

Commercial Property Energy Performance Certificates (EPC's) Guidelines

Introduction

From 1st October 2008 properties coming to the market for sale or to let will, by law, need to provide an EPC.

For properties already on the market at 1st October 2008, an EPC will be required by 4th January 2009 at the latest.

What is an EPC?

An EPC indicates how energy efficient a building is and is broadly similar to energy labels provided with many appliances and vehicles. EPC's have been required on various residential premises for some time and were subject to a phased introduction. The better the rating (A to G) the more energy efficient the building is and the lower the fuel bills are likely to be. The EPC will also show the carbon emissions of a building.

An energy rating is based on characteristics of the building itself, the services and the use of the building. An EPC must also be accompanied by a report providing recommendations to improve energy efficiency for a building.

An EPC is valid for 10 years

When is an EPC Required?

A landlord / vendor must make a valid EPC available at the earliest possible opportunity and no later than: -

- 1) when any written information concerning the building is provided in response to a request from the prospective tenant.
- 2) when a viewing is conducted
- 3) before entering into a contract to sell or let

Who is responsible for obtaining an EPC?

It is the responsibility of the **seller** to provide an EPC to a prospective buyer as soon as the process of offering a building for sale is commenced.

It is the responsibility of the **landlord** to make an EPC available to a prospective tenant as soon as a building is in the process of being let.

A lease assignment is considered to be a sale or letting. The assignor will need to provide the EPC.

The vendor or landlord is responsible for ensuring there is an EPC for the building (or part) being sold or let even if an agent or another service organisation is acting on their behalf or providing an EPC. It is the landlord or vendors' responsibility to check that their agents are acting in compliance with the regulations.

Construction or modification

When a building being constructed is complete the person carrying out the construction is to obtain an EPC and recommendations to the owner of the building and to inform Building Control this is done.

Transactions Not Requiring an EPC

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

Buildings Not Requiring an EPC

- Places of worship
- Temporary buildings with a planned time of use of less than 2 years
- Where the building is to be redeveloped/demolished
- Stand alone buildings with a total useful floor area of less than 50 m²

Cost of obtaining an EPC

The costs of preparing an EPC will depend on the amount of time that is taken for the inspection, the calculation of the energy efficiency of the building and reporting recommendations on increasing energy efficiency. Generally this will be proportional to the size of the building but the majority of EPC Assessors will charge on a daily basis. Other factors affecting the costs in obtaining an EPC are, age, location and use of a building.

Whilst regulations state that an EPC should be provided free of charge to prospective tenants or buyers a landlord may be able to organise an EPC for the whole building and recover the costs via the service charges. This will depend on the wording of the service charge clauses within the lease.

What information is required for an EPC

An Assessor will need to understand the internal layout of a building and for what purpose it was designed for. Information required includes

- The dimensions of individual spaces and zones in use within a building. (Either inspected or from plans)
- The activities carried out within each zone
- The heating and ventilation services installations within each zone
- The lighting and controls in each zone
- The construction of the fabric of the building and thermal efficiencies of materials used

As dimensions and much information can be taken from plans then if they are present this can dramatically reduce the time taken and costs involved in producing the EPC.

Enforcing the Legislation

The responsibility for enforcing the requirement to have an EPC is with Local Authorities (Trading Standards Officers) and failure to comply means a vendor / lessor may be liable to a civil penalty charge notice. Trading Standards may request a copy of the EPC and recommendation report and failure to produce this within seven days of a request can lead to a penalty charge notice. A copy of an EPC can be requested at anytime up to six months after the last day for compliance and there is an obligation to make it available.

Penalty for Failing to Make an EPC Available

In most cases this is fixed at 12.5% of the Rateable Value (RV) of the premises subject to a minimum of £500 and capped at £5,000. There is also the possibility that repeat fines may be incurred for continued non compliance.

Where a property has no RV the default penalty is £750.

Avoiding Incurring a Penalty Charge?

A landlord should be able to avoid a penalty charge if it can demonstrate: -

- 1) the prospective tenant sought to rent the premises following an emergency that required its urgent relocation;
- 2) there was insufficient time in which the certificate could reasonably be obtained
- 3) the landlord has given the tenant a valid EPC as soon as reasonably practicable after renting the building.

A valid defence is also if an EPC was commissioned 14 days before it was required and despite all reasonable efforts it was not received at the relevant time. Evidence will need to be provided that a proper request for an EPC was made to an accredited Assessor.

If the building is being sold for demolition or it is reasonable to assume that the prospective purchaser / tenant is to demolish the building then an EPC is not required. This can be demonstrated by having the relevant planning permission or evidence that planning permission has been applied for.

Practical Problems for not having an EPC

Exchange / completion or signing of a lease may be delayed as prospective purchasers / tenants may require the certificate and recommendations to be produced before they complete the transaction. We would therefore recommend that your EPCs should be in place as soon as possible.

What happens if there is no time to obtain an EPC?

In practice leniency may be given to vendors / landlords where an EPC has been commissioned from the earliest possible date and this can be demonstrated. In practice there may be further flexibility at the introduction of the legislation as there may be a shortage of Assessors.

Who to Contact

For a quote or further information, please call our EPC hotline on 0800 280 0122 or email EPC@argroup.co.uk.
For an on line quote, please see our website www.argprop.co.uk

Useful Further Links

www.communities.gov.uk/planningandbuilding/theenvironment/energyperformance/