

# Briefingsheet



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## Energy performance certificates for commercial properties

### Relevant legislation

Energy Performance of Buildings (Certificates and Inspectors) (England & Wales) Regulations 2007.

### What is an EPC?

An EPC is a certificate containing information about the energy efficiency of a building. EPCs are produced by an Energy Assessor who is accredited under the EPC Regulations.

There is no formal requirement to comply with any recommendations in any report accompanying an EPC.

### Timetable for implementation of the regulations

- i As from 6 April 2008 an EPC is required for a commercial building of more than 10000 sq metres (107,639 sq feet).
- ii As from 1 July 2008 an EPC is required for a commercial building of more than 2500 sq metres (26,909 sq feet).
- iii As from 1 October 2008 for all other commercial buildings unless they fall within the exceptions. The exceptions are narrow and include:
  - Buildings primarily used as places of worship;
  - Buildings of less than 50 square metres (538 square feet); and
  - Temporary buildings with a planned use of 2 years or less.

### What transactions will trigger the requirement for an EPC?

EPCs are required when a property is constructed, sold or let.

This will include an assignment of a lease or a sub-letting. The following

are not considered to be sales or lettings:

- i Lease renewals or extensions;
- ii Compulsory purchase orders;
- iii Sales of shares in a company where building remains in common ownership; or
- iv Lease surrenders.

It is unclear whether granting a licence to occupy amounts to renting out for the purposes of the EPC requirements.

### Who needs to provide the EPC?

It is the responsibility of the seller or the landlord to make the EPC available to prospective buyers/tenants.

### At what point in time does the EPC need to be produced?

The prospective buyer or tenant must receive an EPC "at the earliest opportunity" and the obligation to provide an EPC is triggered by the earlier of the date on which:

- i The seller or landlord provides written information about the building to someone who has requested such information;
- ii A prospective buyer or tenant views the building; or
- iii A contract is completed for the sale or letting of the building.

There are transitional provisions for properties less than 2500 square metres on the market before 1 October 2008. The deadline for providing EPCs is extended to 4 January 2009 or date of exchange whichever is the earlier.

Accordingly an EPC may need to be made available even before the property is put on the market.

Please note that the seller or landlord need not make an EPC available if it has reasonable grounds to believe that a prospective buyer or tenant is unlikely to complete the transaction or is someone to whom the seller or landlord would not be prepared to sell or grant a lease.

## Who pays for the EPC?

Who bears the cost of producing an EPC is an issue which has been widely debated in the property industry. The British Property Federation has published guidance on EPCs. The guidance sets out the following possible approaches to the issue of who should pay:

- i. The landlord bears the whole cost. The BPF guidance suggests this is reasonable where the need for the EPC is triggered by the landlord wanting to deal with the whole or part of a building.
- ii. The landlord recovers the cost of obtaining an EPC through the service charge. This would be considered to be fair where the landlord agrees to make the EPC available to the tenant's prospective assignees and/or sub-tenants.
- iii. The parties agree to split the costs between them and specify the proportions in the lease.
- iv. The landlord pays the cost of the EPC at the outset. If a tenant requires a copy the landlord could recharge part of the cost of providing the copy through the service charge.
- v. If the tenant is to bear the cost, the lease should limit how many times the landlord may charge for an EPC (for example no more than once every 3 years).

Thought needs to be given by the seller/landlord to who bears the costs before a requirement to produce an EPC is triggered by the Regulations.

## How long is an EPC valid?

An EPC is valid for 10 years from the date on which it is issued. A valid EPC for a building would be revoked if a new EPC is issued for the building.

## Multi-let buildings

The requirements for EPCs are more complicated in relation to multi-let and mixed use buildings. If a building is made up of separate commercial units but has a common heating system then either:

- i. An EPC can be prepared for the whole of the building; or
- ii. An EPC can be prepared for the part of the building which is being offered for sale or rent.

If there is no common heating system then an EPC will be required for each part of the building which is being offered for sale or rent

## Enforcement

Failure to produce an EPC will be subject to a civil penalty (enforced through Trading Standards). The current penalty for failing to provide an EPC will be 12.5% of the rateable value of the building, subject to a minimum of £500 and a maximum of £5,000.

## Comments

- i Landlords need to consider the requirement to produce EPCs and have regard to the terms of their leases and in particular whether they can recover the cost through the service charges.
- ii Although a prospective tenant or purchaser may not insist upon an EPC, action still may be taken against the seller or landlord by Trading Standards and penalties imposed.
- iii Although the requirement to produce an EPC is initially with the seller or landlord, as a buyer or tenant you should not ignore this. Remember as a buyer or a tenant you may need to give an EPC in the future. If you sell or lease and if you fail to insist upon getting one from your own seller/landlord, then you will need to incur the costs of producing one yourself.

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