

Energy performance certificates for non-domestic premises

Your Questions Answered (Updated Client Briefing)

In this updated briefing, we look at the final stage of the introduction of Energy Performance Certificates (EPCs) and Display Energy Certificates (DECs) for non-domestic premises in England and Wales and provide answers to questions you may have. We also cover new requirements for the inspection of air conditioning systems.

What is an Energy Performance Certificate?

The purpose of an EPC is to record the energy efficiency of premises. The aim of an EPC is to enable prospective owners, buyers and tenants to use the information to consider energy efficiency and fuel costs as part of their investment.

The EPC provides an energy rating for a building which is based on the performance potential of the building itself (the fabric) and its services (such as heating, ventilation and lighting). The rating given is from A to G, where A is very efficient and G is very inefficient. To give an indication of energy efficiency, a building constructed after April 2006 complying with the revised Part L Building Regulations should achieve a C rating. The certificate is also accompanied by a recommendation report that contains cost effective recommendations to improve the energy rating of the premises. There is no obligation to comply with the recommendations.

Building requiring an EPC

For a building to fall within the requirements for an EPC it must:

- have a roof and walls; and
- use energy to condition the indoor climate. This is where the building has any of the following services: heating, mechanical ventilation or air conditioning. Although the provision of hot water is a fixed building service, it does not "condition the indoor environment" and would not therefore be a trigger for an EPC.

Timetable for implementation of the requirements

6 April 2008	(EPCs required on construction for all dwellings) EPCs required for the construction, sale or rent of non-dwellings with a total useful floor area* over 10,000m ²
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1 July 2008	EPCs required for the construction, sale or rent of non-dwellings with a total useful floor area* over 2,500m ²
1 October 2008	(EPCs required on the sale or rent of all remaining dwellings) EPCs required on the construction, sale or rent of all remaining non-dwellings DECs required for public buildings with a total useful floor area* over 1000m ²

* "Total useful floor area" is the total area of all enclosed spaces measured to the internal face of the external walls ie the gross internal floor area.

On 9 September the Government announced extended transitional arrangements which apply to non-dwellings already on the market before the regulations apply to them. The effect is that any commercial property which is on the market before 1 October and remains on the market afterwards needs an EPC for sale or let but not necessarily before exchange of contracts - the EPC must be provided as soon as reasonably possible afterwards. This is intended to make it easier for owners and landlords to comply with the legislation. However, these transitional arrangements will end on 4 January 2009 so after that date a copy of the EPC will have to be included with marketing information provided to prospective buyers, or before exchange of contracts at the latest.

For all buildings, if contracts have been exchanged for sale or lease before the Regulations applied to the building, then the seller/landlord is not obliged to provide an EPC. This is confirmed in the Q & A section of the Guidance mentioned immediately below.

Government Guidance

The Department of Communities and Local Government has issued a second edition of its Guidance on the Regulations dated July 2008. It provides helpful and practical information on the requirements.
<http://www.communities.gov.uk/publications/planningandbuilding/guidancenondwellings>

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Who has to provide an EPC?

An EPC and recommendation report will have to be provided:

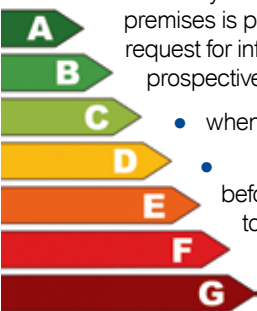
- by the builder of new premises (and of modified premises in certain circumstances) to the owners;
- by the seller of premises (whether freehold or leasehold) to prospective purchasers free of charge; and
- by the landlord of premises to prospective tenants free of charge (but not on lease renewal).

There is no general requirement to have an EPC in the absence of these trigger events.

When must EPC be provided?

The EPC and report (or a copy) must be provided at the earliest opportunity, and no later than:

- when any written information about the premises is provided in response to a request for information received from the prospective buyer;
- when a viewing is conducted or;
- if neither of those occur, before entering into a contract to sell or let.



Are any premises excluded from these requirements?

There are a few exceptions: (1) places of worship (2) temporary buildings with a planned time of use of 2 years or less (3) stand-alone buildings with a total useful floor area of less than 50m² - and stand-alone means a building that is entirely detached (4) industrial sites, workshops and non-residential agricultural buildings with low energy demand (5) in specified circumstances, buildings due to be demolished.

Public buildings will require a different type of energy certificate - a Display Energy Certificate. More information on DECs is given below.

Who issues an EPC and what is the likely cost?

An EPC is issued by an energy assessor who must be a member of an accreditation scheme approved by the Government. Accreditation schemes must ensure that energy assessors are properly qualified.

They will use standard methods with standard assumptions about energy usage so that the energy efficiency of one set of premises can easily be compared with other premises of the same type. The energy assessor must record the EPC on the national register and the EPC is given a unique number.

Every person with an interest in or occupying the premises has a duty to cooperate with the person responsible for producing the EPC for the premises and also to allow access to the energy assessor.

The Government has estimated the cost of an EPC survey from £250 to £500 for small premises and up to £2,000 for larger premises, but other sources have quoted £1,000 to £10,000 plus, depending on the size of the premises, the number of certificates required and the timescale.

For how long is an EPC valid?

An EPC for a non-dwelling is valid for 10 years from the date on which it is issued, although if another EPC is obtained or provided in that 10 year period, the earlier EPC will be invalid. Therefore, the same EPC can be used for successive lettings of the same premises or on assignments of the leases within the 10 year period.

The Government's revised Guidance confirms that if an EPC is produced for part of a building, a previous EPC for the building as a whole will remain valid, except for any separate transactions for the specific part covered by the newer EPC. Conversely, if an EPC is subsequently produced for a building as a whole, or a part of a building, any EPCs for smaller or different parts of the building will also remain valid.

Responsibility for producing an EPC – sample transactions for non-dwellings

Type of transaction	Responsible person	Comments
Construction of a new building	The builder must produce one for the building owner	In most cases this must be provided within 5 days of the building being completed. (The EPC is needed in order to obtain a completion certificate from the building control inspector.)
Sale of a freehold office building	Seller	If a building or part of a building* (designed or altered to be used separately) is to be sold, it is the seller.
Grants of leases of suites of offices in a building	Landlord	If a building* or part of a building is to be rented out, it is the prospective landlord.
A lease renewal of a whole or part of a building	Not applicable	Although it appears that the Regulations catch a lease renewal, the Government's Guidance states that a landlord will not have to provide one.
Assignment of a lease of a whole building	The tenant assigning the lease	This is a building being sold, so it is the seller (tenant assigning) but if the landlord provided an EPC on the grant of the lease and it is less than 10 years old, that EPC could be provided to the incoming tenant. The tenant should check with the landlord whether the EPC has been updated, and if so should provide a copy of the updated EPC.
Assignment of a lease of a suite of offices in a building/ unit in a shopping centre	The tenant assigning the lease	This is part of a building* being sold, so again it is the seller (tenant assigning). See the entry immediately above regarding the EPC.
Surrender of a lease by a tenant to a landlord	Not applicable	Although this may appear to be a sale of the lease by the tenant back to the landlord, the Government's Guidance states that the tenant will not have to provide an EPC.
Auction sale	Yes	The EPC need not be made available in an auction catalogue (although asset ratings should be included in some circumstances), but must be made available in the auction pack.

* If a non-domestic building has a common heating system, one EPC can be produced for the whole building and used when the building, or any part of it, is sold or let. Alternatively, EPCs for separate apartments or units in any building can be based on the assessment of a representative unit in the same building.

Modifications to a building

The Government's Guidance mentioned above contains a section (4.2.4) dealing with EPC requirements on modifications to a building.

If a building is modified so that:

- it will have more or less parts that are designed to be used separately; **and**
- the modification includes the provision or extension of any of the fixed services for heating, hot water, air conditioning or mechanical ventilation,

then an EPC must on completion of the work be provided to the owner of the building by the person carrying out the work. The Government's Guidance provides practical examples.



What can you do to prepare for the issue of an EPC?

You can prepare for energy performance certification by gathering information on matters such as (1) the dimensions of individual spaces or zones in use within the building (2) the activities conducted in the zones eg retail space, office space, kitchens, storage (3) the heating and ventilation services for each zone, including the type of system, metering, controls, fuel used etc (4) the lighting and controls used for each zone (5) the construction of the fabric of the building and thermal efficiency of the materials used: roof, floors, walls and glazing.

If there are no plans for a building, the energy assessor will need to survey the building and gather the appropriate information, which will add to the cost of issuing the EPC. The energy assessor is responsible for ensuring that the information used in the energy calculations is accurate and, even where detailed plans are available, may need to validate the information by making a site inspection.

What if you can't obtain an EPC in time?

In a sale or rental situation, you will not be liable to a penalty charge notice as long as you have requested the EPC at least 14 days before it is needed and make reasonable effort and enquiries to obtain it. The EPC should however be provided to the prospective buyer or tenant as soon as you have it. There is a similar defence to a penalty where you rent to a tenant in an emergency requiring his urgent relocation.

Public buildings and Display Energy Certificates

From 1 October 2008, occupiers of certain public buildings must display a Display Energy Certificate (DEC) if the building or the part they occupy has a total useful floor area over 1000m². DEC's are intended to show the public how well the building is performing. If a building requiring a DEC is sold or let, it will also require an EPC.

DECs apply to buildings occupied by public authorities and institutions providing public services to a large number of persons and so are frequently visited by those persons. The latter would include, for example, hospitals, schools, public museums and swimming pools but would exclude hotels and retail outlets.

The Government has issued Guidance to establish whether a DEC is required and has also recently issued Guidance on transitional arrangements for buildings on a site or campus (most likely to affect NHS Trusts, universities and schools):

<http://www.communities.gov.uk/publications/planningandbuilding/displayenergycertificates>

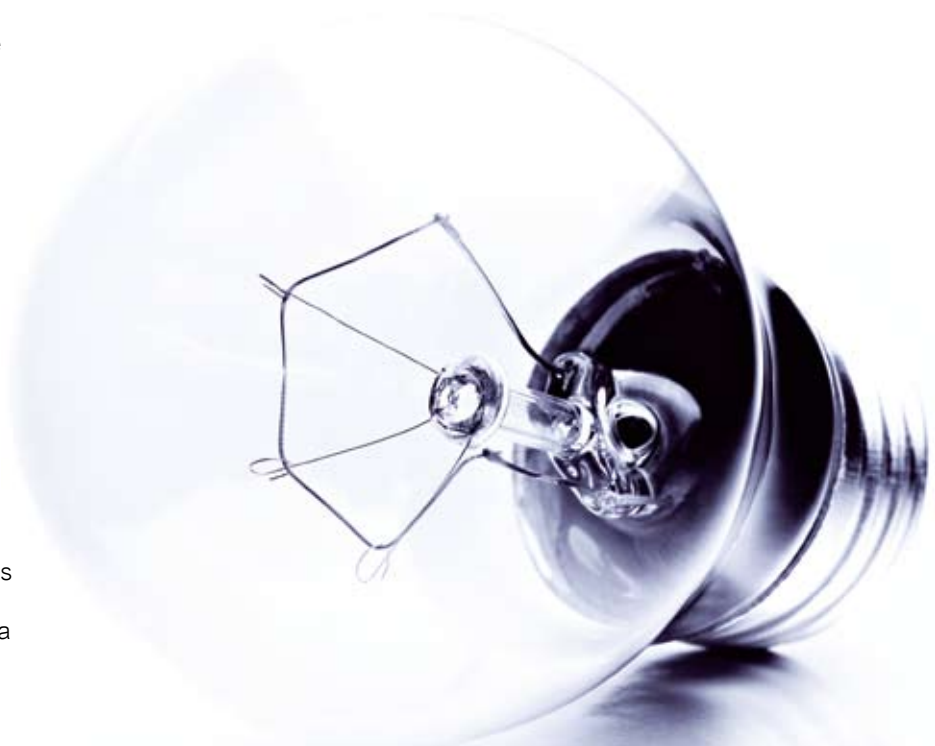
<http://www.communities.gov.uk/publications/planningandbuilding/decsitebased>

Like an EPC, a DEC provides information about the energy performance of the building. A key contrast from the EPC is that the DEC includes a numerical indicator of the amount of energy consumed during the occupation of the building over a 12 month period. These "operational" ratings on an A to G scale are to be derived from meter readings. The DEC must also show the asset rating of the building where an EPC has been provided to the occupier.

In addition the DEC must include the operational ratings for the building expressed in any certificates displayed by the occupier during the previous 2 years to show whether performance is improving. The DEC must be accompanied by an advisory report which sets out how the energy use of the building could be reduced. Again, there is no obligation to comply with the recommendations. However, the purpose of the report is to inform occupiers of what improvements could be made so that these can be included in building maintenance and refurbishment programmes.

From 1 October 2008 you must:

- display the DEC in a prominent place clearly visible to the public;
- have in your possession a valid advisory report for each affected building.



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The Regulations provide alternatives with phased implementation for new occupiers who do not have 2 months' worth of data which is otherwise necessary to produce an operational rating.

Another key contrast from the EPC is that DEC's must be updated every year, although the accompanying advisory report is valid for 7 years.

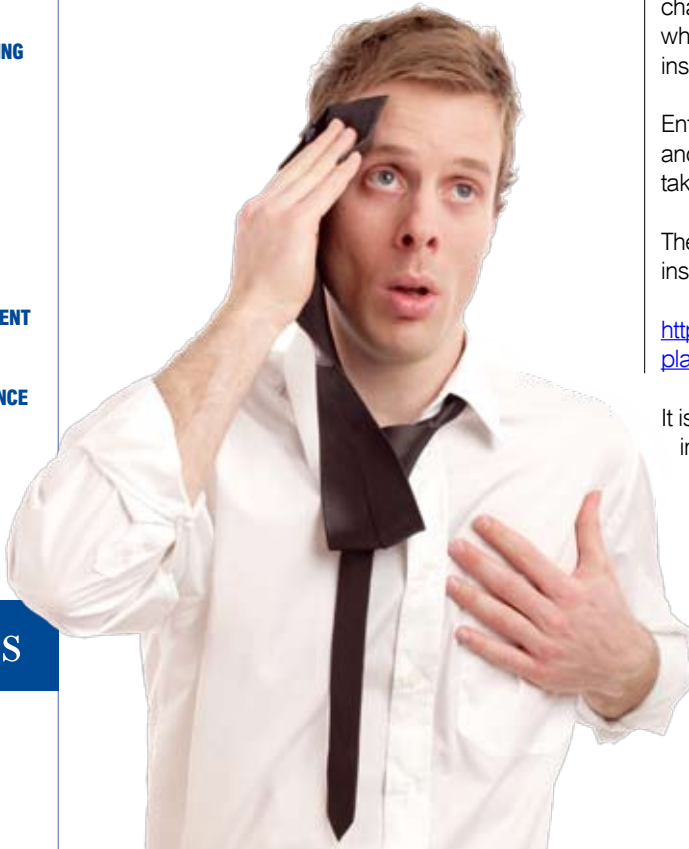
Registration of EPCs and DEC's

All EPCs and DEC's together with their recommendation and advisory reports will be registered by energy assessors on a national register. Copies of documents on the register can be obtained by anyone as long as the report reference number can be provided. From 1 October it will also be possible to find out from the register whether a property has an EPC or not and the date of it. The register can be accessed using the following link: <https://www.ndepcregister.com>

What are the sanctions for not having an EPC or DEC?

Developers must obtain a valid EPC in order to obtain a completion certificate from the building control inspector. This will ensure compliance in the new buildings sector.

The EPC and DEC regime for existing buildings will be policed by Trading Standards officers. They can act on complaints from the public or make random investigations. They can require information within 7 days of request. A copy of an EPC can be requested at any time up to 6 months after the last day it should have been provided to the buyer/tenant. If asked, the seller/landlord must provide it within 7 days of request or be liable to a penalty charge notice. The financial sanction for non-compliance will be 12.5% of the rateable value of the premises, subject to a minimum of £500 and a maximum of £5,000.



In the case of public buildings, the penalties will be £500 for failure to display a DEC as required and £1000 for failing to have an advisory report. In addition to these penalties, it will still be necessary to commission the documents, otherwise further offences will be committed.

Air conditioning units

The Regulations dealing with EPCs and DEC's also contain obligations relating to the inspection of air conditioning systems. The person who has control of the operation of any air-conditioning systems in a building that have a collective cooling capacity larger than 12kW is required to ensure that the overall system is inspected by an accredited energy assessor at regular intervals not exceeding 5 years. The obligations are being phased in for existing systems.

4 January 2009	First inspection of all existing air-conditioning units over 250kW must have occurred by this date.
4 January 2011	First inspection of all remaining air-conditioning systems over 12kW must have occurred by this date.

If an air-conditioning system over 12kW is first put into service after 1 January 2008, the first inspection must take place within 5 years of it being put into service.

The energy assessor must provide a written report as soon as practicable after an inspection and the report must include advice on possible improvements to the system. There is no obligation to comply with the recommendations. The report must be passed on to new occupiers. From 4 January 2011, if there is a change of responsibility for a system, a new occupier who is not given a report on handover must ensure an inspection is carried out within 3 months of arrival.

Enforcement of the duties is by Trading Standards and the penalty for failing to ensure an inspection takes place is £300.

The Government has published Guidance on the inspection regime:

<http://www.communities.gov.uk/publications/planningandbuilding/airconditioning>

It is likely that the Regulations will have their biggest impact in the first few years as the property industry and energy assessors become accustomed to the new Regulations. Nevertheless, a good rating in an EPC will be a positive selling point in a market that has become uncertain over recent months.

(The Regulations referred to in this Briefing are The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.)

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