

2nd September 2008

**ENERGY PERFORMANCE CERTIFICATES –
ARE YOU READY?**

1st October 2008 is a date all Landlords (social, private rented and commercial sectors) should have in their dairies. And why is this? Well, from this date, where a Building is sold, rented out or constructed (new builds), the Landlord must have an Energy Performance Certificate or EPC as they are more commonly known.

WHAT IS AN EPC?

The European Directive on the Energy Performance of Buildings is a key part of the Government's strategy for the tackling climate change. The idea underlying the Directive is to ensure the energy transparency of Buildings.

An EPC is a certificate and recommendation report showing the energy rating of a Building.

WHAT DOES AN EPC SHOW?

The EPC shows two things in connection to the Building.

Firstly it will show the Energy Efficiency Rating or running costs of the Building. Secondly, it will show the Environmental Impact Rating or carbon dioxide emissions. Each rating is shown by A to G ratings and these scales are similar to those used for electrical appliances such as fridges.

Accompanying the EPC will be a Recommendation Report. This report should make recommendations as to how the Buildings energy efficiency can be approved, although, interestingly, the Regulations do not at present require that any of these recommendations be implemented.

The EPC together with the Recommendation Report make up EPC.

WHY DO I NEED AN EPC?

As set out above, the European Directive on the Energy Performance of Buildings ('The Directive') is a key part of the Government's strategy for tackling climate change.

The Government has therefore implemented The Directive into the law of England and Wales by the Energy Performance of Buildings Regulations 2007/991 and a full copy of the Regulations can be downloaded at:

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

Northern Ireland and Scotland are making separate arrangements for implementation.

SO WHEN DO I NEED AN EPC – IN WHAT CIRCUMSTANCES?

An EPC is required where a “Building *is sold, rented out or constructed*”. The Regulations require the Landlord/Seller to produce and provide EPC’s to prospective buyers and tenants. The Regulations apply to all buildings, whether residential or commercial, when sold, rented out or new builds.

The Regulations define a Building as “*a roofed construction having walls, for which energy is used to condition the indoor climate, and a reference to a building includes a reference to a part of building which has been designed or altered to be used separately*”

A Building for the purpose of the Regulations is therefore either the whole of a building, or part of a building, where the part is designed or altered to be used separately. In other words, for residential property, EPC’s are required for “*self-contained units*” which do not share essential facilities such as bathrooms, kitchens or entrances.

CAN I CHARGE MY TENANTS/BUYERS FOR AN EPC?

Landlords must provide an EPC free of charge to the tenant who ultimately becomes the tenant, or the purchaser of the Building.

AT WHAT STAGE DO I HAVE TO PROVIDE THE EPC?

The Regulations are designed to ensure a prospective tenant or purchaser is aware of the energy performance of the Building when they are considering whether or not to rent or purchase. The Regulations therefore require the Landlord to commission an EPC and make this, together with the recommendation report, available to any prospective tenant or purchaser, at the earliest opportunity.

By “available” the Regulations indicate the EPC and recommendation report must be ‘*available for inspection*’; the Regulations do not appear to require the Landlord to provide to the prospective tenant or purchaser an actual copy of the EPC and recommendation report at this stage. A copy of the EPC and recommendation report must of course however be provided to the person who takes up the tenancy eventually or purchaser, free of charge.

HOW LONG IS THE EPC VALID FOR?

EPCs are valid for 10 years and can be re-used for as many times as required during that 10 year period. In other words, it is not necessary to commission a new EPC each time there is a change of tenancy, although if a new one is produced in the 10 year period, it will of course supersede the older one.

DO I REQUIRE AN EPC IF I AM JUST RENEWING AN EXISTING TENANCY AGREEMENT OR LEASE?

An EPC is not required for Buildings that are occupied prior to 1st October 2008 and will continue to be occupied by the same tenant(s) after this date. For example, if a tenancy agreement or lease is merely being renewed to the same tenants that occupied the property prior to 1st October 2008, an EPC will not be required.

SO WHOSE RESPONSIBLE FOR ALL THIS?

The Landlord will usually be responsible for obtaining the EPC. Where the Landlord has managing/letting agents, it is possible to instruct them to deal with obtaining an EPC. However, Landlords need to be aware that in the event of any breaches or failures to comply with the Regulations, it will be he that will be held to be ultimately responsible and it will be he that suffer the full consequences of any enforcement action.

HEALTH WARNING: There is no defence in claiming the agent was instructed with the task of ensuring compliance.

Where however a tenant sub-lets a dwelling, the responsibility for producing an EPC available lies with the sub-leaseholder.

WHERE CAN I OBTAIN AN EPC FROM?

EPC's must be produced by an Accredited Domestic Energy Assessor (DEA) or Home Inspector (HI) who must be registered with an accreditation scheme. Landlords should note however that HI are usually accredited to produce Home Information Packs (HIP's) where EPC's are one element; Rental properties only require EPC's.

Landlord's can also become accredited themselves so as to enable them to certify their own properties. This is particularly useful where Landlord's hold numerous Buildings.

Any Assessor will also be required to pass basic Criminal Records Bureau checks as they may be visiting occupied homes.

WHERE CAN I FIND AN EPC ASSESSOR?

There are a number of ways to identify and find Assessors, namely:-

- Local Lettings / Managing or Estate Agents may hold lists for Assessor in your local area;
- Local advertising;
- EPC register at www.epcregister.com . The website has a search facility which can be used to locate assessors within a postcode area. The search will show the assessor's qualifications and accreditation details, contact details and any areas of particular expertise, for example, an assessor may be particularly qualified in a particular construction type.

WHAT WILL THE ASSESSOR DO?

The DEA or HI will carry out a survey of a property to gather wide ranging data on the features of the Building, for example, they will assess the age and dimensions of the Building, the materials used in the construction/fabric of the Building, the extent of any insulation, whether the Building has single or double glazing, whether there are any installed heating systems, the state and condition of the hot water services as well as data on any fixed lighting systems.

The Assessor will then feed the data gathered into a government approved software package which then generates the certificates and recommendations report, which together make up the EPC. The EPC is then lodged on the Domestic Register by an accredited assessor and a hard copy of the EPC is produced.

WHEN DO THE REGULATIONS COME INTO FORCE?

The Regulations are being implemented in phases to ensure that those responsible for providing certificates and those responsible for obtaining EPC's are aware of their obligations under the Regulations.

The rolling out of the Regulations is as follows:

From 6th April 2008

EPC's were required for the sale or rent of commercial buildings with a floor space in excess of 10,000 sq m, as well as for all new schemes at construction stage.

From 1st July 2008

The Regulations were extended to include all commercial buildings with a floor space over 2,500 sq m

From 1st October 2008

EPC's are now required for all buildings (now including domestic dwellings) over 50 sq m, this includes, as set out above, all domestic rentals.

WILL ANYTHING HAPPEN IF I DO NOT COMPLY WITH THE REGULATIONS?

Local Trading Standard Departments are to be responsible for enforcing the Regulations that require EPC's to be produced. An Authorised Trading Standards Officer (TSO) has the authority to ask a Landlord who appears to be or to have been subject to the Regulations to produce for inspection an EPC and Recommendation Report.

If the landlord fails to produce an EPC to an Enforcement Officer when asked, the Trading Standards Officer can issue a penalty charge of £200 per dwelling. In addition, the Landlord will still have to produce an EPC to the person who has become the tenant.

For commercial properties, a Landlord is subject to more severe penalties as failure to comply with the Regulations may result in a maximum penalty of £5,000 with also the requirement to produce a valid EPC enforceable by Trading Standards.

CONCLUSION:

With the phased introduction of the Regulations, Landlords will be unable to plead the Defence of Ignorance. Compliance with the Regulation is essential! Contact a local Assessor today.

ENDS

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