



Department for  
Communities and  
Local Government

# Improving the energy efficiency of our buildings

Local Weights and Measures Authority guidance for the  
enforcement of the requirements of the Energy Performance of  
Buildings (England and Wales) Regulations 2012

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April 2014

ISBN: 978-1-4098-4214-9

# Foreword

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

This guidance offers background on the legal framework for energy performance certificates and air-conditioning inspection reports and on the duties for enforcement by local weights and measures authorities.

This guide describes the scope and requirements of the regulations and provides guidance on how these may be applied. Although this guidance aims to explain how the requirements may 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 provided £3.4m for 2008/09 and £1.8m thereafter to help fund these duties. This is not ring-fenced 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 (EPCs), display energy certificates (DECs) and air conditioning inspection reports under the Energy Performance of Buildings (England and Wales) Regulations 2012. Buildings in Northern Ireland and Scotland are subject to separate regulatory requirements and are not covered by or referred to in this guidance.

# Energy Performance of Buildings Regulations Enforcement – key facts

- It is the duty of every local weights and measures authority to enforce in their area: the making available of energy performance certificates; the appropriate commissioning and obtaining of energy performance certificates; the displaying of energy performance certificates; the inclusion in advertisements of energy performance indicators; compliance with the requirements regarding air-conditioning inspections; and ensuring that required documents are produced within seven days.
- Local weights and measures authorities have a range of measures at their disposal, from education and encouragement to the issuing of penalty charge notices. It is for them to determine the course of action that is appropriate for the circumstances.
- Sellers and landlords are responsible under the Regulations for providing energy performance certificates for 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 any relevant recommendation report.
- When all buildings or building units are offered for sale or rent, the energy performance indicator of the building in the energy performance certificate must be stated in commercial media where one is available.
- It is a requirement for all non-dwellings over 500m<sup>2</sup> and frequently visited by the public, that have a valid energy performance certificate to display it in a prominent place clearly visible to members of the public. There is no obligation to obtain an energy performance certificate for this purpose.
- Buildings over 1,000m<sup>2</sup> occupied by a public authority and frequently visited by the public must have and display a display energy certificate in a prominent place. Display energy certificates are valid for one year and recommendation reports are valid for seven years.
- Buildings over 500m<sup>2</sup> occupied by a public authority frequently visited by the public must have and display in a prominent place a display energy certificate in a prominent place. Display energy certificates and recommendation reports are valid for ten years. This threshold will fall to 250m<sup>2</sup> in July 2015.

# Chapter 1

## Obligations

### **Why is an EPC/DEC/air-conditioning inspection required?**

The EU Directive on the energy performance of buildings (the Directive) came into effect progressively from 2007 and is an important part of the government's strategy to tackle climate change. The current requirements are set out in the Energy Performance of Buildings (England and Wales) Regulations 2012 (the regulations). These came into effect on 9 January 2013.

The principle underlying both the Directive and the regulations is to make energy efficiency of buildings transparent by informing the recipient of these certificates and reports about their building's or system's current energy performance and make recommendations on how to improve energy efficiency.

### **What buildings require EPCs?**

Any reference to a building includes a reference to a building unit in that building, except where otherwise stated.

Existing buildings need an EPC when they are to be sold or rented out.

An EPC is valid for 10 years or until a newer EPC is produced for the same building no matter how many times the property is sold or rented out during that period. Existing occupiers and tenants will not require an EPC unless they sell, assign or sublet their interest in a building.

A building offered for sale or rent, must include the energy performance indicator of the building as shown on the EPC, for example C, in any advertisements in the commercial media<sup>1</sup>. There is no requirement to include the full EPC in these advertisements; however, there are some circumstances in which full EPCs must be displayed.

Buildings with a total useful floor area of more than 500m<sup>2</sup> which are frequently visited by the public and have a valid EPC must display it in a prominent location. There is no need to obtain an EPC specifically for this purpose, but if the property has one, it must be displayed.

It should be noted that having and displaying an EPC does not mean that a building does not also need a DEC, if it meets the criteria.

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<sup>1</sup> Commercial media includes: newspapers and magazines; written material produced by the seller / landlord / estate or letting agent that describes the building being offered for sale or rent, the internet.

## What buildings require DEC's?

All buildings occupied by a public authority where the total useful floor area is greater than 500m<sup>2</sup> and frequently visited by the public must obtain and display a DEC. For buildings over 1,000m<sup>2</sup>, the DEC will be valid for one year and the recommendation report for seven. For all other buildings, both the DEC and the recommendation reports will be valid for ten years.

It should be noted that having and displaying a DEC does not mean that a building does not also need an EPC, if it meets the criteria.

## What buildings require air-conditioning inspections?

An air-conditioning inspection is required if the effective rated output of the system within a building is more than 12kW. These must be carried out at least every five years.

## Situations where an EPC is not required

An EPC is generally not required where the seller or landlord can demonstrate that the building is any of these:

- officially protected<sup>2</sup> as part of a designated environment or because of their special architectural or historic merit where compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance
- temporary buildings with a planned time of use of two years or less
- Industrial sites, workshops, non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance
- residential buildings which are intended to be used less than four months of the year or where the owner or landlord could reasonably expect the energy consumption of the building to be less than 25% of all year round use
- stand-alone buildings with a total useful floor area of less than 50m<sup>2</sup> (i.e. buildings entirely detached from any other building)

A building is also exempt where the seller or landlord can demonstrate that:

- the building is suitable for demolition
- the resulting site is suitable for redevelopment
- all the relevant planning permissions, listed building consents and conservation area consents exist in relation to the demolition, and
- in relation to the redevelopment, either outline planning or planning permission exists and where relevant listed building consents exist

Holiday lets may not need an EPC. An EPC will only be required for a property rented out as a furnished holiday let, as defined by HMRC, where the building is occupied for the purposes of a holiday as a result of a short term letting arrangement of less than 31 days

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<sup>2</sup> Listed buildings on the English Heritage (or its Welsh equivalent) website ([www.english-heritage.org.uk/caring/listing/listed-buildings](http://www.english-heritage.org.uk/caring/listing/listed-buildings))

to each tenant, and is rented out for a combined total of four months or more in any 12 month period, and if the occupier is responsible for meeting the energy costs for the property. **The property must meet all the conditions of a furnished holiday let as defined by HMRC and the occupant must not be responsible for the energy costs in order for an EPC not to be necessary.** Please see the Glossary for the full definition of a Furnished Holiday Let.

An EPC is not required for an individual room in a dwelling when it is rented out, as it is not a building or a building unit designed or altered for separate use. The whole building will require an EPC if sold or rented out.

DCLG is unable to provide specific advice regarding whether any of these exemptions may apply to specific properties. Specialist advice relevant to the circumstances should be sought.

There are no other exemptions from the EPC obligations although there may be some transactions which do not qualify as a sale or renting out (see Chapter 2, *Transactions not considered a sale or rent*). If in doubt, legal advice should be sought.

**There are no exceptions to the requirement to have a DEC. If the building has a total useful floor area greater than 500m<sup>2</sup> and is occupied by a public authority and frequently visited by the public, a DEC must be obtained and displayed.**

**There are no exceptions to the requirement to have an air-conditioning inspection if the effective rated output of the system within a building is more than 12kW.**

# Chapter 2

## Enforcement of the regulations

Regulations 34 – 43 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118) deal with enforcement and outline the powers and the responsibilities of enforcement authorities and their officers.

### What is it your duty to enforce and against whom?

The following table contains a brief summary of the Energy Performance of Buildings (England and Wales) Regulations 2012 that it is the duty of local weights and measures authorities to enforce.

Regulation	Area of responsibility	Relevant person
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)
7(2)	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)
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 behalf of the seller or landlord (e.g. the property or letting agent)
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)
10(2)	The energy performance certificate must be valid and must be displayed in a prominent place clearly visible to members of the public who visit the building, where a building has a total useful floor area of over 500m <sup>2</sup> , is frequently visited by the public and an EPC has been made available.	The landlord or owner

11(2)	The energy performance indicator of the building expressed in the energy performance indicator must be stated in any advertisement of the sale or rental in commercial media.	The person placing the advertisement (relevant person or person acting on their behalf)
14(3)	Buildings over 500m <sup>2</sup> occupied by public authorities and frequently visited by the public must display a DEC in a prominent place clearly visible to the public and the occupier of the building must have in their possession or control at all times a valid recommendation report.	The public authority occupying the building
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
35(5)	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 the person who has control of the operation of the air-conditioning system respectively

## What penalties may be imposed?

It is the decision of the enforcement authority or its authorised officer to determine what action is appropriate when they find that breaches of the regulations are being committed. It may be that providing advice and information is sufficient to ensure compliance. In some cases educating the relevant person regarding the benefits of knowing the cost-effective energy efficiency improvements they could make may be all the encouragement needed to ensure compliance with the requirements. However, in some cases, it may be that only imposing a penalty will do. It is for the enforcement authority or its authorised officer to decide what is the appropriate action in the circumstances.

The table following summarises the penalties that may be imposed by the enforcement authority or its authorised officer, through serving a penalty charge notice.

Regulation	Requirement	Penalty for breach
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.	£200 (dwelling)  Calculated according to the formula in 38(2) (non-dwelling)
7(2)	The relevant person must ensure that an EPC is commissioned before marketing the building for sale or rent.	£200 (dwelling)  Calculated according to the formula in 38(2) (non-dwelling)
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.	£200(dwelling)  Calculated according to the formula in 38(2) (non-dwelling)
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).	£200(dwelling)  Calculated according to the formula in 38(2) (non-dwelling)
10(2)	The energy performance certificate must be valid and must be displayed in a prominent place clearly visible to members of the public who visit the building, where a building has a total useful floor area of over 500m <sup>2</sup> , is frequently visited by the public and an EPC has been made available.	£500
11(2)	The energy performance indicator of the building expressed in the energy performance indicator must be stated in any advertisement of the sale or rental in commercial media.	£200
14(3)(a)	The occupier of a building over 500m <sup>2</sup> occupied by a public authority and frequently visited by the public must have in their possession or control at all times a valid recommendation report.	£1,000
14(3)(b)	Buildings over 500m <sup>2</sup> occupied by public authorities and frequently visited by the public must display a DEC in a prominent place clearly visible to the public.	£500

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.	£300
35(5)	A valid EPC, recommendation report, advisory report or air-conditioning inspection report must be produced when required by an enforcement authority within seven days.	£200

## Defences

Regulation 37 sets out the circumstances in which a person shall not be liable to a penalty charge for not making an EPC available to a prospective tenant. These include where a person is able to demonstrate that they have made all reasonable efforts to obtain an EPC since becoming subject to the duty, and where the urgent relocation of a tenant was required.

## Reviews

Regulation 39 sets out an enforcement authority's obligations regarding the conduct of reviews of the issuing of penalty charge notices. These include considering any representations made by the recipient of the penalty charge notice and deciding whether to confirm or withdraw the penalty charge notice. It also sets out the circumstances in which the authority shall withdraw the penalty charge notice.

## Appeals

If the recipient of the penalty charge notice remains unsatisfied after the conclusion of the review, they may appeal to the county court on any of the grounds specified in regulation 40.

## Duty to cooperate

Regulation 45 sets out the duty of a person with an interest in, or in occupation of, a building, to cooperate with any seller or landlord to enable them to comply with requirement to make an EPC available. They must also allow access to the building to any energy assessor appointed by the seller or landlord. The penalty for obstructing an enforcement officer or for imitating an enforcement officer is a fine not exceeding level 5 on the standard scale, upon summary conviction.

# Glossary of terms

A **building** means ‘a roofed construction having walls, for which energy is used to condition the indoor climate’.

A **building unit** means ‘a section or floor within a building that has been designed or altered to be used separately’.

A **stand-alone** building is defined as a building that is free standing, i.e. entirely detached from any other building.

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 guidance issued to surveyors:

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

A **dwelling** means a self-contained unit designed to provide living accommodation for a single household. This would imply that it does not share kitchen and bathroom facilities.

A **non-dwelling** is a building that is not a dwelling, such as retail units and offices.

If a **building** that is to be used for **industrial or commercial purposes** (e.g. 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 (e.g. a small manager’s flat in a large non-domestic building would not mean the whole should be treated as a dwelling).

**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.

**Rooms for residential purposes are not dwellings.** A Room for residential purposes is defined in the Building Regulations 2010 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, , but does not include a room in a hospital, or other similar establishment, used for patient accommodation

A **furnished holiday let** meets the definition provided in s.323 – s.326A of the Income Tax (Trading and Other Income) Act 2005, as amended in April 2012, set out below:

**323 Meaning of “commercial letting of furnished holiday accommodation”**

(1) A letting is a lease or other arrangement under which a person is entitled to the use of accommodation.

(2) A letting of accommodation is commercial if the accommodation is let—

- (a) on a commercial basis, and
- (b) with a view to the realisation of profits.

(3) A letting is of furnished holiday accommodation if—

- (a) the person entitled to the use of the accommodation is also entitled, in connection with that use, to the use of furniture, and
- (b) the accommodation is qualifying holiday accommodation (see sections 325 and 326).

(4) This section applies for the purposes of this Chapter.

**324 Meaning of “relevant period” in sections 325 and 326**

(1) For the purposes of sections 325 and 326 “the relevant period” for accommodation let by a person in a tax year is determined as follows.

(2) If the accommodation was not let by the person as furnished accommodation in the previous tax year, “the relevant period” is 12 months beginning with the first day in the tax year on which it is let by the person as furnished accommodation.

(3) If the accommodation—

- (a) was let by the person as furnished accommodation in the previous tax year, but
- (b) is not let by the person as furnished accommodation in the following tax year, “the relevant period” is 12 months ending with the last day in the tax year on which it is let by the person as furnished accommodation.

(4) Otherwise “the relevant period” is the tax year.

### **325 Meaning of “qualifying holiday accommodation”**

(1) Accommodation which is let by a person during a tax year is “qualifying holiday accommodation” for the tax year if the availability, letting and pattern of occupation conditions are met.

(2) The availability condition is that, during the relevant period, the accommodation is available for commercial letting as holiday accommodation to the public generally for at least 210 days.

(3) The letting condition is that, during the relevant period, the accommodation is commercially let as holiday accommodation to members of the public for at least 105 days.

(4) For the purposes of the letting condition, a letting of accommodation for a period of longer-term occupation (see subsection (6)) is not a letting of it as holiday accommodation.

(5) The pattern of occupation condition is that, during the relevant period, not more than 155 days fall during periods of longer-term occupation.

(6) For the purposes of this section a “period of longer-term occupation” is a continuous period of more than 31 days during which the accommodation is in the same occupation otherwise than because of circumstances that are not normal.

### **326 Under-used holiday accommodation: averaging elections**

(1) This section applies if during a tax year a person lets both—

(a) qualifying holiday accommodation, and

(b) accommodation that would be qualifying holiday accommodation if the letting condition (see section 325(3)) were met in relation to it (“under-used accommodation”).

(2) The person may make an election for the tax year specifying—

(a) the qualifying holiday accommodation, and

(b) any or all of the under-used accommodation.

(3) The under-used accommodation so specified is treated as qualifying holiday accommodation for the tax year if the average of the number of let days for the tax year of all the accommodation specified in the election is at least 105.

(4) “The number of let days” for a tax year of any accommodation is the number of days during the relevant period for which it is commercially let by the person as holiday accommodation to members of the public.

(5) Qualifying holiday accommodation may not be specified in more than one election for a tax year.

(6) An election for a tax year must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.

(7) This section is to apply separately in relation to accommodation in the United Kingdom and accommodation in EEA states other than the United Kingdom.

### **326A Under-used holiday accommodation: letting condition not met**

(1) This section applies if—

(a) during a tax year a person lets qualifying holiday accommodation,

(b) the accommodation is let by the person—

(i) during the next tax year, or

(ii) during the next two tax years,

(c) the accommodation would (apart from this section) not be qualifying holiday accommodation—

(i) during the tax year mentioned in paragraph (b)(i), or(ii) during both of the tax years mentioned in paragraph (b)(ii),

only because of a failure to meet the letting condition (see section 325(3)),  
and

(d) there was a genuine intention to meet the letting condition for the tax year within subsection (1)(c)(i) or each of the tax years within subsection (1)(c)(ii) (as the case may be).

(2) If the person makes an election in respect of that accommodation for any tax year in respect of which the failure mentioned in subsection (1)(c) occurs, the accommodation is to be treated as qualifying holiday accommodation for that tax year.

(3) Subsection (2) does not apply for the purposes of section 326 or subsection (1)(a).

(4) If an election is not made for the first of the tax years within subsection (1)(c)(ii), an election may not be made for the second.

(5) An election for a tax year must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.

(6) References in subsection (1)(a) and (c) to qualifying holiday accommodation include accommodation treated as such under section 326.