

Energy Performance Certificates (EPCs) and commercial buildings

All commercial buildings regardless of size require an EPC on construction, sale or letting.

The Regulations - the Energy Performance of Buildings (Certificates and Inspections) Regulations 2007 (as amended). A proposed EC Directive will, if adopted, require the scope of the Regulations to be extended.

Trigger for obtaining an EPC:

Sale of a building for value - includes sales by liquidators/receivers and inter-company transfers but not the sale of shares in a company that holds property or sales pursuant to a compulsory purchase order

Granting a new lease, or assignment of an existing lease, of a building - includes sales and leasebacks but not lease renewals or extensions, lease surrenders or licences to occupy

Construction of a new building

Modification of a building - provided: (i) it is to have more/fewer parts designed to be used separately than it had before the modification and (ii) the modification includes the provision, or extension of existing, fixed services

A building for the purposes of the Regulations:

- Has a roof and walls; and
- Uses energy services to condition the indoor climate through e.g. heating, mechanical ventilation or air-conditioning (but not hot water or electric lighting) or, there is an intention that such services will be installed.

A building includes part of a building which has been designed or altered to be used separately.

Exempt commercial buildings:

- A free standing, entirely detached unit under 50sq.m.
- Temporary buildings (planned use under two years)
- Places of worship
- Where the building is due to be demolished by a prospective buyer
- Industrial sites, workshops, non-residential agricultural buildings (where not air conditioned or fully heated/cooled)

The EPC has to be made available:

Sale or assignment/grant of a lease: at the earliest opportunity and no later than the earliest of:

- when any written information about the building is provided in response to a request for information from a serious prospective buyer/tenant; or
- when a viewing is conducted; or
- before entering into a contract to sell, let or assign

If a seller/landlord orders an EPC at least 14 days before it is required and makes reasonable efforts to obtain it in time a transaction can proceed without being held liable for a penalty.

On construction of new building/modification of existing building: by the person carrying out the works to the owner within 5 days after the works are completed.

The EPC must reflect the building being sold or let:

Buildings with a common heating system:

The EPC can relate to the whole building and be used when the building **or any part of it** is sold or let.

Buildings without a common heating system:

The EPC should relate to each part offered for sale or let.

An EPC can also be produced for a separate part if required.

If an EPC does exist for the whole building (e.g. as a result of construction) it may not be used unless the **whole** building is being sold or let.

Recovering the cost of commissioning an EPC:

Sale or assignment/grant of a lease - buyer/tenant entitled to receive the EPC without charge (this cannot be waived).

Existing lease but no duty to provide an EPC has previously arisen - the lease will have to be checked to see if the cost can be recovered from the tenant by the landlord.

Validity: valid for 10 years unless a new EPC of the same building is obtained by, or provided to, the seller/landlord.

If a tenant of part of a building has an EPC for that part and the landlord has an EPC for the whole building: both EPCs will be valid, but for transactions relating solely to the part in question the tenant's EPC should be used.

If a seller/landlord does not provide an EPC when required: civil offence - penalty fine of 12.5% of the rateable value of the property (minimum £500, maximum £5,000). Enforced by the Local Authority through its trading standards officers.

Note: the above is intended as a general reference only and further legal guidance is advisable. For further information on this guide please contact Barbara Naftalin, Partner in the Asset Management Group at Davies Arnold Cooper. T: 020 7293 4115 E: bnaftalin@dac.co.uk
The above is based on the law as at January 2009.

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