

To: Cabinet
Date: 19 December 2019
Report of: Head of Regulatory Service and Community Safety
Title of Report: Delegation of powers by Oxfordshire County Council to Oxford City Council to enforce energy efficiency legislation

Summary and recommendations	
Purpose of report:	To seek formal approval to enforce legislation applicable to: <ul style="list-style-type: none"> a) Domestic Private Rented Energy Performance Certificates (EPCs); and b) Commercial Minimum Energy Efficiency Standards (MEES); <p>following the delegation of powers under the Energy Performance of Buildings (England and Wales) Regulations 2012 and under the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 from Oxfordshire County Council</p>
Key decision:	Yes
Cabinet Member:	Councillor Linda Smith, Cabinet Member for Leisure and Housing
Corporate Priority:	Meeting Housing Needs A Clean and Green Oxford
Policy Framework:	
Recommendations: That Cabinet resolves to:	
	<ol style="list-style-type: none"> 1. Accept the delegation of powers from Oxfordshire County Council to enable Oxford City Council to carry out enforcement of Energy Performance Certificates (EPCs) in the domestic private rented sector under The Energy Performance of Buildings (England and Wales) Regulations 2012; 2. Accept the delegation of powers from Oxfordshire County Council to Oxford City Council for the enforcement of the Minimum Energy Efficiency Standards (MEES) in commercial property The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015; 3. Authorise the Head of Regulatory Services and Community Safety, acting in consultation with the Head of Law & Governance and the Head of Financial Services, to enter into all necessary and appropriate contracts to implement the delivery of the enforcement work on behalf of

- the Oxfordshire County Council; and
4. **Delegate** authority to the Head of Regulatory Services and Community Safety to perform the enforcement duties of the Oxfordshire County Council as set out in the agency agreement and to take any steps necessary to perform those duties.

Appendices

Appendix 1	Risk Register
Appendix 2	Initial Equalities Impact screening

Introduction and background

1. Oxford City Council “the Council” (and five other local authorities) received £150K funding from the Department of Business, Energy and Industrial Services (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 Certificates (EPC) and Minimum Energy Efficiency Standards (MEES) legislation under the Energy Performance of Buildings (England and Wales) Regulations 2012 and the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015, in enabling councils to improve energy efficiency standards in the private rented sector. To fulfil the objectives of the project the Councils are required to commence enforcement of the MEES in the private rented sector. The Council has been working in partnership with Oxfordshire County Council to consider how enforcement of the legislation can be shared to ensure that it occurs and improves the energy efficiency of the private rented sector in Oxford.
2. Oxfordshire County Council, at its Cabinet meeting on the 19 November 2019, agreed to delegate enforcement powers contained in the Energy Performance of Buildings (England and Wales) Regulations 2012 for domestic EPCs and in the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015, for commercial properties in Oxford to Oxford City Council. This delegation was made under section 101 of the Local Government Act 1972 and section 9EA Local Government Act 2000 together with Regulation 5 of the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012.
3. The Council has declared a Climate Emergency with a corresponding Citizens’ Assembly to consider relevant actions, both of which acknowledge the vital need to reduce carbon emissions in Oxford, nationally and worldwide. Improvements in energy efficiency are directly linked to a reduction in carbon emissions; therefore this vital energy efficiency related enforcement opportunity would be valuable to this Council priority.

Current Enforcement Regime

4. Since 1 April 2018, the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 have required that when new leases and lease

renewals of domestic and commercial private rented properties are entered into, the property meets a minimum energy efficiency standard (MEES) of E in its Energy Performance Certificates (EPCs) unless there is a valid registered exemption or the property does not require an EPC.

5. Oxfordshire County Council's "local weights and measures authority", through the Trading Standards Team, is the authority responsible for the enforcement of the regulations in relation to EPCs. The responsibility for enforcement of the legislation in relation to the MEES is divided by property type between Oxford City Council which is responsible for enforcement within the domestic private rented sector and the "local weights and measures authority", being Oxfordshire County Council Trading Standards Team within the commercial private rented sector and within commercial assets owned by Oxford City Council
6. Reflecting the national picture other high service demands have meant that the legislation is not currently being prioritised and proactively enforced by Oxfordshire County Council
7. The Council enforces the Housing Act 2004 in the domestic private rented sector and undertakes different enforcement action in the commercial sector. It has a proven track record of improving homes and workplaces across Oxford through these interactions.

Future Enforcement Options

8. It is clear that the enforcement regime for this work area is fragmented for a two tier authority, with two councils having different priorities, enforcing the same legislation. Therefore as part of the BEIS project a number of options have been considered to ensure appropriate enforcement is undertaken.
- 9 Enforcement of MEES in commercial privately rented property - The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 require commercial premises to have an EPC of E and above, similar to the requirement for the domestic sector. Concern around the impact of a cold environment on health within workplaces, as well as homes, is a very real issue. The Council is undertaking work to inform local businesses of their responsibilities to encourage compliance however if enforcement action had to be taken to improve properties this would have to be passed to Oxfordshire County Council to carry out. This could lead to confusion for businesses, difficulties in ensuring successful enforcement and a possible duplication of resources. At this stage in the project it is envisaged that a more streamlined and efficient approach would be for the Council to be able to enforce this part of the legislation if required. Formal enforcement action would be taken only where advice and education of the businesses had failed.
10. Energy Performance Certificate (EPC) enforcement - From discussions with officers in Oxfordshire County Council Trading Standards Team it is clear that enforcement work to ensure that EPCs are in place is not being undertaken in either the commercial or domestic sector within Oxford. , This work has not been treated as a priority and the level of penalties are relatively low (£200).

However it is also clear that without enforcement of The Energy Performance of Buildings (England and Wales) Regulations 2012 in relation to EPCs within the private rented sector; poor performing properties will not be improved to meet minimum energy efficiency standards. 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 enforcement action to improve their properties as the offence is to let a property with an EPC of F or G. As the two pieces of legislation are so closely linked it would be more efficient for the Council to be able to enforce the regulations in relation to EPCs in both the domestic and commercial private rented sector. It is for this reason that Oxfordshire County Council has made its delegation to Oxford City Council.

11. Any future enforcement of these regulations by the Council will be carried out in accordance with the Council's enforcement policy.
12. The current enforcement arrangements of the Energy Performance of Buildings (England and Wales) Regulations 2012 and The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 in relation to domestic and commercial stock owned by the Council falls outside this delegation and Oxfordshire County Council will continue to act as the enforcing authority.

Crime and disorder

13. Properties that do not have an EPC may be some of the harder to reach private rented homes and are also more likely to fall foul of other legislative requirements. Officers from the Council and Oxfordshire County Council have considered some of the potential powers that could be used and other stakeholders that would need to be engaged around safeguarding and other concerns .

Environmental implications

14. In light of the recent Climate Emergency Declaration, ensuring the Council is able to undertake appropriate enforcement in relation to minimum energy efficiency standards in both the domestic and commercial sector is a clear way to support this declaration and play a positive role in the reduction of damaging carbon emission in the environment. This is vital for the Council's priority 'Clean and Green Oxford'.

Financial implications

15. The Council has experience of enforcing legislation in both the domestic and commercial private rented sector and currently the BEIS funded project allows for this additional enforcement work to be undertaken as part of the project. When the funding ceases at the end of March 2020, and depending on compliance rates this work could be undertaken within the existing resources to strengthen the enforcement work already undertaken by the Council.

16. In both the EPC and MEES regulations there is the ability to serve financial penalties of up to £5000 for domestic properties and £10,000 or 20% of the rateable value of the property (whichever is greater), up to a maximum of £150,000, for commercial properties. As this legislation is relatively new it is unclear at this stage what the compliance rates will be and therefore the number of financial penalties served. The Council will seek to retain the income from the financial penalties it secures in relation to the work it undertakes.

Legal issues

Oxfordshire County Council has delegated the enforcement powers subject to an agreed agency agreement being in place. The agreement will detail the operational aspects of this work to ensure the enforcement work is undertaken in an efficient and cost effective manner; detailing processes, roles and timeframes. Section 101 of the Local Government Act 1972 and Section 9EA of the Local Government Act 2000 enable Oxfordshire County Council to delegate powers to Oxford City Council to discharge certain functions, and this will be the authority relied upon in the agreement between the two councils. The agreement will include review periods to enable amendments to be made if necessary.

Level of Risk

1. The risk register is attached at Appendix 1 – there are no abnormal risks for the council associated with this enforcement work.

Equalities impact

2. An initial Equalities Impact screening form is provided in Appendix 2 .

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Background Papers: None

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