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Energy Performance Certificates

Climate Change and Energy Group briefing March 2008

EPCs will have a number of business impacts

- An EPC is required when you build, sell or rent a building.
- First deadline is for property over 10,000m² where contracts are to be exchanged (to sell or rent) on or after 6th April 2008.
- Planning & preparation are crucial. There is a shortage of suitable assessors.
- We recommend gathering plans, specifications & data about buildings in advance.
- Landlords may be able to recover the cost of an EPC through the service charge.

Stop Press: Transitional provisions have been introduced for buildings already on the market at 6th April 2008 (over 10,000m²) and 1st July 2008 (over 2,500m²). Any building of the relevant size which is on the market before then and remains on the market afterwards will need an EPC by 1st October 2008 at the latest. If sold or rented out in the meantime, an EPC must be commissioned and then handed over as soon as practicable. We understand that this is due to concerns about the lack of assessors available to prepare EPCs.

WHAT IS AN EPC?

An EPC is a certificate that contains information about the energy efficiency of a building which will be produced by a qualified assessor who will give the building an asset rating on a scale from A to G (similar to those currently used for white goods). An EPC must be produced whenever a building is constructed, sold or leased.

The assessor will consider the impact of such factors as lighting, insulation, heating, air quality and carbon dioxide emissions. The EPC must be accompanied by a recommendation report (containing recommendations for the improvement of the energy performance of the building to which the certificate relates and is issued by the energy assessor who issued the EPC). There will be (at least initially) no legal obligation to comply with the recommendations contained in the report. An EPC and recommendation report are valid for 10 years.

Government guidance (the Guidance) indicates that lease renewals or extensions, compulsory purchase orders and lease surrenders will not amount to a sale. Other types of transaction that might not require an EPC are not-for-value transactions and intra-group transfers/lettings. It would appear, however, that sales on insolvency, sale and leasebacks, short-term lettings and swaps of properties might all require an EPC. The Guidance is not entirely helpful and is only intended as an aid to interpreting the regulations.



WHO PAYS FOR THE EPC?

A landlord may be able to recover the cost of producing a certificate via the service charge. However, this will depend on how the specific clause in the lease is worded.

PRIORITIES

The first and immediate deadline is 6th April 2008, when an EPC will be required on the construction, sale and rental of non-dwellings of more than 10,000m². An EPC has to be made available to a prospective buyer or tenant at the earliest opportunity and in any event before entering into a contract to sell or rent out the building.

Even though this is the initial priority, it is necessary to be mindful of the subsequent deadlines for implementation of the regulations. For details of the full timetable see <http://www.communities.gov.uk/planningandbuilding/theenvironment/energyperformance/whenmeasures/>. Note in particular the deadline for air conditioning inspections in 2009 that will affect many properties.

If you have a property transaction that is covered by the regulations, we would recommend that you contact assessors now. It is anticipated that there could be a real shortage of qualified assessors initially, which is a significant concern in the coming months.

ASSESSORS, CERTIFICATES & DATA

Energy assessors must be accredited through a Government-recognised accreditation scheme. The Guidance lists 10 approved accreditation schemes. See <https://www.ndepcregister.com/> to find a suitably accredited energy assessor.

It is not yet clear whether the information contained in an EPC will be freely available to all parties interested in a building. The register for EPCs has not yet been set up. Each accreditation body for assessors will have its own register which in time will move to one central register. It is thought that the register will not be searchable by property address to reveal what EPC(s) exist in relation to a particular property. It is also not yet confirmed who will have access to the register.

It seems unlikely that it will be possible to compare the energy efficiency of one building against another. This is due to the way an EPC is calculated. The rating is calculated by comparing the actual building with the rating that would be achieved for a standard building of its age and type. This will not achieve a standard, objective benchmark across all types of building, to enable a clear comparison between, say, an office built in 1975 and a data centre constructed in 1998.

MULTIPLE PROPERTIES & PORTFOLIOS

Despite bulk discounts being offered by assessors, we would not recommend obtaining EPCs for a whole portfolio for two reasons. First, it may not be possible to recover the cost of obtaining an EPC in relation to all leases. Secondly, the regulations provide that if a building is modified after an EPC has been issued, these modifications can make the EPC invalid. This might be a risk if a number of properties were assessed at one time.



We suggest that owners of portfolios need to liaise with assessors now about what information they need in relation to your buildings, for example measured plans, specifications of the building's services and materials and the intended activities to be conducted within each part of the building. This will ensure the assessor is ready to issue an EPC for a particular building as and when you may need it.

If one tenant in a multi-let building assigns or sublets, some people have suggested that this could give rise to a requirement for an EPC on the whole building. The Guidance indicates that this really depends on the configuration of the heating systems (and this presumably extends to the cooling systems). For units with independent systems if a unit is being sold or let then an EPC just for the single unit is required. In the case of a unit with a shared system, the EPC could either cover the whole building or the single unit.

The wording of the regulations suggests that a subsequent EPC on the whole or part of a building could render a previous EPC of that building invalid. This is unsatisfactory and creates uncertainty. It is hoped that further Government guidance will be forthcoming on this point.

COMPLIANCE AND PENALTIES

Failure to produce an EPC does not constitute a criminal offence but Trading Standards will police this. The penalty for failing to provide an EPC when selling or renting out commercial property is 12.5% of the rateable value of the building, with a minimum of £500 and a maximum of £5,000.

Simply paying the penalty will not work as an alternative to obtaining an EPC, as once the penalty has been imposed, if an EPC is not produced, further penalties might be imposed until one is produced.

However, if the shortage of assessors prevents EPCs from being produced, there is a limited defence excusing the payment of a penalty. If the seller or landlord made a request for a certificate at least 14 days before the relevant time (which will usually be when the property was first marketed) and despite making reasonable efforts it was unable to obtain a certificate by such time, this might excuse payment.

THE FUTURE

There is a degree of uncertainty in this area. We think that there is a possibility that a low rating might be linked to a levy on Business Rates. It also seems possible that in the future property owners could be required to carry out the recommendations contained in the EPC.

Energy consumption within buildings is gaining increasing political attention. Whilst EPCs are designed to give prospective buyers and tenants greater transparency on energy performance, other measures are being introduced that will make these parties much more interested in what EPCs reveal. An example of this is the Carbon Reduction Commitment which will impose carbon caps on very many organisations with a reasonably high energy expenditure.



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MORE INFORMATION

This is a fast developing area. More information can be obtained by clicking on the links below.

For Government Guidance

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/guidancenondwellings>

To find an accredited energy assessor

<https://www.ndepcregister.com/>

For the regulations

http://www.opsi.gov.uk/si/si2007/uksi_20070991_en_1

Timetable

<http://www.communities.gov.uk/planningandbuilding/theenvironment/energyperformance/whenmeasures/>

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