

**CABINET MEETING: 27 JULY 2017**

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**SINGLE LICENSING AUTHORITY ENFORCEMENT POLICY FOR  
POWERS CONTAINED UNDER PART 1 OF THE HOUSING  
(WALES) ACT 2014**

**REPORT OF DIRECTOR OF COMMUNITIES, HOUSING &  
CUSTOMER SERVICES**

**AGENDA ITEM: 8**

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**PORTFOLIO: HOUSING AND COMMUNITIES (COUNCILLOR LYNDA  
THORNE)**

**Reason for this Report**

1. Pursuant to the Council's designation as Single Licensing Authority for Wales this report provides an update on Rent Smart Wales to date and seeks the Council's adoption of an Enforcement Policy which will ensure that Rent Smart Wales enforcement activities are delivered consistently and responsibly across Wales.

**Background**

2. A report presented to Cardiff Council Cabinet in March 2015 outlined new provisions contained within the Housing (Wales) Act 2014 and the implications it would have for local authorities in Wales and specifically Cardiff Council as the designated Single Licensing Authority (SLA). The brand name for the scheme is Rent Smart Wales (RSW).
3. Rent Smart Wales' role is to ensure that all landlords and agents involved in the management of privately rented property comply with the legislation in order to improve the standards and management of the sector and to better protect the interests of tenants.
4. Since the implementation of the legislation on the 23<sup>rd</sup> November 2015 and introduction of the enforcement provisions a year later, substantial progress has been made to secure compliance. This has been achieved in the main through a joined up approach with partners including Welsh Government, local authorities and stakeholders to implement the marketing strategy. Compliance and activity levels at the end of May 2017 are summarised below :

- i. User accounts established on the RSW database: 101,235

- ii. Landlord Registrations completed: 76,680. This represents 161,564 rented properties as part of a completed registration.
- iii. Total licence applications submitted: 23,146.
- iv. Call and email volumes fluctuate greatly with November 2016 experiencing 23,924 incoming calls and 6955 emails respectively.

## Issues

- 5. Despite significant progress to date, it is estimated that 20% of landlords / agents remain non-compliant; it is important that full compliance is secured as early as possible. This can only be achieved by having the right balance of marketing and enforcement activity. Whilst we will continue to focus on ensuring that appropriate marketing messages are distributed through social media, press, radio and stakeholder engagement; Fixed Penalty Notices and prosecution activity is now being taken forward. 35 FPNs have been served to date and Newport Council has secured a successful prosecution.
- 6. The officers involved in RSW enforcement are employed both by Cardiff Council, as the Single Licencing Authority, and all 22 local authorities. One enforcement policy to capture the approach to be taken by all partners is therefore required to ensure a consistent approach across Wales.
- 7. Attached at Appendix 1 is a copy of the draft Rent Smart Wales Enforcement Policy. Its purpose is to set out the standards that will be applied by RSW and its partners in respect of its compliance and enforcement activities, and to give guidance to those affected by it, in particular landlords, managing agents and tenants.
- 8. During the development of this policy, consultation has been undertaken with the stakeholders and the 22 Welsh local authorities. The comments led to a review and simplification of the final document. A summary of the comments received and RSW response is attached at Appendix 2. The Welsh Heads of Environmental Health Group and the Rent Smart Wales Strategic Implementation Group have subsequently endorsed the revised policy.
- 9. An Enforcement Policy helps to promote efficient and effective approaches to regulatory activity and the need to have an Enforcement Policy in place is required in the Regulators Code of 2014.
- 10. Enforcement Policies must reflect the Regulators Code and the regulatory principles under the Legislative and Regulatory Reform Act 2006. Consequently, underlying the document content is a commitment to the principles of good regulation as promoted in The Legislative and Regulatory Reform Act 2006. The key features are that we will exercise our regulatory activities in a way which is:

- **Proportionate** – our activities will reflect the level of risk and enforcement action taken will relate to the seriousness of the offence
- **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures
- **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others.
- **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- **Targeted** – we will focus our resources on higher risk activities

11. The policy sets out:

- The aims of the policy
- What the policy is for
- What status the Enforcement Policy has
- Our approach to compliance and enforcement
- It provides advice on the Rules
- How we intend to ensure Compliance
- How we respond to Breaches of the Rules
- How we work with Stakeholders
- How we deal with comments and complaints
- When the policy will be reviewed and what monitoring we will undertake.

#### **Local Member consultation**

12. The proposal does not involve a local issue. The proposal does not require the carrying out of consultation under statute or at law or by reason of some promise or undertaking previously given by or on behalf of the Authority.

#### **Scrutiny**

13. The draft Rent Smart Wales - Enforcement Policy was presented to the Communities and Adult Services Scrutiny Committee on 19<sup>th</sup> July 2017 for pre decision scrutiny. The letter from the Scrutiny Chair following this meeting is attached at appendix 3.

#### **Reason for Recommendations**

14. An Enforcement Policy will ensure that Rent Smart Wales enforcement activities are delivered consistently and responsibly across Wales and is in accordance with the requirements set out by Legislative and Regulatory Reform Act 2006 and Regulators Code of 2014.

## **Financial Implications**

15. There are no additional resource requirements arising from this report and all costs associated with the proposed enforcement activity will be met by either fees generated within the RSW service, fixed penalty notice income or costs awarded through the courts.

## **Legal Implications**

16. An Equality Impact Assessment has been undertaken during the policy development stage. This is attached at Appendix 4.
17. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.
18. The Housing (Wales) Act 2014 specifically designates Cardiff Council as the Single Licensing Authority (SLA) for the enforcement of breaches of the Act. This power is in turn granted to the respective 22 Local Authorities in Wales through a joint Memorandum of Understanding for the enforcement of the act by Rent Smart Wales. The power to act to each Local Authority was delegated through a letter of authorisation dated 2nd February 2017. This grants a general power for each individual Local Authority to enforce the act and ultimately prosecute breaches of the act in their area through the criminal courts.
19. In turn each officer either employed through Rent Smart Wales or specifically acting on their behalf through their own home Local Authority, is individually authorised to act on behalf of Rent Smart Wales in investigating and enforcing any breaches of the Housing (Wales) Act 2014.
20. It is intended that the Enforcement Policy will be utilised by all of the officers of the 22 Local Authorities investigating landlords and agents in their area on behalf of Rent Smart Wales. The Enforcement Policy will provide a uniform mechanism for the issuing of Fixed Penalty Notices and the instigation of prosecution proceedings within the criminal courts in Wales. This is facilitated through a defined and consistent approach amongst the Local Authorities and in line with the enforcement powers of the single licensing authority (SLA) throughout Wales. The enforcement policy will avoid any local exceptions becoming established and provide a defined consistency of approach for referral throughout Wales. It is further confirmed that where a conflict arises with the Enforcement Policy of Rent Smart Wales and that of the host Local Authority for enforcement, the host Local Authority's policy will take precedence over the enforcement policy of Rent Smart Wales.

21. If a challenge is made to the validity Enforcement Policy of Rent Smart Wales, any refinement or amendment brought about by that decision will act uniformly across Wales.

### **HR Implications**

22. There are no additional HR resource requirements arising from this report.

### **RECOMMENDATIONS**

Cabinet is recommended to:

1. note the progress made by Rent Smart Wales in delivery of the Housing (Wales) Act 2014
2. approve the draft Rent Smart Wales Enforcement Policy as set out at appendix 1 and
3. delegate authority to the Director with responsibility for Rent Smart Wales to approve amendments to the policy that may be required periodically.

**SARAH McGill**

**Director**

21 July 2017

*The following appendices are attached:*

Appendix 1: Draft Rent Smart Wales Enforcement Policy 2017

Appendix 2: Summary of Stakeholder Consultation Responses

Appendix 3: Scrutiny Letter from Community & Adult Services Scrutiny Committee dated 20th July 2017.

Appendix 4: Equality Impact Assessment