



Requirements for energy performance certificates (EPCs) when marketing commercial (non-domestic) properties for sale or let



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properties for sale or let

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This guide describes the scope and requirements of the Regulations applying to energy performance certificates (EPCs) when non-domestic properties are being sold or let and provides guidance on how these are applied. While this guidance aims to explain how the requirements will work in practice, any interpretation of the Regulations is offered only as a guide, as the Department cannot provide legal advice. Therefore, it is important to read and understand the Regulations as well. In cases of doubt independent legal advice should be sought.

1. Which commercial properties require an EPC?

Reference should be made to the guidance: *Improving the energy efficiency of our buildings: A guide to energy performance certificates for the construction, sale and let of non-dwellings, 2nd edition*. This document may be found at:

www.communities.gov.uk/publications/planningandbuilding/nondwelling

The relevant sections are 1.2 (buildings requiring an EPC), 1.5 (situations where an EPC is not required) and 4.2 (applying the Regulations in practice).

2. I am marketing a commercial property for sale or rent which requires an EPC. Marketing started before 1 October 2008. When does my vendor/landlord client need to obtain an EPC?

Any property¹ that was already on the market for sale or let before the 6 April, 1 July and 1 October 2008 commencement dates, whichever applies for the size of building in question, will require an EPC when a contract for sale or let is entered into.

What happens if I enter into a contract to sell or rent prior to 4 January 2009?

At the latest an EPC² must be requested when a contract for sale or let is entered into. All reasonable efforts must be made to obtain it as soon as reasonably practicable.

If the EPC is not available before the contract is entered into, this need not delay the transaction. However, the EPC **is still required** and once the EPC has been obtained, it must be given free of charge to the buyer or tenant.

What happens if the property is still on the market on or after the 4 January 2009?

On or after 4 January 2009, the EPC must be made available for the property, free of charge, to a prospective buyer or tenant at the earliest opportunity and in any event:

- when written information about the building is first provided as a result of a request by a prospective purchaser
- when the building is viewed.

In any event an EPC must be obtained before a contract for sale or let is entered into.

It is not placing a property on the market that defines the point at which an EPC must be made available, but any of the circumstances listed above.

A seller or landlord should order an EPC from a person who can provide an EPC for the category of building in question in good time and at least 14 days before it is required to avoid any penalty charges. Therefore if a property is on the market and you expect to have viewings, provide written information or to exchange contracts, you should encourage your client to obtain an EPC as soon as possible.

It is not obligatory to include the EPC graphs in the written / electronic property details. However, it would be good practice to include them.

¹ EPCs are not required on sale or rent for: places of worship, temporary buildings with a planned time of use of less than two years, stand-alone buildings with a total useful floor area of less than 50m² that are not dwellings, industrial sites, workshops and non-residential agricultural buildings with low energy demand. EPCs are not required on sale or rent for dwellings due to be demolished, if the seller or landlord can demonstrate that: the dwelling is suitable for demolition, the resulting site is suitable for redevelopment, and all the appropriate permissions are in place for both the demolition and the redevelopment.

² **Any** reference in this document to an EPC means the EPC and its accompanying recommendations report.

The ***seller or landlord*** is the 'relevant person' under EPC legislation and is responsible for making the EPC available. The seller or landlord, ***not*** the agent, is liable to a penalty charge if the EPC is not made available. It would be good practice, however, for any agent offering a property for sale on a seller's or landlord's behalf to inform the seller or landlord of the legal obligation and to recommend that an EPC is obtained as soon as possible.

3. I am marketing a commercial property for sale or let which requires an EPC. Marketing started after 1 October 2008, when does my vendor/landlord client need an EPC?

An EPC is required for the sale or let of **all** properties¹ from 1 October 2008.

The EPC, along with its accompanying recommendation report, must be made available for the property, free of charge, to a prospective buyer or tenant from the 1 October 2008, at the earliest opportunity and in any event:

- when written information about the building is first provided as a result of a request by a prospective purchaser
- when the building is viewed

In any event an EPC must be obtained before a contract to sell or let is entered into.

It is not placing a property on the market that defines the point at which an EPC must be made available, but any of the circumstances listed above.

A seller or landlord should order an EPC from a person who can provide an EPC for the category of building in question in good time and at least 14 days before it is required to avoid any penalty charges. Therefore if your property is on the market and you expect to have viewings, provide written information or to exchange contracts, you should consider obtaining an EPC as soon as possible.

It is not obligatory to include the EPC graphs in the written / electronic property details. However, it would be good practice to include them.

The **seller or landlord** is the 'relevant person' under EPC legislation and is responsible for making the EPC available. The seller or landlord, **not** the agent, is liable to a penalty charge if the EPC is not made available. It would be good practice, however, for any agent offering a property for sale or let on a seller's or landlord's behalf to inform the seller or landlord of the legal obligation and to recommend that an EPC is obtained as soon as possible.

4. Q&A

What happens if the vendor or landlord has ordered an EPC and it hasn't arrived?

If the vendor or landlord has ordered an EPC from a person who can provide an EPC for the category of building in question at least 14 days before it was required (see sections 1 and 2 of this document for more guidance on when EPCs are required) and have made, and continue to make, all reasonable efforts and enquiries to obtain it in time, the sale or rental process can continue whilst waiting for the EPC.

If the EPC was ordered less than 14 days previously, the following should not happen:

- viewings
- the provision of any written information
- entering into a contract with a prospective buyer or tenant.

If any of these happen without an EPC being made available, the vendor or landlord will be liable to a penalty charge.

These actions can commence when the EPC is available, or when 14 days have elapsed after it has been ordered and if all reasonable efforts and enquiries have been made, and continue to be made, to obtain it in time.

What is the penalty charge?

In most cases, the penalty charge will be 12.5 per cent of the rateable value of the building with a default penalty of £750 where the formula cannot be applied. The range of penalties under this formula are set with a minimum of £500 and capped at a maximum of £5,000.

It is the vendor or landlord who will be liable for the penalty charge. However, it is good practice for an agent to inform the seller or landlord of the legal obligation and to recommend that an EPC is obtained.

Do I need an EPC where a tenant is in occupation?

Where a tenant is in occupation before the 1 October 2008 and continues to be occupation after this date an EPC is not required. If at a later point the tenant changes, an EPC will be required to show prospective tenants.

The EPC is valid for up to ten years, unless a newer EPC is produced for the property, in which case only the latter is valid.

What is written information?

Written information covers information about the building, whether provided in paper or electronic form.

It is information provided in response to a request about a building. It is our view, therefore, that brief information advertising a building for sale or let e.g. in a window or a thumbnail on a website, is not the provision of written information in response to a request.

However, a further request specifically about a property e.g. walking into a shop and asking for written information, or selecting a website link to more detailed information about a specific building, constitutes a request.

What does make an EPC available mean?

It is our view that this means at the least:

- making the prospective buyer or tenant aware that the EPC is available
- having the EPC ready to be shown if asked, and
- giving a copy of the EPC and recommendations report, if asked, without charge, either at once, or if that is not practical at the first available opportunity.

It would be good practice to therefore:

- have it in your possession if you are conducting a viewing of a property
- provide a copy EPC or a link to the EPC if you hand over or send out any written information about a building.

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