

## *Tightening the Screws on EPCs* *April 2010*



EPCs have been part of the real estate world for 18 months and property professionals have become accustomed to the concept. The Government is considering tightening the rules to increase compliance and to make better use of the information that EPCs yield.

### **The current regime**

Since 1 October 2008 it has been a requirement on the construction, sale or letting and on some modifications of qualifying properties that an Energy Performance Certificate ("EPC") is provided. An EPC describes the energy efficiency of a building. Its objective is to inform a prospective buyer or tenant about the energy performance and potential improvement of a building at an early stage of a transaction.

There are various exemptions from the requirement to produce an EPC, including transactions that do not involve a new owner or tenant (such as lease renewals or extensions, lease surrenders, compulsory purchase orders, share sales), buildings which do not contain heating or chilling systems, and exempted buildings which include places of worship, temporary buildings with a planned period of use of less than 2 years, non-residential stand alone buildings with a total useful floor area of less than 50m<sup>2</sup> and industrial sites, workshops and non-residential agricultural buildings with low energy demands.

### **Non-compliance**

The Government has estimated that the rate of non-compliance in transactions involving non-domestic buildings is between 50-80% and that some buyers and sellers may be deliberately committing a breach of the duty to provide an EPC.

One reason for the high level of non-observance may be that the penalty for non-compliance (currently set at 12.5% of rateable value with a minimum fine of £500 and a maximum fine of £5,000) is too low, compounded by the fact that to date no fixed penalty notices appear to have been issued for non-compliance in the commercial sector.

*“The rate of non-compliance for non-domestic properties is between 50 and 80 percent”*

### **The consultation**

As a result of the non-compliance and with the general objective of raising the profile and efficacy of energy efficiency regulation, the Government has recently released a consultation document "Making better use of Energy Performance Certificates and Data" (2 March 2010) which proposes the following measures:

- Clarifying that EPCs are to be produced at the earliest opportunity in a transaction. As currently drafted, this provision directs that the EPC must be provided as soon as possible but no later than the first of: (i) the date when written information is provided to a prospective buyer or tenant, (ii) on first viewing, or (iii) before exchange of contracts. The Government is concerned that these deadlines are being misinterpreted or avoided and is seeking to impose clarity by the proposed simplification so as to remove the opportunity for sellers or landlords to defer providing an EPC until contracts are exchanged.
- Introducing a new requirement for the EPC rating to be shown on property advertisements.
- Extending the use of Display Energy Certificates ("DECs") to all commercial buildings. DECs are

*EPCs are to be produced at the earliest opportunity in a transaction.*

currently only required for "public" buildings over 1000m<sup>2</sup>. This proposal is intended to raise awareness of energy efficiency to the public. As the proposal is beyond the scope of the current EU Directive it would require primary legislation to implement.

- Introducing mandatory registration of air conditioning reports for non-domestic buildings. Air conditioning units are not energy efficient and the aim is to improve quality control and encourage greater energy and carbon reductions. The current regulations require regular inspections of and recommendations about improving the energy performance of air conditioning installations but there is no system for tracking the results of these checks.

*There will be a new requirement for EPCs to be shown on property advertisements.*

Extending and managing access to EPC data and its use. Currently access is restricted. A hierarchy of levels of access is proposed to enable use of the data in various reports, carbon frameworks and general public statistical information.

*“DECs would be extended to all non-domestic buildings”*

- Extending the EPC regime for houses in multiple occupation when a room in such a building is first rented out. Currently an EPC is not required where rooms are let, only when the property as a whole is sold or let. The change would include arrangements such as student accommodation and would trigger a requirement for an EPC to be undertaken for the whole building. Self-contained flats would not be affected as these are already qualifying properties.
- Extending the requirement for EPCs to short-term holiday lets which are currently not qualifying properties. This would not extend to mobile homes or caravans and would only apply to properties rented out for at least four months per year.

There is an inevitability about the proposed extension of the current regime. Both the Government and the EU are committed to the "greening" of buildings. The changes would clarify the regime but would also make it more onerous, particularly if DECs are to be required for all commercial buildings.

The consultation document is available at:

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

and the impact assessment at: <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1491231.pdf>.

Responses must be submitted by 25 May 2010.



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Please get in touch with Anthony Judge or your usual contact at Travers Smith if you would like further information about this area of law or if you are considering responding to the consultation and would like to discuss your thoughts with us.

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