

CARDIFF COUNCIL CYNGOR CAERDYDD

CABINET MEETING: 27 JULY 2017

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: 9

**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 23rd 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 19th July 2017 for pre decision scrutiny. The letter from the Scrutiny Chair following this meeting and response are 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
7 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 and Cabinet Member response from Community & Adult Services Scrutiny Committee dated 19th July 2017.
Appendix 4: Equality Impact Assessment

Rhentu Doeth Cymru Rent Smart Wales



RENT SMART WALES ENFORCEMENT POLICY 2017



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1. Introduction

This Policy covers the enforcement work undertaken by Cardiff Council as the Single Licensing Authority (SLA) and 22 Local Authorities to deliver Part 1 of the [Housing \(Wales\) Act 2014](#). Collectively the partnership and service is known as Rent Smart Wales (RSW).

This policy sets out the approach taken by RSW to compliance and enforcement activities, and is intended to establish a consistent approach to enforcement across its various functions, without placing too heavy a burden on landlords, managing agents and tenants. It excludes matters which specifically relate to the determination and revocation of licence applications and securing compliance with licence conditions.

This policy has been subject to consultation across a range of stakeholders. However, further feedback is always welcomed using the contact details provided below. We will give consideration to the inclusion of any suggested improvements in future revisions.

In adopting this policy RSW intends to apply legal powers consistently and fairly, whatever the circumstances. Decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims or witnesses.

RSW wants to make it easy for you to receive our information. This policy is published in English and Welsh on our [website](#) and in hard copy. We are also able to provide the document in alternative formats including audio tape, large print and in community languages. We have access to interpreter services where required. Requests for copies in other formats or other languages should be addressed to:

Rent Smart Wales,
PO Box 1106,
Cardiff.
CF11 1UA

Revision date 2017

2. Aims of the Policy

Rent Smart Wales (RSW) strives 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.

RSW's responsibility is to ensure compliance with Part 1 of the Housing (Wales) Act 2014 ensuring that landlords of rented property in Wales are registered and self-managing landlords and agents are licensed. In seeking compliance RSW enforces the law, including taking enforcement action where appropriate. These areas of responsibility are summarised in the table below.

<p>Registration of landlords and properties</p>	<p>Undertake appropriate interventions to ensure compliance with legislation at local and national level, in accordance with the Memorandum of Understanding (MOU) in place between the SLA and 22 local authorities</p>
<p>Licensing of self-managing landlords and agents</p>	<p>Undertake appropriate interventions to ensure compliance with legislation at local and national level, in accordance with the MOU in place between the SLA and 22 local authorities</p>
<p>To investigate complaints and undertake proactive activity to ensure compliance</p>	<p>To undertake proactive activity and investigate complaints about landlords / agents / premises brought to the attention of RSW and to determine the most appropriate course of action to be taken.</p>
<p>To determine licence applications and where necessary refuse or revoke licences</p>	<p>To determine all applications having regard to provisions in the Act and in accordance with Welsh Government Guidance on the "fit and proper person test". To work collaboratively across 22 local authority areas to ensure that complete and accurate information is available when considering the fitness and propriety of all applicants.</p>
<p>Education and Advice</p>	<p>To provide advice to all in respect of matters relating to Part 1 of the Housing (Wales) Act 2014 and other associated legislation. To provide RSW approved training to facilitate compliance with the licence requirements, both in a classroom environment and online.</p>
<p>RSW Enforcement</p>	<p>To take the appropriate enforcement action in line with this policy to remedy contraventions of Part 1 of the Housing (Wales) Act 2014.</p>

Compliance with the law is proactively encouraged and to this end we want to work with landlords, managing agents and tenants to promote this goal through the provision of advice and education, intelligence led checks on compliance and proportionate responses to regulatory breaches.

Our ultimate purpose is to ensure that the private rented sector functions effectively providing a safe and secure place for tenants to live. When that purpose is undermined, we will use our legal powers to take action to resolve any unsatisfactory situations and ensure that any wrongdoers are held to account. This is what is meant by the term “enforcement action”.

We are committed to taking firm action in the following situations: -

- Against those who flout the law, or who deliberately or persistently fail to comply
- Where there is a risk to health and safety; and
- Where it is necessary to protect the vulnerable from harm

RSW publishes an annual service delivery plan which sets out RSW’s service standards and our main areas of work for the year ahead.

3. What is this policy for?

The purpose of this document is to set out the RSW policy in respect of its compliance and enforcement activities, and to give guidance to those affected by it, in particular landlords, managing agents and tenants. It does not however, affect the discretion to take legal proceedings when this is considered to be in the public interest.

The staff of RSW will adhere to this policy, and this will be subject to regular monitoring / review periodically.

4. What is the status of this Enforcement Policy?

This policy has been adopted in accordance with the Cardiff Council constitutional arrangements and has been endorsed by the RSW Strategic Implementation Group on 13th April 2017 and Welsh Heads of Environmental Health on 21st April 2017.

RSW is delivered by the SLA and 22 local authorities (LAs) in partnership. This arrangement is captured in a memorandum of understanding (MOU) signed by each party which outlines the roles and responsibilities of each party in relation to the promotion and delivery of the legislation and responsibility of each for enforcement activities. It also outlines arrangements for information sharing.

To facilitate this partnership ***Cardiff Council as Single Licencing Authority has provided its general consent to each Council:***

Pursuant to Section 28 (2) and (3) of the Housing (Wales) Act 2014, to bring criminal proceedings in respect of any offence under Sections 4(2), 6(4), 7(5), 9(2), 11(3) or 13(3) of the Act, if the alleged offence arises in respect of a dwelling in their respective area.

Pursuant to Section 30 (2) of the Housing (Wales) Act 2014, to make an application for a Rent Stopping Order to the Residential Property Tribunal in respect of an offence under Sections 7(5), or 13(3) of the Act, if the alleged offence arises in respect of a dwelling in their respective area.

Pursuant to Section 31 (3) of the Housing (Wales) Act 2014, to make an application to revoke a Rent Stopping Order to the Residential Property Tribunal in respect of an offence under Sections 7(5), or 13(3) of the Act, if the offence arose in respect of a dwelling in their respective area, and is no longer being committed.

Pursuant to Section 32 (2) of the Housing (Wales) Act 2014, to make an application for a Rent Repayment Order to the Residential Property Tribunal in respect of an offence under Sections 7(5), or 13(3) of the Act, if the alleged offence arises in respect of a dwelling in their respective area.

In addition, individuals within each local authority have been authorised under section 29 (Fixed Penalty Notices) and Section 37 (Power to require documents to be produced or information given) of the Act.

It is expected that local authorities will apply this policy in their delivery of Rent Smart Wales activities, however, there may on occasion, be a conflict with their own local enforcement policy. Where this is the case, the local authority policy will take precedence.

5. Our approach to compliance and enforcement

We aim to use our enforcement powers sensibly and in a proportionate manner. Our overall goal is to promote a fair, safe environment where citizens, tenants, property owners, investors and managing agents in Wales are treated fairly and not exposed to any hazards or unscrupulous practices. From the outset, it is important to state that we want to work with landlords, managing agents and their representative bodies to achieve that goal. Each transaction we undertake, each complaint we investigate, will be conducted fairly and in a proportionate manner.

[The Legislative and Regulatory Reform Act 2006](#), as amended, requires RSW to have regard to the Principles of Good Regulation. 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

RSW embraces the principles of good enforcement established in the [Regulators' Code \(April 2014\)](#), as amended, i.e.

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow;
- Regulators should provide straightforward ways to engage with those they regulate and hear their views;
- Regulators should base their regulatory activities on risk;
- Regulators should share information about compliance and risk;
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- Regulators should ensure that their approach to their regulatory activities is transparent

However, in certain instances we may conclude that a provision in the Regulators' Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on the available evidence.

RSW is committed in all aspects of its work to the promotion of equality in accordance with the participant authorities' Equality statements and policies. The Service will seek to adopt best practice in pursuit of that commitment, including in relation to the provision of assistance, information and advice.

This policy will contribute to the fairness of decision making and will seek to ensure that decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims or witnesses. During the monitoring and review of our practices under this policy we will make sure that our enforcement activity reflects this commitment.

In some areas of our work we have a shared enforcement role with other agencies. When we exchange information on enforcement activities with our partner agencies, we will do so in accordance with any established methods of information sharing and legal requirements, including the [Data Protection](#)

Act 1998, the Crime and Disorder Act 1998 and the Housing (Wales) Act 2014.

We will work with other service areas within Cardiff Council and Council's across Wales, and the appropriate external regulators to ensure that our 'own house is in order' to promote regulatory compliance.

6. Advising on the Rules

Advice to business will be provided proactively and also in response to specific requests for guidance. Such advice will be given clearly and in plain language and will be confirmed in writing on request. Legal requirements will be clearly distinguished from best practice, codes of practice, guidance and other advice.

We will promote compliance with legal requirements, by raising awareness of relevant standards, through media releases and marketing, distributing leaflets, face-to-face contact and through stakeholder engagement and community partnerships.

RSW supports the Government's 'golden rules' for guidance on regulation set out in the Code of Practice on Guidance Regulation

http://www.fwr.org/WQreg/Appendices/CoP_on_Guidance_on_Regulation.pdf

(BIS, 2009), in that it should be:

- Based on a good understanding of users
- Designed with input from users and their representatives
- Organised around the user's way of working
- Easy for the intended users to understand
- Designed to provide users with confidence in how to comply with the law (i.e. no use of legal disclaimers of liability)
- Issued in good time
- Easy to access
- Reviewed and improved

Landlords and businesses approaching the Service for advice on any non-compliance can in the main do so without fear of automatically triggering an enforcement action. Nevertheless there will be some circumstances e.g. where there is a history of noncompliance, where after due consideration, enforcement action is unavoidable.

7. Ensuring Compliance

RSW adopts an intelligence-led / risk based approach to ensure that its resources are most effectively targeted.

Complaints received about alleged non-compliance will be assessed on an individual, case by case basis and allocated to an appropriate officer / local authority for investigation / action as necessary.

8. Responding to Breaches of the Rules

Overview

In responding to breaches of the law, a range of actions is available to RSW, and these are set out below. The appropriate action will be determined following careful consideration of the particular facts of each individual case, and taking into account the approach of the offender and any comments they wish to be taken into consideration.

RSW will normally take a stepped approach within the hierarchy of enforcement available.

There may be circumstances where it is suspected that an offender has committed offences across a number of local authority areas. In such circumstances we may enter into a legal agreement for one authority to take the lead role, as appropriate, making use of the provisions of [section 19 of the Local Government Act 2000](#), [section 222 of the Local Government Act 1972](#) or any other enabling provisions and/or the Single Licensing Authority will take the lead.

Conduct of Investigations

All investigations will be carried out with due regard to the following legislation and any associated guidance or codes of practice, in so far as they relate to the RSW:

- the [Criminal Procedure and Investigations Act 1996](#)
- the [Police and Criminal Evidence Act 1984](#)
- the [Regulation of Investigatory Powers Act 2000](#)
- the [Criminal Justice and Police Act 2001](#)
- the [Human Rights Act 1998](#)
- the [Protection of Freedoms Act 2012](#)

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our procedures for interviewing alleged defendants follow the principles set out in the Police and Criminal Evidence Act 1984, and the relevant associated Codes of Practice.

Enforcement powers are provided by the legislation under which our officers are authorised, and staff will use these powers when necessary, but always in a proportionate manner. Officers will reasonably expect co-operation during

the investigation of alleged contraventions.

All investigations will be completed in a timely fashion and having regard to any time limits for bringing formal action prescribed by the legislation.

Communication

Our staff will always work collaboratively with partners, where appropriate.

Those affected by enforcement action (including witnesses and defendants) will be kept informed of the progress of investigations. This will be done in a clear, appropriate and timely manner. As decisions are made regarding the direction in which an investigation will be concluded, the defendant(s) will receive written confirmation of the intended course of action. This will be provided as soon as practicable, together with information on rights to representation

RSW will publish the results of its prosecution cases on its website. Such results may also be drawn to the attention of interested parties.

Decisions on Enforcement Action

The appropriate action will be determined following careful consideration of the circumstances of each individual case.

A range of enforcement outcomes is available to RSW, as detailed below. In general the more serious the matter the more likely it is that court proceedings will follow.

Our choices of enforcement actions aim to:

- Change the behaviour of the offender to secure compliance.
- Eliminate any financial gain or benefit from non-compliance.
- Be responsive and appropriate for the particular offender and regulatory issues which can include punishment and the public stigma that should be associated with a criminal conviction.
- Be proportionate to the nature of the offence and the harm caused.
- Restore the harm, or make safe any situation, caused by regulatory non-compliance where appropriate; and
- Deter future non-compliance.

The main types of legal sanctions available and the factors to be taken into account when deciding on the most appropriate course of action are outlined below. Any decision to take formal action will take account of the criteria contained in the [Code for Crown Prosecutors](#), The Regulators Compliance Code and guidance issued by Welsh Government.

Fixed Penalty Notices

RSW has the power to issue fixed penalty notices in respect of certain breaches under the Act. These notices give the offender the opportunity to avoid prosecution by payment of the prescribed sum (£150 or £250) in recognition of the offence. Fixed Penalty payable is specified in the legislation (Section 29 (4)). The decision to offer an offender a Fixed Penalty Notice is at the discretion of the investigating officer. They will only be issued where the evidence would have been sufficient to support a prosecution.

Payment of a fixed penalty does not provide an individual immunity from prosecution in respect of similar or recurrent breaches. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issuing of a fixed penalty notice. A FPN will only be offered to discharge liability for an offence once. A recurrence of the offence will result in the case being considered for prosecution.

Upon expiry of an unpaid FPN, payment will not be accepted. The case will be assessed for alternative enforcement action possibly leading to prosecution.

Prosecution

RSW may prosecute breaches of the Act, particularly in respect of those who flout the law or who act irresponsibly, or where there is a risk to health and safety. Where Fixed Penalty Notices have failed to secure compliance previously, then prosecution is likely.

As with the preceding enforcement options, a number of factors will be taken into consideration including

- The seriousness of the offence
- The previous history of the offender
- Any statutory defence available
- Action taken to avoid recurrence
- Any explanation offered, and if the law allows the circumstances and attitude of the offender
- What course of action will best serve the public interest
- Whether there is a realistic prospect of conviction

The decision as to whether prosecution is the most appropriate course of action in a particular case will be made

- In accordance with this Policy;
- In accordance with the Code for Crown Prosecutors; and
- In accordance with statutory requirements, taking into consideration all relevant codes of practice, and without any unnecessary delay.

In following the Code for Crown Prosecutors, a prosecution will only be

commenced where RSW / Council is satisfied that there is **sufficient evidence** to provide a realistic prospect of conviction against the defendant(s). In addition RSW / Council must be satisfied that having considered all the relevant facts and circumstances of the case, and having regard to the criteria established by the Code for Crown Prosecutors, a prosecution would be **in the public interest** for each case and its merits.

A successful prosecution will result in a criminal record. There is a range of punishments available to the court depending on the charge, and the particular circumstances of a case and the offender

Prosecution cases will be issued in Cardiff if instigated by the single licensing authority (SLA). Where local authorities instigate proceedings the cases will be issued in their local courts. At this point a compensation order for the tenants affected may be applied for.

The court may be asked to compensate the tenants for the period that a breach was in force. As part of the investigation, the prosecuting authority may where appropriate investigate the financial means of the Defendant to ensure that the Court has all factual information available to them to decide on fines and possible compensation.

Section 35 of The Housing (Wales) Act 2014 provides the ability to prosecute the directors of a limited liability company as well as the body corporate. As a general rule we will use this provision where the director has consented or connived in the offence, or can be shown to have been negligent, or where a series of companies are used to limit liability for breaches and / or responsibility etc. A similar approach will be taken when considering offences undertaken by partnerships and charities / trusts.

Additional Considerations

During the decision process on the appropriate enforcement action, consideration will be given to whether a Rent Stopping Order or Rent Repayment Order should also be pursued. Additional factors considered for these purposes will include:

- Type and number of complaints about property portfolio
- Evidence of non-compliance with the [Code of Practice for Licensed landlords and Agents](#)
- Impact of non-compliance on tenants
- Period of non-compliance

Landlords will be informed at appropriate intervals that we have powers to instigate Rent Stopping Order and Rent Repayment Order proceedings. Appendix 2 provides additional information on these sanctions.

9. Working with Stakeholders

RSW has established a Stakeholder Consultation structure. We will endeavour to undertake consultation with stakeholders through this and other fora and welcome suggestions to improve the way we manage our service.

10. Comments and complaints

We strive to provide a high standard of service. However, for anyone wishing to make a complaint about the service they have received from us, there is a formal complaints procedure, to ensure that concerns are dealt with quickly and consistently. Complaints can be made in person, in writing, by email or by using the online enquiry form. You will find more information about our Complaints Policy at: <https://www.rentsmart.gov.wales/en/resource-library/>

Any comments or complaints about the application of this policy should be addressed to Rent Smart Wales at the address given in the introduction to this policy.

On occasion, one of our 22 local authority partners may be more appropriate to investigate, under their own Complaint Policy. If this is the case we will advise the customer and refer the matter to the local authority in question to provide an appropriate response.

Sometimes your concern or complaint will not be dealt with via the Complaints Policy, examples include:

- an appeal against a 'properly made' decision made by the Council
- a means to seek change to legislation or 'properly made' policy decision
- decisions in respect of which there is a separate right of appeal or review, e.g. via a Residential Property Tribunal

11. Review and Monitoring

This Policy is reviewed periodically. This includes consultation with Directors of Public Protection across Wales

Details of formal action are reported to appropriate bodies.

APPENDIX 1: TABLE OF OFFENCES

Offences and Enforcement:

Please read in consultation with Part 1 of the Housing (Wales) Act 2014

Key: Information in **green** is relevant to Licensing Authority. Information in **blue** is relevant to Local Housing Authority

Offence:	Enforcement
<p>Section 4(2)</p> <p>4 Requirement for a landlord to be registered (1) The landlord of a dwelling subject to, or marketed or offered for let under, a domestic tenancy must be registered under this Part in respect of the dwelling (see sections 14 to 17), unless an exception in section 5 applies. (2) A landlord who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p>	<p>Prosecutions: By Licensing Authority - s. 28(1) General or specific consent of LiA, LHAs where dwelling in their area – s.28(2) Fixed Penalty Notices: Can be issued by Licensing Authority for where dwelling to which offence relates covers - 29(10a) By consent from LiA, LHA where dwelling in their area – 29(11)</p>
<p>Section 6(4)</p> <p>6 Requirement for landlords to be licensed to carry out lettings activities (1) The landlord of a dwelling marketed or offered for let under a domestic tenancy must not do any of the things described in subsection (2) in respect of the dwelling unless— (a) the landlord is licensed to do so under this Part for the area in which the dwelling is located, (b) the thing done is arranging for an authorised agent to do something on the landlord’s behalf, or (c) An exception in section 8 applies. (4) A landlord who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine.</p>	<p>Prosecutions: By Licensing Authority - s. 28(1) General or specific consent of LiA, LHAs where dwelling in their area – s.28(2) Fixed Penalty Notices: Can be issued by Licensing Authority for where dwelling to which offence relates covers - 29(10a) By consent from LiA, LHA where dwelling in their area – 29(11)</p>
<p>Section 7(5)</p> <p>7 Requirement for landlords to be licensed to carry out property management activities (1) The landlord of a dwelling subject to a domestic tenancy must not do any of the things described in subsection (2) in respect of the dwelling unless— (a) the landlord is licensed to do so under this</p>	<p>Prosecutions: By Licensing Authority - s. 28(1) General or specific consent of LiA, LHAs where dwelling in their area – s.28(2) Fixed Penalty Notices: Can be issued by Licensing Authority for</p>

<p>Part for the area in which the dwelling is located, (b) the thing done is arranging for an authorised agent to do something on the landlord’s behalf, or (c) An exception in section 8 applies. (5) A landlord who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine.</p>	<p>where dwelling to which offence relates covers - 29(10a) By consent from LiA, LHA where dwelling in their area – 29(11) Rent Stopping Order – Application to RPT can be made by: 30(1a) - Licensing Authority for area where dwelling located 30 (1b) LHA for area where dwelling located [but only on either general or specific consent from LiA 30(2)] Rent Repayment Order – Application to RPT can be made by: 32(1a) - Licensing Authority for area where dwelling located 32 (1b) LHA for area where dwelling located [but only on either general or specific consent from LiA 32(2)]</p>
<p>Section 9(2)</p> <p>9 Requirement for agents to be licensed to carry out lettings work (1) A person acting on behalf of the landlord of a dwelling marketed or offered for let under a domestic tenancy must not carry out lettings work in respect of the dwelling unless the person is licensed to do so under this Part for the area in which the dwelling is located. (2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine.</p>	<p>Prosecutions: By Licensing Authority - s. 28(1) General or specific consent of LiA, LHAs where dwelling in their area – s.28(2) Fixed Penalty Notices: Can be issued by Licensing Authority for where dwelling to which offence relates covers - 29(10a) By consent from LiA, LHA where dwelling in their area – 29(11)</p>
<p>Section 11(3)</p> <p>11 Requirement for agents to be licensed to carry out property management work (1) A person acting on behalf of the landlord of a</p>	<p>Prosecutions: By Licensing Authority - s. 28(1) General or specific consent of LiA, LHAs where dwelling in their</p>

<p>dwelling subject to a domestic tenancy must not carry out property management work in respect of the dwelling unless the person is licensed to do so under this Part for the area in which the dwelling is located.</p> <p>(2) Where a dwelling was subject to a domestic tenancy, but is no longer subject to that domestic tenancy, a person acting on behalf of the landlord of the dwelling must not check the contents or condition of the dwelling, or arrange for them to be checked, for any purpose connected with that tenancy unless—</p> <p>(a) the person is licensed to do so under this Part for the area in which the dwelling is located,</p> <p>(b) the person does no other thing in respect of the dwelling falling within—</p> <p>(i) section 10(1), except preparing, or arranging the preparation of, any inventory or schedule of condition, or (ii) section 12(1), or</p> <p>(c) The activity would not, by virtue of section 12(3), be property management work.</p> <p>(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine.</p>	<p>area – s.28(2)</p> <p>Fixed Penalty Notices: Can be issued by Licensing Authority for where dwelling to which offence relates covers - 29(10a) By consent from LiA, LHA where dwelling in their area – 29(11)</p>
<p>Section 13(3)</p> <p>13 Offence of appointing an unlicensed agent</p> <p>(1) The landlord of a dwelling marketed or offered for let under a domestic tenancy must not appoint or continue to allow a person to undertake lettings work on behalf of the landlord in relation to that dwelling, if—</p> <p>(a) the person does not hold a licence to do so under this Part for the area in which the dwelling is located, and</p> <p>(b) The landlord knows or should know that the person does not hold such a licence.</p> <p>(2) The landlord of a dwelling subject to a domestic tenancy must not appoint or continue to allow a person to undertake property management work on behalf of the landlord in relation to that dwelling, if—</p> <p>(a) the person does not hold a licence to do so under this Part for the area in which the dwelling is located, and</p> <p>(b) The landlord knows or should know that the person does not hold such a licence.</p> <p>(3) A landlord who contravenes subsection (1)</p>	<p>Prosecutions: By Licensing Authority - s. 28(1) General or specific consent of LiA, LHAs where dwelling in their area – s.28(2)</p> <p>NO FPN</p> <p>Rent Stopping Order – Application to RPT can be made by: 30(1a) - Licensing Authority for area where dwelling located 30 (1b) LHA for area where dwelling located [but only on either general or specific consent from LiA 30(2)]</p> <p>Rent Repayment Order – Application to RPT can be made by:</p>

<p>or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.</p>	<p>32(1a) - Licensing Authority for area where dwelling located 32 (1b) LHA for area where dwelling located [but only on either general or specific consent from LiA 32(2)]</p>
<p>Section 16(3)</p> <p>16 Duty to update information (1) A landlord who is registered under section 15 in relation to a rental property must notify the licensing authority in writing of the following changes— (a) any change in the name under which the landlord is registered; (b) the appointment of a person to carry out lettings work or property management work on behalf of the landlord in respect of the rental property; (c) that a person who the landlord has previously appointed to carry out lettings work or property management work on behalf of the landlord in respect of the rental property has ceased to do so; (d) any assignment of the landlord’s interest in the rental property; (e) Any prescribed changes. (2) A landlord must comply with the duty in subsection (1) within 28 days beginning with the first day on which the landlord knew, or should have known, of the change. (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.</p>	<p>Prosecutions: By Licensing Authority only - s. 28(1) Fixed Penalty Notices: Can be issued by Licensing Authority to which the information to which the offence related was provided to - 29(10b)</p>
<p>Section 23(3)</p> <p>23 Duty to update information (1) A licence holder must notify the licensing authority in writing of the following changes— (a) any change in the name under which the licence holder is licensed; (b) Any prescribed changes. (2) A licence holder must comply with the duty in</p>	<p>Prosecutions: By Licensing Authority only - s. 28(1) Fixed Penalty Notices: Can be issued by Licensing Authority to which the information to which the offence related was provided to - 29(10b)</p>

<p>subsection (1) within 28 days beginning with the first day on which the licence holder knew, or should have known, of the change.</p> <p>(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.</p>	
<p>Section 38(1)(4)</p> <p>38 Enforcement of powers to obtain information</p> <p>(1) A person who fails to do anything required of that person by a notice under section 37 commits an offence.</p> <p>A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.</p> <p>(4) A person who intentionally alters, suppresses or destroys any document which the person has been required to produce by a notice under section 37 commits an offence.</p> <p>A person who commits an offence under subsection (4) is liable on summary conviction to a fine.</p>	<p>Prosecutions: By Licensing Authority only - s. 28(1)</p> <p>Fixed Penalty Notices – 38(1) Only: Can be issued by Licensing Authority which authorised the person who gave the notice - 29(10c)</p>
<p>Section 39(1)(2)</p> <p>39 False or misleading information</p> <p>(1) A person who—</p> <p>(a) Supplies any information to a licensing authority in connection with any of its functions under this Part which is false or misleading, and</p> <p>(b) Knows that it is false or misleading or is reckless as to whether it is false or misleading, commits an offence.</p> <p>(2) A person who—</p> <p>(a) supplies any information to another person which is false or misleading,</p> <p>(b) knows that it is false or misleading or is reckless as to whether it is false or misleading, and</p> <p>(c) Knows that the information is to be used for the purpose of supplying information to a licensing authority in connection with any of its functions under this Part, commits an offence.</p> <p>(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.</p>	<p>Prosecutions: By Licensing Authority only - s. 28(1)</p> <p>Fixed Penalty Notices : Can be issued by Licensing Authority to which the information was supplied - 29(10d)</p>

APPENDIX 2: Additional Information: Rent Stopping Orders & Rent Repayment Orders.

Rent Stopping Orders

A Rent Stopping Order has the effect of stopping the rent payable by a tenant to a landlord while it is in force.

In some circumstances, if a landlord is carrying out certain property management activities without a licence or uses an unlicensed agent to carry out letting or property management work on his or her behalf, the single licensing authority or a local authority *may* consider applying to the Residential Property Tribunal (RPT) for a rent stopping order.

The RPT in considering an application for a rent stopping order, must be satisfied that an offence under sections 7(5) or 13(3) of the Housing (Wales) Act 2014 is being committed.

Where the RPT makes a rent stopping order, the periodic rent payments in connection with that particular property are stopped for the period falling between the “stopping date” specified in the order, and a date specified by the tribunal when the order is revoked.

A licensing authority or local authority will need to be able to provide evidence to the RPT that these offences are being committed, although it is not necessary for the person to have been convicted or charged for the offence.

A landlord would not be considered to be committing an offence if they have applied to be licensed, from the date of the licence application until it is determined or if refused, the appeals process has been exhausted and the decision upheld.

However, if a landlord continues to undertake such activities without a licence, or use an unlicensed agent to undertake such activities, and makes no effort to comply with their duties despite requests, there would likely be clear evidence to present to the RPT.

If a tenant is concerned that their landlord is committing such an offence, they should notify the licensing authority or their local authority. They will be given appropriate advice by RSW.

Rent Repayment Orders

A rent repayment order has the effect of requiring the landlord to repay rent that has been paid for a specific period of time stated in the order during which the landlord has been found to have committed an offence under section 7(5) or 13(3).

If a landlord has been carrying out certain property management activities without a licence or using an unlicensed agent to carry out lettings or property management work, the licensing authority or a local housing authority or a tenant may consider applying to the Residential Property Tribunal (RPT) for a rent repayment order.

For an application from a licensing authority or local authority, the RPT in considering an application, must be satisfied that an offence under sections 7(5) or 13(3) of the Housing (Wales) Act 2014 has been committed. The licensing authority or local authority must give the landlord a “notice of intended proceedings” and the offence must have been committed within 12 months of the date of that notice.

For an application from a tenant, the RPT in considering an application must be satisfied that the landlord has been convicted of an offence or that a rent repayment order has already been made in respect of housing benefit or universal credit. The application by a tenant must be made within 12 months of the date of the conviction or the date of any rent repayment order made.

Where the RPT makes a rent repayment order, the landlord will be required to repay the rent amount specified in the order to the relevant applicant. This allows the tenants of a property to recover rent they have paid, or the relevant local authority or licensing authority, to recover rent, housing benefit or universal credit paid, to an unlicensed landlord.

Appendix 2

Rent Smart Wales Enforcement Policy Stakeholder Consultation Summary Responses and Consideration

<u>Organisation</u>	<u>Comment summary</u>	<u>Rent Smart Wales response</u>
Bridgend, Cardiff and Vale of Glamorgan AND Merthyr Council (point 1 raised only)	Does enforcement policy determine SLA decisions only and allow LA to use their own	LAs acting under Housing (Wales) Act 2014 are acting as "RSW" and should use this guidance in decision-making and progression to ensure consistency. However, LA policies are not restricted.
	The policy style and content should be simpler and shorter.	Document reviewed and significant alterations made to reflect the comment made.
	Was Regulators Code considered when preparing doc, it's not mentioned	Yes, document also amended to be clearer.
Peter Alan	What are an agents responsibilities re. Landlords being registered?	Agents have requirement in licence conditions to notify client landlords of requirement to register and must report landlord to RSW within 12 weeks if they have failed to do so. Landlord has legal responsibility to register. Clarification request, no change required to policy.
	What are an agents responsibilities re. Landlords providing and updating correct info?	Landlords are legally required to provide correct info and update any changes. Agent must provide up to date details of houses they represent at least once a year or on request from RSW. Clarification request, no change required to policy.
	When does a licence holder need to update their name?	When there is any change in who licence is issued to. Clarification request, no change required to policy
Torfaen	Wording amendment - Clarity on wording to be changed to "Registration of Landlords and properties" and typographical corrections	Document has been re-worded.
Powys	What are the implications for Trading Standards responsible for EPC elements of rented properties?	Breaches of EPC, Tenancy deposit, fees etc are a breach of RSW COP which should be assessed during any visits. Recommendations are being prepared for additions to inspection forms to cover these issues and to include cross-authorisation of enforcement officers. Enforcement of matters contained within COP is a LA issue. This level of detail is covered in the policy, no amendment required.
Newport	Query whether RSW or LAs would investigate complaints about the service	Policy amended to simplify and clarify. Investigations will be undertaken by either Rent Smart Wales or Local Authorities, depending upon the nature of the complaint. Where the matter is specifically related to a Local Authority issue their complaints policy will be followed.
RCT	How will consistency in decision making be ensured?	Through use of prosecution guidelines, standard documentation and all-Wales training. Clarification request, no change to policy required.
	Will there be operational guidelines to be followed?	Flowcharts and procedures will continue to be developed and tested as cases are dealt with. Clarification request, no change to policy required.

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Rent Smart Wales Enforcement Policy Stakeholder Consultation Summary Responses and Consideration

	How will referrals, timescales, info sharing and case conferences work in practice?	Use of common IT system, 'How To' guides. Case conferences can either be telephone calls, e-mail exchanges or meetings where required. All notes will be stored in common IT system against the case. Clarification request, no change to policy required.
National Landlords Association	No comments, "policy looks fine to us"	n/a
Neath Port Talbot	Would the LA require authorisation from RSW in order to take formal action?	General consent is granted to LA under MoU. Specific consent would have to be sought if LA were looking to take action with regard to a dwelling not in their area or for offence that was not in the remit of LA. There would be an expectation to discuss cases and keep all parties informed either through IT system updates and/or discussion and case conferences. Clarification request, no change to policy required.
	Who would generate the FPN?	LA has access to RSW database and ability to generate and process FPNs. Clarification request, no change to policy required.
	How is the LA reimbursed for the FPN activity?	Payments initially made to RSW, but returned to the LA through financial transaction. Clarification request, no change to policy required.
	Will every non-compliant landlord/agent be prosecuted	No. The policy explains that FPNs will be used where appropriate in most cases, prior to prosecutions. Level of action required will be assessed against circs and guidelines. Policy amended to simplify and clarify options.
Caerphilly	Will prosecutions only be taken against landlords/agents with large portfolios	No, but prosecutions against those with larger portfolios will have greater effect and protect interests of more tenants. Enforcement action can be taken where appropriate against anyone not complying. Policy amended to simplify and clarify options.
	What message should the Council give to landlords/agents they use in PSH	That they MUST comply with all requirements. If info is given to them in writing then they have no Defence of not being aware of requirements. Any breach can be considered for immediate action. Clarification request, no change to policy required.
	What consent does a LA have to take action?	General consent is given to the LA through the MoU as the LA undertaking duties in relation to the Housing (Wales) Act 2014 are acting as part of Rent Smart Wales. Specific consent is needed if LA wanting to take action outside of their area or powers. Content of the policy amended to make this clearer.
	Who is Rent Smart Wales in relation to LA?	Policy amended to make this clearer. LAs acting under Housing (Wales) Act 2014 are acting as "RSW" and should use this guidance in decision-making and progression to ensure consistency. However, LA policies are not restricted.

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Rent Smart Wales Enforcement Policy Stakeholder Consultation Summary Responses and Consideration

	Query whether RSW or LAs would investigate complaints about the service	Policy amended to simplify and clarify. Either Rent Smart Wales or Local Authorities, depending upon the nature of the complaint, will undertake investigations. Where the matter is specifically related to a Local Authority issue their complaints policy will be followed.
	Why is there no mention of refusal/revocation of licences?	Policy excludes this aspect and states this clearly. In addition, any activities that may also indicate that a licence holder is no longer a "fit and proper" person should be reported, to be dealt with under separate procedure. No amendment required.
	Who takes the lead in relation to offences where either SLA or LA could?	This is covered in detailed procedures guidelines, which form part of the MOU and subsequent and ongoing training. No amendment to policy required, as not intended to include this level of detail.
Wrexham	Who is Rent Smart Wales in relation to LA, SLA, LiA?	This policy covers the enforcement work undertaken by Cardiff Council as the Single Licensing Authority (SLA) and 22 Local Authorities to deliver Part 1 of the Housing (Wales) Act 2014. Collectively the partnership and service is known as "Rent Smart Wales". Each LA has access to the database, branding and documentation. Policy now makes this clearer.
Flintshire	Query whether RSW or LAs would investigate complaints about the service	Policy amended to simplify and clarify. Either Rent Smart Wales or Local Authorities, depending upon the nature of the complaint, will undertake investigations. Where the matter is specifically related to a Local Authority issue their complaints policy will be followed.
	Why is there no mention of refusal/revocation of licences?	Policy excludes this aspect and states this clearly. In addition, any activities that may also indicate that a licence holder is no longer a "fit and proper" person should be reported, to be dealt with under separate procedure. No amendment required.
	Is it fair for Defendants to have to travel to Cardiff for trial when SLA initiates proceedings?	Prosecution cases will be issued in Cardiff if instigated by SLA as this is home authority. If LA instigates proceedings, cases will be issued in local Court. There is precedent where a national body operates schemes of this nature but this will be reviewed with the benefit of experience. Equality impact assessment also covers this matter.
RICS	Happy with doc, requests periodic review	No amendments required

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Rent Smart Wales Enforcement Policy Stakeholder Consultation Summary Responses and Consideration

RLA	What will be the enforcement approach to landlords/agents ignorant of, or misunderstanding requirements?	Approach will be proportionate. It is currently recognised that there is still a need for marketing, and that this will continue in order to inform new persons entering the market. No amendment made to the policy.
	How much grace allowed to unregistered/unlicensed landlords? Will non-compliant landlords/agents be allowed time to register/licence without action as long as they comply with the steps that would normally be taken?	Unregistered/unlicensed landlords or agents have had over a year already. Proportionate response will be taken. Marketing will continue. No amendment required to policy
	Will other factors (i.e. Property condition, agent vs landlord) be considered in deciding what action to take	Yes, each case will be considered on merit, before deciding on what action is appropriate.
	What are an agent's responsibilities re. Landlords being registered?	Agents have a requirement in licence conditions to notify client landlords of requirement to register and must report landlord to RSW within 12 weeks if they have failed to do so. Landlord has legal responsibility to register. Clarification request, no change to policy required.
	If officers approach businesses/individuals and require them to provide info about investigation, should they be cautioned first and dealt with under PACE if suspected of criminal offence?	Documentation will make clear to Caution where appropriate and conduct investigations in accordance with PACE. Policy makes it clear that the relevant regulatory codes of practice / legislation should be followed.
	Why are there guidelines for decision making only under prosecution section. What are the guideline and timescale considerations for other disposals? How can consistent decisions be reached without this?	Policy re-written to clarify and simplify. Guidelines referred to removed from doc, referenced instead via Policy, Crown Prosecutors code etc rather than prescribed in policy itself.
	Is policy going to be restructured to show a more transparent and graduated decision-making process?	Decisions will be appropriate to the case and decision-making will be made in line with the guidelines and policy. Amendments made to simplify and remove options unlikely to be used.
	What guidance is there as to when Rent Stopping/Rent Repayment Orders will be considered	Templates will be drawn up to ensure that at the decision making point re: formal action, the relative merits of RSO/RRO will be considered. This will be done using the same criteria as any other formal decision making option. This section has been re-worded to provide additional clarity.

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Rent Smart Wales Enforcement Policy Stakeholder Consultation Summary Responses and Consideration

	Wording amendment - bullet point "public opinion" to "public interest"	Removed on edit
	Wording amendment - reword "matter of judgement and officers must exercise their discretion...."	Removed on edit
	Wording amendment – “a decision may need to be made ...”	Removed on edit
	Wording amendment - Contradictory re: discretion and the enforcement officer	Removed on edit
	Wording amendment - Should there be a qualification against the "aim of eliminating financial gain" or clarification of when Rent Stopping/Rent Repayment orders will be applied for?	No change as believed to be a misunderstanding. In consideration of action we are going to take we should take account of the financial gain that the offender has had from non-compliance
	Wording amendment – “remuneration” to “reparation”.	Removed on edit
	Who makes decisions on enforcement/NFA and who takes prosecution (Who is Rent Smart Wales in relation to LA?)	This policy covers the enforcement work undertaken by Cardiff Council as the Single Licensing Authority (SLA) and 22 Local Authorities to deliver Part 1 of the Housing (Wales) Act 2014. Decisions about enforcement action will be taken either at LA level or SLA level, depending on the agreements set out in the MOU.
Denbighshire	Will prosecution templates be provided for consistency?	Yes. No amendment required to the policy.
	If businesses ask for a meeting with RSW who would attend this? Would SLA officers travel or would complainants have to travel to Cardiff?	This will vary depending on the case locality and complexity. Operational matter, no policy amendment required.
	Clarification on the "complaints" section. Who is this section suggesting would be penalised after complaint?	Refers to complaints made about RSW service (not about landlords or tenants) and that there is system of accountability for RSW actions. Complaints to be learned from rather than used to penalise staff. Section re-written to make simpler / clearer.
Training for Professionals	Informal cautions are not indefinitely unspent	Section deleted

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Rent Smart Wales Enforcement Policy Stakeholder Consultation Summary Responses and Consideration

National Trading Standards Estate Agency Team	Policy is too wordy and should be slimmed down as the more there is in there, the more there is to challenge at Court.	Policy substantially reviewed to provide clarity and simpler framework.
	PACE Interviews - Interviews should be offered before enforcement decisions are made.	Incorporated during edit.
NALS	FPN - is there a FPN appeals process? Is the representation/complaints section the process that should be used.	No legal appeal process but can contact RSW via representation/complaints options to challenge. Otherwise would need to make argument in Court once escalated to prosecution. No amendment.
	Simple Cautions - who is authorised to issue caution. Will it be Senior Officer? In Police officer requests, Insp authorises, Sgt administers.	Provision deleted, as following legal advice, considered inappropriate for use in this circumstance.
	Simple cautions - query re: fact that cautions never become spent.	Section deleted.
	Prosecution - standard wording required to identify decision makers for cautions (unrelated to investigation) and prosecutions (not normally had any significant involvement)	Simple Caution removed from policy. Unrelated officer to review evidence for decision to prosecute. This officer will not normally have been involved in the preparation of the case. Template prosecution forms will cover this item, reference to process not required in the policy.
	Prosecution - Senior Officer authorisation should be sought for FPNs	No, FPNs are issued in response to offences before progression to prosecution in order for offender to discharge liability. Authorisation devolved to officers, decision making to be reviewed by Senior Officers at relevant times. No amendment to policy, operational matter.
	Prosecution - Senior Officer authorisation should be sought for RSO, RRO	Templates will be drawn up to ensure that at the decision making point re: formal action the relative merits of RSO/RRO will be considered. This will be done using the same criteria as any other formal decision making option.
	Who takes the lead on enforcement, SLA, LA?	This policy covers the enforcement work undertaken by Cardiff Council as the Single Licensing Authority (SLA) and 22 Local Authorities to deliver Part 1 of the Housing (Wales) Act 2014. Collectively the partnership and service is known as "Rent Smart Wales". Each LA has access to the database, branding and documentation. Policy now makes this clearer. There is a MOU in place, which describes the detail of how responsibilities are shared between the SLA and LA partners.

Equality Impact Assessment
Corporate Assessment Template

Service Title: Rent Smart Wales: Enforcement Policy
New

Who is responsible for developing and implementing the Policy/Strategy/Project/Procedure/Service/Function? OM, Rent Smart Wales	
Name: Angharad Thomas	Job Title: Group Leader Enforcement and Training
Service Team: Rent Smart Wales	Service Area: Communities
Assessment Date: 07/02/2017	

1. What are the objectives of the Policy/Strategy/Project/ Procedure/ Service/Function?

To set out the arrangements for enforcing the requirements of the Housing (Wales) Act 2014, through the use of appropriate enforcement action against landlords / agents who own or manage rented properties in Wales.
The purpose of the legislation is to ensure that:

- Landlords register their eligible private rented properties located in Wales
- Persons managing these properties are licenced

2. Please provide background information on the Policy/Strategy/Project/ Procedure/Service/Function and any research done [e.g. service users data against demographic statistics, similar EIAs done etc.]

Cardiff Council has been designated the Single Licensing Authority for Wales by the Welsh Government. Cardiff Council has created a service, branded “Rent Smart Wales” (“RSW”) which administers the requirements of the Housing (Wales) Act 2014 (“the Act”) on behalf of all Welsh Local Authorities. The Service provides a telephone advice contact centre, application processing service and an internet-based website and database which can be updated by the Service User.

The service is bi-lingual for both English and Welsh speakers. All documentation, information on the RSW website and training courses are available in both English and Welsh. The telephone advice service also offers Welsh and English options, with both English & Welsh speakers employed by RSW across all areas of the Service. Access to language line is available when required.

Cardiff Council delivers this service across all of Wales from a single point.

To secure full compliance with the legislation, enforcement provisions are available which include Fixed Penalty Notices, Prosecutions, Rent Stopping Orders and Rent

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Equality Impact Assessment Corporate Assessment Template

Repayment Orders.

A Memorandum of Understanding has been signed by all 22 Local Authorities to ensure marketing and promotional work required as part of the Act will be delivered in partnership and consistently across Wales. Relevant information is shared with Local Authorities, to discharge RSW duties effectively.

Rent Smart Wales has identified that customers and stakeholders will come from a multitude of backgrounds, including but not limited to landlords, tenants, agents, professional/academic bodies, other Local Authorities, Welsh Government, etc.

The property owners and agents involved in property management are known to live across Wales, UK and abroad.

3 Assess Impact on the Protected Characteristics

3.1 Age

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative/]** on younger/older people?

	Yes	No	N/A
Up to 18 years		x	
18 - 65 years		x	
Over 65 years	x		

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

Negative Impact:

It is recognised that the way in which the service is delivered (i.e. High dependence on use of IT equipment) will have a negative impact on this characteristic, this is addressed by the EIA completed for the service itself. This EIA does not address these matters addressed in the EIA about the service as a whole.

Proceedings for failure to comply with the provisions of the Act will be issued in the Cardiff Magistrates' Court, where Cardiff Council leads on the case. This could present difficulties for travel to Cardiff which may more significantly impact older people.

The following actions have been taken to address the negative differential impact:

- The telephone service is available to provide help and support for offenders to comply at an early stage.
- An application can be made to the court to re-locate the hearing in exceptional circumstances. Information will be made available when proceedings are issued, about the court process, disability measures and how to contact the court.

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Equality Impact Assessment Corporate Assessment Template

<ul style="list-style-type: none"> Courts have their own legal obligations to comply with EA requirements. These can be met by methods such as video link The policy itself requires that each case is considered on merit to ensure that decisions made are appropriate to the circumstances. If additional assistance is identified, through the assessment process, it will be taken into account. (Decision documentation to record these additional needs). The policy itself can be made available in any format e.g. braille upon request <p>Positive Impact:</p> <ul style="list-style-type: none"> Tenants and their families (regardless of age) will benefit from ensuring that their landlords / agents comply with the legislation, as it aims to improve the quality of private rented properties across all of Wales.
What action(s) can you take to address the differential impact?
No further actions identified at this time

3.2 Disability

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on disabled people?

	Yes	No	N/A
Hearing Impairment	x		
Physical Impairment	x		
Visual Impairment	x		
Learning Disability	x		
Long-Standing Illness or Health Condition	x		
Mental Health	x		
Substance Misuse	x		
Other	x		

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

Negative Impact:
It is recognised that the way in which the service is delivered (i.e. High dependence on use of IT equipment) will have a negative impact on this characteristic, this is addressed by the EIA completed for the service itself. This EIA does not address these matters specifically.

Proceedings for failure to comply with the provisions of the Act will be issued in the Cardiff Magistrates' Court, where Cardiff Council leads on the case. This may present difficulties for travel to Cardiff which possibly will impact people with a physical disability / illness.

In addition:

- Persons with sight impairments may find it difficult to read the legal documentation
- Persons with hearing impairment may find it difficult to talk by phone to the contact centre for early advice on compliance

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Equality Impact Assessment Corporate Assessment Template

The following actions have been taken to address the negative differential impact:

- The telephone service is available to provide help and support to offenders to help them comply at an early stage.
- An application can be made to the court to re-locate the hearing in exceptional circumstances. This information will be made available when proceedings are issued i.e. when the summons is issued. An application for this purpose can be made on form EX104 - Details of how to contact the court.
- Courts have their own legal obligations to comply with EA requirements. These can be met by methods such as video link
- The policy itself requires that each case is considered on merit to ensure that decisions made are appropriate to the circumstances. If additional assistance is identified, through the assessment process, it will be taken into account. (Decision documentation to record these additional needs).
- The policy itself can be made available in any format e.g. braille upon request

Positive Impact:

Tenants with and without disabilities will benefit from this Service, as it aims to improve the quality of private rented properties across all of Wales.

What action(s) can you take to address the differential impact?

No further actions identified at this time

3.3 Gender Reassignment

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on transgender people?

	Yes	No	N/A
Transgender People (People who are proposing to undergo, are undergoing, or have undergone a process [or part of a process] to reassign their sex by changing physiological or other attributes of sex)		x	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

No differential impact has been identified at this time

What action(s) can you take to address the differential impact?

No actions identified at this time

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3.4. Marriage and Civil Partnership

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on marriage and civil partnership?

	Yes	No	N/A
Marriage		x	
Civil Partnership		x	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

No differential impact has been identified at this time

What action(s) can you take to address the differential impact?

No actions identified at this time

3.5 Pregnancy and Maternity

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on pregnancy and maternity?

	Yes	No	N/A
Pregnancy	x		
Maternity	x		

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

Negative Impact:

It is recognised that this service may have a negative impact on this characteristic.

Persons with this characteristic may find it difficult to travel to court venues. Proceedings for failure to comply with the provisions of the Act will be issued in the Cardiff Magistrates' Court, where Cardiff Council leads on the case. This will present difficulties for travel to Cardiff which may more significantly impact on those who are pregnant.

The following actions have been taken to address the negative differential impact:

- The telephone service is available to provide help and support to offenders to help them comply at an early stage.
- An application can be made to the court to re-locate the hearing in exceptional circumstances. Contact information will be made available when proceedings are issued i.e. when the summons is issued. Form EX104 - Details of how to contact the court.

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- Courts have their own legal obligations to comply with EA requirements. These can be met by methods such as video link
- The policy itself requires that each case is considered on merit to ensure that decisions made are appropriate to the circumstances. If additional assistance is identified, through the assessment process, it will be taken into account. (Decision documentation to record these additional needs).

Positive Impact:

Tenants with and without this characteristic will benefit from this Service, as it aims to improve the quality of private rented properties across all of Wales.

What action(s) can you take to address the differential impact?

No further actions identified at this time

3.6 Race

Will this Policy/Strategy/Project//Procedure/Service/Function have a **differential impact [positive/negative]** on the following groups?

	Yes	No	N/A
White	x		
Mixed / Multiple Ethnic Groups	x		
Asian / Asian British	x		
Black / African / Caribbean / Black British	x		
Other Ethnic Groups	x		

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

Negative Impact:

It is recognised that this service may have a negative impact on this characteristic.

- Persons with this characteristic may not use English or Welsh, and therefore struggle to understand legislative requirements.

The following actions have been taken to address the negative differential impact:

- Many search engines provide translation services to help web Users translate words or phrases into their chosen language (e.g. Google Translate)
- The telephone service is available to provide help and support to Offenders, which includes providing advice on how to complete comply with the law. Similarly, Offenders can choose to contact us by Email, log a call through the website enquiries page, or contact us via Twitter. Users will be advised that if they do not have translation support, they can contact their Local Authority, which can provide information about local translation services and support

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groups. In addition, the RSW service itself has access to Language Line
What action(s) can you take to address the differential impact?
<p>Landlord Associations / Agents will be encouraged to provide feedback with regard to any language barriers. RSW will evaluate the numbers and demographics to ascertain whether document translations are required.</p> <p>Ethnicity monitoring is undertaken as part of the RSW application processes. This will be analysed to determine whether there is a need for information in additional languages.</p>

3.7 Religion, Belief or Non-Belief

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on people with different religions, beliefs or non-beliefs?

	Yes	No	N/A
Buddhist		x	
Christian		x	
Hindu		x	
Humanist		x	
Jewish		x	
Muslim		x	
Sikh		x	
Other		x	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.
No differential impact has been identified at this time
What action(s) can you take to address the differential impact?
No actions identified at this time

3.8 Sex

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on men and/or women?

	Yes	No	N/A
Men		x	
Women		x	

Please give details/consequences of the differential impact, and provide supporting
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evidence, if any.
No differential impact has been identified at this time
What action(s) can you take to address the differential impact?
No actions identified at this time

3.9 Sexual Orientation

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on the following groups?

	Yes	No	N/A
Bisexual		X	
Gay Men		X	
Gay Women/Lesbians		X	
Heterosexual/Straight		X	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.
No differential impact has been identified at this time
What action(s) can you take to address the differential impact?
No actions identified at this time

3.10 Welsh Language

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on Welsh Language?

	Yes	No	N/A
Welsh Language		X	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.
The Service is fully bi-lingual for both English and Welsh speakers. All documentation, information on the RSW website and training courses are available in both English and Welsh. The telephone advice service also offers Welsh and English options, with both English & Welsh speakers employed by RSW across all areas of the Service.
What action(s) can you take to address the differential impact?
No actions identified at this time

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4. Consultation and Engagement

What arrangements have been made to consult/engage with the various Equalities Groups?

Consultation has been undertaken with stakeholders in the development of the policy. Tai Pawb, Shelter, CAB and landlord / agent organisations were included. No specific equality comments were received. However, this document will be revisited with the benefit of operating the enforcement provisions as and when further impacts are identified to ensure consideration is given to the individual Protected Characteristics.

5. Summary of Actions [Listed in the Sections above]

Groups	Actions
Age, Disability, Pregnancy and Maternity	<ul style="list-style-type: none">• The telephone service is available to provide help and support to offenders to help them comply at an early stage.• An application can be made to the court to re-locate the hearing in exceptional circumstances. Form EX104 - Details of how to contact the court.• Courts have their own legal obligations to comply with EA requirements. These can be met by methods such as video link• The policy itself requires that each case is considered on merit to ensure that decisions made are appropriate to the circumstances. If additional assistance is identified, through the assessment process, it will be taken into account. (Decision documentation to record these additional needs).• The policy itself can be made available in any format e.g. braille upon request
Gender Reassignment	
Marriage & Civil Partnership	
Race	Landlord Associations / Agents will be encouraged to provide feedback with regard to any language barriers. RSW will evaluate the numbers and demographics to ascertain whether document translations are required. Ethnicity monitoring is undertaken as part of the RSW

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	application processes. This will be analysed to determine whether there is a need for information in additional languages.
Religion/Belief	
Sex	
Sexual Orientation	
Welsh Language	
Generic Over-Arching [applicable to all the above groups]	

6. Further Action

Any recommendations for action that you plan to take as a result of this Equality Impact Assessment (listed in Summary of Actions) should be included as part of your Service Area's Business Plan to be monitored on a regular basis.

7. Authorisation

The Template should be completed by the Lead Officer of the identified Policy/Strategy/Project/Function and approved by the appropriate Manager in each Service Area.

Completed By : Angharad Thomas	Date: 07.02.17
Designation: Group Leader; Enforcement and Training	
Approved By: Bethan Jones	
Designation: Operational Manager, Rent Smart Wales	Date: 07.02.17
Service Area: Rent Smart Wales	

- 7.1 On completion of this Assessment, please ensure that the Form is posted on your Directorate's Page on CIS - *Council Wide/Management Systems/Equality Impact Assessments* - so that there is a record of all assessments undertaken in the Council.

For further information or assistance, please contact the Citizen Focus Team on 029 2087 3059 or email citizenfocus@cardiff.gov.uk