



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**29 July 2021**

**Report of the Executive Director - Place**

**Delegation of Enforcement of The Energy Performance of Buildings  
(England and Wales) Regulations 2012 to District/Borough Councils**

**(Health and Communities)**

**1. Divisions Affected**

1.1 County-wide.

**2. Key Decision**

2.1 This is not a key decision.

**3. Purpose**

3.1 The purpose of this report is to highlight partnership working between Derbyshire County Council Trading Standards and Derbyshire Districts/Boroughs to improve the standards of housing in the private rented sector. It has been identified that it would be operationally effective for Districts and Boroughs to enforce the requirement to provide energy performance certificates (EPCs) in private rented properties.

3.2 Cabinet is asked to:

- a) agree to implement the delegation of enforcement of Enforcement Performance of Building (England and Wales) Regulations 2012 with respect to private rented properties to the eight District/Borough Councils within Derbyshire.

#### **4. Information and Analysis**

- 4.1 It is proposed that changes to delegation arrangements are made that will ensure that local housing teams within District and Borough Councils can enforce the requirements to produce EPCs in the rented sector. EPCs are a requirement of the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended) and the enforcement responsibilities currently sit solely with Derbyshire County Council Trading Standards.
- 2.2 The cost of an EPC is approximately £100 but failing to produce an EPC can have serious consequences for landlords, as well as tenants. It is understood that a significant proportion of no-fault evictions fail because the landlord is unable to present an EPC. This is a waste of time and money for the landlord and the court and is entirely preventable.
- 2.3 Across Derbyshire the private rented sector has grown, but consistently has some of the poorest quality housing with tenants having to put up with cold and hard to heat homes. The Districts/Boroughs, as Housing authorities, are all seeking to improve standards and consistently find that the inability to heat a home is the biggest source of complaint. The EPC should be used by the tenant to inform their decision about the cost of keeping the home warm and is informative when considering their future housing options.
- 2.4 The Government introduced regulations to increase the energy efficiency of homes; The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 came in to force in 2018. Further amendments have been introduced since to consolidate the requirements across the housing sector. The Regulations created a new minimum standard for EPCs and makes it an offence to let out a property that does not reach the minimum rating of E, thus making it an offence to rent out a property rated as F and or G for new tenancies from 1 April 2018 (subject to specified exemptions e.g. listed buildings). This does fall within the enforcement remit of the Housing authorities.
- 4.5 Because of the inability of the Housing authorities to enforce the EPC requirement, any landlord has a potentially perverse incentive if they have an inefficient home - by initially failing to provide an EPC as they are less likely to fall foul of the new legislation relating to minimum standards. The penalty for failing to provide a certificate is lower than that for the failure to meet the minimum EPC standard.

- 4.6 Providing delegation to District/Borough Councils will enable them to absorb enforcement of EPC legislation in private rented properties as part of their routine duties, given that as already stated, the ability of tenants to keep warm is a key part of the existing workload. This delegation is not intended to relate to house sales or business properties, only to the renting of domestic properties. As the County Council will also retain the enforcement powers, officers will ensure that intelligence is shared to prevent duplication.
- 4.7 Trading Standards staff work closely with partner authorities through the Derbyshire Built Environment Group (with representatives of the housing teams within District/Borough plus Trading Standards). There are likely to be Government incentives/funding available to housing authorities in the next 12 months to focus on EPC enforcement as a means of driving improvements in housing stock. Any collaborative work will rely on delegation of the role to those agencies.
- 4.8 Failing to provide an EPC can result in a fixed penalty notice. Anecdotal evidence suggests that this is not a significant source of income but acts as a deterrent. It is not anticipated that the delegation will substantially increase the workloads of housing enforcement teams but will enhance their ability to tackle the poorest standards.

## 5. Consultation

- 5.1 N/A

## 6. Alternative Options Considered

- 6.1 **Do Nothing** – this risks creating a more fragmented process of enforcement, without the benefits of a more integrated approach within housing teams in partner authorities.
- 6.2 **County Council to take on the additional role in minimum EPC standards across the County** – in this scenario, the limited resources of Trading Standards would need to undertake work across the County beyond its traditional remit, with little background knowledge of the private rented sector.

## 7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

8.1 N/A

## **9. Appendices**

9.1 Appendix 1 – Implications.

## **10. Recommendation(s)**

That Cabinet:

- a) Approves the delegation of enforcement of Enforcement Performance of Building (England and Wales) Regulations 2012 with respect to private rented properties to the eight District/Borough Councils within Derbyshire.

## **11. Reasons for Recommendation(s)**

- 11.1 The above decision will enhance partnership working and improve enforcement processes that protect tenants in the rented sector, as well as improving energy efficiency in Derbyshire homes.

## **12. Is it necessary to waive the call-in period?**

12.1 No.

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**Implications**

**Financial**

- 1.1 There are no significant implications for the Council as the limited enforcement role is being delegated to partner agencies

**Legal**

- 2.1 Appropriate amendment may need to be made to the Council's constitution to effect this change

**Human Resources**

- 3.1 N/A

**Information Technology**

- 4.1 N/A

**Equalities Impact**

- 5.1

**Corporate objectives and priorities for change**

- 6.1 N/A

**Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

- 7.1 The agreement to delegate will enhance countywide efforts to improve housing stock and improve energy performance of homes, thus contributing to environmental sustainability across the authority.