



# Commercial Property EPCs – Compliance on the High Street

A research report by the NHER scheme, part of National Energy Services

June 2009





*“We all recognise the serious and real threat of climate change – it’s no longer a question of whether we need to act but how much we need to do to stabilise our climate. A major part of the answer lies in improving the energy efficiency of buildings.”*

Iain Wright MP, Communities Minister, April 2008

**It is a legal requirement that all commercial buildings being marketed for sale or rent should now have an Energy Performance Certificate (EPC) available to inform prospective buyers and tenants about the energy performance of the building. This requirement was phased in throughout 2008 and took full effect on 4 January 2009. It applies equally to all ‘non-domestic’ buildings – from large city-centre offices to the typical High Street shops and offices that make up the vast majority of our commercial property stock.**

**Following anecdotal reports that compliance is very patchy, in May 2009 National Energy Services Ltd decided to investigate by undertaking a mystery shopper exercise among more than 100 commercial property agents in England and Wales who were offering commercial buildings for sale or rent.**

## **What is an Energy Performance Certificate (EPC)?**

An Energy performance Certificate (EPC) informs potential buyers or tenants about the energy performance of a building. A potential occupier can then consider the energy efficiency of a building prior to any investment.

An EPC will provide an energy rating for a building which is based on the performance potential of the building itself (the fabric) and its services (such as heating, ventilation and lighting). The energy rating given on the certificate reflects the intrinsic energy performance standard of the building relative to a benchmark which can then be used to make comparisons with similar properties. It is accompanied by a recommendations report, which provides recommendations on how the energy performance of the building could be enhanced, together with an indication of the payback period.



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## Why is an EPC needed?

Commercial buildings are responsible for almost 20% of the UK's energy consumption and carbon emissions.

Energy Performance Certificates (EPCs) are a requirement of the Energy Performance of Buildings Directive (EPBD). This directive became European law on 4 January 2003 and required that EPCs must be made available every time a building is constructed, sold or rented out. The objective of the EPC is to greatly improve awareness of energy use in buildings and to stimulate increases in investments in energy efficiency measures within these buildings. The very latest date for implementation was 4 January 2009.

The Department for Communities and Local Government (CLG) is responsible for the implementation of the Directive in England and Wales. The relevant devolved administrations are separately responsible in Scotland and Northern Ireland.

## When did the requirement for EPCs on commercial buildings in England and Wales become mandatory?

In England and Wales, the requirement for EPCs for non-dwellings (commercial buildings) has been phased in from April 2008, starting with larger buildings first:

- From 6 April 2008, commercial buildings with a floor area greater than 10,000m<sup>2</sup> required an EPC when constructed, sold or let.
- From 1 July 2008 commercial buildings with a floor area greater than 2,500m<sup>2</sup> required an EPC when constructed, sold or let.
- From 1 October 2008 all remaining commercial buildings required an EPC when constructed, sold or let.
- Any building that was already on the market before the relevant coming into force date did not require an EPC until 4 January 2009. If it was sold or rented out in the meantime an EPC should have been commissioned and handed over as soon as reasonably practicable.



## Responsibilities for providing an EPC when selling or letting a commercial building

Unlike in the residential sector where it is the estate agent who takes the lead, in the commercial property sector it is the responsibility of the seller or landlord offering the accommodation for sale or let to make an EPC available for their building. The seller or landlord should therefore ensure any agents acting on their behalf are complying with the regulations.

Clearly, it would be expected that any professional agents would be aware of the necessary regulations and would advise their clients on EPC requirements. Agents could also offer a commissioning service for EPCs as part of their professional services to ensure that their clients complied with all the necessary legislation.

## When exactly should the EPC be made available in the selling or letting process?

A valid EPC must be made available free of charge by the seller or landlord to a prospective buyer or tenant when commercial buildings are sold or let. This must be at the earliest opportunity and no later than:

- When any written information about the building is provided in response to an enquiry from the prospective buyer or tenant
- When viewing is conducted
- In any event, before entering into a contract to sell or let.

## Enforcement

Local authorities (usually by their Trading Standards Officers) are responsible for enforcing the requirement to have an EPC on sale or let of a building. Failure to make an EPC available when required by the Regulations could result in a civil penalty charge notice.

The penalty for failing to make an EPC available to any prospective buyer or tenant when selling or letting a commercial building is fixed at 12.5% of the rateable value of the building, with a default penalty of £750 where the formula cannot be applied. The range of penalties under this formula are set with a minimum of £500 and capped at a maximum of £5,000.



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## What this research set out to discover

It is a legal requirement that all commercial buildings being marketed for sale or rent should now have an EPC available to inform prospective buyers and tenants about the energy performance of the building. This requirement was phased in throughout 2008 and took full effect on 4 January 2009.

Energy Assessors that are qualified and accredited through the NHER Scheme (part of National Energy Services) have provided anecdotal evidence that the level of compliance with this requirement is poor. So in May 2009 NES decided to investigate the level of compliance by undertaking a mystery shopper exercise among more than 100 commercial property agents in England and Wales who were offering commercial buildings for sale or rent.

## Methodology

Our research followed the following methodology:

- Five geographical regions were used across the country.
- Research via the internet and local press identified the key commercial property agents in each of these regions.
- 108 commercial property agents were selected to be contacted spread across the five regions.
- For each agent, an NES researcher (who was a qualified building surveyor) had identified a suitable property on the agents' website to ask for further information on.

According to CLG statistics<sup>1</sup> 86% of commercial buildings have a total useful floor area of less than 500m<sup>2</sup>. Small retail units such as high street shops and small office accommodation were also estimated to comprise 39% of the commercial building stock. Our research therefore predominantly concentrated on this profile of buildings.

The NES researcher contacted each of the agents by telephone and posed as a building surveyor working on behalf of a client who either wished to purchase or rent the particular property. This telephone work started on the 27 April 2009.

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<sup>1</sup> Source: CLG EPBD Regulatory Impact Assessment 2007



The researcher entered into a general discussion with the agent to build credibility before asking a specific and direct question as to whether an EPC was available. Where the agent confirmed that an EPC was available, a copy was requested by the researcher. In instances where the agent was unsure whether an EPC had been produced or not, the agent was made aware of the 'client's' interest in having the EPC and was encouraged to get back to the NES researcher with details.

The telephone research finished on 22 May 2009. All agents were given until 1 June to contact the researcher should an EPC have since become available. (It was our experience that the EPC either appeared within 48 hours of the conversation with the agent or not at all).

The research results were collated on a standardised questionnaire and checklist – including a full audit trail of all property details sent out.

## Key Results

Out of the 108 agents contacted about a specific property that they were marketing, 88 (81%) did not have an EPC available.

The 88 agents who did not have an EPC on the property that they were marketing were asked why they didn't have an EPC available. The following reasons were given:

- Almost half (47% - 41 agents) said they believed an EPC was not necessary, or that they just didn't know.
- A further third (36% - 32 agents) said that they would only get an EPC at the point of sale.
- 17% (15 agents) said that they believed the EPC was in the process of being undertaken.



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## Where do we go from here?

Our research shows widespread non-compliance with the regulations regarding the availability of EPCs for commercial buildings that are being marketed for sale or rent.

NES makes the following recommendations, listed in priority order:

1. **Make the display of the EPC rating mandatory on all commercial building particulars used by agents to market the building.** This will increase transparency and will make enforcement of the regulations easier. It will also increase awareness amongst potential buyers and tenants on the energy efficiency of the building they are looking at. This requirement is currently in place for the marketed sale of dwellings. This measure could be achieved for commercial buildings quickly and at little or no cost.
2. **Place the legal responsibility of providing an EPC on the actual entity marketing the commercial building (e.g. the commercial property agent).** Currently, it is the responsibility of the seller or landlord offering the building for sale or let to make an EPC available for their building. This is unlike the dwellings sector, where the legal liability rests with the entity actually offering the dwelling for sale. It is generally believed that the dwellings sector has a high level of compliance and it is perhaps because estate agents have a direct legal responsibility to ensure they are compliant with the EPC requirements. In the commercial sector, if legal responsibility for the EPC was changed to reside with the entity marketing the building, it could allow agents to make a positive contribution to both the levels of compliance and to promoting investment in improving the energy efficiency of the buildings they market.
3. **Make the implications of non-compliance more acute by increasing the penalties.** The current levels of penalties range between £500 and £5,000 depending upon a building's rateable value. Clearly this is not providing a deterrent to non compliance and therefore there is an argument that the penalties and enforcement are inadequate.
4. **CLG should work alongside the property and energy industry to reinvigorate and clarify their communication programme** particularly in the segment of smaller commercial buildings and with Trading Standards Departments. CLG should urgently establish a small industry working group to help them in this task. This should include the energy assessor community whose enthusiasm to ensure that EPCs are successful could be harnessed to communicate clear information at a local level.



## About National Energy Services and the NHER

National Energy Services (NES) through its National Home Energy Rating (NHER) scheme provides training, software, accreditation, and consultancy in energy efficiency in buildings. The NHER is the leading accreditation scheme for EPCs with over 3,000 energy assessors as members and over 800,000 Energy Performance Certificates (EPCs) lodged since 2007.

The company provides services to individual energy assessors, local authorities, housing associations, architects, consulting engineers, energy companies, house builders and central government. NES is majority owned by the National Energy Foundation, an independent educational charity, and is based at the National Energy Centre in Milton Keynes.

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