



Department for
Communities and
Local Government

Improving the energy efficiency of our buildings

Local weights and measures authority guidance for energy
performance certificates and air conditioning inspections for
buildings

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Foreword

The guidance is intended to help enforcement agencies to understand how the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012 and the Directive, on which these regulations are based, work in practice. How to apply the regulations, what the responsibilities are for sellers and landlords, building owners and occupiers, builders and their agents and the role for enforcement agencies in making sure that these responsibilities for providing energy performance certificates and air conditioning inspection reports are met.

This guidance offers background on the legal framework for energy certificates and air conditioning inspections and on the powers and processes for enforcement by local weights and measures authorities.

This guide describes the scope and requirements of the regulations and provides guidance on how these should be applied. Though this guidance aims to explain how the requirements will work in practice, any interpretation of the regulations is offered only as a guide.

The Department for Communities and Local Government cannot provide legal advice nor can it provide a definitive interpretation of the law as only the courts are able to do this. Therefore, it is important to read and understand the regulations as well. In cases of doubt, enforcement authorities should obtain their own legal advice.

The Department has provided £3.4m for 2008/09 and £1.8m thereafter 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.

This document is part of a suite of documents that explains the requirement for energy performance certificates, display energy certificates, and air conditioning inspections in England and Wales only. Buildings in Northern Ireland and Scotland are subject to separate regulatory requirements and are not covered by or referred to in this guidance.

Key points:

- sellers and landlords are responsible under the regulations for providing energy performance certificates on their buildings when these are sold or rented out
- energy performance certificates are valid for 10 years and can be reused as required within that period. A new energy performance certificate is not required each time there is a change of tenancy, or the property is sold, provided it is no more than 10 years old. Where more than one is produced, the most recent energy performance certificate is the valid one
- for all sales or lettings of both dwellings and non-dwellings an energy performance certificate must be made available to any prospective buyers or tenant by the seller or landlord at the earliest opportunity and no later than the time at which information in writing is first given on request to such a person, or such a person views the building concerned. An energy performance certificate made available for these purposes must be accompanied by its recommendation report
- from 9 January 2013 when all buildings or building units are offered for sale or rent, the asset rating of the building in the energy performance certificate must be stated in commercial media where one is available
- from 9 January 2013 it is a requirement for all non-dwellings over 500m² frequently visited by the public to display a valid energy performance certificate in a prominent place clearly visible to members of the public. This will only apply to buildings where an energy performance certificate has been produced for that building
- buildings over 1,000m² occupied by a public authority and frequently visited by the public (such as hospitals, local or central government buildings) are responsible for showing a display energy certificate in a prominent place. The display energy certificate is valid for one year and the report is valid for seven years
- from 9 January 2013 buildings over 500m² occupied by a public authority frequently visited by the public are responsible for showing a display energy certificate in a prominent place. The display energy certificate and the report are valid for 10 years. This threshold will fall to 250m² in July 2015
- local weights and measures authorities are the enforcement authority responsible for ensuring that a valid energy performance certificate or display energy certificate is provided or shown
- local weights and measures authorities have similar duties for ensuring that the person who has control of the operation of an air conditioning system with an effective rated output greater than 12kW is in possession of an inspection report. Systems must be inspected at regular intervals not exceeding five years
- local weights and measures authorities as enforcement authorities have powers to require the production of an energy performance certificate and recommendations report, display energy certificate and report and air conditioning inspection report for inspection. An authorised officer of an enforcement authority can also ask for evidence to confirm that an energy performance certificate has been commissioned before marketing takes place. They may serve penalty notices for failure to comply with duties in respect of any of these documents for buildings
- energy assessor accreditation schemes will handle other aspects of the regulations, including ensuring that assessors work to appropriate standards, checking the quality and accuracy of certificates and inspection reports and handling complaints against assessors for unacceptable work or behaviour

- when a building being constructed is physically complete, it is the responsibility of the person carrying out the construction to give an energy performance certificate and recommendation report to the building owner and to notify building control that this has been done. The duties relating to energy performance certificates do not apply until construction of the building has been completed

Chapter 1

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

The recast of the EU Directive (2010/31/EU) for the energy performance of buildings comes into force on 9 January 2013. These amend the provisions relating to energy performance certificates, display energy certificates and air conditioning inspection reports which were first transposed into legislation in March 2007. 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

What this means for England and Wales

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (the regulations) came into force on a phased basis, from 1 August 2007 to 1 October 2008, and covered the energy certification of buildings and the inspection and assessment of air conditioning systems.

The Energy Performance of Buildings (England and Wales) Regulations 2012 implement (in England and Wales) parts of Directive 2010/31/EU on the energy performance of buildings. The Directive lays down requirements for the energy performance certificates when buildings are sold or rented out. Copies of the statutory instruments, which implement the regulations, are available from the www.legislation.gov.uk website.

What are the requirements?

An energy performance certificate is required when a building, which by definition includes a part of a building or a building unit, which has been designed or altered to be used separately, is sold, rented out or when construction has been completed:

- for non-dwellings, this requirement started for buildings with a total useful floor area 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

- the current requirement for all marketed sales of homes requiring an energy performance certificate came into force on 1 August 2007 on a phased basis
- all remaining homes when sold (non - marketed sales) required an energy performance certificate from 1 October 2008
- this requirement started from 1 October 2008 for homes when rented
- this requirement started from 6 April 2008 for homes at the end of construction

If contracts were exchanged, or the same tenant remains in occupation of the building, before the coming into force date for an energy performance certificate in relation to the category of building in question, then no energy performance certificate is required.

Non-marketed sales of dwellings that are sold but not marketed will need an energy performance certificate. This requirement started from 1 October 2008. An example of non-marketed sale, which requires an energy performance certificate, is a private non-marketed sale, for example, between family members.

Homes which were rented out before 1 October 2008 and where the tenancy of that property has not changed will not require an energy performance certificate. If, however, that tenancy changes an energy performance certificate must be produced so that it can be seen by prospective tenants.

For holiday accommodation, an energy performance certificate is required whenever a property is rented out (unless it is used for less than four months in a year), including when it is rented for use as holiday accommodation. A rental arrangement is one where a person pays the property owner for the exclusive use of the property.

An EPC is not required for a holiday let where the property is rented out for less than four months in a year or it is let under a license to occupy - regardless of the amount of time it is occupied. Guidance has been published at:

webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/planningandbuilding

A display energy certificate must be displayed in a prominent place in buildings:

- where the total useful floor area of the building is greater than 1000m², the building is occupied by a public authority and frequently visited by the public. In these circumstances the display energy certificate is valid for one year
- from 9 January 2013 this requirement will apply to buildings with a total useful floor area of over 500m², occupied by a public authority and frequently visited by the public. In these circumstances display energy certificates are valid for 10 years
- where an air conditioning system was in operation before 1 January 2008, an air conditioning inspection is required if the effective rated output of the system 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. Where an air conditioning system is first in operation on or after 1 January 2008 the first inspection must take place by the last day of the five year period on which the system first came into service. From 6 April 2012, it will be statutory requirement for all air conditioning inspection reports produced on or after this date to be lodged on the central register.

Chapter 2

Responsibilities and exemptions

Who is responsible for ensuring certificates and inspections are done?

Regulation	Area of responsibility	Relevant person
E 6(2) and 6(5)	The EPC is made available free of charge to any prospective buyer or tenant, and given to the eventual buyer or tenant.	The relevant person (i.e. the seller or landlord).
x 7(2) and (3)	The relevant person must ensure that an EPC is commissioned before marketing the building for sale or rent.	The relevant person (i.e. the seller or landlord).
m 7(3)	A person acting on behalf of the relevant person must satisfy themselves that an EPC has been commissioned before marketing on their behalf.	A person acting on their behalf (e.g. the property or letting agent).
p 7(4) and 7(5)	The relevant person and the person acting on their behalf must use all reasonable efforts to ensure that the EPC is obtained within 7 days of the start of marketing. The EPC must be obtained within the period of 21 days following the expiry of the 7 day period mentioned in 7(4).	The relevant person and/or a person acting on their behalf (e.g. the property or letting agent).
b 14(3)	Buildings over 500m ² occupied by public authorities and frequently visited by the public must display a DEC in a prominent place clearly visible to the public and have in its possession at all times a valid report. A DEC for buildings over 1,000m ² will be valid for one year. For buildings between 500m ² and 1000m ² a DEC will be valid for 10 years.	The public authority occupying the building.
u 18(1), 20 and 21	Air conditioning systems with an effective rated output of more than 12kW must be inspected at intervals not exceeding 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 person who has control of the operation of the air conditioning system.
i 35(5)	A valid EPC, recommendation 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 the person who has control of the operation of the air conditioning system respectively.
d		

Exempt buildings

The following buildings do not need energy performance certificates:

- buildings and monuments officially protected as part of a designated environment or because of their special architectural or historic merit in so far as compliance with certain energy efficiency requirements would unacceptably alter their character or appearance
- buildings used as places of worship and for religious activities
- temporary buildings with a planned time of use of two years or less, 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, i.e. those buildings which are entirely detached
- crown and statutory undertakers' buildings are also included in the requirements

The duty which requires an energy performance certificate to be given or made available to a prospective buyer or tenant at any time does not apply before construction of the building has been completed.

Buildings suitable for demolition are also exempt, provided the seller or owner can demonstrate that the conditions, regulation 8(1) for dwellings and regulations 8(2) and 8(3) for non- dwellings, in the Energy Performance of Buildings (England and Wales) Regulations 2012 are met.

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Chapter 3

The process

This section looks at the process for getting an energy certificate or inspection report for a building, and the duties involved. The same requirements apply in law under the regulations regardless of whether it is a dwelling or non-dwelling.

Who is responsible for getting energy performance certificates, display energy certificates and air conditioning inspections?

Regulation 2 (1) states that the relevant person is responsible for providing an energy performance certificate, display energy certificate or air conditioning inspection report. Under regulation 14, 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 or rent, it is the responsibility of the seller or landlord to make available an energy performance certificate and recommendation report, free of charge, to a prospective buyer or tenant
- when a building being constructed is physically completed, it is the responsibility of the person carrying out the construction to give the energy performance certificate to the building owner and to notify building control 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 total useful floor area of 500m² 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 at all times in a prominent place clearly visible to the public and have a valid report in their possession
- for enforcement purposes, it is always the responsibility of the relevant person to make sure that the energy performance certificate 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 (e.g. a property or letting agent).

When must the documents be made available?

For all sales and rentals, the energy performance certificate and recommendation report must be made available to any prospective buyer or tenant at the earliest opportunity and in any event no later than, whichever is the earlier of, 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 such a person.

The display energy certificate should be prominently displayed at all times in a

prominent place clearly visible to the public.

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

Production of energy certificates and accreditation schemes

All energy assessors producing energy certificates (energy performance certificates and display energy certificates) and air conditioning inspection reports 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 accreditation schemes are expected to achieve.

Validity of documents

An EPC is valid for 10 years, when the property is first marketed, however, if a newer energy performance certificate is produced only the latter will be the valid energy performance certificate for the building.

A display energy certificate for a building over 1,000m² is valid for a period of one year. A display energy certificate for a building between 500m² and 1,000m² is valid for 10 years.

An air conditioning report is valid for five years.

Chapter 4

Enforcement of the regulations

Regulations 34 – 43 of The Energy Performance of Buildings (England and Wales) Regulations 2012 deal with enforcement and outline the powers and the responsibilities of enforcement authorities and their officers.

Summary of enforcement provisions

The main features of the enforcement provisions are as follows:

- it is the duty of every local weights and measures authority to enforce the energy performance certificate, display energy certificate and air conditioning inspection duties in its area (regulation 34)
- they have power to require a person to produce within seven days an energy performance certificate a 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 35)
- where a breach of duties is believed to have taken place, including the duty under regulation 35 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 36)
- 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 (regulation 39)
- 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 40)
- the penalty charge amount is recoverable as a debt (regulation 41)
- 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 43)

Under the Energy Performance of Buildings (England and Wales) Regulations 2012 enforcement officers have no powers to check the accuracy of the energy efficiency information in the energy performance certificate, display energy certificate or air conditioning inspection report. They can only check that it has been issued by an accredited assessor and entered into the national register (operated by Landmark Information Group) in relation to the building featured in the transaction and is valid in respect of time.

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 energy performance certificate and recommendation report, display energy certificate 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.

Penalty charge notices

There is no statutory form notice. The notice 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 the breach relates to the sale or rent of a dwelling, the penalty is £200 for failing to make available an energy performance certificate or recommendation report to any prospective buyer or tenant or to give an energy performance certificate or recommendation report to the person who ultimately becomes the buyer or tenant
- where the breach relates to a non-dwelling, the penalty for failing to make an energy performance certificate 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 rateable¹ 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
- for failure to display a display energy certificate 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

¹ 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.

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 37

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

Defences

Regulation 37 establishes two defences where an energy performance certificate is not obtainable in time:

1. A person will not be liable to a penalty charge where they can show that he is not the person to whom the duty under regulations 7(2) applies and he made a request to an energy assessor to obtain an energy performance certificate as soon as possible after he became subject to the duty and despite all reasonable efforts and enquiries has been unable to obtain it.

The request for an energy performance certificate in these circumstances must have been addressed to an energy assessor likely to be able to provide an energy performance certificate for the category of building in question, and accompanied by the necessary payment or an undertaking to pay.

2. 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 energy performance certificate available, 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 energy performance certificate to the tenant as soon as is reasonably practicable.

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

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.

Offences relating to enforcement officers

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

Enforcement Checklist

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

- is the relevant person claiming the property is exempt? If so, consider whether this is correct, consulting relevant energy performance certificate, display energy certificate and air conditioning inspection guidance and the regulations
- if the relevant person is claiming that an energy performance certificate, display energy certificate or air conditioning report is completely unobtainable, is this correct/does it seem reasonable?
- is the energy performance certificate and/or display energy certificate authentic, i.e. has it been entered on to the national register
- is the air conditioning inspection report authentic? All reports produced on or after 6 April 2012 must be lodged on the national register
- has the relevant person unjustifiably failed to make available a copy of the energy performance certificate to a potential buyer or tenant?
- has the relevant person provided evidence to confirm that they either have in their possession or have commissioned an energy performance certificate before marketing a building for sale or rent?
- has a person acting on behalf of the relevant person provided sufficient evidence to confirm that an energy performance certificate has been commissioned before marketing?

- has the relevant person or the person acting on their behalf without reasonable excuse taken longer than allowed (seven days) to produce a document to the enforcement officer?
- has the relevant person or the person acting on their behalf without reasonable excuse taken longer than the additional 21 days allowed to produce a document to the enforcement officer?
- 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)?
- has the relevant person imposed any unreasonable conditions on the potential buyer seeing the EPC or charged for providing a copy of the EPC?
- is action other than a penalty charge notice a more appropriate exercise of enforcement functions in the particular case e.g. a warning?

Chapter 5

The EPC Register

All energy certificates (energy performance certificates and display energy certificates) and associated recommendation reports or must be entered on to the central register, maintained by Landmark Information Group, on behalf of the Secretary of State.

Air conditioning reports produced on or after 6 April 2012 must be entered on the national register. Reports produced before this date may have been lodged on a voluntary basis.

There are two separate national registers, one for dwellings and the other for non-dwellings and air conditioning inspection reports.

Access to and disclosures from the register

The register is an archive of all energy performance certificates, display energy certificates and associated reports produced by energy assessors. Where appropriate, some air conditioning inspection reports are also lodged on the register. 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 the 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 report reference number, which can be found on the certificate. Since 22 April 2012, the register operator can disclose energy performance certificates to those persons in regulation 2(1) of the Energy Performance of Buildings Regulations, subject to certain safeguards.

A copy of the energy certificate or inspection report can also be downloaded from the central register website (www.epcregister.com) using the building address. Unless the owner of the building has opted-out of making the energy certificate or inspection report available in this way.

Any other person who is in possession of register data may only disclose data in accordance with regulations 30, 31 and 32 of the Energy Performance of Buildings (England and Wales) Regulations 2012. Any other disclosure by such a person is an offence and may result in a fine not exceeding level five (currently £5,000).

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, display energy certificate or air conditioning inspection report (if appropriate) or verify that the person who produced the assessment is properly qualified and accredited, go to www.epcregister.com. Authorised officers are able to search for a report by the property's address.

Information for enforcement officers on how to install the digital certificates that allow access to the appropriate user area of the national register(s) website can be found in the following document: *Domestic and Non- Domestic EPC Registers - Enforcement Officer User Guide*.

Knowledge hub group

Trading standards officers also have access to the knowledge hub online community to share information run by the Local Government Association. This promotes greater uniformity of enforcement, assist with shared networking and information gathering. The Hub can be accessed at: knowledgehub.local.gov.uk

