

ENERGY PERFORMANCE CERTIFICATES - WHAT ARE THEY AND DO I NEED TO HAVE ONE?

Energy Performance Certificates contain summary information about the potential energy performance of a building. For commercial properties they are generally valid for 10 years. They are now required on the construction, sale or letting of all commercial buildings. Note that the definition of a “building” includes parts of the building designed or altered to be used separately.

The only exceptions are for stand-alone buildings with a useful floor area of less than 50 square metres, industrial sites, workshops, warehouses and non-residential agricultural buildings with “low energy demand”, places of worship, temporary buildings (with a planned use of less than 2 years) and buildings to be demolished by a prospective purchaser or tenant.

If you don't already have an EPC then unless your property falls into the exceptions above you will need to call in an accredited energy assessor if you have a commercial property that you want to sell or rent out, since you have to provide an energy performance certificate to prospective purchasers or tenants.

You have to make one available at the earliest opportunity, and certainly no later than:

- (a) the time at which any written information about the building is given in response to a request from information received from a prospective purchaser or tenant; or
- (b) when a viewing is conducted

(As far as auctions are concerned, if the auction catalogue contains a floor plan or room sizes then the asset rating from the EPC must also be included in the catalogue. A full copy of the EPC must then be in the information pack provided to prospective purchasers).

There is an exception in the case of lease renewals or extensions, or the sale of shares in a company that owns property. Neither of these situations requires the production of an EPC.

Also if you believe on reasonable grounds that a prospective buyer or tenant does not have a genuine interest in concluding a deal or does not have the means to proceed then you have no obligation to produce an EPC.

There is also a defence if you can show that you made a request for an EPC at least 14 days before the relevant time, and then made all reasonable efforts and enquiries to obtain it. Given that there is still a shortage of energy assessors, this defence may prove useful.

If a commercial property building contains communal areas and is due to be sold or let as a whole, the building owner has a choice of either preparing an EPC covering the whole building including the communal areas, or commissioning separate EPCs for each separate unit in the building, plus a separate EPC covering the common parts.

A valid EPC for a building will be revoked if a new EPC is issued for the building. However, if an EPC is produced for part of a building, it will not revoke a previous EPC for the whole of the building, and vice versa. For example, if you obtained an EPC for the whole of an

office block and a tenant subsequently obtained an EPC for the first floor, your EPC would remain valid for use in transactions relating to the whole building or any other part of the building, except the first floor.

Note that an EPC is required even if a tenant is fitting out and installing its own services. Even if the unit is let without any “fixed services” (ie systems for heating, mechanical ventilation or air conditioning which are attached to the fabric of the building) then if the tenant will install its own services as part of its fit-out the landlord will have to provide an EPC based on the building’s Use Class. For EPC purposes, the activity within the building must be specified in line with business activity typical of the Use Class and the most energy-intensive fit-out accepted in line with building regulations in force when the building was built.

The above requirement applies irrespective of what the tenant will actually install. The end result may be that the landlord provides an EPC which will be out of date as soon as the tenant actually installs the relevant fixed services! However, since there is then no obligation on the tenant to produce an up-to-date EPC based on what it actually installs, the result is that the one produced by the landlord could last for ten years or until a subsequent transaction triggers the requirement for a new EPC.

If you fail to provide an EPC when one is required then you can be liable for a penalty charge fixed at 12.5% of the rateable value of the building (from a minimum of £500 up to a maximum of £5,000). If there is no rateable value then the penalty charge will be £750. It is local authorities, usually through their trading standards officers, who are responsible for enforcing the 2007 regulations.

From the point of view of the purchaser or tenant, there is no sanction if they fail to obtain an EPC when acquiring the property; the sanction applies to the seller or landlord instead. However, if the buyer or tenant then wants to sell on or sub-let the property it will need an EPC at that time and will have to commission one at its own cost, rather than already having one available at no cost.

If you wish to discuss any of the issues raised in this article, or for information on any other commercial property matters, please contact Jenny Harbord of Murrell Ashworth LLP using the following details:

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