
REPORT FOR: CABINET

Date of Meeting:	19 November 2015
Subject:	New legislation affecting the Private Rented Sector
Key Decision:	Yes
Responsible Officer:	Venetia Reid-Baptiste, Divisional Director of Commissioning
Portfolio Holder:	Councillor Graham Henson, Portfolio Holder, Environment , Crime and Community Safety
Exempt:	No
Decision subject to Call-in:	Yes
Enclosures:	Appendix A – EQIA Appendix B – Statement of Principles Appendix C – Government Guidance regarding the Redress Scheme Appendix D – Government Guidance regarding the Smoke and Carbon Monoxide Alarm Requirements

Section 1 – Summary and Recommendations

In October 2014 The Redress Schemes for Letting Agents and Property Management Work (Requirement to Belong to a Scheme etc) Order 2014 came into force. This requires all letting and management agents to be a member of a redress scheme, acting essentially as an Ombudsman Scheme.

In October 2015 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force. This requires all rented accommodation to have prescribed

smoke and carbon monoxide detectors in place

Within each of these pieces of legislation is a penalty charge element for non-compliance. The Local Authority is responsible for enforcing these pieces of legislation and setting and collecting penalty charges.

Recommendations:

1. To note the requirements of the specified legislation
2. Agree the Statement of Principles and penalty charge of £5,000 for non-compliance of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015
3. Agree the introduction of a penalty charge up to £5,000 for the non-compliance to the Redress Schemes for Letting Agents and Property Management Work (Requirement to Belong to a Scheme etc) Order 2014
4. Delegate the Portfolio Holder to approve a concession policy regarding both schemes
5. Gives delegated authority to the Divisional Director to review the penalty charge imposed dependent on receipt of representation
6. Agree the issuing of a penalty charge where appropriate within the requirements of the legislation and the principles of enforcement.

Reason: (For recommendation)

The Council is obliged by these pieces of legislation to take action where they become aware of non-compliance. The council is permitted to set a suitable penalty to encourage compliance which will also recover the costs of enforcement.

Section 2 – Introduction and Background

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 2.1 On 1st October 2015, Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (hereinafter “the Regulations”) came into force.
- 2.2 The regulations put a requirement to have smoke detectors and carbon monoxide alarms in all private rented accommodation. Landlords are required to ensure that all detectors and alarms are in working order at the start of any tenancy.
- 2.3 While there are some exemptions under the legislation (for example, providers of social housing), the legislation applies to a tenancy or licence of residential premises which grants one or more persons the right to occupy premises as their only or main residence.

- 2.4 For those premises that require a licence already (Houses in Multiple Occupation subject to mandatory licensing and premises subject to Selective Licensing), the Regulations amend existing requirements to make compliance with the Regulations a mandatory requirement. Failure to comply with this condition would then be enforced under the specific licensing legislation (i.e. failure to meet a licence condition)
- 2.5 It is the responsibility of the Local Housing Authority to enforce the Regulations, and ensure compliance. This includes the use of a remedial action notice and, if that is not complied with, to carrying out the works in default. The Authority may require a landlord to pay a penalty charge where the landlord has been served with a remedial notice. The maximum penalty charge that may be applied is £5,000. This includes a recharge cost of officer time for dealing with each contravention.
- 2.6 As part of the Regulations, the Local Housing Authority have a requirement to publish a statement of principles that governs the penalty charge that may be issued. (**Appendix B**)

Alarm Types and Position

- 2.7 The legislation requires that a smoke alarm is fitted on each storey of the premise on which there is a room which is used wholly or partly as living accommodation. A lounge, dining room kitchen and toilet / bathroom all count as living accommodation for this purpose.
- 2.8 The requirements do not stipulate the type of alarm to be fitted, and it may be battery operated or hard wired. It is the view of many organisations, including the Residential Landlord Association (www.rla.org.uk) that the ideal situation would be for the alarm to be hard wired as this ensures its operation and prevents tampering. It is recognised that standalone battery operated alarms present the risk of batteries being taken out and not being replaced
- 2.9 With regards Carbon Monoxide alarms, from 1st October 2015 such an alarm must be fitted in any room within the premise which is used wholly or partly as living accommodation which contains a solid fuel burning combustion appliance. This can range from a wood burning stove to a solid fuel Aga cooker.
- 2.10 The current building regulations already impose the requirement for a carbon monoxide alarm in such circumstances, but this specific legislation applies retrospectively to those premises that were in place before the building regulation requirement came into force.
- 2.11 The landlord must ensure the alarms are in proper working order at the start of any new tenancy, and when the tenancy is renewed or if an existing assured shorthold tenancy lapses into a statutory periodic tenancy. There is an expectation (although this is not specifically legislated for in the Regulations) that regular checks to ensure compliance will be carried out during the course of the tenancy.

- 2.12 The Public Protection Service will also be working with insurance companies and landlords to ensure that the alarms that Landlords fit are in line with the requirements of their building insurance, to protect them.

The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (The Enterprise and Regulatory Reform Act 2013)

- 2.13 On 1st October 2014, The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (hereinafter “the Requirements”) came into force
- 2.14 The Requirements made it a mandatory requirement for any letting and management agent engaged in letting agency or property management work to become part of a Government approved redress scheme.
- 2.15 A redress scheme allows tenants and landlords dealing with agents in the private rented sector and leaseholders and freeholders dealing with property managers in the residential sector to be able to complain to an independent person about the service they have received. This will allow fair and impartial investigation of complaints.
- 2.16 There are 3 Government approved schemes operating. They are:
- a. The Property Ombudsman (www.tpos.co.uk)
 - b. Ombudsman Services (www.ombudsman-services.org)
 - c. Property Redress Scheme (www.theprs.co.uk)
- 2.17 Membership of such a scheme is annually renewed, and is subject to a fee. Most of these schemes will charge a registration fee, and a fee for each branch of the member organisation. Some of the schemes, for instance the Property Redress Scheme, also offer additional, enhanced services for further fees.
- 2.18 A penalty charge may be issued for non-compliance with the Requirements. This fine must not exceed £5,000. This includes a recharge cost of officer time for dealing with each contravention.
- 2.19 Under the Requirements, responsibility for enforcement and compliance rests with the local enforcement authority for the area. For Harrow, that means this Council. There is no discretion as to whether a council takes action where they become aware of non-compliance.

3 Options considered

Smoke and Carbon Monoxide Alarms

- 3.1 **Don't Agree the Penalty Charge and / or Statement**
The legislation would still need to be enforced, but any breach would not have a consequence for the landlord, as the Council will be unable to issue any penalty charge or recover costs, but would still be required to carry out remedial works. This is therefore not an option
- 3.2 **Agree a statement and penalty charge**
The maximum penalty charge is £5,000, but it is for the Authority to set the amount and issue a statement of principles which must be followed when determining the amount of the penalty charge.
- 3.3 The Council is the local housing authority and is therefore obliged by the Regulations to enforce them.

Redress Scheme

- 3.4 **Don't Agree the Penalty Charge**
The legislation would still be enforce, but with no ability of the Council to do so. This is therefore not an option
- 3.5 **Agree delegation and Maximum Penalty Charge Level**
A maximum penalty charge of £5,000 is provided for by the Requirements. It is for the enforcing authority to determine the penalty charge to be applied in the event of non-compliance with the Requirements.
- 3.6 The Council is the enforcing authority and is therefore obliged by the Requirements to enforce the redress scheme.

4. Enforcement Process

Smoke and Carbon Monoxide Alarms

Remedial Notices and Penalty Charges

- 4.1 The Department for Communities and Local Government issued guidance in September 2015 covering the Smoke and Carbon Monoxide Alarms (**Appendix D**). This Guidance clearly sets out the enforcement process.

- 4.2 If there are reasonable grounds for the Local Authority to believe a landlord is in breach of the provision to provide suitable and sufficient alarms, they must serve a remedial notice on the landlord.
- 4.3 There is a 28 day period of compliance from the day of serving, and it is for the landlord to show they have taken all reasonable steps to comply. A notice can be suspended or revoked, and it is expected that any suspension and reinstatement would lead to a new 28 day period being given for compliance.
- 4.4 If the Local Authority is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the notice within 28 days, they must arrange for remedial action to be taken where the occupier consents.
- 4.5 Remedial action can include installing a required alarm (or alarms), repairing an installed alarm or checking an installed alarm is in proper working order.
- 4.6 If a Landlord fails to comply with a remedial notice, a penalty charge of up to £5,000 may be imposed. A statement of principles (**Appendix B**) about how the civil penalty is reached must be produced by the Local Authority and published. The intent is to publish this on the Harrow website on approval.
- 4.7 Where a penalty charge is to be imposed for non-compliance, the landlord subject to the fine shall be notified in writing by a “penalty charge notice”. This notice shall include the reason for imposing the penalty; the premises to which it relates; the number and type of alarms the Council has installed at the premises; the amount of the penalty; details to make payment; and, details of the right to request a review and how to request it.
- 4.8 The Regulations set out no other method to recover the Council’s costs for any remedial works they have to carry out. Therefore, the penalty charge must take this into account and ensure that the Council recovers its costs.

Reviews and Appeals

- 4.9 While compliance with the Regulations is mandatory, the nature of any penalty charge and therefore any review and appeal, is determined on the balance of probabilities.
- 4.10 For the purposes of the Regulations, on consideration of any representation and evidence, the penalty charge notice can be confirmed, varied or withdrawn. This will be in line with the Council’s concession policy. Such a decision is confirmed by issuing a decision notice on the Landlord. If varied or confirmed, the notice shall state a further appeal can be made to a Residential Property Tribunal and further details given.

- 4.11 The concession policy shall be put in place to run in conjunction with the Private Sector Housing Enforcement Policy to ensure a clear, set out process for representations. Approval of such a policy is to be delegated to the Portfolio Holder, with further delegation to the Divisional Director to consider and amend any penalty charge on receipt of a representation in line with the concessions policy.
- 4.12 Any attempt to provide false information or be obstructive shall, in itself, be considered reason to seek the maximum fine allowable, and this will be covered in the concession policy.
- 4.13 An appeal can only take place following a review, and once the decision to vary or confirm the penalty charge notice has been given. Such an appeal must show that the review decision was factually incorrect, was wrong in law, or was unreasonable.
- 4.14 The penalty charge notice cannot be enforced until the Appeal has been heard and disposed of

Statement of Principles for Penalty Charges

- 4.15 The Regulations requires the Local Housing Authority to publish a statement of principles which it follows when determining a penalty charge.
- 4.16 For that purpose, a statement of principles is provided in **Appendix B** for consideration and approval. On approval, this would be published on the Council website, and also be made available on request to any party.
- 4.17 The statement of principles was produced by the West London Housing Group, consisting of Authorities including Kensington & Chelsea, Hackney, Hounslow and Hillingdon, and provides a consistent approach across authorities.

Penalty Charge

- 4.18 The Government has not set any guidance or requirement in terms of setting the level of the penalty charge, only putting in place a maximum £5,000
- 4.19 Any penalty charge levied will cover the cost of all works in default, Council costs and a fine element.
- 4.20 The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a Landlord, and the lack of compliance directly impacts the safety and security of tenants, especially those that are vulnerable and those with families.
- 4.21 It is understood that the imposition of the maximum potential fine, being £5,000 under the regulations, can present an excessive financial burden but this is balanced against the risk and the fact that

reasonable opportunity will have been given to the Landlord to comply prior to any penalty charge being levied.

- 4.22 As stated, the law gives flexibility to the landlord to choose the most appropriate alarm. Such alarms are readily available for purchase, with most not being above £20 for Carbon Monoxide and cheaper for smoke detectors.
- 4.23 Additionally, Fire Authorities continually run schemes that provide such detectors for free, which includes the current scheme:

<http://www.london-fire.gov.uk/freesmokealarms.asp>

Harrow Council has also worked with the Fire Brigade to promote this, as well as with Home Retail (Harrow Council Primary Authority company) to provide information about this in all London Homebase stores. The service will continue to work with the London Fire Brigade to promote fire safety.

Therefore failure to comply cannot be based on financial or legal burden

- 4.24 It is estimated by Government that a person is 4 times more likely to die from a fire with no smoke detector in place. Additionally, these regulations are estimated, in terms of smoke detectors, shall prevent 231 deaths and 5,860 injuries over 10 years, at a benefit to the economy of £606.7 million. In terms of Carbon Monoxide this is 6-9 fewer fatalities and 306-460 fewer injuries, at a saving of £16.8 million.
- 4.25 It is, unfortunately, recognised that the private rented sector is one area that such alarms are either lacking or not maintained. Due to the very nature of the sector, this presents an increased risk to families and the vulnerable. It is also an aspect recognised by the Courts, including a recent case where a £48,000 fine was levied for lack of adequate fire protection in a rented property¹
- 4.26 Regulation 9(2) allows a Local Housing Authority to put in place a discount. For the purposes of Harrow, and in line with the West London Group, a 50% discount is in place for payment within 14 days of request. This is set out within the Statement of Principles

Redress Scheme

- 4.27 The Department for Communities and Local Government issued guidance in October 2014 covering the redress scheme (**Appendix C**).
- 4.28 If the Council is satisfied, on the balance of probabilities that a letting agent or property manager has failed to join a redress scheme, then the Council may immediately issue a “notice of intent” to impose a penalty charge. This is because no remedial works are required or

¹ RBKC v Mr Zhang and Chelsea Residential, 2015

relevant (i.e. it is for the letting agent or property manager to join the scheme and not for the Authority to do so on their behalf)

- 4.29 It is the intention of the service to write to all persons / companies known of to inform them of the schemes and the potential penalties if they have not already complied. They will be requested to complete a form to tell the Authority which scheme they are part of. A 21 day period shall be set for them to reply with the information, with warning of the potential for a penalty charge to be imposed if the information is not forthcoming or they are not a member of a scheme.
- 4.30 If no details are received, a second letter giving a final 14 days to reply shall be sent out. This shall make it clear that any failure to comply or contact the Authority with details shall be taken as non-compliance with the Requirements on the balance of probabilities (i.e. if compliant, there is no reasonable reason not to provide the information). At this point, a notice of intention to impose a penalty charge shall be sent.

Reviews and Appeals

- 4.31 While compliance with the Requirements is mandatory, the nature of any penalty charge and therefore any review and appeal, is determined on the balance of probabilities.
- 4.32 If the letting agent or property manager does not agree with the penalty charge, they are able to request a review. It is proposed that this request, which must be in writing and within the time period specified on the Notice of Intent, is made to the Divisional Director.
- 4.33 For the purposes of the Requirements a 28 day period is given on issuing a notice of intention to serve a penalty notice to allow for any written representations or objections
- 4.34 At the end of 28 days, a decision will be made whether to issue a final notice to the letting agent or property manager, giving at least 28 days for payment to be made.
- 4.35 Any review by the letting agent or property manager takes into consideration any exceptional circumstances (e.g. proof of extreme personal hardship). The defence of not knowing the requirements of the legislation would not be sufficient for the charge to be waived or reduced.
- 4.36 A concession policy shall be put in place to run in conjunction with the Private Sector Housing Enforcement Policy to ensure a clear, set out process for considerations during representations. Approval of such a policy to be delegated to the Portfolio Holder, with delegation to the Divisional Director to consider and amend any penalty charge on receipt of a representation in line with the policy

- 4.37 Any attempt to provide false information or be obstructive shall, in itself, be considered reason to seek full payment, and this will be covered in the concession policy.
- 4.38 If a decision is made to seek payment following representation, a final notice shall be issued in line with the legal requirements, including reason to seek payment, the amount, how to pay and state a further appeal can be made to a Residential Property Tribunal and details given.
- 4.39 An appeal can only take place following a review, and once the decision to vary or confirm the penalty charge notice has been given. Such an appeal must show that the review decision was factually incorrect, was wrong in law, or was unreasonable (including for grounds of amount requested)
- 4.40 The penalty charge notice cannot be enforced until the Appeal has been heard and disposed of

Penalty Charge

- 4.41 The Government has not set any guidance or requirement in terms of setting the level of the penalty charge, only putting in place a maximum £5,000.
- 4.42 The Department of Culture and Local Government Guidance states “The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.”²
- 4.43 In terms of letting agents and property managers, it is imperative that the private sector is managed and regulated effectively to the benefit of all. While it is accepted that most seek to comply, there must be a strong message to encourage all to do so.
- 4.44 For this reason, and to protect landlords and tenants, a penalty charge of up to £5,000 shall be set, which is in line with Government Guidance³. Again, a 50% reduction is offered for early payment within 14 days but only where there has been no previous penalty charge.

Use and Review

- 4.45 It shall be noted that there is technically no limit to the amount of penalty charges that can be imposed for either piece of legislation. It is likely though, that after two such actions that enforcement would be escalated including potential prosecution. Ultimately it is about seeking compliance, and not continually penalising financially.

² <https://www.gov.uk/government/publications/improving-the-private-rented-sector-and-tackling-bad-practice-a-guide-for-local-authorities>

³ <https://www.gov.uk/government/publications/improving-the-private-rented-sector-and-tackling-bad-practice-a-guide-for-local-authorities> page 53

- 4.46 Both pieces of legislation allow for representation to be made on receipt of a penalty charge. These will be considered on their individual merits and circumstances, but any decision shall be in line with an approved concession policy. This will operate in line with the Private Sector Housing Enforcement Policy.

Implications of the Recommendation

5 Resources, costs and risks

- 5.1 Penalty Charges must not be seen as a potential source of generating income. Enforcement action must only be taken where it is appropriate to do so. The Council is at risk of being challenged where a disproportionate number of charges have been served inappropriately to generate income.
- 5.2 The recipient of the penalty charge notice has a right to review and appeal against the notice and the charge. A tribunal may make an order to reduce, quash or require repayment of any charges made.
- 5.3 No additional resources, including staffing, are required by the introduction of such schemes as the basis of enforcement is already in place. The requirement to provide alarms is now mandatory for any licensed premise, forming part of their conditions, and other rented premises will be inspected anyway for compliance to other hazards.
- 5.4 Ultimately the introduction of penalty charging will enable the Council to recover its costs from those that are responsible for failing to comply and allowing the service to maintain standards. It will also send out a strong message to all about the need to manage the private rented sector properly, and safely.
- 5.5 It is important to ensure that landlords are advised at the outset of the charging for any non-compliance, and the statement of principles (which will be published on the website) as well as details on the Remedial Notice will assist.
- 5.6 Letting Agents and Property Managers are to be written to, and the process of issuing a notice of intention will achieve the same outcome in terms of informing of the charge
- 5.7 As mentioned, the introduction of a charging regime will aid in getting early compliance to necessary works from landlords, letting agents and property managers, and encourage early engagement with Officers in achieving the set standards.
- 5.8 It should be noted that information about the requirements of the above legislation has been made available nationally. Within the Borough, Officers have also been informing Landlords through the landlord forum (April 2015) as well as when interacting with them during the normal course of their duties.

6 Staffing and workforce

- 6.1 No additional staffing is proposed as a result of implementing this legislation as it will be conducted as part of Officers' normal duties

7 Equalities Impact considerations

- 7.1 A separate equalities impact screening assessment has been completed for this report. The screening assessment followed the screening methodology recommended in the Councils Equalities Impact Assessment. The screening assessment did not conclude any adverse effect on any particular or recognised minority group and did not recommend that a full assessment.
- 7.2 Ultimately any scheme that aids in achieving basic level of compliance to remove residential hazards will be of benefit across all characteristics affected. This is particularly true in terms of this legislation and protecting the vulnerable

8 Legal Implications

- 8.1 The Council has a duty to enforce the regulations, and the failure to have an agreed penalty charge amount or statement of principles limits the effectiveness of this.
- 8.2 There is discretion within both sets of legislation regarding the setting of the fee, though both are limited to a £5,000 maximum. As per the procedure set out in this document, representations can be considered to provide a lower penalty when relevant, or remove completely.
- 8.3 Delegation of any final notice following representation and review should rest with the person who carries out any review, in this case being the Divisional Director
- 8.4 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires a statement of principles regarding the setting of the fees and this is found in **Appendix B**.

9 Financial Implications

- 9.1 As stated, the introduction of such charging is clearly set out within legislation as a means to recover cost and encourage compliance and not to raise additional income. The charging will allow the service to recover costs that would otherwise have not been recoverable apart from taking a prosecution case and applying for costs.
- 9.2 The legislation does not dictate where any income from such fines is to be used, but it is envisaged that it would go back into the service to contribute to cost neutrality.

- 9.3 It is likely, due to the low cost of compliance to either schemes that compliance will be high. Therefore any income is likely to be a one off in nature, and again would negate any attempt to set a income target or on going reliance on such monies.
- 9.4 The maximum fee for the Penalty Charge shall be £5,000 and this shall be seen as the set standard but with consideration to any representation.
- 9.5 A concession policy allows a clear route for the recognition of exceptional circumstances to consider a reduced fee.
- 9.6 It may be appropriate for the council to determine that in certain circumstances a reduced charge or no charge at all should be applied in line with guidance.

10 Performance Issues

- 10.1 The introduction of charging will encourage early compliance with addressing a clear hazard within premises, to the benefit of residents as well as the reduced involvement of Officers.
- 10.2 In those cases where enforcement is required, it allows for the Council to recover officer costs and ensure the service is provided.
- 10.3 Improving the private rented sector will have a positive impact on helping make a difference to families, businesses and communities. It fits in with Harrow's Housing Strategy to provide good quality private sector housing locally, which recognises the contribution that a healthy private rented sector can make to the provision of housing solutions for those who cannot access home ownership or affordable housing.
- 10.4 The enforcement of these two pieces of legislation will add an additional aspect for Officers to carry out, but will tend to be as a result of complaint or finding during the conduct of their normal duties (for example, inspecting a premise). It is therefore envisaged this impact will be limited.

11 Environmental Impact

- 11.1 The policy is not expected to have any direct impact on the environment, but improve the situation faced in terms of residential premises.
- 11.2 Approving this policy does not require an Environmental Impact Assessment.

12 Risk Implications

- 12.1 This policy is not included on the Directorate or any other corporate risk register
- 12.2 Any failure to make arrangements to enforce these regulations will put the Council in conflict with its legal requirements

13 Corporate Priorities

The Council's vision:

Working Together to Make a Difference for Harrow

The cost recovery of enforcement action aids in meeting the priorities of the Council including:

Making a difference to communities:

It allows appropriate action to be taken to improve those living in the community without placing a burden on the Council, or on those that comply with the legislation

Making a difference to the most vulnerable:

The use of enforcement tools are essential to tackle the highest risk hazards in premises that many vulnerable occupy. The charging of such action means the decision to serve notice is based on those affected rather than cost to the Council.

Making a difference to families:

The ability to recover costs helps ensure a minimum housing standard families can expect in the housing market

Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 12 October 2015		
Name: Andrew Lucas	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 12 October 2015		

Ward Councillors notified:	N/A
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EqIA carried out:	YES
EqIA cleared by:	Hanif Islam

Section 4 - Contact Details and Background Papers

Contact: Richard Le-Brun, Service Manager (Public Protection),
020 8424 6267, Richard.lebrun@harrow.gov.uk

Background Papers: See Enclosures

Call-In Waived by the Chairman of Overview and Scrutiny Committee	NOT APPLICABLE <i>[Call-in applies]</i>
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