



# the energy performance of buildings regulations

New regulations relating to the energy performance of commercial and other non-domestic buildings come into force from 6 April 2008.

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 ('the Regulations') implement certain articles of the Energy Performance of Buildings Directive and are designed to help the EU and the UK meet their Kyoto carbon emission targets.

## energy performance certificates

The principal requirement of the Regulations is the obligation on sellers, landlords and contractors to supply an Energy Performance Certificate ('EPC') on the sale, let or construction of a building. The EPC will contain information about the energy efficiency of a building, including an asset rating (of between A – good – and G – poor), which will be similar to the rating already displayed on certain white goods. The EPC must be accompanied by a Recommendation Report ('Report'), which will recommend both cost-effective and more expensive steps that can be taken for improving the energy performance of the building. An EPC is generally valid for 10 years in respect of a non-domestic building.

## what buildings are affected?

A building is defined as 'a roofed construction having walls' using energy to 'condition the indoor climate' and includes part of a building 'designed or altered to be used separately'. An EPC is required for each such building although an EPC can in some cases be based on the energy assessment of a representative unit within the same block. An EPC does not need to be produced in respect of certain buildings, such as temporary buildings, places of worship, industrial buildings with a low energy demand, buildings with a floor area of less than 50 sq metres, and buildings that are to be demolished.

## when is an EPC required?

The requirement to provide an EPC in relation to non-dwellings comes into force on the following dates:

- 6 April 2008: buildings with a total useful floor area of over 10,000 sq metres
- 1 July 2008: buildings with a total useful floor area of over 2,500 sq metres
- 1 October 2008: all remaining buildings

From the above dates, a seller or landlord must provide any 'prospective buyer or tenant' (which includes an assignee or sub-tenant) with an EPC and Report, free of charge, at the 'earliest opportunity' i.e. typically when written information is supplied or a viewing is made. There are certain exceptions e.g. the seller/landlord reasonably believes that the buyer/tenant is unlikely to have sufficient means or is not genuinely interested.

Transitional arrangements apply until 1 October 2008 in respect of buildings caught by the first two dates detailed above. If a building is marketed for sale or let before the relevant date then no EPC needs to be supplied until a contract for sale or let is actually entered into.

An EPC must also be produced by a contractor to the owner when a building is constructed or is converted into fewer or greater separate units and the conversion includes the provision or extension of any the building's fixed services i.e. heating, hot water, air-conditioning, etc.

#### display energy certificates

From 1 October 2008, a Display Energy Certificate ('DEC') must be displayed at buildings with a floor area of over 1,000m<sup>2</sup> that are occupied by public authorities or by institutions providing public services to a large number of persons and thereby frequently visited by those persons. This will affect leisure centres, schools, hospitals, libraries etc. The DEC will contain essentially the same information as an EPC but will also display an operational rating i.e. a rating showing the building's actual energy performance over the previous 12 months. The DEC must be renewed every year. An advisory report, containing recommendations for improving energy performance, is also required and will be valid for seven years. Certain time-limited exceptions apply in respect of new occupiers.

#### inspection of air-conditioning systems

Those who control air-conditioning systems with an output of more than 12kW must ensure that any separately controlled system is inspected at least every five years. For systems put into service on or after 1 January 2008 the first inspection must take place within five years of the first service date. For systems in service prior to 1 January 2008 an inspection is required before 4 January 2009 if the system has an output of more than 250kW or before 4 January 2011 if it has an output of more than 12kW.

#### energy assessors

Only an appropriately qualified member of an approved accreditation scheme can issue an EPC or DEC or inspect an air-conditioning system. Initial demand for assessors is likely to outstrip supply and costs are therefore expected to be high. Details of accredited energy assessors will be listed at [www.ndepcregister.com](http://www.ndepcregister.com).

The Regulations place a duty on every person with an interest in, or in occupation of, the building to allow access to the energy assessor, and to co-operate with the seller, landlord or contractor, as far as is reasonably necessary. The energy assessor is also required to register every EPC, Report, DEC and advisory report on a national register. Access to registered documents is strictly limited.

#### enforcement and penalties

Failure to produce a required certificate or report can incur a penalty charge, which in most cases will be 12.5% of the rateable value (subject to a minimum of £500 and maximum of £5000). A number of defences apply e.g. the responsible person is able to show that it requested an EPC at least 14 days before it was required but an EPC had not been received despite using all reasonable efforts/enquiries.



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