

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**  
**EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE**  
**CABINET**

**Date 11<sup>th</sup> November 2015**

**REPORT TITLE**      **Implementation of new housing legislation for the Redress scheme and smoke / carbon monoxide alarms**

**Submitted by:**      **Gill Taylor**

**Portfolio:**            **Planning & Housing**

**Ward(s) affected:**    **All**

**Purpose of the Report**

To advise Cabinet of the following new housing legislation and to decide upon the Council's response to it:

- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a scheme etc) (England) Order 2014, and;
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, ensuring arrangements are in place for appropriate delegations and fines.

**Recommendations**

- a) **To note the new duty placed on Local Authorities under both 'The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a scheme etc) (England) Order 2014, and The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.**
- b) **To delegate authorisation to investigate, take enforcement action and issue civil penalties and monetary penalties under the above legislation to the Head of Housing, Regeneration and Assets (and appropriately qualified housing officers). To report this amendment to the Scheme of Delegation to full Council.**
- c) **To approve the issue of a monetary penalty or a civil penalty notice of up to £5,000 as provided for in the legislation (also referred to in this report as 'fines') for breaches of the legislation reflecting the serious consequences non-compliance can have on tenants' rights and on their safety.**
- d) **To authorise the Executive Director for Regeneration and Development in liaison with the Portfolio Holder for Planning and Housing to revise the Housing Enforcement Policy to include the new legislation and principles used to determine the level of fine and enforcement requirements.**

**Reasons**

The Council should be aware of and compliant with new legislation. The report proposes to delegate authority to appropriately qualified officers to ensure that the Council is ready and prepared to deal with any breaches thereby ensuring tenants in the borough are appropriately protected.

## 1. **Background**

- 1.1 There is a strong private rented sector in the borough serving the housing needs of approximately 10% of the population. The Council is responsible for ensuring good standards in the sector protecting the health, welfare and rights of tenants. This report discusses two new pieces of government legislation to strengthen these powers.

## 2. **New Legislation**

### 2.1 **The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a scheme etc) (England) Order 2014**

- 2.1.1 This Order makes it a legal requirement for any person who engages in lettings agency work and/or property management work in England to join a Government-approved redress scheme. The legislation intends that tenants, prospective tenants, landlords dealing with lettings agents, leaseholders and freeholders dealing with property managers (as detailed in the Order) can complain to an independent body about the service received. This should make it easier to complain about bad service and reduce the risk of disputes escalating. There are currently three government approved redress schemes. Each Scheme publishes a list of its members on their website.

- 2.1.2 The Council has a duty to enforce the legislation. In the event of a failure to remedy a breach following service of notices, the Council may impose a fine up to £5000. The requirements and procedure for the imposition of a fine are set out in Appendix A.

- 2.1.3 Guidance has been issued and sets out that that 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.

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

- 2.2.1 These Regulations came into force on 1<sup>st</sup> October 2015 and place three duties on landlords in the private rented sector:

- to ensure there is a smoke alarm on every storey of their property;
- to ensure there is a carbon monoxide alarm in any room used as a living room which contains a solid fuel-burning combustion appliance; and
- to ensure that alarms are in proper working order at the start of a new tenancy.

- 2.2.2 The Council has a duty to enforce the legislation. The Regulations require the Council to serve a remedial notice where there are reasonable grounds to believe the landlord has not complied with any of the three duties. If a landlord fails to comply with the remedial notice within 28 days of the notice being served, the Council has a duty (where the occupier consents) to arrange remedial action, within 28 days of such consent, in order to ensure that tenants are protected by working alarms. The Council may also, within a 6 week period, impose a civil penalty charge of up to £5,000 on landlords who are in breach of their duty to comply with the remedial notice.

Further information on the process for service of a remedial notice is contained in Appendix B. A landlord may request a review of the service of a remedial notice and if dissatisfied with the outcome of the review has the right to appeal to the first-tier

Tribunal. The legislation also makes provision that in the event of non-payment of a penalty charge the Council can recover the charge on the order of a court. A local housing authority is required to publish a statement of principles in relation to the amount of the penalty charge.

- 2.2.3 Following discussions with neighbouring authorities it is proposed to have a consistent fine for non-compliance with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 throughout Staffordshire to ensure it is given equal importance and a consistent message to landlords who have properties in more than one borough within the County. A fine of £2,500 is proposed for a first occasion and £5,000 where there is evidence of a previous fine.

### 3. **Proposal**

- 3.1 For the relevant officers within the Housing Services team (within the Regeneration and Development Directorate) to be delegated to enforce both pieces of new legislation, taking enforcement action and issuing fines as appropriate. In addition it is proposed that authority is given to the appropriate officer, in liaison with the Portfolio Holder for Planning and Housing, to amend current Policy to take account of these legislative changes.

### 4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 4.1 The adoption of these duties will contribute to:
- creating a healthy and active community by improving the safety of the private rented sector and enhancing tenants' rights;
  - our Co-operative Council aims to protect the interests of our citizens and;
  - demonstrate effective Partnership Working, with Staffordshire Fire and Rescue Service and neighbouring authorities.

### 5. **Legal and Statutory Implications**

- 5.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 and the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 place a duty on local authorities to enforce the requirements enshrined in these pieces of legislation.

### 6. **Equality Impact Assessment**

- 6.1 There are no negative impacts that have been identified. The positive impacts will directly benefit tenants in the private rented sector.

### 7. **Financial and Resource Implications**

- 7.1 It is expected that there will be some resource implications for staff to monitor the new duties but it is anticipated that these can be absorbed within the existing resources. With regard to the work arising from any resulting enforcement action (where needed) it is expected that this will be covered by the income derived from any fines.
- 7.2 With regard to financial implications, whilst any surplus income resulting from fines for non-compliance is expected to be minimal (once the Council's administrative/legal costs have been taken into account) these sums may be used by the authority to support any of its functions.

8. **Major Risks**

8.1 None identified from the recommendations identified in this report

9. **Key Decision Information**

This is a key decision as it could affect all wards.

10. **List of Appendices (available on request)**

10.1 Appendix A - Guidance on The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/361556/Lettings\\_Agents\\_and\\_Property\\_Managers\\_redress\\_scheme\\_leaflet.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361556/Lettings_Agents_and_Property_Managers_redress_scheme_leaflet.pdf)

10.2 Appendix B – Guidance to the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/464711/150929\\_SC\\_Explan\\_Book\\_Annex\\_B\\_LAs\\_REVISED.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/464711/150929_SC_Explan_Book_Annex_B_LAs_REVISED.pdf)