

Energy Performance Certificates – commercial properties

Introduction

The provision of an Energy Performance Certificate (EPC) is now compulsory on the construction, sale or letting of a commercial building. This information sheet sets out the key points.

What is an EPC?

An EPC is a certificate provided by an accredited energy assessor which is designed to summarise the energy performance of a building. A rating from A to G will be given, where A is the most efficient and G is the least efficient. The EPC also contains a recommendation report on how the building could be made more energy efficient.

Each EPC will be given a unique reference number. It is stored on a central register so an EPC can be made available to prospective buyers or tenants. An EPC is valid for 10 years or until a new EPC is obtained in respect of that property. The EPC must be provided by the seller or the landlord free of charge.

When is an EPC required?

EPCs are required where a commercial building is constructed, sold or let. For the purposes of the legislation:

- **"building"** is a "roofed construction having walls, for which energy is used to condition the indoor climate". It can be the whole of a building or part of a building where the part is designed or altered to be used separately. It can include agricultural buildings.
- **"condition the indoor climate"** energy will be used to condition the indoor

climate of a building if it has fixed systems for heating the building, air conditioning or mechanical ventilation.

Buildings which are exempt

The following types of building are exempt from the requirement to obtain an EPC even though they may contain systems for conditioning the indoor climate:

- 1 Places of Worship;
- 2 Temporary buildings with a planned time of use of less than 2 years;
- 3 Stand alone buildings with a total useful floor area of less than 50 square metres;
- 4 Industrial sites, workshops and non residential agricultural buildings with low energy demand (these include buildings or parts of buildings whose purpose is to accommodate industrial activities in spaces where the air is not conditioned);
- 5 Listed buildings or those within a designated conservation area, but only, in so far as compliance with minimum energy performance requirements would unacceptably alter their character or appearance; and
- 6 Buildings earmarked for demolition where there is specific evidence of planned demolition.

EPCs for part of a building

- 1 If a building has a common heating or air conditioning system then the seller or prospective landlord can either:

Head Office
Heathervale House
2-4 Vale Avenue
Tunbridge Wells
Kent TN1 1DJ
T 01892 510000
F 01892 540170

Thames Gateway
Corinthian House
Galleon Boulevard
Crossways Business Park
Dartford
Kent DA2 6QE
T 01322 623700
F 01322 623701

Energy Performance Certificates – commercial properties

Continued

- Obtain an EPC for the whole building, which can subsequently be used on the sale or letting or any part; or
 - Obtain an EPC for the part which is being offered for sale or let provided that the part is designed or altered to be used separately.
- 2 For buildings with separate parts and separate heating systems an EPC should be obtained for each part that is being offered for sale or let. If the whole of the building is being sold or let as a whole a single EPC can be produced but it can not subsequently be used for the sale or letting of parts of the building.

When is an EPC not required?

According to guidance issued for EPCs, certain transactions do not require an EPC. These are:

- 1 Lease renewals or extensions;
- 2 Compulsory purchase orders;
- 3 Lease surrenders.

It should be noted however that whilst EPC guidance indicates that no EPC is required when a lease is renewed, this guidance conflicts with more recent government guidance issued, for legislation imposing minimum energy efficiency requirements (MEES). MEES guidance indicates that EPCs are required on a lease renewal.

There are no provisions exempting transactions between group companies from the requirement to provide an EPC on a sale or letting of a commercial building.

Timing for providing EPC

There is an obligation to use all reasonable efforts to ensure that an EPC is obtained within 7 days of marketing the building. If one is not obtained within the initial 7 days, there will be an additional 21 days in which an EPC can be obtained.

All sales or lettings advertisements in the commercial media should show the EPC rating for the property being advertised.

The EPC should be made available to the prospective buyer or tenant at the earliest of:

- the time at which information in writing about the property is first made available to someone who has requested any information about the property;
- the time at which a person views the property, having requested to do so;
- otherwise at the earliest opportunity.

Who must provide the EPC?

- 1 When a building is being constructed and is physically complete, the person carrying out the construction must provide an EPC to the owner.
- 2 When a building is being modified so as to include more or less parts than it originally had and the modification involves the provision of heating, air conditioning or mechanical ventilation, it is the person carrying out the modifications who must provide the EPC to the owner.

Note: in 1 and 2 above Building Control will not issue a certificate of completion

Energy Performance Certificates – commercial properties

Continued

until they are satisfied that an EPC has been provided.

- 3 As soon as the building has been offered for sale the seller must make an EPC available to prospective purchasers.
 - 4 As soon as the building has been offered for let the landlord must make an EPC available to prospective tenants.
- Note: on the assignment of a lease, it is the assignor's responsibility to provide an EPC.
- 5 Trading Standards have powers to require not just sellers and landlords, but persons acting on their behalf (i.e. agents) to produce EPCs for inspection

Obtaining an EPC

An energy assessor must be commissioned to produce an EPC. The energy assessor will belong to an accreditation scheme. Energy assessors are responsible for conducting an energy assessment, producing an EPC and lodging the EPC with their accreditation scheme. For further information see www.ndepcregister.com

Display of EPC

Where an EPC has been produced for a building, if that building is over 500m² and is frequently visited by the public, it is now a requirement for the EPC to be displayed in a prominent place clearly visible to members of the public.

Penalties

The requirement for an EPC to be made available is enforced by the local authority

through the Trading Standards Officers. The Trading Standards Officers can request a seller or landlord to provide a copy of the EPC within 7 days of request. There is a fixed penalty charge. In most cases this is fixed at 12.5% of the rateable value of the property.

There is a formula for calculating the penalty. If the formula cannot be used, the default fine is £750. The range of penalties under the formula are set at a minimum of £500 and capped at a maximum of £5,000.

Conclusion

As the requirements on the sale or letting of a property become more complicated, it is increasingly important that professional advice is obtained well in advance, before a property is placed on the market.

Further information

This information sheet has been prepared to highlight some of the key issues relating to the requirement for EPCs on commercial property. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at March 2019 and may be affected by subsequent changes in the law. For more information please contact Sarah Easton on 01892 510000 or email at:

sarah.easton@ts-p.co.uk