

## Property

January 2009

### Energy Performance Certificates & Commercial Buildings in England & Wales

Whenever a building or part of a building in England and Wales is constructed, sold or let, the seller or prospective landlord must ensure that any prospective buyer or tenant is provided with an energy performance certificate (an EPC) for the premises. This certificate contains information about the energy efficiency of the building and must be provided free of charge.

The obligation to ensure that the certificate is provided is that of the seller/landlord even if he has commissioned agents to act on his behalf in connection with the sale or letting. The only situation in which the obligation does not apply to a relevant building is if the seller/landlord has reasonable grounds to believe that the prospective buyer or tenant is unlikely to have sufficient funds to complete the transaction, or is not genuinely interested in buying or renting that type of property, or is not someone to whom the seller/landlord would be prepared to sell/rent.

Even if the prospective buyer/tenant agrees that it does not want or need to receive an EPC, the seller/landlord must still comply with the obligation, or risk a penalty notice and fine.

EPCs are required for nearly all buildings that have heating or air conditioning services – the most common exceptions being temporary buildings, stand alone buildings of less than fifty square metres and buildings due for demolition. The time to provide an EPC arises when (i) marketing details are provided to a prospective purchaser/tenant or (ii) when a prospective purchaser/tenant views the building or (iii)

at the very latest, on exchange of contracts/agreement for lease or completion of the transaction if there is no preceding contract. So even a transaction involving a building that has not been marketed still requires an EPC.

Nearly all types of transaction are caught by the requirement.

Sales, new leases, sub-leases, the assignment of leases or sub-leases, sale and leaseback transactions - are all included, as are sales by administrators or liquidators.

The few common situations which do not require the provision of an EPC include lease surrenders, lease extensions or renewals, licences to occupy or the sale of shares in a single purpose vehicle property owning company.

The EPC itself is to be produced by an accredited energy assessor and the certificate will then be included in the EPC register under its unique reference number. The register is not open to public inspection and the only way to obtain a copy of an EPC from the register is by way of the unique reference number. If a building is modified so as to be converted into more or fewer units intended for separate occupation and the heating or air conditioning systems are modified as well, a new EPC must be produced upon completion of the modifications.

Otherwise an EPC is valid for ten years from its date of issue, or until a newer certificate is produced for the building or that part of the building.

Enforcement of EPC provision is the responsibility of the local Trading Standards Authority. Should the Trading Standards Authority investigate the transaction and seek to enforce penalties,

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.

Trading Standards may request a copy of the EPC at any time up to six months after the transaction.

This Bulletin is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

© January 2009, Dundas & Wilson CS LLP and Dundas & Wilson LLP. All rights reserved.

If you would like any further information on this topic or any other property issues, please call the person at D&W with whom you normally liaise, or the following specialist:

Caroline Andresier [caroline.andresier@dundas-wilson.com](mailto:caroline.andresier@dundas-wilson.com) 020 7759 3621

[www.dundas-wilson.com](http://www.dundas-wilson.com)