



Improving the energy efficiency of our buildings

**Local weights and measures guidance for Energy Certificates
and air-conditioning inspections for buildings**



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and air-conditioning inspections for buildings**

The Energy Performance of Buildings
(Certificates and Inspections) (England and Wales)
Regulations 2007 SI 2007/991, amended by
SI 2007/1669, SI 2007/3302, SI 2008/647 and SI 2008/2363

October 2008
Department for Communities and Local Government

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Foreword

The requirements of the Energy Performance of Buildings Directive relating to Energy Performance Certificates (EPCs) and inspection of air-conditioning systems have been transposed into law in England and Wales, creating new responsibilities for building owners, sellers, builders and occupiers, and new roles for enforcement agencies in making sure that these responsibilities are met.

This guidance offers background on the Directive, the legal framework for energy certificates and air-conditioning inspections, and on the powers and processes for enforcement by local weights and measures authorities (Trading Standards or other services).

This guide describes the scope and requirements of the Regulations and provides guidance on how these should be applied. It is intended for local weights and measures. Though 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, enforcement authorities should obtain their own legal advice.

This guide deals with the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007. In situations where homes are marketed for sale, sellers will also need to comply with the Housing Act 2004 and the Home Information Pack (No. 2) Regulations 2007 (as amended) with respect to providing home information packs. Separate guidance for enforcement authorities is available for Home Information Packs.

The Department has provided £3.4m for 2008/09 and £1.8m for 2009/10 to help fund these new duties. There is no hypothecation of any element of the transfer and local authorities are free to determine funding of different services taking into account local needs and priorities.

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Energy Performance Certificates Enforcement – key facts

- Sellers, landlords and builders respectively are responsible for providing energy performance certificates (EPCs) on their properties when these are sold, rented and constructed
- Occupiers of larger public buildings (such as hospitals or government offices) are responsible for showing a display energy certificate (DEC) in a prominent place
- Local weights and measures authorities or, for EPCs on construction only, local building control officers or approved inspectors are responsible for ensuring that these people provide or show valid EPCs or DEC
- Local weights and measures authorities are also responsible for ensuring that owners of air-conditioning systems (over 12kW) are in possession of an inspection report. Systems will have to be inspected at least once every five years
- Enforcement agencies have new powers to investigate, require the production of EPCs and DEC and serve penalty notices for failure to comply with duties in respect of EPCs, DEC or air-conditioning inspection reports for buildings
- Energy assessor accreditation bodies will handle other aspects of regulation, including ensuring that assessors work to appropriate standards, checking the quality and accuracy of certificates, and handling complaints against assessors for unacceptable work or behaviour.

Section 1

Introduction

1.1 What is the European Directive on the Energy Performance of Buildings (EPBD)?

Directive 2002/91/EC on the energy performance of buildings came into force on 4 January 2003, and the provisions which relate to EPCs, DEC's and air-conditioning inspection reports must be transposed no later than 4 January 2009. The aim of the directive is to promote improvements to the energy performance of buildings. By encouraging owners and tenants to choose energy efficient buildings and to improve the energy performance of those buildings once they occupy them, energy consumption and carbon emissions will be reduced.

The Directive promotes the improvement of energy performance of buildings in four areas:

- Providing methods to calculate the energy performance of buildings
- Setting of minimum standards in new and existing buildings
- Energy certification of buildings
- Inspection and assessment of heating and cooling installations.

1.2 What this means for England and Wales

Legislation was passed in 2006 to update the Building Regulations 2000 to ensure all new buildings would meet higher standards of energy efficiency. This covered the first two requirements of the Directive: providing methods to calculate the energy performance of buildings and the setting of energy performance standards for new buildings and larger buildings when refurbished. This is reflected in Part L of the Building Regulations which is enforced by building control.

The Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007 ('the Regulations') have come into force on a phased basis, from 1 August 2007 to 1 October 2008, and cover the remaining two requirements: energy certification of buildings and inspection and assessment of air-conditioning installations.

1.3 What are the requirements

An energy performance certificate (EPC) is required when a building, which definition includes a part of a building which has been designed or altered to be used separately, is constructed, sold and let:

- for non-dwellings, this requirement started for buildings with a total useful floor area (TUFA) of more than 10,000m² from 6 April 2008, more than 2,500m² from 1 July 2008 and for all other non-dwellings from 1 October 2008
- this is a current requirement for all marketed sales of homes requiring a home information pack (HIP). For any other home sales, this requirement starts from 1 October 2008
- this requirement started from 6 April 2008 for homes at the end of construction
- this requirement starts from 1 October 2008 for homes when rented.

A display energy certificate (DEC) must be displayed by occupiers of public buildings:

- where the TUFA of the building is greater than 1000m²; and
- the building is occupied by a public authority or an institution providing public services to a large number of persons; and
- the public visit the building.

An air-conditioning inspection is required if the effective rated output of systems within a building is more than 12kW:

- if the system has an effective rated output of 250kW or more, the first inspection must be carried out by 4 January 2009
- if the system has an effective rated output of 12kW or more, the first inspection must be carried out by 4 January 2011.

Air-conditioning systems must be inspected at intervals not exceeding five years.

Transitional provisions apply in relation to EPC requirements for non-dwellings and in relation to HIP requirements for marketed sales of homes, though the latter do not affect the requirements for an EPC. The prevailing provisions should be checked before any penalty notices are issued. If contracts have been exchanged before the coming-into-force date for an EPC in relation to the category of building in question, then no EPC will be required. Details of the transitional arrangements can be found in Appendix A.

1.4 When energy certificates and inspections are required

The timetable for the introduction of energy certificates and inspections is phased and is shown below:

Energy performance measures for buildings – timetable for introduction		
What is affected	What is required	When it will be required by law
Homes – when sold (marketed sales only)	Energy Performance Certificate	Phased from 1 August 2007
All remaining Homes – when sold (non marketed sales)	Energy Performance Certificate	From 1 October 2008
Homes – when built	Energy Performance Certificate	From 6 April 2008
Homes – when rented	Energy Performance Certificate	From 1 October 2008
Commercial buildings > with total useful floor area 10,000m ² - when built, sold or rented	Energy Performance Certificate	From 6 April 2008
Commercial buildings > with total useful floor area 2,500m ² – when built, sold or rented	Energy Performance Certificate	From 1 July 2008
All remaining commercial buildings – when built, sold or rented	Energy Performance Certificate	From 1 October 2008
Public buildings > 1000m ²	Display Energy Certificate – displayed at all times	By 1 October 2008
Air conditioning systems > 250kW	First inspection	By 4 January 2009
Air conditioning systems > 12kW	First inspection	By 4 January 2011

1.5 Who is responsible for ensuring certificates and inspections are done

Regulation	Area of responsibility	Relevant person
5(2) and 5(5)	The EPC is made available to prospective buyers and tenants, and given to eventual buyers and tenants.	The seller or landlord
6(2)	Written particulars on dwelling sales covered by HIPs requirements include the asset rating of the building or the whole EPC.	The person providing the particulars (ie this may be a seller or an estate agent)
9(2)	EPCs are given to the owners of newly constructed Crown or statutory undertakers' buildings.	The builder
10	EPCs must be accompanied by recommendation reports	The relevant person for the EPC on sale or rent, that is the seller or landlord or the builder under reg. 9(2)
16(2)	Public buildings to display DEC's and have advisory reports	The building occupier
21(1), 23 and 24	Certain air-conditioning systems must have inspections at least every five years, and keep a copy of the inspection report. A person taking over the system must ensure that it is inspected within three months if no inspection report is given when responsibility changes.	The system controller, usually the owner
39(4)	A valid EPC, recommendation report, advisory report or air-conditioning inspection report must be produced when required by an enforcement authority within seven days.	The seller or landlord, building occupier, or system controller respectively

1.6 Exempt buildings

The following buildings do not need EPCs:

- buildings used primarily or solely as places of worship
- temporary buildings with a planned time of use of two years or less, and industrial sites, workshops and non-residential agricultural buildings with low energy demand
- stand alone buildings with a total floor area of less than 50m² which are not dwellings.

Historic and listed buildings are not exempt. Crown and statutory undertakers' buildings are also included in the requirements.

1.7 Policy background

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991 as amended):

- these regulations implement (in England and Wales) parts of Directive 2002/91/EC on the energy performance of buildings. The Directive lays down requirements for the energy performance certificates when buildings are constructed, sold or rented out
- the Regulations are available from the Office of Public Sector Information website. They are also available from the Communities and Local Government website together with guidance (see www.communities.gov.uk/epbd).

Section 2

Production of certificates and reports

Energy certificates rate the energy performance of a building on a scale from A to G. Three types of energy certificate are required in different circumstances:

- energy Performance Certificates (EPCs) for domestic buildings when they are constructed, sold or rented out
- energy Performance Certificates (EPCs) for non-domestic buildings when they are constructed, sold or rented out; and
- display Energy Certificates (DECs) for large, public buildings occupied by public authorities or institutions providing a public service to a large number of persons and in either case visited by the public, which need to be displayed at all times.

An air-conditioning inspection report must include an assessment of the air-conditioning efficiency and the sizing of the system compared to the cooling requirements of the building and contain appropriate advice on possible improvements to the system, replacement of the system and alternative solutions.

2.1 The process for EPCs, DECs and air-conditioning inspections

This section looks at the process for getting an EPC for a building, and the duties involved. The same requirements apply in law under the EPC regulations regardless of whether it is a dwelling or a non-domestic building. However, the Home Information Pack Regulations also apply to dwellings that are marketed for sale and in these cases the EPC will be the first document in the HIP.

Separate guidance on the HIP requirements has been produced by Communities and Local Government, and is available from www.homeinformationpacks.gov.uk.

2.2 Who is responsible for getting an EPC, DEC or air-conditioning inspection report?

The Regulations 2 (1) state that the 'relevant person' is responsible for providing an EPC, DEC or air-conditioning inspection report. Under regulation 16, it is 'the occupier' who has duties in relation to display energy certificates. The following persons are responsible in the circumstances described:

- as soon as a building is in the process of being offered for sale, it is the responsibility of the seller to make available an EPC and recommendation report, free of charge, to prospective buyers
- as soon as a building is in the process of being offered to let, it is the responsibility of the prospective landlord to make available an EPC and recommendation report to prospective tenants
- when a building being constructed is physically complete, it is the responsibility of the person carrying out the construction to give an EPC and recommendation report to the building owner and to notify Building Control that this has been done
- for air-conditioning systems, the person who controls the operation of the system is the person who has the responsibility for ensuring an inspection takes place. The person who controls the operation of the system is the person who controls the technical functioning of the system, not someone who can just alter the temperature
- for buildings with a TUFA of 1000m² or above that are occupied by public authorities or by institutions providing public services to a large number of persons, and visited by the public, it is the responsibility of the occupier to display a display energy certificate (DEC) at all times in a prominent place clearly visible to the public and have a valid advisory report in their possession.

For enforcement purposes, it is always the responsibility of the relevant person to make sure that the EPC is made available in respect of sales or lettings, and provided to the ultimate buyer or tenant, even if in practice this is done by someone else (eg an estate agent or managing agent). This is slightly different from the HIPs Regulations, where the responsibility to provide a pack can be passed to an agent. If the EPC is not provided, however, this will always come back to the relevant person as a legal responsibility.

To ensure that the same breach is not penalised twice, the same person cannot be subject to a penalty notice under both the HIP and EPBD Regulations for failing to make available an energy performance certificate. However, if a HIP does not contain an EPC, both seller and estate agent can be liable to be given penalty charge notices under the respective legal provisions.

2.3 When must the documents be made available?

For all sales and rentals, the EPC must be made available to any prospective buyer or tenant at the earliest opportunity and in any event before entering into a contract or, if earlier, when information in writing is first given to such a person who requests information about the building, or when the building is first viewed by a such a person.

The DEC should be prominently displayed at all times in a prominent place clearly visible to the public. It is recommended that it is at least A3 in size and displayed in the reception area of a building.

The most recent air-conditioning report should be kept by the relevant person and given to any new relevant person.

2.4 What must be made available?

The EPC and the recommendation report must be provided free of charge to prospective buyers or tenants, and be given to the person who ultimately becomes the buyer or tenant of the building.

The DEC must be displayed at all times in a prominent place, clearly visible to the public.

The format of EPCs is different for domestic and non-domestic properties. The approved format for EPCs is:

2.4.1 Domestic EPC

The domestic EPC shows two graphs: the energy efficiency rating (relating to running costs) and the environmental impact rating (relating to the carbon dioxide emissions rating) of the property.

Energy Performance Certificate

17 Any Street,
Any Town,
County,
YY2 5XX

Dwelling type: Detached house
Date of assessment: 02 February 2007
Date of certificate: 08 November 2007
Reference number: 0000-0000-0000-0000-0000
Total floor area: 100 m²

This home's performance is rated in terms of the energy use per square metre of floor area, energy efficiency based on fuel costs and environmental impact based on carbon dioxide (CO₂) emissions.

Energy Efficiency Rating

Energy efficiency rating: 37

Potential energy efficiency rating: 72

Environmental Impact (CO₂) Rating

Environmental impact rating: 69

Potential environmental impact rating: 31

Estimated energy use, carbon dioxide (CO₂) emissions and fuel costs of this home

	Current	Potential
Energy use	453 kWh/m ² per year	176 kWh/m ² per year
Carbon dioxide emissions	13 tonnes per year	4.9 tonnes per year
LAPHS	\$41 per year	\$66 per year
Heating	\$1173 per year	\$447 per year
Hot water	\$216 per year	\$104 per year

Based on standard assumptions about occupancy, heating patterns and geographical location, the above table provides an indication of how much it will cost to provide lighting, heating and hot water to this home. The fuel costs only take into account the cost of fuel and not any associated service, maintenance or safety inspection. This certificate has been provided for comparative purposes only and is not intended to be compared with another. Always check the date the certificate was issued, because fuel prices can increase over time and energy saving recommendations will evolve.

To see how this home can achieve its potential rating please see the recommended measures.

Remember to look for the energy saving recommended signs when buying energy-efficient products. It's a quick and easy way to verify the energy efficiency of products in the market. For advice on how to take action and to find out about other buildings to help make your home more energy efficient, call 0800 012 012 or visit www.energyefficiency.org.uk

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17 Any Street, Any Town, County, YY2 5XX
(certificate does not contain the address)

About this document

The Energy Performance Certificate for this dwelling was produced following an energy assessment undertaken by a qualified assessor, accredited by (scheme name), to a scheme authorised by the Government. This certificate was produced using the RdSAP 2005 assessment methodology and has been produced under the regulations. A copy of the certificate has been lodged on a national register.

Assessor's accreditation number: (accreditation number)
Assessor's name: (assessor name)
Company name/brand name: (company name)
Address: (address continued)
Phone number: (phone)
Fax number: (fax)
E-mail address: (e-mail)
Postal code: (postcode)

If you have a complaint or wish to confirm that the certificate is genuine

Details of the assessor and the relevant accreditation scheme are on the certificate. You can get contact details of the accreditation scheme from our website at (website address) together with details of their procedures for confirming authenticity of a certificate and for making a complaint.

About the building's performance ratings

The ratings on the certificate provide a measure of the building's overall energy efficiency and its environmental impact, calculated in accordance with a national methodology that takes into account factors such as insulation, heating and hot water systems, ventilation and fuels used. The average energy efficiency rating for a dwelling in England and Wales is band E (rating 69).

As all buildings are used in the same way, so energy ratings use 'standard occupancy' assumptions which may be different from the specific way you use your building. Different methods of calculation are used for homes and for other buildings. Details can be found at www.communities.gov.uk.

Buildings that are more energy efficient use less energy, save money and help protect the environment. A building with a rating of B55 would cost almost nothing to heat and light and would cause almost no carbon emissions. The potential ratings in the certificate describe how close this building could get to B55 if all the cost effective recommended improvements were implemented.

About the impact of buildings on the environment

One of the biggest contributors to global warming is carbon dioxide. The way we use energy in buildings causes emissions of carbon. The energy we use for heating, lighting and power in homes produces over a quarter of the UK's carbon dioxide emissions and other buildings produce a further one-third.

The average household causes about 6 tonnes of carbon dioxide every year. Adopting the recommendations in this report can reduce emissions and protect the environment. You could reduce emissions even more by switching to renewable energy sources, in addition there are many simple every day measures that will save money, improve comfort and reduce the impact on the environment, such as:

- Check that your heating system thermostat is not set too high (in a home, 21°C in the living room is suggested) and use the timer to ensure you only heat the building when necessary.
- Make sure your hot water is not too hot - a cylinder thermostat need not normally be higher than 60°C.
- Turn off lights when not needed and do not leave appliances on standby. Remember not to leave chargers (e.g. for mobile phones) plugged in when you are not using them.

Visit the Government's website at www.communities.gov.uk for:

- How to confirm the authenticity of an energy performance certificate
- How to make a complaint about a certificate or the assessor who produced it
- Learn more about the national register where this certificate has been lodged
- Learn more about energy efficiency and reducing energy consumption

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Recommended measures to improve this home's energy performance

17 Any Street,
Any Town,
County,
YY2 5XX

Date of certificate: 08 November 2007
Reference number: 0000-0000-0000-0000-0000

Summary of this home's energy performance related features

The following is an assessment of the key individual elements that have an impact on this home's performance rating. Each element is assessed against the following scale: Very poor / Poor / Average / Good / Very good.

Element	Description	Current performance	Energy efficiency	Environmental
Walls	Cavity wall, as built (no insulation)	Poor	Poor	
Roof	Pitched, 250 mm of insulation	Good	Good	
Floor	Solid, no insulation (assumed)	-	-	
Windows	Partial double glazing	Poor	Poor	
Main heating	Boiler and radiators, mains gas	Average	Average	
Main heating controls	Programmer, room thermostat and TRVs	Average	Average	
Secondary heating	None	-	-	
Hot water	From main system, no cylinder	Poor	Poor	
Lighting	Low energy lighting in 70% of fixed outlets	Very good	Very good	
Current energy efficiency rating		F 37		
Current environmental impact (CO₂) rating		E 69		

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17 Any Street, Any Town, County, YY2 5XX
(certificate does not contain the address)

Recommendations

The measures below are cost effective. The performance ratings after improvement listed below are cumulative, that is they assume the improvements have been installed in the order that they appear in the table.

Lower cost measures (up to £600)	Typical savings per year	Performance ratings after improvement	Energy efficiency	Environmental impact
1 Cavity wall insulation	\$471	B 63	B 66	
2 Low energy lighting for all fixed outlets	\$11	B 63	B 66	
Subtotal	\$482			
Higher cost measures (over £600)				
3 Hot water cylinder thermostat	\$122	D 59	D 59	
4 Replace boiler with B24 A condensing boiler	\$325	D 73	D 59	
Total	\$928			
Potential energy efficiency rating		C 73		
Potential environmental impact (CO₂) rating		C 55		

Further measures to achieve even higher standards

The further measures listed below should be considered in addition to those already specified if aiming for the highest possible standards for this home.

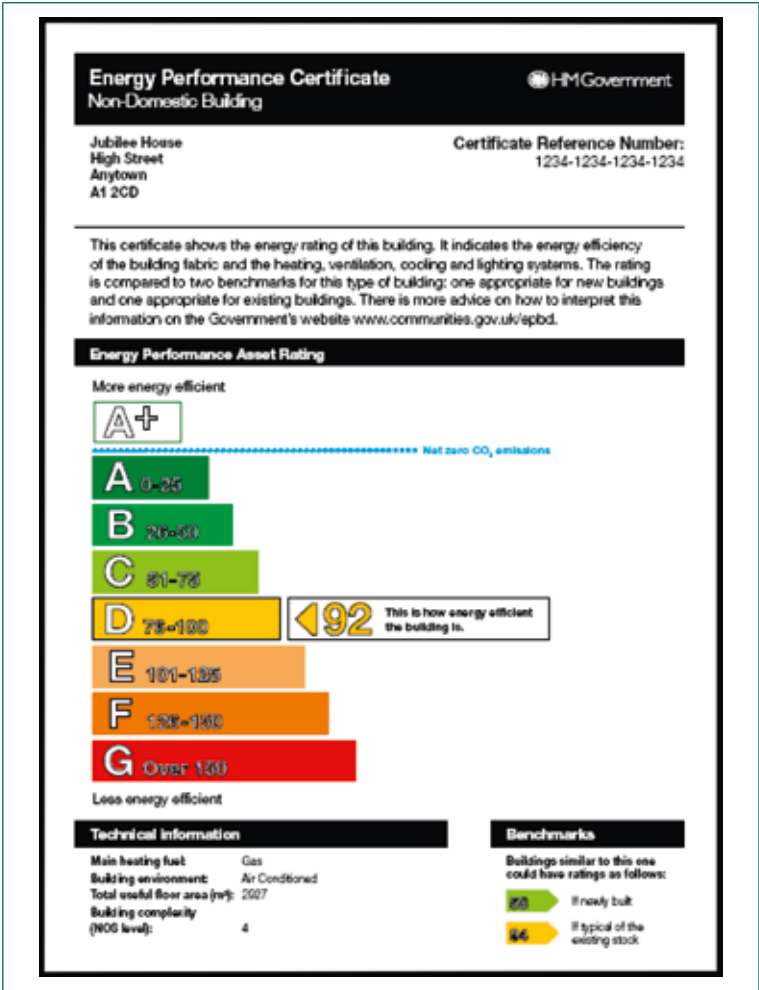
5 Replace single glazing with low-E double glazing	Typical savings per year	Performance ratings after improvement	Energy efficiency	Environmental impact
5 Replace single glazing with low-E double glazing	\$40	D 79	D 71	
6 Solar photovoltaic panels, 2kW of roof area	\$48	D 77	D 74	
Enhanced energy efficiency rating		C 77		
Enhanced environmental impact (CO₂) rating		C 74		

Improvements to the energy efficiency and environmental impact ratings will usually be in line with each other. However, they can sometimes diverge because reduced energy costs are not always accompanied by a reduction in carbon dioxide (CO₂) emissions.

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2.4.2 Non-domestic EPC

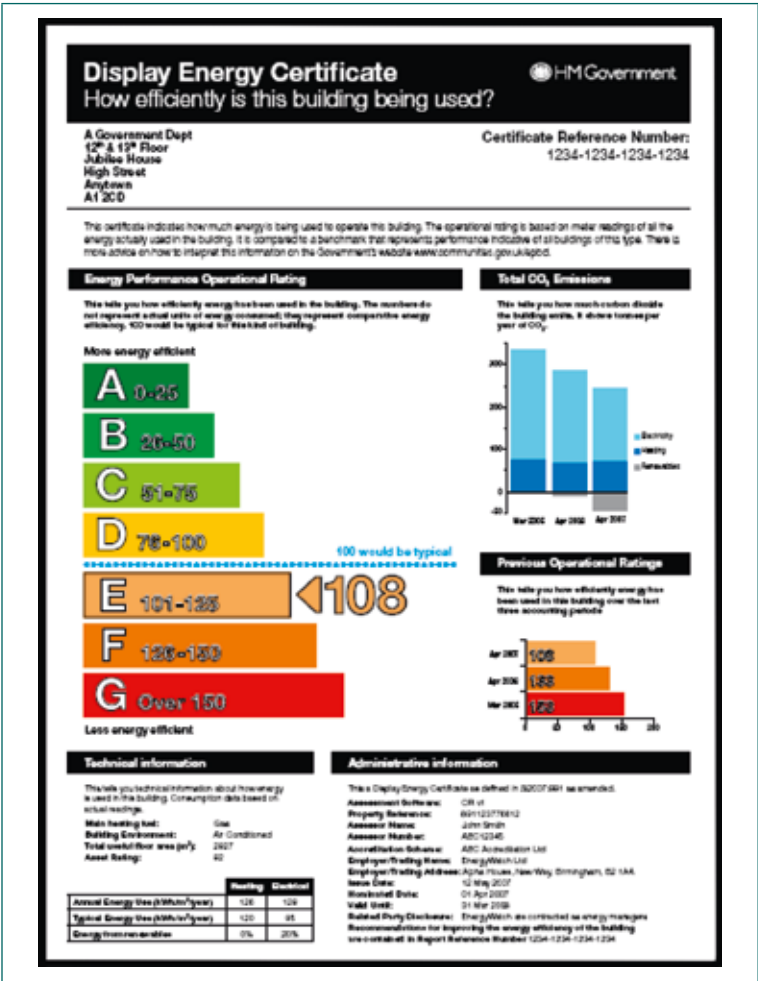
The non-domestic EPC shows the energy performance of the building as a Carbon Dioxide (CO₂) based index.



EPCs must always be accompanied by a recommendation report that lists cost effective measures to improve the energy rating of the building and further measures (such as low and zero carbon generating systems) to achieve the highest standards.

EPCs are produced using standard methods with standard assumptions about energy usage. This allows prospective buyers or tenants to compare the energy performance of different buildings.

2.4.3 Display Energy Certificates



A Display Energy Certificate (DEC) provides an Operational Rating for a building. This is based on the actual energy consumption of the building as recorded by gas, electricity and other meters and helps the public see the energy efficiency of a building.

A DEC is always accompanied by an advisory report that lists cost effective measures to improve the energy rating of the building.

2.4.4 Providing information at auctions

In the case of auctions, if the catalogue contains a photograph accompanied by a floor plan or description of room sizes, or a floor plan and description of room sizes, an asset rating will also need to be shown. Moreover, the EPC must be available to prospective buyers at the earliest opportunity. For auctions of domestic property, a HIP must be made available¹.

¹ Regulation 33 of the HIP regulations provides for transitional arrangements by which homes already on the market when HIP duties would otherwise commence for them are exempted. Notwithstanding this, independent EPC duties will have commenced for all buildings on 1st October 2008.

2.4.5 Written particulars (for sales of homes only)

For marketed sales of homes where written particulars for the property are produced, these must include either:

- The energy efficiency and environmental impact rating graphs, *or*
- The EPC (though not the recommendation report) attached to the particulars.

Written particulars are a description of the property given by the seller or on the seller's behalf to persons who may be interested in buying the building that includes at least two of the following:

- a photograph of the building or any room in it
- a floor plan of the building
- a description of the size of the rooms in the building.

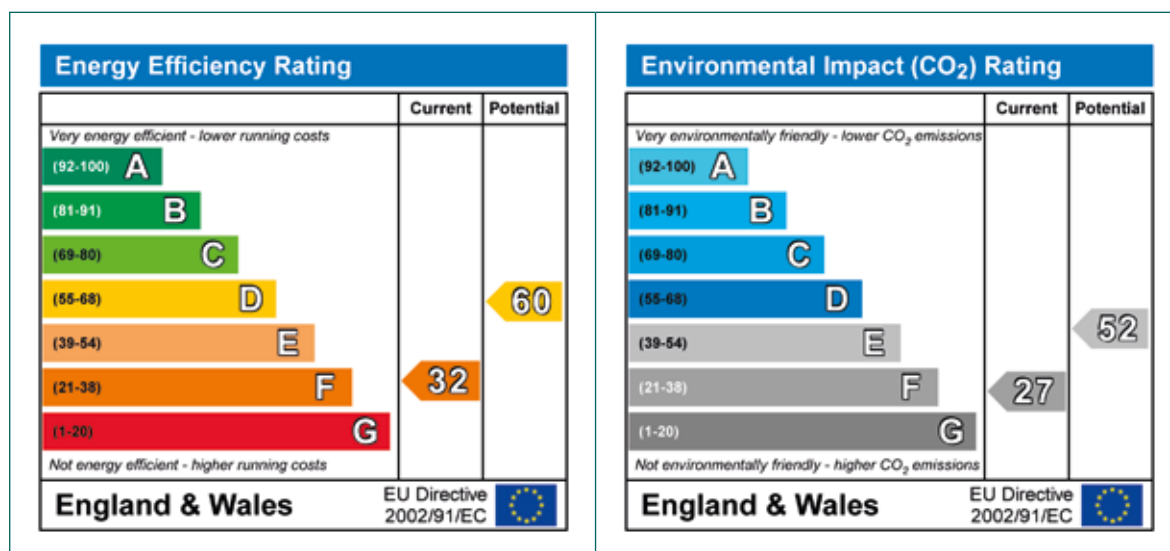
This includes agents' information sheets, auction catalogues, or any other written information given to such persons, as long as it meets the description above.

Giving 'written particulars' includes giving or making available particulars electronically, such as in an email or as information on a website.

The asset rating graphs from the EPC need not be included in estate agents' newspaper adverts or estate agents' window cards. Where however the window card includes two or more of the above types of information, it would be good practice to include the asset rating graphs from the EPC.

Where the written particulars display the two graphs, these must be in the format specified in the Government's Notice of Approval of the National Calculation Methodology². This is shown below:

² <http://www.communities.gov.uk/index.asp?id=1510426>, page 6.



These can be produced in colour or black and white, and as long as the graphs are legible, there is no size limit. These must however be based on a valid EPC. As long as they correspond to the ratings in the EPC for the home and the format shown here, and are included in particulars, the graphs will comply with the requirements. A number of software providers and property websites are producing the graphs, and there is a template available on the HIPs website which can also be used to create them.

Except in the case of EPCs (or EPC graphs) attached to written particulars, the EPC must always be accompanied by the recommendation report.

All the requirements for EPCs can be satisfied by communication via the web or e-mail, if the recipient consents, as well as by printed material. In the case of information in writing and written particulars this might include a link to an EPC on a property website, copies made available to those viewing a property or email attachments. The means of displaying the graphs on websites will vary, but might include a link to the EPC or graphs on a page for a particular property. The main principle is that the EPC or graphs should be easily accessible and obvious to the person looking at the information.

2.4.6 Energy information for off-plan marketed sales (for sales of homes only)

Where a home is sold before it is physically completed it will need a HIP but it cannot include a full EPC, which will only be available once construction has been completed. Instead the HIP will contain a predicted energy assessment (PEA), which will look similar to the graphs from the full EPC, and will be produced from the design plans for the building. It will not contain the second column in each graph which shows the potential for savings if the recommendations report were implemented. The PEA must be replaced by an EPC when the property is physically complete.

There is no specified form for the PEA but it is likely that it will be similar to the form shown below³:

Predicted Energy Assessment

Address 1
Address 2
Address 3
Address 4
Postcode

Date of assessment: 00 month 2007

This document is a Predicted Energy Assessment required to be included in a Home Information Pack for properties marketed when they are incomplete. It includes a predicted energy rating which might not represent the final energy rating of the property on completion. Once the property is completed, the Pack should be updated to include information about the energy performance of the completed property.

Energy Efficiency Rating	Environmental Impact (CO ₂) Rating
<p>Very energy efficient – lowest running costs</p> <p>A</p> <p>B</p> <p>C</p> <p>D</p> <p>E</p> <p>F</p> <p>G</p> <p>Not energy efficient – higher running costs</p>	<p>Very low environmental impact – lowest CO₂ emissions</p> <p>A</p> <p>B</p> <p>C</p> <p>D</p> <p>E</p> <p>F</p> <p>G</p> <p>Not environmentally friendly – higher CO₂ emissions</p>

England & Wales EU Directive 2002/91/EC

The energy efficiency rating is a measure of the overall efficiency of a home. The higher the rating the more energy efficient the home is and the lower the fuel bills will be.

The environmental impact rating is a measure of a home's impact on the environment in terms of carbon dioxide (CO₂) emissions. The higher the rating the less impact it has on the environment.

When the building is physically complete, a full EPC will be produced. If it is still on the market, the EPC will replace the PEA in the HIP. The EPC will have to be given to the ultimate purchaser under the EPC legislation in any event.

2.4.7 Non-marketed sales of homes

HIPs are intended to help reform the home buying and selling process. Homes that are sold but not marketed are not subject to HIP duties, nor are sales in certain other circumstances specified in the HIPs Regulations connected with commercial uses. These transactions will nonetheless need an EPC from 1 October 2008⁴.

Examples of non marketed sales which require an EPC but not a HIP are:

- Private non-marketed sales (for example, between family members)
- Examples of sales excluded by the HIPs Regulations include:
 - Mixed sales, such as a farm, which might consist mainly of agricultural buildings, but with a farmhouse included
 - Portfolio sales, where multiple dwellings (eg a block of flats) are being sold together and are not available for sale singly.

³ There is a template which can be used to create a PEA of this format at http://www.homeinformationpack.gov.uk/pdf/Predicted_Energy_Assessment.xls.

⁴ This will also include home properties subject to the exception in regulation 33 of the HIP regulations.

Homes where all or part of the property has sitting tenants are exempt from the need from a HIP, but would need an EPC (or EPCs) when sold or rented out from October 2008. However, a building that is being sold as one property but with a sitting tenant in a sub-divided part (such as a granny flat) will need a HIP. In these situations there could be two EPCs in the HIP, because if the granny flat is a separate unit with its own essential facilities (kitchen and bathroom) the EPC software will consider it a separate dwelling.

For a full list of which sales are exempt from HIPs requirements, see Part 6 of the HIPs Regulations at : www.opsi.gov.uk/si/si2007/20071667.htm.

2.5 Validity of documents

An EPC is valid for 10 years, except for sales of homes which are subject to the Home Information Pack Regulations 2007, where a Home Information Pack (HIP) is required. In these cases an EPC must be no more than three years old when the property is first marketed. In either case however, if a newer EPC is produced only the latter will be the valid EPC for the building.

A DEC is valid for a period of 12 months beginning with the nominated⁵ date. The advisory report is valid for seven years from issue.

An air-conditioning report is valid for five years.

⁵ The nominated date is a date no later than three months after the end of the period over which the operational rating is calculated. The date is nominated by the energy assessor who issued the certificate, most likely in agreement with the building occupier.

Section 3

Enforcement of the regulations

Regulations 38 – 48 of The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991 as amended by SI 2007/1669, SI 2007/3302, SI 2008/647 and SI 2008/2363) deal with enforcement and outline the powers and the responsibilities of enforcement authorities and their officers.

3.1 Summary of enforcement provisions

The main features of the enforcement provisions are as follows.

1. It is the duty of every local weights and measures authority to enforce the EPC, DEC and air-conditioning inspection duties in its area. (regulation 38).
2. They have power to require a person to produce within seven days an EPC and recommendation report, advisory report or air-conditioning inspection report for inspection, up to six months from when that person was subject to a duty in relation to that document. (regulation 39).
3. Where a breach of duties is believed to have taken place, including the duty under regulation 39 to produce a document for inspection, an enforcement authority may, if it considers that a penalty charge notice ought to be given, give such a notice to the person who has committed the breach, up to six months after that breach. The notice must contain specified particulars. It is payable within 28 days or such longer period specified by the authority. A notice may be withdrawn by the authority. (regulation 40).
4. The recipient of the notice can, within the time specified for payment, give notice requiring the enforcing authority to review its decision to give the notice.
5. If the notice is confirmed on review, an appeal may be made to a County Court, and must be lodged within 28 days of that confirmation or such extended time as the county court may allow (regulation 45).
6. The penalty charge amount is recoverable as a debt (regulation 46).
7. A person who obstructs, an enforcement officer or who, not being an enforcement officer, purports to act as one, commits an offence and is liable to a fine (not exceeding level 5) on conviction. (regulation 48).

Enforcement officers have no powers to check the accuracy of the energy efficiency information in the EPC, only that it has been issued by an accredited assessor and entered into the EPC register in relation to the building featured in the transaction and is valid in respect of time.

3.2 Power to require documents

The Regulations give trading standards officers as authorised officers of the enforcement authority the power to require a person under a duty to produce an EPC and recommendation report, advisory report or air-conditioning inspection report for inspection within seven days of the request. A person is not required to comply with the request if they have a reasonable excuse for not doing so.

3.3 Penalty charge notices

There is no statutory form for the notice, but it must:

- state the officer's belief that the person has committed a breach of duty
- state the circumstances of the breach
- require that the person either pay the penalty charge or ask the local authority to review the notice within the specified period for payment
- tell the recipient that the penalty charge is recoverable as a debt
- specify to whom and at what address the penalty charge may be paid and the payment method or methods
- specify to whom and at what address a request for a review and any representations relating to it should be addressed.

The main penalty charges are as follows:

- When selling or renting a home, the penalty is £200 for failing to make available an EPC or recommendation report to any prospective buyer or tenant or to give an EPC or recommendation report to the person who ultimately becomes the buyer or tenant
- The penalty for failing to make an EPC available to any prospective buyer or tenant when selling or letting non-dwellings is fixed, in most cases, at 12.5 per cent of the rateable⁶ value. The range of penalties under this formula is set with a minimum of £500 and capped at a maximum of £5,000, with a default penalty of £750 where the formula cannot be applied

⁶ Rateable values may be found at www.voa.gov.uk by entering the postcode into the search facility. Alternatively these may be available from the department in the Local Authority that deals with business rates.

- For failure to display a DEC the penalty will be £500 and for a failure to be in possession of an advisory report, £1,000
- For failure to have an air-conditioning inspection the penalty will be £300.
- For failure to produce a document to an authorised officer when required to do so the penalty is £200.

The receipt of a penalty charge notice does not remove the need to comply with the duty for breach of which it was given.

The enforcing authority may withdraw the notice if considers that it should not have been given, and must withdraw it if the recipient can demonstrate that he or she:

- took all reasonable steps and exercised due diligence to avoid the breach; or
- has a defence set out in regulation 42.

The relevant person is not liable to a penalty charge for a breach of duty by failing to make available an EPC or recommendation report to a potential purchaser if he or she has been given a penalty charge notice under the HIPs legislation in respect of that same failure.

If a penalty charge notice is withdrawn, the enforcement authority must refund any charge already paid.

3.4 Defences

Reg 42 of the Regulations establishes two defences where an EPC is not obtainable in time:

A person will not be liable to a penalty charge where they can show that they made a request to an energy assessor to obtain an EPC at least 14 days before it was needed and that despite all reasonable efforts and enquiries have been unable to obtain it. The request for an EPC in these circumstances must have been addressed to an energy assessor likely to be able to provide an EPC for the category of building in question, and accompanied by the necessary payment or an undertaking to pay.

A landlord will also not be liable if a prospective rental tenant is seeking to rent the building due to an emergency which required his urgent relocation, the landlord has no EPC available, and there is insufficient time for the landlord reasonably to be expected to obtain one before the building is rented out to that tenant. The landlord must nonetheless give an EPC to the tenant as soon as is reasonably practicable.

3.5 Reviews

When the recipient of a penalty charge notice has asked the notice authority to review their decision to issue it, the authority must withdraw the notice if it is not satisfied that:

- the recipient committed the breach of duty specified in the notice; or
- the notice was issued within time and contained the necessary particulars; or
- in the circumstances of case it was appropriate for the notice to be given to the recipient.

3.6 Appeals

If a person who has been issued with a penalty notice is not satisfied with the review, they may appeal to the County Court within 28 days after having the penalty charge confirmed.

If a penalty charge has been confirmed, an appeal can be made on one or more of the following grounds:

- the recipient did not commit the breach of duty specified in the penalty charge notice;
- the notice was not given within the period specified, or contain the necessary particulars; *or*
- in the circumstances of the case it was inappropriate for the notice to be given to the recipient.

Where an appeal is considered by the County Court, the court may either uphold the penalty charge or quash it. Where it is quashed, the enforcement authority must refund any charge already paid.

3.7 Offences relating to enforcement officers

A person who obstructs a trading standards officer who has required an EPC and recommendation report, advisory report or air-conditioning inspection report for inspection is guilty of an offence and liable upon conviction to a fine not exceeding level 5 (currently £5,000 maximum).

A person who is not an enforcement officer and purports to act as such is guilty of an offence and liable upon conviction to a fine not exceeding level 5 (currently £5,000 maximum).

3.8 Enforcement Checklist

The following checklist is designed to help enforcement officers carry out their duties:

1. Is the relevant person claiming the property is exempt? If so, consider whether this is correct, consulting relevant EPC, DEC and air-conditioning inspection guidance and the Regulations.
2. If the relevant person is claiming that an EPC, DEC or air-conditioning report is completely unobtainable, is this correct/does it seem reasonable?
3. Is the EPC authentic ie registered?
4. Has the relevant person unjustifiably failed to make available a copy of the EPC to a potential buyer?
5. Has the relevant person without reasonable excuse taken longer than allowed (seven days) to produce a document to the enforcement officer?
6. Is it more than six months since the relevant person ceased to be under a duty (in which case the enforcement officer cannot require the production of the document)?
7. Has the relevant person imposed any unreasonable conditions on the potential buyer seeing the EPC or charged for providing a copy of the EPC?
8. Is action other than a Penalty Charge Notice a more appropriate exercise of enforcement functions in the particular case eg a warning?

Section 4

The EPC Register

All energy certificates (EPCs and DEC)s and associated recommendation reports or advisory reports must be entered into a central register maintained on behalf of the Secretary of State.

There are two separate databases within the register, one for dwellings and the other for non-dwellings.

4.1 Role of Accreditation Schemes

Energy assessors are required to be a member of an accreditation scheme approved by the Secretary of State. The Government approves accreditation schemes to monitor the quality of energy assessments by ensuring that energy assessors are competent and possess the appropriate skills to conduct energy assessments.

The Secretary of State's policy is to grant approval to accreditation schemes which meet published statutory criteria. These standards define the outcomes that certification schemes are expected to achieve.

4.2 Access to and disclosures from the Register

The Register is an archive of all EPCs and DEC)s and associated recommendation reports and advisory reports produced by energy assessors. Documents and data held on the register may only be disclosed by the register keeper to the extent that explicit provision for such disclosure is made in the Regulations.

In order that register should provide an independent means for potential buyers or renters (and those acting on their behalf) to check that certificates which are made available to them are authentic, access to the register is allowed to any person who has the RRN – the Report Reference Number, which can be found on the top right hand side of the certificate.

Any other person who is in possession of an EPC or a recommendation report may only make disclosure of an EPC to the extent that explicit provision for such disclosure is made in the regulations. Any other disclosure by such a person is an offence and punishable by a fine not exceeding level 5 (currently £5,000).

4.3 Access to the register for enforcement authorities

The register keeper may disclose any document or data to an authorised officer of an enforcement authority.

If you need to check the authenticity of an Energy Performance Certificate or verify that the person who produced the assessment is properly qualified and accredited, go to www.epcregister.com for domestic properties and www.ndepcregister.com for non-domestic properties. Authorised officers are able to search for a report by the property's address.

Glossary of terms

A **building** is defined as “a roofed construction having walls, for which energy is used to condition the indoor climate; a building may refer to the building as a whole or parts thereof that have been designed or altered to be used separately”.

For a building to fall within the requirement for an EPC it must:

- have a roof and walls; *and*
- use energy to condition the indoor climate.

Services that are considered to condition the indoor climate are the following fixed services: heating, mechanical ventilation or air-conditioning. Although the provision of hot water is a fixed building service, it does not condition the indoor environment and would not therefore be a trigger for an EPC. The same argument applies to electric lighting.

A building can be either:

- the whole of a building; *or*
- part of a building, where the part is designed or altered to be used separately.

For a dwelling, ‘designed or altered to be used separately’ describes a unit that is self-contained, meaning that it does not share essential facilities such as a bathroom/shower room, wc or kitchen with any other unit, and that it has its own entrance, either from outside or through common parts, that is not through another dwelling.

For a non-dwelling ‘designed or altered to be used separately’ is where the accommodation is suitable for separate occupation. this could be indicated by the accommodation having its own access, separate provision of heating and ventilation or shared heating and ventilation but with the ability by the occupier to independently control those services. The part could be deemed to be separate even if some facilities (ie kitchen and toilet facilities) were shared. An example might be a unit in a shopping centre or a floor in an office building. Twenty-four hour access to any common parts is not relevant to this definition

A **stand-alone building** is a building that is free standing ie entirely detached.

The **Total useful floor area** is the total area of all enclosed spaces measured to the internal face of the external walls, that is to say it is the gross floor area as measured in accordance with the guidance issued to surveyors by the RICS. In this convention:

- the area of sloping surfaces such as staircases, galleries, raked auditoria, and tiered terraces should be taken as their area on the plan; *and*
- areas that are not enclosed such as open floors, covered ways and balconies are excluded.

Buildings that are **industrial sites and workshops with low energy demand**. These include buildings, or parts of buildings designed to be used separately, whose purpose is to accommodate industrial activities in spaces where the air is not conditioned. Activities that would be covered include foundries, forging and other hot processes, chemical process, food and drinks packaging, heavy engineering and storage and warehouses where, in each case, the air in the space is not fully heated or cooled. Whilst not fully heated or cooled these cases may have some local conditioning appliances such as plaque or air heaters or air conditioners to serve people at work stations or refuges dispersed amongst and not separated from the industrial activities.

Non-residential agricultural buildings with low energy demand include buildings, or parts of buildings designed to be used separately, that are heated for a few days each year to enable plants to germinate but are otherwise unheated.

A **dwelling** means a separate unit designed to provide living accommodation for a single household.

A **non-dwelling** is a building that is not a dwelling.

If a **building** that is to be used for **industrial or commercial purposes** (eg a workshop or an office) also contains living accommodation, it should be treated as a **dwelling** if the industrial or commercial part could revert to domestic use, without significant alteration, on change of ownership. This could be the case if:

- a) there is direct access between the industrial or commercial space and the living accommodation; *and*
- b) both are contained within the same thermal envelope; *and*
- c) the living accommodation occupies a substantial proportion of the total area of the building (eg a small manager's flat in a large non-domestic building would not mean the whole should be treated as a dwelling).

Significant alterations are those alterations that are covered by the Building Regulations.

Rooms for residential purposes are not dwellings. A Room for residential purposes is defined in the Building Regulations 2000 as a room, or a suite of rooms, that is not a dwelling-house or a flat and that is used by one or more persons to live and sleep and includes a room in a hostel, an hotel, a boarding house, a hall of residence or a residential home, whether or not the room is separated from or arranged in a cluster group with other rooms, but does not include a room in a hospital, or other similar establishment, used for patient accommodation. For the purposes of this definition, a 'cluster' is a group of rooms for residential purposes that is:

- a) separated from the rest of the building in which it is situated by a door that is designed to be locked; *and*
- b) not designed to be occupied by a single household.

SBEM – Simplified Building Energy Model

SBEM is a computer program that provides an analysis of a building's energy consumption. The SBEM tool is designed to cover buildings that are not dwellings. It has been adopted by government as part of the UK national methodology for calculation of the energy performance of buildings. It is used also to demonstrate compliance for dwellings with Part L of the Building Regulations 2000 (in England and Wales). For more information visit: www.ncm.bre.co.uk/.

DSM – Dynamic Simulation Model

A Dynamic Simulation Model is a software tool that models energy inputs and outputs for different types of building over time. In certain situations, SBEM may not be sophisticated enough to provide an accurate assessment of a building's energy efficiency. In these cases government-approved proprietary dynamic simulation models may be used. Communities and Local Government will provide such an approval.

SAP – Standard Assessment Procedure

SAP is the Government's Standard Assessment Procedure for energy assessments of dwellings. The current version of SAP, SAP 2005, has been adopted by government as part of the England and Wales national methodology for calculation of the energy performance of buildings. It is used to demonstrate compliance for dwellings with Part L of the Building Regulations 2000 (in England and Wales). For further information visit: www.projects.bre.co.uk/sap2005/

RdSAP is the new government-approved standard assessment procedure for energy assessments of existing dwellings. A full SAP assessment requires many data items, commonly derived from plans. RdSAP is an industry-agreed standard set of data items with a standard set of assumptions, appropriate to the type of property being assessed. For more information visit: www.nher.co.uk/pages/insight/rdsap.php or www.rdsap.info.

Appendix A

Transitional arrangements

The following transitional arrangements apply:

Any non-dwelling that was already on the market before the 6 April, 1 July, and 1 October 2008 commencement dates and remains on the market will not require an EPC to be made available to prospective buyers and tenants until 4 January 2008. Once a contract is entered into for the sale or the rent of the building, however, there is a duty for the prospective seller or landlord to request an EPC from an energy assessor and make all reasonable efforts to obtain the EPC as soon as reasonably practicable, and then give it to the person who has bought or rented the building.

Before a dwelling can be marketed for sale, a HIP must be available. The temporary exception, “first day marketing during a temporary period”, in regulation 34 of the HIP Regulations, allows marketing to start without a HIP *if an EPC or PEA cannot be obtained in time despite all reasonable efforts, and to continue without it until such time as an EPC or PEA can be obtained*. In these cases, the duty to have a HIP arises when the responsible person receives the EPC. The temporary exception ends on 31 December 2008.

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