



Woolley Bevis Diplock LLP

SOLICITORS

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Energy Performance Certificates

Article 7 of the E.U. Energy Performance of Buildings Directive introduces regulations and requirements which will affect nearly all commercial buildings on construction, sale or rental. The only buildings which will be exempt are (1) buildings due for demolition (2) places of worship (3) buildings that are temporary (i.e. a planned use time of less than 2 years) (4) non-residential agricultural buildings with low energy demands and (5) stand-alone buildings with a total useful floor area of less than 50m².

As from **1st October 2008** an Energy Performance Certificate (EPC) will be required for the construction sale, rental or assignment of **all** commercial buildings (apart from those exempt *see above*). This is in addition to the duties already in place pursuant to Part L of the Building Regulations.

Larger buildings already require EPC's. Since **6 April 2008** an EPC has been required for commercial buildings with a total useful floor area greater than 10,000m², lowered to greater than 2,500 m² as from **1 July 2008**. The total useful floor area is the total area of all enclosed spaces excluding covered ways balconies and similar. The RICS has issued guidance on this definition.

If a building has both (i) a roof and walls and (ii) uses energy to 'condition the indoor climate', it will require an EPC. Only fixed services (i.e. heating, mechanical ventilation or air-conditioning) are considered to do this. Other fixed services (e.g. hot water and electric lighting) are alone not sufficient to mean a building will require an EPC.

It is the action of construction, selling, letting or assigning that triggers the requirement for an EPC and the **relevant person** is under a duty (that cannot be waived) to provide one, i.e. the developer, seller, landlord or assigning tenant.

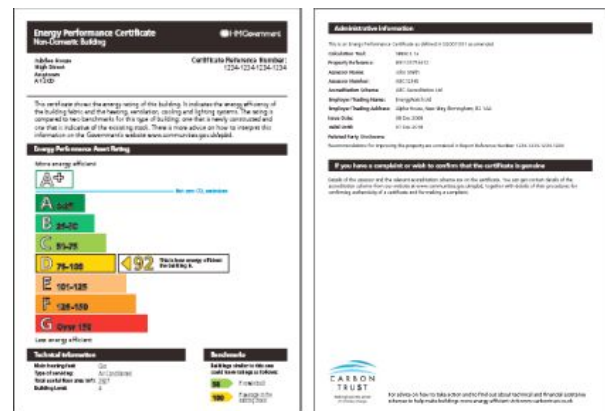
However, EPC's are not required on compulsory purchases, lease renewals, extensions or surrenders. Also, if sold or let off-plan an EPC is not required, though it must be provided to the owner or tenant within five days of completion of the building.

Transitional Provisions

On 4 September 2008, the Government announced that it was extending existing transitional arrangements (previously available to larger buildings) to all buildings already on the market at the appropriate commencement date. Until **4 January 2009** the relevant person is allowed to commission an EPC after exchange of contracts instead of having it available at the earliest opportunity. These provisions do not apply to residential dwellings.

About the EPC

An EPC can only be prepared by an accredited energy assessor who is suitably qualified for the type of building being assessed. The EPC provides an energy rating for the building based on its performance potential (i.e. the fabric) and its services (e.g. heating and ventilation). The energy performance of the building is shown as a Carbon Dioxide based index.



The EPC will grade the energy performance on a scale from A to G similar to the system we are familiar with grading white goods. As the importance of energy issues increases an EPC may become important to demonstrate that a building meets the best available standards.

Currently, an EPC is valid for ten years but must be renewed earlier if there are changes or improvements which require a new certificate.

In general terms, an EPC should reflect the accommodation being constructed, sold, let or assigned. For buildings for single occupation it is easy to establish who the relevant person is. For buildings sold or let in parts the position is more complicated and one on which detailed advice will be required.

To prepare an EPC, the relevant person will need to provide the assessor with details of the building type(s), location and number of floors/levels. Also the size and number of rooms, accurate floor plans, the building's specification and its operations & maintenance manual. Then the assessor is likely to inspect the building at least once.

Further, the type of building will determine the type of assessment and assessor. There are three levels and the energy assessor must be qualified for the type of building being assessed. Level 3 means simple existing buildings (e.g. small converted house). Level 4 is for new and existing buildings (e.g. small purpose built office). Lastly, Level 5 for new and existing complex buildings (e.g. large offices or factories).

The relevant person cannot influence the recommendations of or how the assessor's recommendations are presented as the EPC is in a required form, although it is possible to complain about the quality or accuracy of the EPC and its accompanying report. Once produced the EPC is registered against a national register by the assessor with a unique reference number. Accompanying the EPC is a report recommending steps to be taken to improve the building's rating. There is however, no compulsion to follow these steps.

Once available, the EPC must be attached to a building's written particulars. The EPC will have to be provided *free of charge* at the earliest opportunity either when a prospective buyer or tenant (1) requests information about a building; (2) makes a request to view; or (3) makes an offer (whether written or oral) and in any event before the parties are legally committed (e.g. contracts are exchanged).

The regulations do try to provide a safeguard against disclosure on the basis that the information in the EPC need not be released where it is believed (on reasonable grounds) that the enquiry comes from a person who (1) lacks the means to buy or rent the building; (2) is not genuinely interested; or (3) is not a person with whom the owner is prepared to deal.

In case of auctions, the EPC need not be in the catalogue unless there is a photograph with/or a floor plan and/or description of room sizes. However, the EPC must be in the auction pack and available to prospective bidders before the auction.

Failure to produce an EPC to a Trading Standards Officer within 7 days of demand means the relevant person may be liable to a civil penalty charge notice, which is fixed (in most cases between £500.00 and £5,000.00) at 12.5% of the rateable value of the building. There is a default penalty of £750.00 where this formula cannot be applied.

There are major concerns regarding the cost of the EPC and the availability of suitably qualified assessors in time. This is a new market and fears are that there will be a repeat of last year's problems with Domestic Energy Assessors for residential dwellings. The cost of the EPC is likely to be determined by a building's size, type, complexity and the quality of technical information made available to the assessor.

Landlords electing to follow the recommendations contained in an EPC may find no mechanism for recovering the costs from tenants. Also buildings can have multiple tenancies, differing lease agreements, various sub-letting arrangements and different uses. Then there are common parts to consider.

Tenants should be careful at the end of a lease to ensure that no recommendations or additional works are included in any terminal schedule of dilapidations or payment in lieu of compliance.

Indications are that improving energy performance will not, of itself, result in increased rental income or capital value. If anything, improving energy performance may merely preserve current levels. Buyers and tenants will quite possibly argue for reductions where a building's rating is poor.

Air conditioning systems

Already required, by the same regulations, since **1 January 2008**, is the five yearly inspections of air-conditioning systems with an effective rated output of more than 12kW. For systems installed after the 1 January 2008 inspection is required within five years of installation. For systems already in place, the inspection must take place by the **4 January 2009** (if the output is more than 250kW) or the **4 January 2011** (if the output is more than 12kW).

Display Energy Certificates

Also from **1 October 2008** public buildings (initially only those regularly visited by the public, e.g. public sports centres, libraries, schools, hospitals) with a total useful floor area of greater than 1000m² will have to display, in a prominent position, a Display Energy Certificate (DEC).

However, the definition may in time be extended to private sector buildings visited by the public (e.g. retail shopping centres). There is nothing though to stop one from voluntarily displaying a DEC where there may be some gain from a display of corporate social responsibility or commercial perspective.

A useful link is:

www.communities.gov.uk/planningandbuilding

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