

EPCs for Commercial Buildings

Key Points

From 6th April 2012 the legislation for Commercial EPCs is changing. The legislation is being tightened and is applicable to building owners and anyone acting on their behalf.

- ▶ **All commercial property that is sold or let must have an Energy Performance Certificate (EPC) commissioned prior to, or within 7 days of being put on the market. There is a further 21 days allowed for the completion and acquisition of the EPC after which time fines can be imposed.**
- ▶ **Failure to comply with the legislation will allow trading standards to levy fines up to 12.5% of the rateable value, capped at £5,000, as a penalty for non-compliance.**
- ▶ **It is the action of selling, letting or construction that triggers the requirement for an EPC. Therefore existing occupiers and tenants will not require an EPC unless they sell, assign or sublet their interest.**
- ▶ **The certificate must be made available to the person interested in renting/buying the property at no cost to the interested party. From 6th April 2012 the first page of the EPC will need to be included with all marketing material for the property.**
- ▶ **The EPC is valid for a period of 10 years.**
- ▶ **Lease renewals, extensions and surrenders do not require an EPC.**

Background Detail

The Legal Framework: The Directive

Energy Performance Certificates (EPCs) are required for almost all buildings when they are constructed, sold or rented under Article 7 of The Energy Performance of Buildings (Certificates and Inspections) Regulations 2007 (SI 2007/991, amended by SI2007/1669, SI2007/3302 and SI 2008/647). These Regulations and Statutory Instruments have been passed to ensure that England and Wales conforms to the European Directive 2002/91/EC on the Energy Performance of Buildings (EPBD).

Key Dates

6 th April 2008	Buildings greater than 10,000 sq. m. (107,640 sq. ft.) GIA
1 st July 2008	Buildings greater than 2,500 sq. m. (26,910 sq.ft.) GIA
4 th January 2009	All buildings that are not exempt

Any building coming on the market must have a certificate commissioned within 7 days of marketing commencing. If it cannot be demonstrated that an EPC has been secured within 28 days of marketing, Trading Standards will impose a fine.

If the building is mixed commercial / residential and the residential section has a separate entrance, then the properties need assessing separately by appropriately qualified assessors -Commercial Energy Assessor (CEA) and Domestic Energy Assessor (DEA).

Which buildings need an EPC?

Definition of a Building

- ◆ A building is a roofed construction having walls, for which energy is used to condition the indoor climate.
- ◆ A building can be a whole building or part of a building that is designed or altered to be used separately.
- ◆ Communal areas must either be assessed with the whole building or assessed separately where the communal area provides access to a number of spaces.

Exemptions

- ◆ Places of worship
- ◆ Temporary buildings with a planned time of use of less than two years
- ◆ Stand-alone buildings with a total useful floor area (GIA) of less than 50m² that are not dwellings
- ◆ Industrial sites, workshops and non-residential agricultural buildings with low energy demand ^{*see below}

EPCs are not required on sale or rent for buildings due to be demolished. The seller or landlord should be able to demonstrate that:

- ◆ The building is to be sold or let with vacant possession
- ◆ The building is suitable for demolition and the resulting site is suitable for redevelopment
- ◆ They believe, on reasonable grounds, that a prospective buyer or tenant intends to demolish the building (e.g. on evidence of an application for planning permission).

Not all transactions will be considered to be a sale or let. These include:

- ◆ Lease renewals or extensions
- ◆ Compulsory purchase orders
- ◆ Sales of shares in a company where buildings remain in company ownership
- ◆ Lease surrenders.

Responsibility

It is the responsibility of the seller, landlord or someone acting on their behalf, to make an EPC available for the building that is being marketed. A lease assignment would be considered to be a sale and the assignor should provide the EPC.

For new builds, it is the responsibility of the person carrying out the construction to provide the EPC to the owner and Building Control will not issue a certificate until they are satisfied this has been done.

For buildings being modified an EPC only applies if the fixed services (heating, ventilation and /or air con) are changed.

* this clause causes a lot of debate as to what is low energy use, we provide an interpretation but legal guidance should be sought

Providing information to Buyers & Tenants

A valid EPC and recommendation report must be made available free of charge by the seller, landlord or Agent to a prospective buyer or tenant when non-dwellings are sold or let. This must be at the earliest opportunity and no later than:

- ◆ When any written information about the building is provided in response to a request for information received from the prospective buyer or tenant
- ◆ When a viewing is conducted
- ◆ In any event, before entering into a contract to sell or let.

Auctions

In the case of auctions, the EPC will need to be included in any catalogues from 6th April 2012. Moreover, an EPC must be included in a pack and made available to prospective buyers or tenants at the earliest opportunity as in the circumstances described above.

Situations where an EPC may be unobtainable in time

The relevant person will not be liable to a penalty charge notice:

- ◆ In rental situations:
 - Where a prospective tenant was seeking to rent the building in an emergency requiring urgent relocation
 - The landlord did not have in his possession a valid EPC at the time of letting because there was insufficient time for the prospective landlord to be reasonably expected to have obtained an EPC before letting the building; but the landlord must provide a valid EPC to the tenant as soon as reasonably practicable after letting the building.

The Process

Every building is different so it is necessary to understand the specification for the building concerned in terms of size, building design, HVAC and any special features. This is done through a short questionnaire or receiving a copy of the sales brochure.

Having defined whether a Level 3 or 4 Assessor is required, I would provide a quotation and, subject to acceptance of the offer, the survey date would be agreed. The more information available in advance of the survey the quicker and more accurate the assessment will be.

I will require access to all parts of the building internally and externally. I would need access to each room and the plant room where HVAC systems are located. Time on site can vary considerably and will depend on the size and layout of the building. Estimates will be provided when the survey date is agreed if required.

Once all the data has been collected, it may take up to 10 days to complete the EPC, but I can usually complete and lodge the EPCs within a few days if required. The report will then be available online and a hard copy sent in the post. I will also supply the report in pdf format via email to the agent and to the landlord if required

About Us

I am a self employed Commercial Energy and Asbestos Surveyor. I am qualified to produce Commercial EPCs, Display Energy Certificates, and Floor plans and carry out Asbestos Management and Refurbishment Surveys.

I trained with and am accredited with BRE Global (Building Research Establishment) to provide EPCs for the commercial market and Display Energy Certificates usually for the public sector. I am based in Buckinghamshire but cover all parts of the UK if required.

As one of the first to be qualified to produce Commercial EPCs, my aim is to set high standards in terms of quality and service. For insurance purposes, all asbestos work is carried out with Abbey Surveyors and we work in teams of two for this high risk type of work.

I provide a fast, professional service offering value for money, working with property professionals and owners / landlords nationwide. I would be happy to talk to you about your requirements, please call me on **07739 998407** or email me at **debiwood@btinternet.com**

Reference Information

The most important document issued by CLG (Department for Communities & Local Government) for practical advice is: Improving the energy efficiency of our buildings: **A guide to energy performance certificates for the construction, sale and let of non-dwellings**. 2nd edition July 2008

This publication provides general information and does not constitute legal advice. It is believed to be accurate as of Dec 2011 but is subject to change. To be sure you have the most up to date information please contact me.