

Amendment of the Executive Scheme of Delegation to Officers

21st October 2015

Report of the Chief Officer (Governance)

PURPOSE OF REPORT

To give notice of amendments made by the Leader to the Scheme of Delegation to Officers.

This report is public

RECOMMENDATIONS

(1) That the report be noted

1.0 Introduction

1.1 The current delegations of executive functions to officers were confirmed by Council in May 2015, and are set out in Part 3 of the Constitution.

1.2 Rule 1.4(b) of the Cabinet Procedure Rules provides as follows:

“The Leader may amend the scheme of delegation relating to Executive functions at any time during the year. To do so, the Leader must give written notice to the Chief Officer (Governance) and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body, committee or the Executive as a whole. The Chief Officer (Governance) will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.”

1.3 The Leader has amended the Scheme of Delegation to ensure that officers are able to exercise new powers contained in 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

2.0 Proposal Details

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

- 2.1 Since October 2014, persons who engage in lettings agency work and persons who engage in property management work are required to belong to a redress scheme for dealing with complaints in connection with that work. This Order imposes a duty on enforcement authorities to enforce the Order. The Council is the enforcement authority.
- 2.2 Where a person has failed to comply with the requirement to belong to a redress scheme, the authority may by notice require the person to pay the authority a monetary penalty. The amount of the penalty must not exceed £5000.
- 2.3 The person who is served with a notice may appeal to the First-Tier Tribunal against the notice, and the Tribunal may either quash, confirm or vary the final notice.
- 2.4 The enforcement authority may recover the monetary penalty on the order of a court, as if payable under a court order. In proceedings to recover the amount due, a certificate which is signed by the enforcement authority's chief finance officer and states that the amount due has not been received by a date specified in that certificate is conclusive evidence of the fact, and a certificate to that effect and purporting to be signed is to be treated as being signed, unless the contrary is proved.
- 2.5 Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 2.6 From October 2015 landlords in the private rented sector in England are required to ensure that a smoke alarm is installed on every storey of their rented dwelling when occupied under a tenancy, and that a carbon monoxide alarm is installed in any room which contains a solid fuel burning combustion appliance. Such alarms must be in proper working order at the start of a new tenancy. In addition, the Regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.
- 2.7 Lancaster City Council is the enforcing authority and is required to serve a remedial notice on a relevant landlord where they have reasonable grounds to believe the landlord has not complied with any one of the duties set out above. A landlord who is in breach of a duty must comply with the remedial notice and if they fail to do so within 28 days of the notice being served, the local housing authority is placed under a duty (where the occupier consents) to arrange remedial action.
- 2.8 The local housing authorities are able to impose a penalty charge of up to £5000 on landlords who are in breach of their duty to comply with the remedial notice. Where a local housing authority intends to impose a penalty, it must give written notice of its intention to do so (a "penalty charge notice"). The landlord is required within the specified period, to pay the penalty charge or request a review
- 2.9 A person served with a penalty notice may appeal to the First-Tier Tribunal if it is confirmed or varied by a local housing authority after a review. If an appeal is

lodged the penalty cannot be enforced until the appeal is disposed of.

2.10 The penalty will be enforceable on the order of a court, and where proceedings are necessary for the recovery of the penalty, a certificate signed by the local housing authority's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the penalty has not been paid. Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

2.11 In order to implement all these provisions, it was necessary for the officer Scheme of Delegation to be amended to authorise officers who may issue the appropriate notices, and take the appropriate enforcement action.

2.12 Accordingly, the Leader has amended the Scheme of Delegation to provide authority as follows:

"To the Chief Officer (Health & Housing) and any officers designated by her in writing:

- (a) Under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 to set and impose a penalty charge (to a maximum of £5000); to undertake the service and signing of notices; to consider and determine representations and objections; to recover the monetary penalty through a certificate signed by the Chief Officer (Resources).
- (b) Under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to act as Inspectors; to undertake the service and signing of notices; to set and impose a penalty charge (to a maximum of £5000); to authorise remedial work; to consider and determine representations and objections; to recover a monetary penalty through a certificate signed by the Chief Officer (Resources)."

3.0 Details of Consultation

3.1 There has been no consultation.

4.0 Conclusion

5.1 The report is for noting

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The delegations authorised by the Leader will ensure that appropriate action can be taken in the interests of public safety.

LEGAL IMPLICATIONS

Legal Services will be able to advise in individual circumstances on the appropriate use of the powers contained in the relevant legislation.

FINANCIAL IMPLICATIONS

Any additional staff time that will be required to implement the new legislation will be met from existing budgets and the service will incorporate into existing workloads. The annual budget may need revision to take account of the potential for a minimal increase in income from penalties, but this will be reported as part of the quarterly monitoring during the year.

OTHER RESOURCE IMPLICATIONS

Human Resources:

None

Information Services:

None

Property:

None

Open Spaces:

None

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her role as Chief Officer (Governance).

BACKGROUND PAPERS

None

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