



Commercial Energy Performance Certificates – How switched on are you?

The provisions of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (as amended) (“the Regulations”) affecting commercial buildings came into force on 6 April 2008.

This explanatory note serves to highlight some of the main provisions.

Critical Dates for Energy Performance Certificates (EPC’s)

EPC’s will be required from:

6 April 2008 for buildings with a total useful floor area >10,000m²

1 July 2008 for buildings with a total useful floor area >2,500m²

1 October 2008 for all commercial buildings (subject to exemptions)

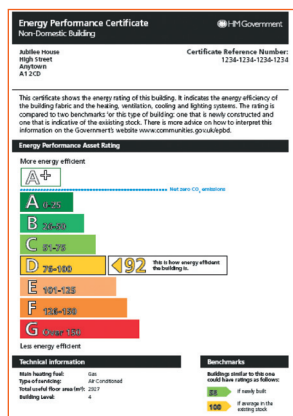
condition the indoor climate. Having an electricity supply does not necessarily mean that a building requires an EPC and if in doubt as to whether the requirement applies you should seek professional advice. Stand-alone buildings of less than 50m² are exempt. Buildings which are intended to be demolished do not require an EPC provided the intention to demolish can be evidenced at the time an EPC would be required.

When must an EPC be provided and how do I get one?

EPC’s are to be undertaken by registered assessors who will also provide a recommendation report (for existing buildings) on how the energy performance of the building can be improved and over what period.

An EPC is required when the building is constructed, extensively modified, sold or let.

What is an EPC?



An EPC provides an energy rating from A-G (A being the most efficient) on the performance potential of the buildings fabric and services (heating, ventilation & lighting).

EPC’s are valid for 10 years and will have a unique reference number and must be stored on the national register (www.epcregister.com) for 20 years allowing future comparison.

The relevant person (usually the seller/landlord) must provide an EPC free of charge to any prospective buyer/tenant when either:

- (a) written information is supplied in response to a request made by the prospective purchaser/tenant such as the request for a prospectus or particulars for the purpose of deciding whether to buy/let; or
- (b) when a viewing is conducted for the purpose of deciding whether to buy/let; or
- (c) when an offer to buy/let is made (i.e. before entering into a contract to sell/let).

What is a building for the purpose of the Regulations?

A ‘building’ must have a roof and walls for which energy is used to

There are transitional provisions where properties have been on the market prior to the commencement date and the requirement to provide an EPC before the sale/let will not apply, but an EPC must be provided on exchange of contracts.

Multi-occupancy buildings are particularly complex as are sale/leaseback or surrender/re-grant arrangements.

EPC's are not required:

- (a) Where the building does not qualify as a 'building' or is exempt;**
- (b) Where contracts have been exchanged before the commencement date; or**
- (c) Where it is reasonable to believe that the prospective buyer/tenant does not have the means to buy/let the building, is not genuinely interested in buying/letting the building or is not someone who the seller/landlord would be prepared to sell/let the building to.**

Costs

Costs for EPC's are based on the size of the building and range from hundreds of pounds to tens of thousands.

Obligations

The relevant person (usually the seller or landlord) will have the duty to provide the EPC. They should also ensure that satisfactory documentation and information to obtain the EPC is available. There are also access considerations.

Enforcement

Local Authorities are responsible for enforcement of the Regulations (predominately by trading standards officers). Failure to provide an EPC may result in a civil penalty charge of 12.5% of the rateable value or where this is not possible, the charge will be based on a scale of

£500-£5000. Defences are available in certain circumstances such as where an EPC has been commissioned, but despite reasonable efforts it has not been received, or where there was insufficient time to commission an EPC.

Although these Defences may assist in avoiding the civil penalty charge they do not negate the need for an EPC and this will remain an ongoing duty.

There is also an additional criminal offence of obstructing an officer in his enforcement of the Regulations if responses to requests are not dealt with promptly (which can be as little as 7 days). This is particularly significant for existing tenants/occupiers but also for landlords if insufficient information is supplied to an assessor. Fines for this offence follow the magistrates sentencing guidelines of a scale 5 fine (currently £5000).

... and that is not all.

The regulations also implement provisions for air conditioning systems (with a maximum output of more than 12kW) to be inspected on a regular basis (at least every 5 years) by independent experts.

Critical dates for these provisions are:

4 January 2009 – deadline for the possession of a valid report following the first inspection of all existing air-conditioning systems with an output of more than 250kW.

4 January 2011 – deadline for the possession of a valid report following the first inspection of remaining air conditioning systems with a valid output of more than 12kW.

The Future

Key stakeholders in the property industry speculate that there will be a move towards documenting the actual performance of buildings similar to the requirements for Display Energy Certificates applicable to public buildings.



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For further information and guidance EPC's please contact Phil Byrne in Liverpool on 0151 600 3000. www.brabnerschaffestreet.com.

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