

A Guide to Energy Certificates

June 2008

Energy Performance Certificates and Display Energy Certificates

There is no doubt that the EU Energy Performance of Buildings Directive has serious implications for property owners, landlords, tenants and property developers. Whilst the concept is quite simple - "energy certificates rate the energy performance of a building" - complying with the Regulations that implement the EU Directive is not quite so straight forward.

There are two types of energy certificate and they are required in different circumstances. They are **Display Energy Certificates** and **Energy Performance Certificates**.



PARIS SMITH & RANDALL LLP
SOLICITORS

Hampshire's premier law firm

Providing a full range of legal services to
individuals and businesses across the region
for over 180 years.

Number 1 London Road
Southampton
Hampshire SO15 2AE

Telephone: 023 8048 2482
Fax: 023 8063 1835
E-mail: info@parissmith.co.uk
DX 38534 SOUTHAMPTON 3

www.parissmith.co.uk



Lexcel
THE LAW SOCIETY



INVESTOR IN PEOPLE



Energy Performance Certificates (EPC's)

The EPC shows the rating of the energy efficiency and carbon emissions of a building. The ratings will be from A to G where A is very efficient and G is very inefficient.

The rating is assessed using standard methods with standard assumptions about energy usage. This is so that the energy efficiency of different buildings can be compared easily.

The EPC has a recommendation report ancillary to it which sets out measures that could be taken to improve the energy rating and provide information as to the energy rating that could be achieved if all the listed recommendations are carried out.

An EPC is only required when a building is constructed sold or rented out and is valid for 10 years. The only exception is in connection with residential properties - under the Home Information Pack Regulations 2007 the EPC must not be more than a year old when the property is first marketed.

On completion of the construction of a new building the person responsible for the construction is responsible under Building Regulations to obtain an EPC and provide it to the owner. A certificate will also be required if a building is converted into fewer or more units and alterations are made to the heating and/or hot water systems and/or any air conditioning/ventilation systems.

The sale or renting out of a building will also trigger the requirement for the seller/landlord

to provide an EPC to the proposed buyer/tenant at the earliest opportunity.

The measures are being introduced in phases so that an EPC will be required as follows:-

From 6 April 2008

- *on the construction of all dwellings*
- *on the construction rent or sale of buildings other than dwellings with a useful floor area exceeding 10,000 square meters*

From 1 July 2008

- *on the construction sale or rent of buildings other than dwellings with a useful floor area exceeding 2500 square meters*

From 1 October 2008

- *on the sale or rent of all dwellings*
- *on the construction sale or rent of all buildings*

Unhelpfully there is no definition in the regulations of "useful area" to assist in assessing whether a building exceeds the limits referred to.

The Regulations also include on-going inspections in respect of air conditioning systems. On the basis of an air conditioning system first put into service on or after 1 January 2008 the Regulations also provide

that the first inspection of all existing air conditioning systems over 250 kw must have occurred by 4 January 2009 and for all air-conditioning systems over 12 kw by 4 January 2011. Air conditioning systems must then be inspected every five years.

Certificates must only be produced by qualified assessors who will need to have both the Energy Assessor Qualification and the Energy Assessor Accreditation. Assessors may only carry out inspections in the areas covered by their current qualification and accreditation system but must produce their certificates using the relevant part of the National Calculation Methodology which sets out the different methodologies developed for different types of building and building condition.

Once obtained an EPC is valid for 10 years and so if a valid EPC exists when a property is sold or let no new certificate is required.

Certain properties are exempt from the requirement for an EPC. These include: places of worship; particular buildings with low energy demands; buildings which are to be demolished (in certain circumstances); and temporary buildings which have a planned time of use of 2 years or less.

Display Energy Certificates (DEC's)

This certificate shows the actual energy usage of a building known as its Operational Rating. It is based on the energy consumption of the building as recorded by the utility meters.

It must be displayed in a prominent place in clear view of the public at all times. There is always an ancillary Advisory Report. The Advisory Report lists cost effective measures that could be taken to improve the building's Operational Rating.

Whilst the DEC is only valid for a year the Advisory Report is valid for 7 years.

DEC's are only required in respect of buildings that are occupied by a public authority or an institution providing a public service to a large number of persons and have a total useful area greater than 1000 square meters. Again there is no definition of "total useful area"

Whilst DEC's come into effect for such

buildings from 1 October 2008 the Government is intending to consult on whether the requirement for a DEC should be extended so as to include all private sector buildings occupied by commercial organisations where large numbers of public persons regularly visit the building.

Enforcement and Penalties

The Regulations will be enforced by Building Control in connection with newly constructed buildings and by Trading Standards in connection with existing buildings.

Penalty fines will apply if there is a breach of the regulations. The penalty is £500 for failing to display a DEC in a prominent place at all times clearly visible to the public and £1,000 for failing to have an Advisory Report.

The penalty for failing to comply with the EPC requirements is based on a formula referring to 12.5% of the rateable value of the building in particular circumstances subject to a minimum of £500 and a maximum of £5,000.

It is possible to request a review of a penalty charge and thereafter to appeal to the County Court against a penalty charge notice. The Regulations set out the grounds on which such an appeal may be made.



Problems

In addition to the difficulty referred to above (i.e. that the Regulations refer to “useful floor area” without giving any guidance as to what is “useful floor area”) there are other difficulties with the application of the Regulations:-

1. assuming that assessors will be available there is a particular problem with multi-let/multi-occupational buildings. The reason for this is that the Regulations provide that an EPC is only valid “if no other EPC for the building has since been obtained by or provided to the relevant person”. This could lead to a situation where the Landlord of a multi-let building may find that issuing an EPC to a single tenant in the building may invalidate the EPC for the building as a whole. The position will be further complicated if the building in question contains a mixture of retail and residential units.
2. linked to the problem with multi-let buildings is the issue of the cost of the certificates themselves. The service charge provisions of existing leases may not permit the Landlord to recover the cost of obtaining the EPC (and DEC where appropriate) and in order to recover such expenses in new lettings express wording would need to be added to the service charge provision as it is unlikely that a general “mopping up” clause will be sufficient. Express inclusion of such a provision is likely to be struck through by the solicitor of a tenant with no alienation or subletting rights. Further where a Landlord has obtained an EPC for a new letting of an existing multi-let building any tenant whose lease is shortly to expire or has no alienation rights will dispute paying part of the cost of the EPC under the service charge provisions on the basis that no benefit has been obtained.
3. The practical effects of the rating also need to be considered:-
 - 3.1 if an assessment produces a low rating there is no obligation on the owner or occupier to carry out the works referred to in the recommendation report. However, if a poor rating is given then it is likely to have a significant effect on the value and marketability of the property. Purchasers and tenants are likely to be attracted to buildings with the best ratings.
 - 3.2 if a low rating is given and the owner/occupier fails to implement all the recommendations set out in the recommendation report this may have an effect on the availability of buildings insurance, the premium payable for such insurance or the levels of the excesses which are to apply to the policy.
 - 3.3 if a low rating is given then this may have a detrimental effect for a landlord on a rent review, particularly if the energy efficiency of the building is lower than that of comparables.
 - 3.4 although not yet set in stone, the Government has hinted that it may change the method of assessing the level of business rates payable in respect of a property so as to reflect its energy rating.

This would result in properties with low ratings being charged higher business rates.

Developers, landlords and sellers all need to be aware of their obligations in connection with the Regulations and need to consider as soon as possible how complying with the Regulations could affect them. Similarly buyers and tenants need to be aware of what information they are entitled to receive and tenants, in particular, need to understand how on-going compliance with the Regulations whether by them or their landlord could affect them.

For further advice or information contact:-

Frances Cook

Associate

Paris Smith & Randall LLP

Tel : 023 8048 2109

Empty Properties

On 1 April 2008 The Rating (Empty Properties) Act 2007 came into force giving effect to the Government's reforms to relief from business rates announced in the 2007 Budget.

The effect of the Act to reduce the exemption from empty property rates is likely to significantly impact upon owners of vacant commercial properties, with the largest affect expected on the industrial sector.

Before 1 April 2008 business rates did not apply, at any time, to vacant industrial and listed buildings and small properties with a rateable value of less than £2,200. For all other commercial buildings 100% relief from rates was granted for the first three months that a property was vacant, followed by a further 3 months at 50% relief before full rates applied.

From 1 April, however, once an industrial or listed property has been vacant for a period of six months full non domestic business rates will become chargeable and for all other commercial properties full rates will apply after three months of being vacant.

In addition new anti avoidance provisions are intended to apply preventing owners from vandalising or stripping properties to a shell core in order to remove them from the ratings list.

Further changes will also apply to charities, community amateur sports clubs, insolvent

companies, properties where occupation is prevented by law or action by public authority and part vacant properties and these should be taken into account if applicable.

The Government have commented that the reform is "part of a wider budget package designed to promote more efficient land and property markets" although the reform has been received with mixed reactions. On one hand it is considered that the review will provide strong incentives to bring vacant properties back into use, enhancing supply and creating a downward pressure on rents.

The intention of the reforms is aimed at encouraging owners to re-let, re-develop or sell unused property and so reduce the need for development on Greenfield land. On the other hand, the majority of commentaries do however appear to consider the reform as a step in the wrong direction. Overheads may increase when businesses move and rents and service charges are likely to increase as a result of the Landlord trying to recover their additional costs. Either way it would be wise to review your position and take these provisions into account.

Lisa Busby

Solicitor Paris Smith & Randall LLP Tel: 02380 482172