

StayCurrent

A Client Alert from Paul Hastings

Energy Performance Certificates ("EPC")

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The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (as amended) ("EPBR") come into force in the UK from 1 April 2008.

The aim of this legislation is to promote improved energy performance of buildings (both commercial and residential) and will place obligations upon landlords to provide information to their tenants on assignment, disposal or the grant of a new lease.

To assist landlords in navigating their way through the new law, we summarise below the key issues to note in relation to commercial properties.

WHAT IS AN EPC?

An EPC is a certificate containing information about the energy efficiency of a building and will be accompanied by a recommendation report that contains cost effective recommendations to improve the energy rating of the property. There is no prescribed form, however it should include the following information:

- the asset rating of the building (how efficient it is on an A-G scale);
- a reference value or a benchmark from which to judge efficiency;
- the reference number under which the EPC is registered;
- the address of the building;
- an estimate of the total useful floor area of the building;
- the name of the energy assessor who issued the EPC;
- the date on which the EPC was issued; and
- the name of the approved accreditation scheme of which the energy assessor is a member.

TIMETABLE FOR IMPLEMENTATION

From 6 April 2008	<ul style="list-style-type: none"> • EPCs will be required for the construction, sale or lease and lease renewal of commercial properties over 10,000 square metres.
From 1 July 2008	<ul style="list-style-type: none"> • EPCs will be required for the construction, sale or lease of commercial properties over 2,500 square metres.
From 1 October 2008	<ul style="list-style-type: none"> • EPCs will be required for the construction, sale or lease of all commercial properties not previously affected.

WHO HAS TO PROVIDE AN EPC?

An EPC and recommendation report will have to be provided, free of charge:

- by the developer of a new property to the owners of that property;
- by the seller of premises (whether freehold or leasehold) to prospective purchasers; or
- by the landlord of premises to prospective tenants (including lease renewals).

WHICH BUILDINGS DO NOT REQUIRE AN EPC?

- Places of worship.
- Temporary buildings with a planned time use of two years or less.
- Industrial sites, workshops and non-residential agricultural buildings with low energy demand.
- Standalone buildings with a gross internal area of less than 50m² (excluding dwellings).

- In specified circumstances, buildings that are to be demolished.

REQUIREMENTS IN RESPECT OF MULTI-LET BUILDINGS

Separate commercial units (with a common heating system):

- one EPC can be prepared for the whole building; or
- an EPC can be prepared for the part of the building that is being offered for sale or rent.

Mixed-use building (with a common heating system) – the commercial areas of the building can be assessed on a common EPC.

Separate commercial units (which do not share a common heating system) – an EPC is required for each part of the building that is being offered for sale or rent.

Common parts that are solely or mainly for access to individuals – the energy use of the common parts is allocated to each unit.

WHAT SHOULD BE DONE TO PREPARE?

Essentially a full energy audit will be undertaken. In the meantime, it is advisable to:

- locate floor plans;
- gather information on build dates, refurbishment dates, floor heights, common services for multi-lets, make/model/type of boilers, chillers, air-conditioning units, etc.;
- try to identify what type of energy is being used and where;
- put procedures in place for data collection and uniformity of data across a portfolio; and
- contact energy assessors to start the energy audit of your building.

HOW LONG IS AN EPC VALID?

An EPC is valid for ten years from the date on which it was issued. However, a valid EPC will be revoked if a new EPC is issued for the building. Therefore, the same EPC can be used for successive lettings of the same premises or on assignments of the leases within the ten-year period.

WHAT ARE THE SANCTIONS FOR NOT HAVING AN EPC?

The EPC 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 seven days of request. 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.

AIR-CONDITIONING UNITS

The Regulations dealing with EPCs 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 five years.

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

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

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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