

CABINET - 19 NOVEMBER 2019

DELEGATION OF ENFORCEMENT POWERS FROM THE COUNTY COUNCIL TO THE CITY AND DISTRICT COUNCILS

Report by Chief Fire Officer

RECOMMENDATION

1. **The Cabinet is RECOMMENDED to:**
 - (a) **approve the delegation of specific powers from the county council to the city and district councils in relation enforcement of the legal requirements concerning domestic Energy Performance Certificates (EPCs);**
 - (b) **approve the delegation of specific powers from the county council to the city and district councils in relation to the enforcement of the Minimum Energy Efficiency Standards (MEES) in commercial properties; and**
 - (c) **authorise the Director of Community Safety and Chief Fire Officer, acting in consultation with the Director of Law & Governance, to enter the necessary agreements to implement this delegation.**

Executive Summary

2. This paper proposes to simplify and improve the regulation of the private rented sector in Oxfordshire through the delegation of enforcement powers from the county council to the city and district councils.
3. This report seeks approval for the delegation of enforcement powers under the Energy Performance of Buildings (England and Wales) Regulations 2012 and The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 for commercial properties to the city and district councils by way of agency agreements whilst retaining the authority for Oxfordshire County Council also to enforce this legislation.
4. The regulation of letting agents and landlords is complex. The regulations that apply to this sector seek to ensure that tenants are protected from rogue landlords and that the properties they rent are of a suitable standard. Recently, new requirements have been introduced in this sector seeking to improve the energy efficiency of rented properties.
5. The council has been working with Oxford City Council and Cherwell District Council on a project relating to the new minimum energy efficiency standards applying to rented properties. To improve the enforcement of these regulations it is proposed that Cabinet agrees the delegation of enforcement powers from

the county council to the city and district councils. This paper outlines the background to this proposal and the implications arising from it.

Introduction

6. In recent years the housing market has seen a growth in the private rented sector. A Housing, Communities and Local Government Committee inquiry into the private rented sector¹ commented that the private rented sector has doubled in size over the last 15 years. The growth of 25-34 year olds renting property (46% in 2016-17 compared to 27 percent a decade earlier) means that there are more families and young children in rented properties.
7. Letting agents and landlords are subject to a range of laws which either apply to their activities or to the properties which are made available through the private rented sector. This regulatory landscape is complex with district and county councils holding statutory responsibilities for the enforcement of different parts of the regulatory framework. For example, the requirement that all letting agents belong to an approved redress scheme is enforced by district councils whilst the county council is the enforcing authority for the legal requirements specifying the information that must be displayed by letting agents (including the name of the redress scheme the agent belongs to). This complex legal framework requires close partnership working and information sharing between councils.
8. The Fire and Rescue Community Risk Management Action Plan (CRMP) for 2019/20 contains a project for the county council trading standards team to adopt a proactive role in supporting partner organisations to improve standards in the private rented sector. This project recognises the statutory responsibilities trading standards holds for the regulation of letting agents and other aspects of the private rented market. This project was included in this year's CRMP action plan in response to new legislation being introduced which applies to this sector and the increasing recognition that trading standards has a key role to play in protecting consumers within the rental market and in promoting good practice.
9. Oxford City Council (and five other local authorities) received funding from the Department of Business, Energy and Industrial Strategy (BEIS) to run a project in 2019/20 in partnership with Oxfordshire County Council. The project is focussing upon the operation and functionality of Energy Performance Certificate (EPC) and Minimum Energy Efficiency Standards (MEES) legislation in enabling councils to improve energy standards in the private rented sector. Within this project the city council has been working in partnership with Oxfordshire County Council Trading Standards Service on new models of working. As part of this work it has been identified that a more effective approach to enforcement of the legal requirements could be achieved if the county council delegated to the district councils within Oxfordshire

¹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/44002.htm>. Published April 2018. Accessed September 2019.

enforcement powers for the EPC Regulations and the MEES Regulations in relation to commercial properties.

Exempt Information

10. None

Background

11. The Government's ambition is to improve the energy performance of privately rented properties. Improving a home's energy efficiency helps the occupants keep warm, reduces their energy bills and provides better protection for their health and wellbeing. Those benefits are particularly important to households on lower incomes and in homes which are expensive to heat.
12. As part of this ambition various pieces of legislation have been introduced. The energy performance of buildings was first regulated in 2007 and is now regulated by the Energy Performance of Buildings (England and Wales) Regulations 2012. These Regulations require buildings to have an EPC when sold or rented out. The EPC shows the energy efficiency of a property on a scale of A to G and includes suggestions on how it can be improved.
13. Since 1 April 2018 the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('MEES regulations') have required new leases and lease renewals of domestic and commercial private rented properties to meet a minimum energy efficiency standard. This is measured by reference to the EPC and a standard of E or above is required unless the property has a valid registered exemption or does not require an EPC. The Government intends to consult soon on a proposal to raise the minimum standard for commercial properties.
14. Improving energy efficiency is a core part of initiatives to raise housing standards. These initiatives are mainly led by district councils. Poor energy efficiency is linked to other property deficiencies (e.g. poor insulation and ventilation) and cold homes lead to increased costs for tenants as well as ill-health and early death.
15. Individual energy efficiency measures can save appreciable amounts of energy in homes and organisations. Improving energy efficiency in non-residential buildings can lower operating costs for businesses and provide for improved staff wellbeing.

Enforcement of the Legal Requirements

16. The Local Weights and Measures Authority (namely the county council) has responsibility for the enforcement of the regulations which require EPCs to be obtained and made available when properties are sold or rented.

17. Under the Housing Act 2004 the city and district councils, as housing authorities, have responsibilities to assess housing conditions using a risk assessment approach called the Housing Health and Safety Rating System (HHSRS). Under this Act housing authorities have powers to tackle poor housing conditions. The enforcement of the MEES sits alongside these wider responsibilities for housing standards.
18. All local authorities can enforce the MEES requirements in relation to the domestic private rented sector. Only the “local weights and measures authority” (the county council) can enforce the requirements relating to the commercial private rented sector.
19. Breaches of both regulations are punishable by Penalty Charge Notices (PCN), with any charge not paid to be recovered as a debt owed to the authority. The amount of penalty is set in the Regulations. The issue of a PCN can be appealed.
20. It is clear that the enforcement regime for this work area is fragmented for a two-tier authority area, with both tiers of council enforcing the same legislation and holding responsibilities for enforcement of other legislation in the same sector. Therefore, as part of the BEIS project it is intended that we will develop new ways of working to simplify enforcement and ensure appropriate and coordinated action which promotes compliance with the legal requirements.

Proposals to Simplify Regulation of the Private Rented Sector

21. An option we wish to pursue is the delegation of some county council enforcement powers to the city and district councils. This can be achieved through an agency agreement under section 101 of the Local Government Act 1972. Such a delegation requires approval by the County Council’s Cabinet. For any Cabinet decision on this delegation to take effect the other councils would need to formally accept the delegation through a similar decision within their constitutional rules.
22. EPCs are an integral part of the enforcement of MEES. A property which does not have an EPC falls outside the MEES enforcement regime. Currently landlords who do not obtain an EPC can avoid action to improve the energy efficiency of their properties under the MEES regulations until action is taken to require them to obtain an EPC for the property. As the two pieces of legislation are so closely linked it would be a more efficient approach for the city and district councils to be able to enforce the regulations in relation to EPCs in the domestic private rented sector.
23. Oxford City Council and Cherwell District Council have both indicated that they would wish to adopt any enforcement powers delegated to them by the county council. The South and Vale District Councils and West Oxfordshire District Council have been asked if they would similarly wish to adopt enforcement powers delegated to them.

24. The benefit of delegating enforcement powers for the EPC requirements to the city and district councils is that those councils will be able to enforce the MEES standards alongside their existing responsibilities for standards in residential rented properties and without reliance on trading standards. As such the delegation would facilitate the district councils being able to adopt a holistic approach to the enforcement of housing standards. If agreed, the enforcement framework we establish in Oxfordshire will form part of a toolkit being produced by BEIS to support local authorities to enforce the MEES requirements.
25. All Local Authorities in Oxfordshire seek to provide advice and support to businesses on compliance with regulatory requirements. Enforcement action is only taken in specific circumstances as set out in our Enforcement Policies, normally when the business has had opportunity to comply with legal requirements but has failed to do so. Information is provided to businesses to support them to meet the legal requirements that apply to them.
26. Alongside delegating enforcement powers for EPCs to the city and district councils it is also proposed that we delegate enforcement powers for MEES in non-domestic premises. Promoting compliance with the legal requirements relating to energy efficiency in non-residential premises can form part of climate change action plans. The benefit of delegating enforcement powers for this aspect of the regulatory framework for private rented property would be to ensure all councils are able to act on poor energy efficiency in non-residential premises should they wish to. This can be achieved through the same agency agreement as the delegation of enforcement powers in relation to EPCs.
27. Each district council will be able to choose whether they receive the delegated enforcement powers in relation to both EPCs and MEES or just EPCs.

Corporate Policies and Priorities

28. Ensuring effective enforcement of this legislation contributes and supports the Council's corporate plan and priorities as follows:
 - **Thriving People**
Effective enforcement of the regulations relating to EPCs and MEES will in turn help improve housing standards in the county. Improving housing energy efficiency standards will ensure that people are helped to live safe and healthy lives, helping to reduce cold in people's homes improving quality of life and the local environment.
 - **Environment**
The county council has acknowledged the climate emergency. Improvements in building energy efficiency are directly linked to a reduction in carbon emissions.

Legal Implications

29. The council has statutory duties to enforce the EPCs and MEES regulations. The extent to which, and manner in which, it meets these statutory duties is not prescribed. There are a range of legal requirements which the county council enforces under these regulations. It is not proposed that all these powers be delegated. The powers to be delegated are-
 - (a) Enforcement powers in relation to EPCs for residential buildings.
 - (b) Enforcement powers in relation to the MEES requirements applying to non-residential buildings.
30. Should Cabinet agree to delegate enforcement powers for the EPCs and MEES regulations to the city and district councils an agency agreement will be put in place under section 101 of the Local Government Act 1972. This agreement will detail the operational aspects of this work to ensure the enforcement work is undertaken in an efficient, coordinated and cost-effective manner. It is intended that the city and district councils will be empowered to undertake all parts of the enforcement process, i.e. investigation, service of penalty notices, prosecution, recovery of sums owed under penalty notices and defence of appeals against penalty notices.
31. Any legal action taken under the delegation will remain in the name of the county council. Therefore, the County Council's Legal Services will require some oversight of cases undertaken by the city and district councils. These oversight arrangements will be set out in the agency agreement.
32. Under regulation 34A of the EPCs regulations Oxfordshire County Council is required to authorise another weights and measures authority to enforce the provisions of the EPC regulations that apply to the county council's own buildings. Oxfordshire County Council has authorised Kent County Council for this purpose. Therefore, it is not necessary to delegate enforcement powers for EPCs in relation to Oxfordshire County Council owned buildings to the city or district councils
33. It is intended that the county council will retain the ability to enforce all provisions delegated to other councils.
34. In finalising the proposed agency agreement it is intended that we seek to align policies for the determination of when a financial penalty is imposed for a breach of the legal requirements and on how the level of penalty is determined. However, all councils already have general enforcement policies and specific policies for enforcement in relation to linked matters (e.g. civil enforcement policies and housing condition enforcement policies). These other policies will be applicable to enforcement of the delegated powers and may restrict the ability to adopt identical policies across all councils.

Risk Management

35. The county council can delegate functions under the regulations, but it cannot delegate its duties and accountability. The council must plan for the

enforcements of these regulations. The regulations impose a duty on local weights and measures authorities to enforce them. The recommendations in this report will support performance of the authority's duty in relation to enforcement of MEES and EPC legislation.

36. Local Authorities are subject to the legal requirements in relation to non-residential MEES for buildings that they own. The delegation of enforcement powers in relation to non-residential MEES to the city and district council provides the legal ability for the city or district councils to take enforcement against the county council for non-compliance with these requirements. However, the county council has a programme in place to address the requirements of these regulations as they apply to county council buildings. Therefore, the risk is low that enforcement action against the county council is considered appropriate within the other councils' enforcement policies.
37. Action taken by the city and district councils under any delegation will, in effect, be action taken by those councils as agents for the county council. Therefore, the agency agreement will specify that the agreement will also require the authority receiving the delegation to be responsible for dealing with matters such as appeals against the issue of any FPN and for any legal matters that arise from their enforcement actions. The councils will also be asked to meet any costs that fall to the county council as a result of their enforcement actions.
38. Delegating enforcement powers for these regulations increases the risk that a business is contacted by more than one council in relation to the legal requirements applying to them. This risk will be minimised through information sharing requirements within the agency agreement ensuring that the county council is aware of any action intended by the other councils.

Financial and Staff Implications

39. The delegation of the powers to the district councils will reduce demand on the trading standards service for the enforcement of the EPC requirements. It will ensure that increased focussed on MEES by the city and district council will not impact on other responsibilities and priorities.
40. There are no direct financial implications for the council. Costs to establish this agreement are negligible and relate only to internal costs to formalise the legal agency agreements with each council. These costs will be met within existing budgets. No income has been planned into the budget for the receipt of payment for any fines that may be issued be since such income is likely to be low and levels are difficult to predict.
41. When a financial penalty is levied on a non-compliant business under the relevant legislation this penalty must be paid to the local authority. It is intended that the delegation will enable the authority that issues the relevant enforcement notice to retain any monies paid as a result of these financial penalties. As such, the delegation of enforcement powers will also provide that the city and district council will retain the funds paid which would otherwise

have been paid to the county council if the county council had acted as the enforcing authority.

Equalities Implications

42. There are no equalities implications arising from this proposal.
43. It is considered that there would be no adverse equalities impact on the protected characteristics.

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Background papers: None

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