveland Fire Service continue to provide free smoke alarms, carbon monoxide alarms and home safety checks when requested. Contraventions of the regulations will be determined during the housing inspections which are currently carried out by existing officers. There will be some additional demand in relation to ensuring follow up by the Fire Service, however the additional resource implications to do this will be incorporated into existing functions. The penalty charge is calculated on a cost recovery basis together with a deterrent value incorporated.

#### ***Policy Framework***

21. The use of Smoke Alarm and Carbon Monoxide remedial notices are an enforcement tool which aim to contribute to the provision and access to high quality and safe homes. There would be no impact on the policy framework.

#### ***Equality and Diversity***

22. An Equality Impact Assessment has been completed and is attached to this report (Appendix 2). There will be no negative, differential impact on diverse groups and communities associated with this report.

## **Risk**

23. There is little or no risk associated with the implementation of this legislation. Fees have been calculated on the basis of officer time, the cost of default works and an associated fine. The level of penalty fees are consistent with neighbouring authorities

24. A decision not to approve the charging structure may result Middlesbrough Council being unable to issue penalty charge notices and unable to proceed with regulatory action regarding the provision of smoke and carbon monoxide alarms. Legal challenges may arise, reputational damage to the authority and potentially unsafe housing conditions.

## **Actions to be taken to implement the decision(s)**

25. The approved charging structure will be applied to all penalty charges issued to landlords who have failed to comply with the legislation.

## **Appendices**

Appendix 1 – Statement of Principles

Appendix 2 - Equality Impact Assessment

## **Background papers**

The following background papers were used in the preparation of this report;

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, explanatory booklet for local authorities, September 2015.

**Contact:** Claire Marshall / Judith Hedgley

**Email:** [claire\\_marshall@middlesbrough.gov.uk](mailto:claire_marshall@middlesbrough.gov.uk), [judith\\_hedgley@middlesbrough.gov.uk](mailto:judith_hedgley@middlesbrough.gov.uk)

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

### **Statement of Principles**

#### **Introduction**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced the following requirements for all landlords during any period beginning on or after 1<sup>st</sup> October 2015 when the premises are occupied under a specified tenancy;

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
2. 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
3. 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 tenancy begins if it is a new tenancy.

#### **Enforcement**

Where the Local Housing Authority ('the Authority') has reasonable grounds to believe that

1. There are no or an insufficient number of smoke alarms or carbon monoxide detectors in the property as required by the regulations or;
2. The smoke alarms or carbon monoxide detectors were not working at the start of a tenancy or licence

Then the Authority shall serve on the landlord in a method prescribed by the Regulations, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.

If after 28 days the landlord has not complied with the Remedial Notice, a Penalty Charge may be levied through a penalty charge notice.

#### **Principles to be followed in determining the amount of a Penalty Charge**

The Authority considers that a lesser penalty will be merited on the occasion of a first offence and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability and savings in administration costs.

The Authority considers the level of penalty should, however, as a minimum, cover the cost of all the works in default, officer time, recovery costs, and administration fee and a fine. Repeated offences should attract a progressively higher penalty in view of continuing disregard for legal requirements and tenant safety.

#### **Level of Penalty Charge**

The penalty charge shall be set at £1,000 for the first offence but this will be reduced to £750 if paid within a 14 day period.

Should the landlord not comply with future Remedial notices then the fine shall be set according to the table below;

| <b>Offence</b> | <b>Fine</b> |
|----------------|-------------|
| Second         | £2000       |
| Third          | £3000       |
| Fourth         | £4000       |
| Fifth          | £5000       |

No reduced payment will be offered for prompt payment after the first occasion.

#### Recovery of Penalty Charge

The local housing authority may recover the penalty charge as laid out in the regulations. Should court proceedings be necessary to recover outstanding penalty charges, then the Authority will also seek to recover all reasonably incurred court costs.

#### Appeals in relation to a penalty charge notice

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the authority review the penalty charge notice.

The Authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the authority's decision.

Appendix 2

**Equality Impact Assessment Level 1: Initial screening assessment**

|  |   |  |  |  |
|--|---|--|--|--|
| <b>Subject of assessment:</b>          | Enforcement of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015   |  |  |  |
| <b>Coverage:</b>                       | All properties in the private rented sector in Middlesbrough                    |  |  |  |
| <b>This is a decision relating to:</b> | <input type="checkbox"/> <b>Strategy</b>  | <input checked="" type="checkbox"/> <b>Policy</b>    | <input type="checkbox"/> <b>Service</b>  | <input type="checkbox"/> <b>Function</b> |
|  | <input checked="" type="checkbox"/> <b>Process/procedure</b>                    | <input type="checkbox"/> <b>Programme</b>            | <input type="checkbox"/> <b>Project</b>  | <input type="checkbox"/> <b>Review</b>   |
|  | <input type="checkbox"/> <b>Organisational change</b>                           | <input type="checkbox"/> <b>Other (please state)</b> |  |  |
| <b>It is a:</b>                        | <b>New approach:</b>  | <input checked="" type="checkbox"/>                  | <b>Revision of an existing approach:</b> | <input type="checkbox"/>                 |
| <b>It is driven by:</b>                | <b>Legislation:</b>   | <input checked="" type="checkbox"/>                  | <b>Local or corporate requirements:</b>  | <input type="checkbox"/>                 |
| <b>Description:</b>                    | Seek approval for the penalty charges associated with enforcement               |  |  |  |
| <b>Live date:</b>                      | Date of approval  |  |  |  |
| <b>Lifespan:</b>                       | Ongoing   |  |  |  |
| <b>Date of next review:</b>            | 12-18 months following implementation to ensure that the procedure is adequate. |  |  |  |



| Screening questions   | Response |                          |                          | Evidence   |
|---|----------|--------------------------|--------------------------|--|
|   | No       | Yes                      | Uncertain                |  |
| <b>Human Rights</b><br>Could the decision impact negatively on individual Human Rights as enshrined in UK legislation?  | √        | <input type="checkbox"/> | <input type="checkbox"/> | It is considered that the implementation of the policy will not have an unjustified or disproportionate adverse impact upon any of the groups affected by the enforcement.   |
| <b>Equality</b><br>Could the decision result in adverse differential impacts on groups or individuals with characteristics protected in UK equality law? Could the decision impact differently on other commonly disadvantaged groups?      | √        | <input type="checkbox"/> | <input type="checkbox"/> | It is considered that the implementation of the policy will not have an adverse differential impact on groups or individuals with characteristics protected in UK equality law, or other commonly disadvantaged groups |
| <b>Community cohesion</b><br>Could the decision impact negatively on relationships between different groups, communities of interest or neighbourhoods within the town?   | √        | <input type="checkbox"/> | <input type="checkbox"/> | It is considered that implementation of the policy will not have a negative impact upon the community.   |
| <b>Next steps:</b><br>➡ If the answer to all of the above screening questions is No then the process is completed.<br>➡ If the answer of any of the questions is Yes or Uncertain, then a Level 2 Full Impact Assessment must be completed. |          |                          |                          |  |

|                                 |                 |                         |                |
|---------------------------------|-----------------|-------------------------|----------------|
| <b>Assessment completed by:</b> | Claire Marshall | <b>Head of Service:</b> | Judith Hedgley |
| <b>Date:</b>                    | 26/07/2021      | <b>Date:</b>            | 26/07/21       |

\* Consult the Impact Assessment further guidance appendix for details on the issues covered by each of these broad questions prior to completion.