

Changes to the Energy Performance Certificate Regime

A number of changes to the Energy Performance Certificate (EPC) regime come into force on 9 January 2013 under the consolidated Energy Performance of Buildings (England & Wales) Regulations 2012. Most of these changes result from implementation of the 2010 EU Energy Performance of Buildings Directive.

Display of Energy Performance Certificates

As from 9 January 2013, a new duty applies to any building which both:

- has a total useful floor area of more than 500m²; and
- is frequently visited by the public.

Where an EPC has been made available in respect of the building / relevant part of the building, the EPC must be displayed in a prominent place clearly visible to members of the visiting public.

New DCLG Guidance provides that a building "frequently visited by the public" means a building to which the public has an "implied" or "express" licence to enter and which is regularly visited by members of the public on a daily or near daily basis. This may well rise to uncertainty in many cases where the public have access to a building in practice.

It is not clear from the regulations who needs to satisfy this duty. The DCLG Guidance states that the building "occupier" is responsible. There will be uncertainty in particular for multi-let buildings. It would seem logical that it is the landlord who must display the EPC where an EPC of whole has been produced (probably in the building lobby), but there might also be requirements on individual tenants to display either the building EPC, or EPC of a demised part, in their individual premises. The safest course is likely to be for any tenant to display a copy of a valid EPC in their possession.

Where the display duty applies, there is also a duty to ensure that the EPC remains valid. This would mean that after 10 years, a new EPC would have to be prepared (if it has not already been replaced in the meantime), and that replacement EPC displayed as above.

The regulations do not appear to contain a penalty for failure to comply with this duty; we have asked for clarification from DCLG and await a response.

Drafting Error re EPCs for Parts of a Building

DCLG appear to have made an error in redrafting the recently issued regulations, which results in there no longer being any clear obligation to provide an EPC when only part of building (e.g. one or more floors of an office block) is sold or rented out. We have raised this with DCLG who confirmed that there is no intention for such a change. They are investigating the position and we await a response.

Changes to EPCs

EPCs will now need to include recommendations as to works that would be "cost-effective" to improve the energy efficiency of the building. This is intended to tie in with the works that could be included within a Green Deal plan (the Green Deal is the mechanism for upfront financing of energy efficiency improvements that will be available from January 2013).

Changes to Building Advertisements

The building's EPC rating will now have to be shown in all commercial advertisements for buildings on sale or for let. The current requirement for a copy of the first page of the EPC to be appended to "written particulars" (defined more narrowly than commercial advertisements), which was introduced in April 2012, will be abolished.

Display Energy Certificates (DECs)

These certificates show the actual occupational energy efficiency over time (as opposed to EPCs which show energy efficiency of the asset at the time of survey). DECs are required to be displayed in buildings occupied by public authorities that are frequently visited by the public. As from 9 January 2013 this requirement will apply to buildings over 500 sqm total useful floor area (previously over 1000 sqm).

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