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<u>Item</u>
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Update to Private Rented Sector Housing Enforcement Policy

**Responsible
Officer**

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1. Synopsis

- 1.1. A proposal to consult on an updated Private Rented Sector Housing Enforcement Policy to address the use of additional civil (financial) penalties for the purposes of enforcing electrical safety standards and minimum energy efficiency requirements relating to private rented property.

2. Executive Summary

- 2.1. The Council has a responsibility to regulate private rented domestic accommodation to ensure it is safe to live in, free from health and safety hazards and meets minimum energy efficiency levels. Houses in multiple occupation (HMO) must be licensed and comply with additional requirements relating to health and safety.
- 2.2. Cabinet approved the current Private Rented Sector Housing Enforcement Policy ('the PRSH Enforcement Policy') in July 2019. This Policy was brought into effect to reflect a range of new powers that were given to the Council under the Housing and Planning Act 2016, which included, amongst others, the power to impose civil penalties as an alternative to prosecution.
- 2.3. The new powers were and continue to be aimed at:
 - tackling criminal, rogue and irresponsible landlords;
 - improving standards in the private rented sector; and
 - ensuring that private rented accommodation is safe, well managed and that property is adequately maintained.

- 2.4. Regulations made under the Housing and Planning Act 2016, the Housing Act 2004 and the Energy Act 2011 have now extended the powers of the Council to permit civil penalties to also be imposed, as an alternative to prosecution, specifically in relation to electrical safety standards and minimum energy efficiency levels of private rented domestic property.
- 2.5. The current PRSH Enforcement Policy has been updated to incorporate the additional civil penalty powers and a draft of the updated PRSH Enforcement Policy ('the updated Policy') has been produced for consultation.

3. Recommendations

- 3.1 That Cabinet approves for consultation, with any necessary amendments, the draft updated Private Rented Sector Housing Enforcement Policy as set out at Appendix 1.
- 3.2 That Cabinet instructs the Head of Business and Consumer Protection to undertake a six-week period of consultation and to bring the draft updated Private Rented Sector Housing Enforcement Policy, together with all feedback received from the consultation, back to Cabinet for further consideration and final approval.

REPORT

4. Risk Assessment and Opportunities Appraisal

- 4.1. Shropshire has a wide range of good landlords and letting agents who take their legal responsibilities seriously and provide decent well-maintained homes.
- 4.2. However, there are also a number of rogue, criminal and irresponsible landlords who knowingly flout their legal obligations and rent out accommodation that is substandard, unsafe, unlicensed and/or has poor energy efficiency levels. These landlords create an unfair trading environment that undermines the operation of legitimate and law-abiding businesses.
- 4.3. The current PRSH Enforcement Policy already sets out the enforcement activities that the Council may use to tackle the majority of these concerns, which, in turn, supports good landlords to flourish.
- 4.4. The powers available to the Council have been extended. The Council may now, as an alternative to prosecution, also impose civil

penalties on landlords who are in breach of their duties contained in the following regulations:

- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ('the Electrical Safety Standards Regulations')
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the Energy Efficiency Regulations')

- 4.5. The specific duties set out within the above Regulations, where a civil penalty may now be imposed, are detailed in Section 3.0 of the updated Policy.
- 4.6. The updates to the current PRSH Enforcement Policy, together with the Council's [Better Regulation and Enforcement Policy](#), provide a framework that will assist the Council to improve the safety and energy efficiency of private rented accommodation.
- 4.7. Effective enforcement in relation to private rented accommodation, including the use of civil penalties, is likely to improve the life chances of the population generally and particularly those with protected characteristics such as the elderly, those with disabilities and families with children.
- 4.8. An Equality, Health and Social Inclusion Impact Assessment (EHSIA) is currently being undertaken. It is anticipated that the outcome will demonstrate an increased positive impact on health, equality, and social inclusion. The conclusions from the formal assessment will be brought before Cabinet, together with the feedback from the consultation, and the outcome of both of these will inform the final content of the updated Policy.
- 4.9. Regulation 11 of the Electrical Safety Standards Regulations gives the Council the power to impose civil penalties of up to £30,000. It is for the Council to determine the level of any civil penalty up to this maximum.
- 4.10. Regulation 38 of the Energy Efficiency Regulations gives the Council the power to impose civil penalties of up to £5,000. It is for the Council to determine the level of any civil penalty within certain individual maximum levels for different types of breaches.
- 4.11. Unlike the civil penalties that are already included in the current PRSH Enforcement Policy, there is no statutory guidance recommending or advising that the Council should develop and document a policy to determine how the level of civil penalties under the Electrical Safety Standards Regulations and the Energy Efficiency Regulations should be determined.

- 4.12. There is, however, non-statutory guidance in relation to the Electrical Safety Standards Regulations, which recommends that the Council should develop and document such a policy and that it would be appropriate to consider both the Council's current PRSH Enforcement Policy and the statutory guidance that the Council was required to have regard to when the current Policy was initially developed. There is no equivalent guidance in relation to the Energy Efficiency Regulations.
- 4.13. As a result, the above civil penalty powers could be used by the Council without updating the current PRSH Enforcement Policy. However, by choosing to incorporate these additional powers into the updated Policy, this provides a framework for the Council to enable reasonable decisions to be made and to mitigate the reputational and financial risks that may result from any legal challenge. A failure to update the current PRSH Enforcement Policy may also limit the ability of the Council to improve the safety and energy efficiency of private rented accommodation.
- 4.14. There is a risk that any substantial increase in the number of private rented sector housing related investigations, where civil penalties are an option, is likely to give rise to a corresponding pressure on existing and limited staffing resources, including resources within Legal Services.
- 4.15. In all instances where civil penalties are being considered as an alternative to prosecution, the Council will still have to be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction, i.e., the standard of proof remains the same as if the decision had been taken to institute legal proceedings. The Council needs to demonstrate beyond reasonable doubt that the offence has been committed before imposing a civil penalty. For this purpose, officers involved in cases will consult the Crown Prosecution Service Code for Crown Prosecutors and liaise with Legal Services before any decision is made to impose a civil penalty.
- 4.16. In order to ensure civil penalties are used fairly and are set at an appropriate level, the following factors, as set out in the statutory guidance, first published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities) in April 2017, will be considered:
- severity of the offence
 - culpability and track record of the offender
 - harm caused to the tenant
 - punishment of the offender
 - whether it will deter the offender from repeating the offence
 - whether it will deter others from committing the offence

- whether it will remove any financial benefit the offender may have obtained as a result of committing the offence
- 4.17. Where it is intended that civil penalties will be used for the purposes of enforcing the Housing Act 2004 or the Electrical Safety Standards Regulations, both culpability and harm will be taken into account. It is proposed that the method, contained within Section 7 of the updated Policy, will be used to determine the individual level of any penalty imposed.
- 4.18. Where it is intended that civil penalties will be used for the purposes of enforcing the Energy Efficiency Regulations, it is proposed that the method, contained with Section 8 of the Policy, will be used to determine the individual level of any penalty imposed; in particular, the impact on the following factors will be taken into account:
- the health of the tenants
 - the environment
 - the cost of heating the property
 - the level of fuel poverty
- 4.19. The approach set out in Sections 7 and 8 of the updated Policy aims to minimise the risk of legal challenge. In the event of such a challenge, the approach will increase the likelihood that the Council will be able to successfully defend such a challenge. However, it is impossible to entirely eliminate the legal risks associated with the use of civil penalties; nevertheless, the updated Policy will assist the Council to mitigate the risks associated with any adverse outcome.
- 4.20. Both the Electrical Safety Standards Regulations and the Energy Efficiency Regulations provide landlords with the right to make representations to the Council against the intention to impose a civil penalty and ultimately, they have a right of appeal to a First-tier Tribunal. The Tribunal is an informal body that has the power to quash, confirm, cancel or change any notice, order or decision made by the Council, including increasing or reducing the level of civil penalties.
- 4.21. The Government has made it clear that offenders must not derive any financial benefit from their offending and Tribunals have been briefed on what is expected of them in relation to the use of civil penalties. Whilst Shropshire Council's use of these powers remains untried and untested, there is growing evidence that other local authorities are successfully using the powers where it is appropriate to do so.
- 4.22. The consultation will be made available on the Shropshire Council website and will be open to the public and all stakeholders to put forward their comments. All key stakeholders will be contacted

directly and signposted to the consultation details on the Council's website.

5. Financial Implications

- 5.1. Monies received by the Council from the payment of civil penalties can be retained by the Council to further the delivery of the Council's statutory functions relating to the enforcement activities covering the private rented sector. Any funds that the Council fails to spend on these statutory functions must be paid into central Government's Consolidated Fund.
- 5.2. A First-tier Tribunal would consider any appeal against the imposition of a civil penalty and an unfavourable outcome may adversely affect the Council's income.

6. Climate Change Appraisal

- 6.1. It is not possible to quantify the outcome of the updated Policy in relation to climate change impacts.
- 6.2. Nevertheless, the fundamental purpose of the Energy Performance Regulations is to drive up energy performance of rented accommodation by setting a minimum energy efficiency level for such properties.
- 6.3. Whilst the Electrical Safety Standards Regulations are primarily focused on the electrical safety of rented properties, the energy efficiency is likely to be indirectly improved if the electrical installations are modern and effectively optimised from a safety perspective.
- 6.4. It is, therefore, reasonable to conclude that where enforcement powers are used to ensure compliance with both the Energy Performance Regulations and the Electrical Safety Standards Regulations, there will be a positive climate outcome, particularly in relation to energy and fuel consumption. There is a strong likelihood of significant improvements for tenants on low incomes, with associated co-benefits such as improved physical health and mental wellbeing.
- 6.5. With respect to renewable energy sources, proactive enforcement of the legal requirements may also prompt landlords to consider fitting roof-mounted solar panels to reduce energy use and costs for their tenants or to generate an income stream from their property assets.
- 6.6. It is acknowledged that enforcement of both the Energy Performance Regulations and the Electrical Safety Standards

Regulations will not generate any potential opportunities for carbon offsetting or specific measures to improve resilience to climate related extreme weather events.

7. Background

- 7.1. In Shropshire, the private rented sector represents 17% of the housing market, which equates to approximately 25,000 properties.
- 7.2. The updated Policy sets out enforcement criteria regarding private rented sector housing, which supplement the generic approach to enforcement described in the Council's [Better Regulation and Enforcement Policy](#).
- 7.3. The updated Policy is aimed at the regulation of the private rented sector, which includes housing association properties and not those owned by Shropshire Council.
- 7.4. The supplementary private rented sector housing enforcement activities set out in the updated Policy include the licensing of houses in multiple occupation (HMO), the service of statutory notices as well as the following measures introduced by the Housing and Planning Act 2016, Housing Act 2004 and the Energy Act 2011 which aim to tackle rogue landlords/letting agents and improve the private rental sector:
 - Civil penalties which can be used as an alternative to prosecution
 - Rent Repayment Orders (RROs)
 - Database of rogue landlords/property agents
 - Banning Orders for the most prolific offenders
- 7.5. The updated Policy takes into account the statutory guidance entitled, 'Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities', issued by the Ministry of Housing, Communities and Local Government in April 2017 (updated in April 2018).

8. Additional Information

- 8.1. The supplementary private rented sector housing enforcement activities, including the licensing of houses in multiple occupation (HMO), which were set out in the current PRSH Enforcement Policy have been retained in the updated Policy.
- 8.2. The housing stock managed by Shropshire Towns and Rural Housing (STARH) is owned by the Council and, in law, is not held to be private rented housing. For this reason, the updated Policy does not apply to housing managed by STARH.

9. Conclusions

- 9.1. In order to ensure the Council can utilise civil (financial) penalties as an effective enforcement tool to promote compliance with The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, it is good practice that the current Private Rented Sector Housing Enforcement Policy, which was approved by Cabinet in July 2019, is updated.
- 9.1. A draft of the updated Private Rented Sector Housing Enforcement Policy has now been produced and is ready for formal consultation. Cabinet Members are being asked to agree the draft and approve the consultation process.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

[Shropshire Council Private Rented Sector Enforcement Policy adopted by Cabinet, July 2019](#)

Statutory guidance for local housing authorities published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities):

- [Civil penalties under the Housing and Planning Act 2016, first published in April 2017](#)
- [Database of rogue landlords and property agents under the Housing and Planning Act 2016, first published April 2018](#)
- [Rent repayment orders under the Housing and Planning Act 2016, first published April 2017](#)

Non-statutory guidance for local housing authorities published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities):

- [Banning Order Offences under the Housing and Planning Act 2016, first published April 2018](#)
- [Electrical safety standards in the private rented sector, first published June 2020](#)

[Shropshire Council's Better Regulation and Enforcement Policy approved by Council, July 2018](#)

Cabinet Member (Portfolio Holder)

Cllr Simon Jones, Portfolio Holder for Adult Social Care and Public Health

Local Member

The report has county wide application.

Appendices

Appendix 1 - Draft Private Rented Sector Housing Enforcement Policy