

BRECKLAND DISTRICT COUNCIL

Report of: Cllr Charles Carter Executive Member for Growth

To: Cabinet 22 September 2015

Author: Tim Mills Interim Housing Manager

Subject: New legislative responsibilities for enforcement

Purpose: To outline the new legislative responsibilities of the Council and agree policy and delegation for their enforcement.

Recommendation(s):

- 1) That the Council delegate to the Housing Manager, Principal Housing Officer and Private Sector Team Leader authority to enforce the following legislation.
 - a) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014
 - b) Control of Horses Act
 - c) Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- 2) That the fine to be levied for failure to comply with the Redress Scheme requirements be set at £5,000.
- 3) That the Council only exercise its powers under the Control of Horses legislation where it owns the land or there is no identifiable owner of the land.
- 4) That authority to set and recover a penalty charge under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 is delegated to the Housing Manager and Principal Housing Officer in consultation with the Council'

1.0 BACKGROUND

- 1.1 There have been several new pieces of legislation which place enforcement responsibilities on Breckland District Council. These are
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
 - Control of horses 2015
 - Smoke and Carbon Monoxide Alarm (England) Regulations 2015
 - Mobile Homes Act 2013

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

- 1.1 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 came into force on 1st October 2014. It requires all providers of lettings agency or property management work to be registered with one of three Government approved redress schemes.
- 1.2 Enforcement of the new legislation is the responsibility of Local Housing Authorities which in

two tier areas is the District Council. Hence Breckland Council is required to carry out the relevant action.

- 1.3 Enforcement is essentially an administrative exercise. Once an agency or manager joins one of the schemes they are added to a list that is available on the website of the scheme. An officer can then make a check to see if any particular agency or manager is a member of a scheme.
- 1.4 If an agency or manager is not a member of a scheme the enforcement Authority may issue a Notice of Intent to issue a fine for non-compliance. The maximum fine is £5,000 and the Government Guidance is that £5,000 should be considered to be the norm but discretion is allowed as to the exact fine having taken account of the circumstances of the company concerned, e.g. turnover.
- 1.5 The Notice of Intent will give 28 days for the agency or manager to join a scheme before a Final Notice is served imposing the fine.
- 1.6 The fine is by way of a penalty charge which is retained by the enforcement Authority and may be used for any of its functions.
- 1.7 If there is a continuing failure to join a scheme this may be punished by further fines. There is an appeal process through the First Tier Tribunal and recovery of fine will be by Court Order if not recovered as a simple debt.
- 1.8 Delegation needs to be given to officers to undertake enforcement activity. For operational reasons it is suggested this be to the Housing Service Manager, Principal Housing Officer and Private Sector Housing Team Leader or their equivalent in future so that appropriate staff resources can be allocated to the task.
- 1.9 This legislation is aimed at agents and property managers who it is reasonable to expect will have the capability to comply with the legislation. It is therefore unlikely that circumstances would arise where the Council would wish to exercise discretion to reduce the fine. However it is considered prudent to provide the ability to the enforcing officers in exceptional circumstances.

Control of Horses Act 2015

- 1.10 The Control of Horses Act 2015 came into force on 26th May 2015. This gives a **power** but **not a duty** to local authorities to detain a horse in any public place where there are reasonable grounds for believing the horse is there without lawful authority and, if the land is occupied, that the occupier consents to the detention or would so consent.
- 1.11 Any occupier or freehold owner of public land has a similar power.
- 1.12 A detained horse may be held for 24 hours unless an officer in charge of a police station and the owner of the horse, if known, are advised of the detention when the period may be extended to 96 hours. After this period, if not claimed, ownership of the horse will pass to the local authority who may dispose of it as they wish. The local authority will be responsible for the care and welfare of the horse whilst it is detained. Costs may be recovered from the owner of the horse, if known.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 1.13 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will come into force on 1st October 2015. This places a duty on landlords, (excluding Registered Providers), to ensure that each storey of a premises on which there is a room wholly or partly used as living accommodation is equipped with a smoke alarm. In addition that in every room in which there is a solid fuel combustion appliance there is a carbon monoxide alarm. Different standards apply in Houses in Multiple Occupation.
- 1.14 If the local housing authority is aware that there is a breach of these regulations they must serve a remedial notice requiring appropriate action to be taken within 28 days. Should the landlord not do so the housing authority must itself take action. It can recover the costs of the works and may impose a penalty charge of up to £5,000 for non-compliance. Such penalty charges are retained by the local housing authority.

2.0 OPTIONS

- 2.1 The Council has responsibilities within the three pieces of legislation. It has discretion to:
- i) Vary the fine under the Redress Scheme
 - ii) Determine whether and when to use its powers under the Control of Horses Act.
 - iii) To set and recover a penalty charge where there is a breach of Carbon Monoxide regulations.

3.0 REASONS FOR RECOMMENDATION(S)

- 3.1 Delegation needs to be given to Officers to undertake the enforcement activity. For operational reasons it is suggested this be to the Housing Service Manager, Principal Housing Officer and Private Sector Housing Team Leader or their equivalent in future.
- 3.2 The Redress Scheme legislation is aimed at agents and property managers who it is reasonable to expect will have the capability to comply with the legislation. It is therefore unlikely that circumstances would arise where the Council would wish to exercise discretion to reduce the fine. However it is considered prudent to provide the ability to the enforcing officers in exceptional circumstances.
- 3.3 The Control of Horses legislation provides a power not a duty on the Council. The retention and disposal of one or more horses could be a significant resource burden both in terms of personnel and finance for Breckland DC. As owners and occupiers of public land have a similar power to the District Council it is considered that it is reasonable to expect those responsible for the land to deal with issues arising upon it. This is in line with other environmental legislation. It is proposed that Breckland District Council would only consider using this power where there is land in a public place where no ownership can be established and to land in the Councils ownership and/or occupation.
- 3.4 Unlike the Redress Scheme under the Smoke and Carbon Monoxide regulations there appears to be an expectation that the appropriate penalty charge may differ depending on the circumstances of the case. It is therefore not possible to define specifically the fine which should be applied. It is therefore proposed that the authority to set and recover a penalty charge should be delegated to the Housing Services Manager, Principal Housing Officer and Private Sector Housing Team Leader or their equivalent in future in consultation with the Council's Legal Officer(s) and in accordance with the Council's Enforcement Policy.

4.0 **EXPECTED BENEFITS**

- 4.1 The Redress Scheme will ensure that the Council can protect tenants by ensuring that agents are part of an authorised Redress Scheme.
- 4.2 The Control of Horses Legislation allows the Council to resolve situations with horses on public land where there is no identifiable owner.
- 4.3 The Smoke and Carbon Monoxide Regulations enables the Council to reduce the risk to tenants' lives from fire and carbon monoxide.

5.0 **IMPLICATIONS**

5.1 **Carbon Footprint / Environmental Issues**

- 5.1.1 It is the opinion of the Report Author that there are no implications.

5.2 **Constitution & Legal**

- 5.2.1 The proposals are in accordance with legislation

5.3 **Contracts**

- 5.3.1 It is the opinion of the Report Author that there are no implications.

5.4 **Corporate Priorities**

- 5.4.1 The proposals are in accordance with the Council's Priority of providing the right service in the right way at the right time and stronger and more independent communities.

5.5 **Crime and Disorder**

- 5.5.1 It is the opinion of the Report Author that there are no implications.

5.6 **Equality and Diversity / Human Rights**

- 5.6.1 It is the opinion of the Report Author that there are no implications.

5.7 **Financial**

- 5.7.1 The fines levied under the Redress Scheme and the Smoke and Carbon Monoxide regulations are retained by the Local Authority and if levied will provide one off additional income.
- 5.7.2 If the powers under the Control of Horses legislation are used or the requirement to undertake remedial work under the Smoke and Carbon Monoxide regulations has to be undertaken it will necessitate unplanned expenditure.

5.8 **Health & Wellbeing**

- 5.8.1 The Smoke and Carbon Monoxide regulations will help ensure the health and safety of the residential occupiers.

5.9 Risk Management

5.9.1 It is the opinion of the Report Author that there are no implications.)

5.10 Safeguarding

5.10.1 It is the opinion of the Report Author that there are no implications.)

5.11 Staffing

5.11.1 The responsibilities under the Redress scheme are primarily administrative and can be absorbed within existing resources. Action under the Control of Horses Act could be very time consuming at the time it arises. However this is expected to be exceptional and would be managed by reprioritisation at the time it occurs as it cannot be planned for. The enforcement of the Smoke and Carbon Monoxide regulations will be undertaken as part of the existing enforcement work for these types of dwellings.

5.12 Stakeholders / Consultation / Timescales

5.12.1 It is the opinion of the Report Author that there are no implications.)

6.0 WARDS/COMMUNITIES AFFECTED

6.1 All

7.0 ACRONYMS

7.1 None

Background papers:- None

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Key Decision: Yes

Exempt Decision: No

This report refers to a Mandatory Service