

Clarifying when an Energy Performance Certificate
(EPC) is required on the sale or letting of buildings
Impact Assessment

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Summary: Intervention & Options

Department /Agency: Communities and Local Government	Title: Impact Assessment of Clarifying when an Energy Performance Certificate (EPC) is required on the sale or letting of buildings	
Stage: Consultation	Version: 1	Date: 2 March 2010
Related Publications: Consultation Paper: Extending the scope of Energy Performance Certificates and Making Better Use of Energy Performance Data		

Available to view or download at:

<http://www.communities.gov.uk>

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What is the problem under consideration? Why is government intervention necessary?

There is evidence suggesting the level of non-compliance with the Energy Performance of Buildings Directive in the non-domestic sector is somewhere between 50-80% covering buyers or tenants who do not get an EPC at all or at a very late stage in the process. There are a number of factors that may be contributing to this level of non-compliance including:

- misinterpretation of the regulations leading to an EPC being produced on exchange of contracts
- misconception that EPCs are inaccurate and an unnecessary burden.
- some landlords and sellers may be deliberately committing a breach

What are the policy objectives and the intended effects?

This policy proposes to amend Regulation 5(2) of the 2007 Regulations with the purpose of clarifying when an EPC is required during the process of selling or letting a building, with a particular emphasis on the lack of compliance in the non-domestic sector. It will require buildings owners or landlords to make the EPC available to prospective buyers or tenants no later than when a prospective buyer or tenant requests the information in writing about or to view the property in question. This will remove an erroneous belief that the building owner or landlord may delay making the EPC available up until the point of entering into a contract. Thus it will allow prospective buyers and tenants to take energy performance of buildings into consideration in a timely manner.

What policy options have been considered? Please justify any preferred option.

Do nothing - maintain the current Regulations without clarifying what is already required under the existing regulations.

Amend the regulations to make it clear that owners of non-domestic buildings are required to make EPCs available to prospective buyers or tenants at the earliest opportunity when selling or renting out a building.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

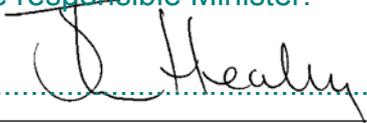
This policy will be reviewed 18 months after implementation. We will interrogate the England and Wales EPC Registers to determine whether there is increased compliance in the non domestic sector.

CLG are about to undertake research to see what the effect of introducing EPCs has been in terms of behaviour change and take-up of the recommendations in EPCs. This research will be completed by the end of 2010.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



..... Date: 26 February 2010

Summary: Analysis & Evidence

Policy Option: 2

Description: Amend the regulations to clarify when an EPC is required during the process of selling or letting a non-domestic building

COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>The proposal is to clarifying an existing requirement and so has minimal direct cost.</p>
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
<p>Other key non-monetised costs by 'main affected groups'</p> <p>It is hoped that the proposed clarification of existing requirements will contribute to providing incentives for the implementation of more energy efficiency measures in non domestic buildings. If it does then there will be costs of carrying out the energy efficiency improvement projects. Due to significant uncertainty there has been no attempt made to estimate the cost of the possible increase in the implementation of energy efficiency measures as a result of this proposal.</p>			

BENEFITS	ANNUAL BENEFITS		<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>Due to uncertainty there has been no attempt made to monetise the benefit of the possible increase in the implementation of energy efficiency measures as a result of this proposal.</p>
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>There are several non monetised benefits. See the main evidence base for more details. They include:</p> <ul style="list-style-type: none"> ensuring that prospective buyer and tenants are provided with details of the building's EPC rating at the earliest possible stage; enabling prospective buyers and tenants to focus their search on properties above a certain band or rating if they wish to; allowing landlords of buildings with high levels of energy efficiency to highlight that feature when they are marketing them for sale or rent; <p>It is hoped that the above will increase the incentives to introduce energy efficiency measures and so reduce fuel bills and reduce carbon emissions from the non domestic buildings</p>			

Key Assumptions/Sensitivities/Risks

- It is assumed that sellers and landlords are misinterpreting the Regulations rather than deliberately committing a breach. However, the risk of non-compliance might be seen as low by sellers and landlord and the notion that non-compliance is a low-risk option may continue even with clarification of the Regulations. If this is the case then many of the benefits will not be realised.
- It is not known whether provision of the EPC has had an impact on a buyer or tenant's decision to enter into a contract to buy or rent a building. Some consideration is being given to this issue separately.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £		
What is the geographic coverage of the policy/option?			England and Wales		
On what date will the policy be implemented?			TBA		
Which organisation(s) will enforce the policy?			LWMAs		
What is the total annual cost of enforcement for these organisations?			£		
Does enforcement comply with Hampton principles?			Yes/No		
Will implementation go beyond minimum EU requirements?			Yes/No		
What is the value of the proposed offsetting measure per year?			£ 0		
What is the value of changes in greenhouse gas emissions?			£ 0		
Will the proposal have a significant impact on competition?			Yes/No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		Yes/No	Yes/No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of £	Decrease of £	Net Impact		£	

Key: **Annual costs and benefits: Constant Prices** (Net) Present Value

Rationale for Government Intervention

Since 1 October 2008, an Energy Performance Certificate (EPC) has been required whenever any building in either the domestic or non-domestic sector is sold, rented out or constructed.

The Energy Performance of Buildings Directive¹ is intended to ensure that prospective buyers or tenants are able to use the information from an EPC to enable them to compare and contrast the energy performance of a building they are considering renting or buying with that of other buildings on the market at that time. The intended effect will not happen if the provision of an EPC is deferred until exchange of contracts.

Regulation 5(2) of the 2007 Regulations stipulates that, when selling or renting out a building, owners or landlords must make an EPC available to prospective buyers or tenants at the earliest opportunity. This is further explained within the 2007 Regulations as being when, at the request of a prospective buyer or tenant, information in writing is made available to, or the building is viewed by, them. The 2007 Regulations also currently contain a fallback option for making an EPC available prior to exchange of contracts. Regulation 5(2) currently says:

“The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant—

(a) at the earliest opportunity; and

(b) in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of—

(i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or

(ii) in the case of a person who makes a request to view the building, the time at which the person views the building”.

There is however evidence that significant numbers of owners and landlords of buildings in the non-domestic sector are not complying with this requirement. There are two primary sources of evidence:

- industry surveys, such as those conducted by National Energy Services² (NES) and Elmhurst³ suggest that approximately 70-85% of owners or landlords of non-domestic buildings are not complying with the requirements of the 2007 Regulations;
- the Regulatory Impact Assessment for articles 7-10 of the EPBD⁴ estimated that, following implementation, approximately 216,000 EPCs would be lodged annually in the non-domestic sector, but only 110,483 were in fact lodged during the course of 2009, the first full year for which information about the number of EPC lodgements in the non-domestic sector is available.

The evidence from the sources quoted above, while not entirely consistent, does suggest that the level of compliance in the non-domestic sector is low, and in fact lies somewhere between 20 and 50%. There appear to be two different levels of non-compliance.:

¹ Available online at: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2002&nu_doc=91

² Available online at: <http://www.nesltd.co.uk/news/epc-index-creeping-64-still-non-compliant>

³ Available online at: <http://www.elmhurstenergy.co.uk/news/29-non-domestic-epcs-for-commercial-properties-market-analysis-report.html>

⁴ Available online at:

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

- (a) those where building owners or landlords defer provision of an EPC until exchange of contracts, when it is too late to be of use to a prospective buyer or tenant in terms of their decision about which building to buy or rent. The evidence suggests that the level of non-compliance of this type may be as high as 85% in the non-domestic sector; and
- (b) those where building owners or landlords do not appear to provide an EPC at all. The evidence suggests that the level of non-compliance of this type may be as high as 50%.

Even though Regulation 5(2) applies to all buildings, the scale of non-compliance in the domestic sales market is reduced by the fact that an EPC is also a required document in a Home Information Pack.

There are a number of factors that may be contributing to this lack of compliance in the non-domestic sector, including:

- misinterpretation of the regulations to mean that it is acceptable for building owners not to make EPCs available to prospective buyers or tenants until exchange of contracts, which is likely to contribute to the type of non-compliance described at (a) above; and
- a misconception amongst building owners and commercial property agents that EPCs are an unnecessary burden, do not provide accurate information and/or do not add value, which is likely to contribute to both types of non-compliance described at (a) and (b) above.
- There may also be a lack of incentive for sellers or landlords to comply with the regulations if they believe that the risk of being penalised is low.

Policy Objectives and Intended Effects

This policy proposes to amend Regulation 5(2) so as to remove any doubt about the requirements set by the regulations by requiring that building owners or landlords must make an EPC available to prospective buyers or tenants at the earliest opportunity whenever a building is sold, rented out or constructed:

- (i) at the time that the building owner or landlord first makes available any information in writing about the building to a prospective buyer or tenant; or
- (ii) at the time that a prospective buyer or tenant views the building.

We propose to remove the opportunity for owners or landlords of buildings to defer making an EPC available to prospective buyers or tenants of buildings until exchange of contracts, by which time it is too late for the EPC to influence their decision. The proposed amendments would be intended to remove the scope for misinterpretation of what the regulations require and when. These changes are likely primarily to address the type of non-compliance described at (a) above, although it should also assist Trading Standards Officers, who are responsible for enforcement. It will provide them with greater certainty about whether or not individual building owners or landlords have complied or not with the regulations when selling or renting their building out, and so help them decide whether or not to take enforcement action. This may indirectly lead to a fall in the level of non-compliance described at (b) above by increasing the level of perceived risk amongst building owners and landlords that enforcement action will result if they fail to comply. At present, there have been no reports of any fixed penalty notices having been issued for non-compliance in the non-domestic sector.

The proposed amendment would only be intended to clarify the existing requirement that building owners and landlords must make an EPC available to prospective buyers or tenants at the earliest opportunity.

Options Considered

Two main options have been considered:

1. Do nothing - maintain the current regulations without clarifying what is already required under the existing regulations.

2. Amend the regulations to make it clear that owners of non-domestic buildings are required to make EPCs available to prospective buyers or tenants at the earliest opportunity when selling or renting out a building.

The preferred option is Option 2.

This ensures prospective buyers and tenants have the opportunity to factor the energy efficiency of the property they are considering into their decision making as early as possible.

Risks and Uncertainties

There is some uncertainty about whether amending the 2007 Regulations will address all factors leading to non compliance in the non domestic sector. There are a number of other factors which may be affecting compliance:

- the penalty charge payable for failure to make an EPC available on a non-domestic building being sold or rented out is not prohibitive as the fee for obtaining a non domestic EPC is likely to be greater than the penalty for non-compliance. The fixed penalty for not making an EPC available to prospective buyers or tenants is set at 12.5% of the rateable value of the property, subject to a minimum of £500 and a maximum of £5,000, and with a default amount of £750 in the absence of there being a rateable value. There is also a fixed penalty of £200 for failing to make an EPC available to an enforcement officer when requested to do so. The cost of having a non-domestic EPC prepared is determined by the market and will vary considerably depending on the size and complexity of the building to which it applies.
- when private dwellings are marketed for sale, an EPC is a mandatory document for inclusion in a Home Information Pack (HIP). The HIP regulations make the estate agent responsible for ensuring that an EPC has been included in the HIP. For sale and rental of all other properties (including dwellings being rented out) the landlord is responsible for making an EPC available to prospective buyers or tenants. It is unknown whether making a third party, such as an estate agent, responsible for ensuring that an EPC is made available to prospective buyers or tenants in other sectors, as well as dwellings for private sale, would help to ensure better levels of compliance.
- we are about to undertake research to see what the effect of introducing EPCs has been in terms of behaviour change and take-up of the recommendations in EPCs, this research will be completed by the end of 2010.

Estimate of Costs for Preferred and Alternative Options

OPTION 1

There are no additional costs for this option as it proposes to maintain the current regulations without requiring EPC ratings on advertisements for dwellings being rented out.

OPTION 2

There are no additional costs for this option either since the amendment is only intended to clarify existing requirements.

Monetised/Quantified Costs and Benefits

It is hoped that the proposed clarification of existing requirements will contribute to providing incentives for the implementation of more energy efficiency measures in non domestic buildings. If it does then there will be both costs and benefits of carrying out the energy efficiency improvement projects. Due to significant uncertainty there has been no attempt made to monetise the cost and benefits of the possible increase in the implementation of energy efficiency measures as a result of this proposal.

Non monetised Costs and Benefits

Clarifying the point in the process of selling or renting out a non-domestic property, that an EPC is required, will remove the scope for misinterpretation amongst both those responsible for

providing the EPC, i.e. building owners and landlords, and those responsible for enforcing the requirements, i.e. Trading Standards Officers. Making EPCs available in accordance with the requirements will have a number of benefits for prospective tenants and landlords including:

- ensuring that prospective buyer and tenants are provided with details of the building's EPC rating at the earliest possible stage;
- enabling prospective buyers and tenants to focus their search on properties above a certain band or rating if they wish to;
- allowing landlords of buildings with high levels of energy efficiency to highlight that feature when they are marketing them for sale or rent;
- improving awareness of energy efficiency and the contributions that buildings can make to reducing carbon emissions;
- increasing transparency; and
- improving compliance with the current requirements

It is hoped that the above will increase the incentives to introduce more energy efficiency measures and so reduce fuel bills and reduce carbon emissions from the non domestic buildings.

Consultation Process

This impact assessment accompanies a consultation paper; the consultation period runs between 2nd March 2010 and 25th May 2010, and is carried out in line with current best practice guidance. We are seeking views on this Impact Assessment and would invite respondents to submit any evidence that may be relevant to the consultation proposals and this Impact Assessment.

Enforcement and Compliance

Trading Standards Officers in local weights and measures authorities are responsible for the enforcement regime; this responsibility will remain the same.

Monitoring and Review

This policy would be monitored closely throughout implementation and formally reviewed after 18 months in operation. We will interrogate the EPC Register to determine whether there is increased compliance in the non domestic sector.

We are about to undertake research to see what the effect of introducing EPCs has been in terms of behaviour change and take-up of the recommendations in EPCs.

Wider Impacts

Competition assessment: Clarifying the existing requirement for EPCs to be made available to the prospective buyer or tenant of any property (in the domestic or non-domestic sector) will not produce any competition issues.

Small firms Impact: Clarifying the existing requirement for EPCs to be made available to the prospective buyer or tenant of any property (in the domestic or non-domestic sector) will not have any impact on the SME sector, other than to make what is already an existing requirement clearer and thus more easy to comply with.

Legal Aid: The proposal does not have any Legal Aid implications

Sustainable Development: The proposal does not have any additional sustainable development implications over and above those that apply to the EPC. Obtaining an EPC does not have a direct impact but adopting any of the recommendations accompanying the Certificate would by reducing carbon emissions.

Carbon Assessment: The proposal does not have any additional carbon saving implications over and above those that apply to the EPC. Obtaining an EPC does not have a direct impact

but adopting any of the recommendations accompanying the certificate would by reducing carbon emissions.

Environmental Impact: Obtaining an EPC does not have a direct impact but adopting any of the recommendations accompanying the Certificate would by reducing carbon emissions.

Health Impact: The proposal does not have any health implications.

Equalities Impact: An Equalities Impact Assessment screening has been completed, covering race, age, health, disability and gender equality issues. Providing energy efficiency information is equalities neutral.

Human Rights: The proposal does not have any impact on human rights.

Rural proofing: These proposals are neutral in relation to rural properties.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

