

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**HOUSING and ENVIRONMENT SERVICES ADVISORY BOARD**

**09 November 2015**

**Report of the Director of Planning, Housing and Environmental Health**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)**

**1 LEGISLATIVE CHANGES IN THE PRIVATE RENTED SECTOR FROM 1ST OCTOBER 2015**

**Summary**

**This report updates Members on the changes introduced by the Deregulation Act 2015 and the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 in the Private Rented Sector. It also seeks delegated authority for the Director of Planning, Housing and Environmental Health to implement the requirements of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.**

**1.1 Background**

- 1.1.1 On the 1 October 2015 a number of provisions under the Deregulation Act 2015 came into force that impact on the private rented sector. The Act introduced provisions designed to protect tenants on assured shorthold tenancies against unfair eviction, namely retaliatory eviction. Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of the property and, in response, instead of making the repair, their landlord serves them with an eviction notice.
- 1.1.2 The Deregulation Act 2015 also places additional requirements on landlords to provide certain documents at the start of new tenancies from 1 October 2015. If landlords are seeking to gain possession of their property by the service of a section 21 eviction notice there is also now a set form they must use for those tenancies.
- 1.1.3 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 requires private sector landlords from 1 October 2015 to ensure that at least one smoke alarm is installed on every storey of their rented property, and a carbon monoxide alarm is installed in any room which contains a solid fuel burning appliance, for example a coal or wood burning fire. It also requires landlords to ensure the alarms are in proper working order at the start of each new tenancy. Tenants are then expected to take responsibility for testing the alarms regularly after that.

## **1.2 Retaliatory Eviction**

- 1.2.1 The retaliatory eviction provision under the Deregulation Act 2015 was introduced by Government to prevent tenants being in fear of being made homeless if they ask for a necessary repair to be undertaken by their landlord.
- 1.2.2 Where a tenant makes a genuine complaint in writing to the landlord about the condition of the property and if after 14 days the landlord does not reply or the reply is inadequate or they respond by issuing a section 21 eviction notice, the tenant should ask an officer from the Private Sector Housing team to carry out an inspection. The officer will inspect and assess the property using the Housing Health and Safety Rating System (HHSRS) to verify whether the property contains serious health or safety hazards and whether the tenant's complaint is valid.
- 1.2.3 In line with the Private Sector Housing Enforcement Policy officers will generally engage with the landlord in the first instance to try to resolve the problem informally but where necessary will take the appropriate enforcement action. If the tenant's complaint is valid and; an Improvement Notice or Notice of Emergency Remedial Action is served requiring the landlord to undertake remedial works within a required time period, the landlord cannot evict the tenant using a section 21 notice for six months.

## **1.3 Additional Requirements for Landlords**

- 1.3.1 Under the Deregulation Act 2015 for assured shorthold tenancies which begin on or after the 1 October 2015 landlords shall provide a tenant with certain documents. These include the following in addition to other mandatory information required by other legislation such as the tenancy deposit protection information:
- A valid Energy Performance Certificate (EPC);
  - A valid Gas Safety Certificate.
  - A copy of the Government's "How to rent: the checklist for renting in England" guide available for free at <https://www.gov.uk/government/publications/how-to-rent>.
- 1.3.2 If the above documents are not supplied the landlord cannot serve a section 21 eviction notice. Once the landlord supplies these documents this restriction is removed.
- 1.3.3 The Deregulation Act 2015 also makes it more straightforward for landlords to evict a tenant using a section 21 eviction notice where they are allowed to do so. To prevent landlords facing unnecessary court costs when seeking possession of their property due to technical errors in their section 21 eviction notice, for

example specifying an incorrect date, Government has prescribed a standard form. This standard form must be used for section 21 notices for all tenancies created on or after the 1 October 2015.

- 1.3.4 The standard section 21 form cannot be served within the first four months of a tenancy and is only valid for six months following the date of its issue.

## **1.4 Smoke and Carbon Monoxide Regulations**

- 1.4.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on the 1 October 2015 and introduced new enforcement responsibilities for local authorities.
- 1.4.2 The aim of the regulations is to reduce the risk of injury or death to tenants or any visitors to the property as a result of a fire or carbon monoxide poisoning.
- 1.4.3 Certain types of accommodation are exempt from the requirements under these regulations to install smoke and carbon monoxide detectors as they are generally already fitted in these types of accommodation, often due to duties imposed by other regulations. The exempted types of accommodation are as follows:
- Social housing
  - Houses in multiple occupation (HMO) where they do not fall under the HMO licensing requirements.
  - Live-in landlords where the occupier shares an amenity such as a kitchen or living room with the landlord.
  - Long lease accommodation where right of occupation is granted for 7 years or more without a break clause.
  - Student halls of residence
  - Hostels and refuges
  - Care homes, hospitals, hospices and other NHS accommodation.
- 1.4.4 If the enforcing authority has reasonable grounds to believe a landlord has not installed the appropriate alarms they must serve a remedial notice on the landlord. The regulations do not require the enforcing authority to enter the property or prove non-compliance to issue a remedial notice. The landlord then has 28 days to comply with the notice.
- 1.4.5 If a landlord does not comply with the notice or is unable to prove they have taken all reasonable steps to comply with the notice the authority must arrange for remedial action to be taken (where the occupier consents). The enforcing authority can impose a civil penalty of up to £5,000 on landlords who do not comply with the remedial notice.

- 1.4.6 The enforcement authority is required to publish a statement of principles which they will follow when determining the amount of a penalty charge. If the enforcing authority intend to impose a financial penalty they must give written notice to the landlord (a 'penalty charge notice'), which must include certain information. This certain information includes the reasons for the penalty, the amount of the penalty and when it is required to be paid. If a landlord does not agree with the penalty charge notice, they can request a review. If after review the enforcing authority confirms or varies the penalty charge notice and the landlord continues to object they may appeal to the First-tier Tribunal on certain specified grounds.
- 1.4.7 The collection of the civil penalty fine is the only means for enforcement authorities of redeeming costs for any remedial works carried out.

## **1.5 Conclusions**

- 1.5.1 The process by which the Private Sector Housing team responds to complaints from private rented sector tenants about their housing conditions will not change other than to advise tenants to put their complaint in writing to the landlord in the first instance rather than just contacting them by phone.
- 1.5.2 The Council is under a mandatory duty to enforce the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 therefore delegated authority must be given to the appropriate Officer of the Council.
- 1.5.3 The Council must publish a statement of principles which they will follow when determining the monetary penalty for non-compliance with the regulations in 1.5.2. The DCLG guidance recommends this statement is published on the Council's website.

## **1.6 Legal Implications**

- 1.6.1 Tonbridge & Malling Borough Council is already under a duty under the Housing Act 2004 to keep housing conditions in their area under review. This includes responding to complaints from tenants regarding their housing conditions.
- 1.6.2 The Council as of the 1 October 2015 is the "enforcement authority" for the purposes of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
- 1.6.3 The Council is obliged to enforce these Regulations and discharge the enforcement functions referred to in this report.

## **1.7 Financial and Value for Money Considerations**

- 1.7.1 It is envisaged that the number of complaints received from tenants of new tenancies from the 1 October 2015 regarding their housing conditions may increase now that they are protected from retaliatory eviction. This potential increase in the number of investigations into complaints will be carried out within the existing resources of the Council's Private Sector Housing Team. Likewise

the enforcement of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

- 1.7.2 It is not anticipated there will be large numbers of penalty charge notices issued but the monetary penalty should be fixed at an amount that allows the Council to recover their costs in undertaking any remedial works and serving of the penalty notice. Also it should act as a sufficient deterrent to the landlord so as to comply with the Regulations. The Council should not expect to receive any regular income from the issuing of the penalty charge notices.

## **1.8 Risk Assessment**

- 1.8.1 None

## **1.9 Equality Impact Assessment**

- 1.9.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **1.10 Recommendations**

**CABINET is RECOMMENDED to:**

- 1.10.1 **AGREE** to delegate the implementation and enforcement arrangements for the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to the Director of Planning, Housing and Environmental Health.
- 1.10.2 **AGREE** to authorise the Director of Planning, Housing and Environmental Health to publish a statement of principles on the Council's website defining how the amount of the penalty charge is determined for a breach of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and to determine the amount of the penalty charge.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

contact: Hazel Skinner  
Satnam Kaur

DCLG, September 2015, The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 : Explanatory Booklet for Local Authorities

DCLG, October 2015, Retaliatory Eviction and the Deregulation Act 2015 - A guidance note on the changes coming into force on 1 October 2015

Steve Humphrey  
Director of Planning, Housing and Environmental Health