

## **ENERGY PERFORMANCE CERTIFICATES**

Under Regulation 5 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 the seller or landlord of commercial property is to make available free of charge to a prospective buyer or tenant a valid Energy Performance Certificate (EPC). Since the 4<sup>th</sup> January 2009 it must be available to a prospective buyer or tenant at the earliest opportunity and in any event when written information about the building is first provided following a request for information from a prospective purchaser or tenant and when the building is viewed. It must be obtained before a Contract for sale or let is entered into.

It is the action of selling, letting or construction that triggers the requirement for an EPC. Therefore, if you own a property that is currently let out the tenant does not require an EPC until you decide to sell or the tenant decides to assign or sublet their interest.

There are a few cases where an EPC is not required, for example, if the building is only a shell, if it cannot be connected to any services so that energy is not being used so that it will not constitute a building within the meaning of the regulations, if the property is a small stand alone non-residential building of less than 15 metres square, if it is a temporary building with a planned user time of less than two years, if it constitutes non-residential agricultural buildings with low energy demand or if it is a site which is to be demolished or required for redevelopment where all appropriate permissions and plans are in place.

In addition, on a renewal Lease to an existing tenant, if the tenant was in occupation before the 1<sup>st</sup> October 2008 then an EPC is not needed.

The EPC Certificate is valid for a period of ten years and is in two parts. Firstly, the Certificate sets out the current energy performance of the building and the rating it could achieve with various recommendations being followed and secondly it lists the recommendations.

If you are a landlord of a multi let building it may be worth while considering whether the costs of obtaining an EPC can be included within the service charge provision. On new leases of multi let units it is advisable for there to be a clear provision in the service charge provisions which would enable the recovery of the costs towards an EPC. If a landlord followed the recommendations in the report the lease would need to be considered to determine whether the cost of this could also be recouped under the service charge provision. From a tenant's point of view it is likely that they would resist this as it is likely to constitute an improvement rather than falling within the remit of the usual repairing obligations.

Trading Standard Officers are responsible for enforcing the regulations. The penalty for failing to make available to a prospective buyer or tenant of commercial premises is fixed at 12.5% of the rateable value of the building with a default penalty of £750.00 where that formula cannot be applied. The range of penalties under this formula is limited to a minimum penalty of £500.00 and a maximum penalty of £5,000.00. It is the seller or landlord who will be liable for the payment of the penalty.

On the sale or the letting of your commercial premises we can arrange to obtain an EPC on your behalf through our internet search provider TM Property Searches.

If you require advice on any aspects of commercial property including sales, purchases and leases please contact Ruth Latham.

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