

ARE YOUR CLIENTS BREAKING THE LAW?

There still appears some confusion amongst property professionals (Agents, Lawyers and Individual Landlords/tenants) regarding EPC requirements and I thought I would try and clarify some details in order to prevent your clients breaking the law. Equally, if acting for tenants/purchasers you will be protecting their best interest by ensuring an EPC is made available before exchange of contracts.

Whilst currently there are no obligations to carry out the recommendations contained within the EPC report, there is a train of thought that at some stage in the future, business rates could be based on how energy efficient a property is, or other penalties for not improving the energy efficiency/reducing carbon emissions.

Attached is a CLG poster and for ease of reference the following information has been extracted:.

EPC's are now required for all commercial transactions whether on construction, sale or rent irrespective of whether it is a private sale

When a building is sold or rented out

When a building is to be sold or rented out, the seller or landlord must provide any prospective buyer or tenant with a valid EPC and a recommendation report, free of charge, at the earliest opportunity (*regulation 5, EPB Regulations 2007*). It is sufficient for the seller or landlord to provide a **copy** of a valid EPC and an electronic copy is permissible if the recipient consents to receiving the certificate electronically.

The obligation to provide an EPC is triggered by whichever of these events occurs first:

- The seller or landlord provides written information about the building to a person who has requested information.
 - A prospective buyer or tenant views the building.
 - A contract is entered into to sell or rent out the building.
- The seller or landlord must ensure that the ultimate buyer or tenant has received a valid EPC.

Regulation 5(3) states that the obligation to provide an EPC does not apply if the seller or landlord has reasonable grounds to believe that a prospective buyer or tenant:

- Is unlikely to have sufficient funds to buy or rent the building.
- Is not genuinely interested in buying or renting that type of property.
- Is not someone to whom the seller or landlord would be prepared to sell or rent out the building.

Although the EPB Regulations 2007 allow a seller or landlord to assess whether or not to provide an EPC in such circumstances, the EPB Regulations 2007 do not permit unlawful discrimination.

Enforcement

The local weights and measures authority in each area is responsible for enforcing the EPB Regulations 2007. Enforcement will normally be carried out by Trading Standards Officers issuing penalty charge notices to those who fail to comply.

The level of the penalty charge varies according to the type of property. For example, the penalty for failing to comply with the EPB Regulations 2007 when selling or renting out a dwelling is currently set at £200. The penalty for failing to provide an EPC when selling or renting out commercial property is, in most cases, 12.5% of the rateable value of the building, with a minimum penalty of £500 and a maximum penalty of £5,000.

The EPCs Guidance advises that a penalty charge notice will not be issued in the following circumstances:

- On the sale or rent of a property where a request for an EPC was made at least 14 days before it was required but, despite all reasonable efforts, it is not in the possession of the seller or landlord. Evidence of the request for an EPC will be needed to rely on this exemption.
- On the renting out of a property:
 - where a prospective tenant was seeking to rent the building in an emergency that required their urgent relocation;
 - the landlord did not have a valid EPC at the time of the letting;
 - there was insufficient time for the landlord to be reasonably expected to have obtained an EPC before renting out the building; and
 - the landlord has given a valid EPC to the tenant as soon as reasonably practicable after the building was rented out.

A penalty charge notice may only be given within a period of six months beginning with the day on which the breach of duty was committed or, in the case of a continuing breach, beginning with the last day of that breach.

Where a seller has been issued with a penalty charge notice under the HIPs legislation for failing to provide an EPC, the EPB Regulations 2007 prevent a notice being issued under the EPB Regulations 2007. This avoids sellers being penalised twice for the same failure. For more information on HIPs, see *note, EPCs and HIPs*.

The EPCs Guidance states that enforcement officers can request a copy of an EPC from a dutyholder up to six months after the EPC was required. It is therefore prudent for the dutyholder to keep a record of the reference number for the EPC, to allow further copies to be requested in the future (see *note, Registration of certificates*).



HM Government



Improving the energy efficiency of our homes and buildings

Energy Certificates and air-conditioning inspections for buildings



ACT ON
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Buildings are responsible for almost 50% of the UK's energy consumption and carbon emissions.

The ways in which we light, heat and use our 25 million buildings all contribute to this. Even small improvements to the energy performance and the way we use our buildings could have a significant effect on our fuel bills and carbon emissions.

Improving the energy performance of buildings

The way a building is constructed, insulated, heated, ventilated and the type of fuel used contribute to its energy consumption and carbon emissions.

The government is introducing a range of initiatives aimed at helping the UK improve the energy efficiency of its buildings and meet its carbon emission reduction targets, including:

- Energy Performance Certificates (EPCs) for homes and buildings
- Display Certificates for public buildings
- Inspections for air conditioning systems; and
- Advice and guidance for boiler users.

The full timetable for the introduction of these new laws is shown on the facing page.

These laws will only apply in England and Wales. Scotland and Northern Ireland are both introducing their own regulations.

Energy performance measures for buildings – timetable for introduction		
What is affected	What is required	When it will be required by law
Homes – when sold (marketed sales only)	Energy Performance Certificate	Phased from 1 August 2007
All remaining Homes – when sold (non marketed sales)	Energy Performance Certificate	From 1 October 2008
Homes – when built	Energy Performance Certificate	From 6 April 2008
Homes – when rented	Energy Performance Certificate	From 1 October 2008
Commercial buildings > 10,000m² – when built, sold or rented	Energy Performance Certificate	From 6 April 2008
Commercial buildings > 2,500m² – when built, sold or rented	Energy Performance Certificate	From 1 July 2008
All remaining commercial buildings – when built, sold or rented	Energy Performance Certificate	From 1 October 2008
Public buildings > 1000m²	Display Energy Certificate – displayed at all times	By 1 October 2008
Air conditioning systems > 250kW	First inspection	By 4 January 2009
Air conditioning systems > 12kW	First inspection	By 4 January 2011

What is an Energy Performance Certificate?

An **Energy Performance Certificate (EPC)** provides a rating for the energy performance of a building. The ratings are standard so the energy efficiency of one building can easily be compared with another building of a similar type.

EPCs are similar to the certificates now provided with domestic appliances such as refrigerators and washing machines. They give building owners, occupiers and purchasers information on the energy efficiency and carbon emissions of their building.

The EPC rates the energy efficiency and carbon emissions of a property on a scale of A to G, where A is the best.

A recommendation report is attached to the certificate, providing information about ways to improve the energy efficiency of the property. The certificate also shows the rating that could be achieved if all the recommendations were implemented.

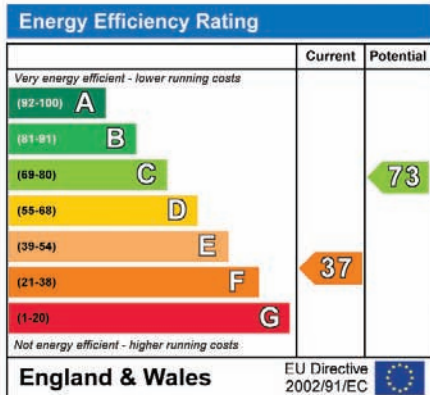
Energy Performance Certificate



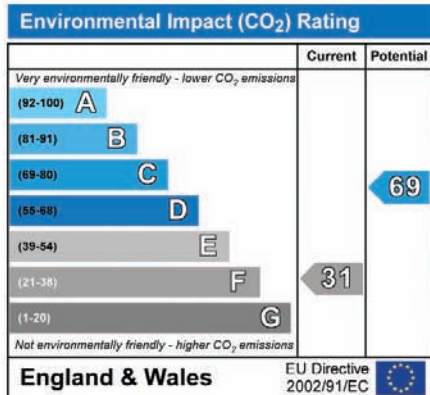
17 Any Street,
Any Town,
County,
YY3 5XX

Dwelling type: Detached house
Date of assessment: 02 February 2007
Date of certificate: [dd mmmm yyyy]
Reference number: 0000-0000-0000-0000-0000
Total floor area: 166 m²

This home's performance is rated in terms of the energy use per square metre of floor area, energy efficiency based on fuel costs and environmental impact based on carbon dioxide (CO₂) emissions.



The energy efficiency rating is a measure of the overall efficiency of a home. The higher the rating the more energy efficient the home is and the lower the fuel bills will be.



The environmental impact rating is a measure of a home's impact on the environment in terms of carbon dioxide (CO₂) emissions. The higher the rating the less impact it has on the environment.

Estimated energy use, carbon dioxide (CO₂) emissions and fuel costs of this home

	Current	Potential
Energy Use	453 kWh/m ² per year	178 kWh/m ² per year
Carbon dioxide emissions	13 tonnes per year	4.9 tonnes per year
Lighting	£81 per year	£65 per year
Heating	£1173 per year	£457 per year
Hot water	£219 per year	£104 per year

Based on standardised assumptions about occupancy, heating patterns and geographical location, the above table provides an indication of how much it will cost to provide lighting, heating and hot water to this home. The fuel costs only take into account the cost of fuel and not any associated service, maintenance or safety inspection. This certificate has been provided for comparative purposes only and enables one home to be compared with another. Always check the date the certificate was issued, because fuel prices can increase over time and energy saving recommendations will evolve.

To see how this home can achieve its potential rating please see the recommended measures.



Remember to look for the energy saving recommended logo when buying energy-efficient products. It's a quick and easy way to identify the most energy-efficient products on the market.

For advice on how to take action and to find out about offers available to help make your home more energy efficient, call 0800 512 012 or visit www.energysavingtrust.org.uk/myhome

When will Energy Performance Certificates become law?

Energy Performance Certificates (EPCs) are being introduced in phases, starting with residential properties. If you are selling your home, an EPC is required as a compulsory part of the Home Information Pack (HIP).

Privately or socially rented homes will need to have an Energy Performance Certificate from 1 October 2008. EPCs for commercial buildings will be introduced from 6 April 2008.

When do I need to have an Energy Performance Certificate?

EPCs are only needed for buildings when they are constructed, sold or rented.

It is the responsibility of the person selling or renting a building to have a valid EPC to show to prospective buyers and tenants. The EPC must be given to the eventual buyer or tenant.

There is no requirement to get an EPC for buildings that are just being occupied normally other than when they are being sold or let.

How do I get an Energy Performance Certificate?

EPCs can only be produced by an accredited Energy Assessor. They may be employed by a company (such as an estate agent or energy company) or be independent traders. Always check they operate as part of an accreditation scheme, as this ensures your Energy Assessor is operating to professional standards.

EPCs can only be produced using a Government approved software programme that uses standard energy rating methods.

What does an Energy Assessment involve?

An accredited Energy Assessor needs to visit a property to conduct an energy assessment. During the assessment they collect information on the property, which includes details of its dimensions, construction and heating/hot water provision.

This information is fed into the approved software programme which produces the EPC and recommendation report.

What sort of recommendations will be made and what do they mean?

The recommendations include a list of cost-effective improvements which will improve the energy efficiency of a property. For each improvement it shows the approximate cost, typical cost savings per year and the performance rating after improvement.

Examples of cost-effective improvement recommendations for a home could include the use of low energy light bulbs, loft insulation and cavity wall insulation.

Do I have to act on the recommendations?

You are under no obligation to act on the recommendations. However, acting on the recommendations is likely to improve the energy efficiency of your property, reduce your fuel bills, cut carbon emissions and could make the property more attractive to potential buyers or tenants in the future.

What are Display Energy Certificates and when are they being introduced?

Certain public buildings will need to show a valid Display Energy Certificate at all times by 1 October 2008. Display certificates show the actual energy usage of a building and help everyone see whether public authorities are running the building to high standards of energy efficiency.

What air conditioning inspections are required?

Existing air conditioning systems greater than 250kW, will need to have their first inspection by 4 January 2009. Existing systems greater than 12kW, will need to have their first inspection by 4 January 2011.

For further information about EPCs, Display Certificates, air conditioning inspections and Home Information Packs, visit:

Communities and Local Government – www.communities.gov.uk/epbd

Helpline: 0845 365 2468

email: help@epbduk.info

Home Information Packs – www.homeinformationpacks.gov.uk

email: homeinfopacks@communities.gsi.gov.uk

For further information about energy efficiency, practical advice and grants:

For domestic consumers, local authorities, schools and community groups:

Energy Saving Trust – www.est.org.uk

Helpline: 0800 512012

For businesses:

The Carbon Trust – www.carbontrust.co.uk

Helpline: 0800 085 2005

A Welsh translation is available on request by calling 0870 1226 236.

Mae'r daflen hon ar gael yn Gymraeg hefyd drwy ffonio 0870 1226 236.

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