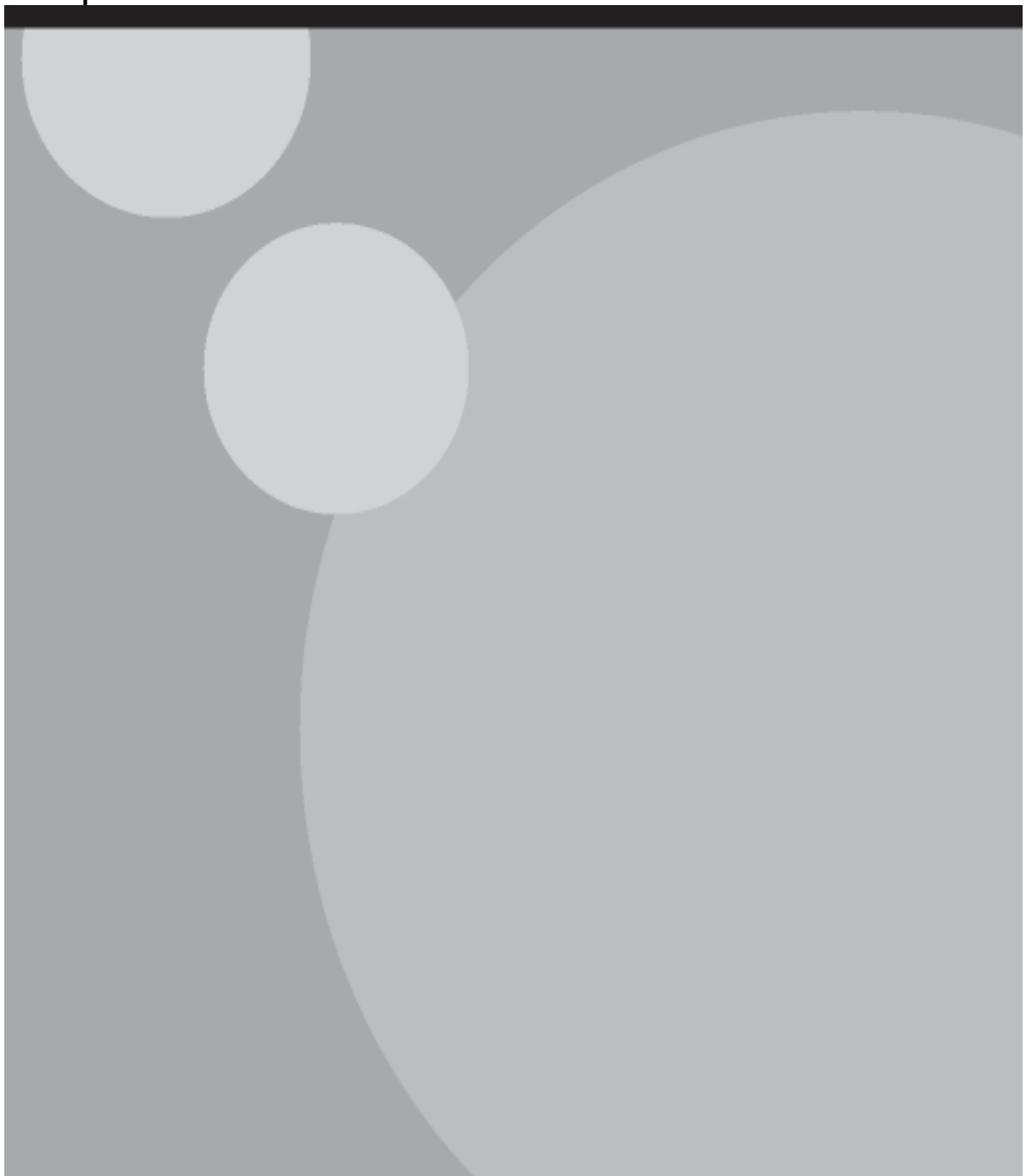




Changes to the Energy Performance of Buildings Framework

Policy update 5 – Energy Performance Certificate compliance and enforcement





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Changes to the Energy Performance of Buildings Regime

Policy update 5 – Energy Performance Certificate compliance and enforcement

Changes have been made to the Energy Performance of Buildings (Certificate and Inspection) (England and Wales) Regulations 2007 (The Energy Performance of Buildings Regulations) to make them more consistent and coherent. You can view the amendments [here](#) and [here](#).

Ensuring the Energy Performance Certificate is provided earlier in the home buying and selling process will increase the likelihood that owners will take steps to act on those recommendations which identify cost effective savings.

The changes are also intended to improve compliance which will provide better information to develop proposals to improve the energy performance of buildings and to monitor implementation.

The changes to the Energy Performance of Buildings Regulations can be summarised as follows:

- The changes will extend the current requirements to commission an Energy Performance Certificate which apply to residential buildings to all residential and non-residential buildings when sold or rented out;
- The requirements for the provision of an Energy Performance Certificate with written property particulars to prospective buyers and will extend to all buildings sold or rented out and the option to attach the energy efficiency rating will be removed. The requirement only extends to a copy of the first page of the Energy Performance Certificate;
- In response to requests from property agents, the Department for Communities and Local Government and the Energy Performance Certificate register operator (Landmark Information Group) are implementing a process which will
 - provide a standard service to enable the Energy Performance Certificate to be retrieved from the register and attached to online written property particulars and;
 - provide an enhanced service where there are confidentiality issues surrounding commercial property transactions, to enable the Energy Performance Certificate to be retrieved from the register and attached to online written property particulars with the address removed.
- Property agents can request further information about the service from the Department of Communities and Local Government at epc.enquiry@communities.gsi.gov.uk.
- The requirement for the statutory lodgement of reports on the central Energy Performance Certificate register will extend to air conditioning reports.

Frequently asked questions

Clarifying when an Energy Performance Certificate is required

Why are you making this change?

The amendment is intended to counter the erroneous belief that the provision of the Energy Performance Certificate can legitimately be delayed until shortly before the parties enter into a contract for sale or rent.

Have you consulted on the change?

Yes. More than 90% of respondents to the Consultation Paper '*Making better use of Energy Performance Certificates and Data*' (DCLG May 2010) agreed with this action in order to make it absolutely clear that the Energy Performance Certificate should be made available earlier in the process.

I have employed an estate agent to sell my home – are they responsible for providing a copy of the Energy Performance Certificate to potential buyers?

No. It is ultimately the responsibility of sellers and landlords to ensure that an Energy Performance Certificate is made available to potential buyers and tenants. The responsibilities of those acting on behalf of the relevant person are detailed in Regulation 6.

When should the Energy Performance Certificate be made available under the new regulations?

The Energy Performance Certificate should be made available as early as possible and, in particular, when a prospective buyer or tenant requests information in writing or views the property in question. In addition, the seller or landlord must ensure that an Energy Performance Certificate has been given to the person who ultimately becomes the buyer or tenant.

Q. Can 'first day marketing' occur if the EPC is not available?

A. There is nothing in the amended provisions which would prevent 'first day marketing' within the first 7 days if an EPC has not been made available. The amended provisions require that an EPC is commissioned before the building is marketed. An EPC is not required to be available before or at the point that a property is marketed.

Commissioning an Energy Performance Certificate before marketing

Why are you making this change?

The requirement to either have or to have commissioned an Energy Performance Certificate before marketing starts in all cases will ensure that prospective buyers and tenants see the Energy Performance Certificate much earlier in the process.

When do these changes come into force?

The new regulations come into force on 6 April 2012 and will apply to buildings put on the market on or after that date.

How can an estate agent be sure that the relevant person has commissioned an Energy Performance Certificate?

Agents will have to satisfy themselves that an Energy Performance Certificate is either available or has been commissioned before they start marketing on behalf of the seller or landlord. Trading Standards Officers can ask for evidence of this.

Isn't it unreasonable to reduce the period in which the Energy Performance Certificate is expected to be obtained from 28 days to seven days?

Evidence shows that most Energy Performance Certificates are obtained within three days so this should not be a challenge in most cases. A further 21 days is allowed if the Energy Performance Certificate cannot be obtained within seven days.

Q. Can 'first day marketing' occur if the EPC is not available?

A. There is nothing in the amended provisions which would prevent 'first day marketing' within the first 7 days if an EPC has not been made available. The amended provisions require that an EPC is commissioned before the building is marketed. An EPC is not required to be available before or at the point that a property is marketed.

What happens after 28 days if the Energy Performance Certificate is still unavailable?

If the building is still on the market after 28 days, Trading Standards Officers may choose to serve a penalty notice.

What is the penalty for a breach?

For domestic properties the penalty is £200. For non domestic properties the penalty is a sum equivalent to 12.5% of the rateable value of the building, subject to a minimum of £500 and a maximum of £5,000.

Who is liable for the penalty charge?

If the relevant person or a person acting on their behalf has not commissioned an Energy Performance Certificate after the 28 day period they may be liable for a penalty charge.

Energy Performance Certificate information with written property particulars

When does this change come into force?

The new regulations will apply to all buildings put on the market on or after 6 April 2012. There will be no requirement to change the written property particulars for buildings already on the market before this date.

Why is it no longer appropriate to include the energy efficiency rating with the written property particulars as before?

The requirement to attach a copy of the first page of the Energy Performance Certificate will ensure that prospective buyers and tenants see the key recommendations attached to the Energy Performance Certificate.

Are buildings on the market before 6 April 2012 required to comply with the new regulations?

Provided that the building has been continuously marketed since before the common commencement date of 6 April 2012 and there is no break in the marketing, then the new regulations will not apply to buildings currently on the market.

Does the whole Energy Performance Certificate have to be attached to the written property particulars?

No, only a copy of the first page.

Can the Energy Performance Certificate be re-sized if the written particulars are produced in A5 format?

The Energy Performance Certificate can be reproduced in a smaller size provided it is still legible and meet any other legal obligations, such as the Equality Act 2010

Does the copy Energy Performance Certificate have to be in colour?

No, a black and white copy is acceptable.

Do the regulations also apply to electronic written particulars on internet sites?

Yes. The national Energy Performance Certificate register operator has provided a technical solution which will enable property agents to retrieve the Energy Performance Certificate from the register and attach it to online written particulars. This service has been provided at the request of property agents. More detailed information for property agents is available on request at: epc.enquiry@communities.gsi.gov.uk.

Can anyone have access to the property agents Energy Performance Certificate retrieval service?

No, this service has been set up at the request of property agents so that they are able to meet the obligation to attach the Energy Performance Certificate where written particulars are given to prospective buyers or tenants. Only property agents who will need to comply with the new regulations will be able to register to use this service.

How will the property agents Energy Performance Certificate retrieval service operate?

Following successful completion of a registration process, property agents will be able to request a URL link for an Energy Performance Certificate lodged on the national register when they have provide the register operator with a valid report reference number for the building in question. If the property agent chooses to do so, the URL can then be passed to those organisations responsible for preparing internet or online property details or to prospective buyers or tenants if written particulars are provided electronically.

Do the regulations apply to all property adverts?

No. Only the more detailed descriptions (referred to as written particulars) produced for potential buyers or tenants as defined by the regulations. In essence this is where an agent proposes to provide written particulars to a person (i.e. a specific individual) who may be interested in buying or renting the building.

Do newspaper adverts or window cards for property lets meet the definition of written particulars?

No. The requirement to attach a copy of the front page of the Energy Performance Certificate to written particulars is where an agent proposes to provide written particulars to a person (i.e. a specific individual) who may be interested in buying or renting the building. This implies that a copy of the front page of the Energy Performance Certificate does not need to be attached to 'advertising material' – ie - a newspaper or window card.

Are auction catalogues captured by the new requirements?

If the details in the auction catalogue meet the definition of written particulars, as defined in the new Regulations, then an Energy Performance Certificate will need to be included with the details of those buildings. The option of including an energy efficiency rating only will no longer apply.

Do buildings advertised for sale or rent on property portals require the Energy Performance Certificate to be attached to those details?

Where the relevant person or a person acting on their behalf intends to make information available on a website and the information provided meets the definition of written particulars then a copy of the Energy Performance Certificate must be attached to those details.

What does 'attached' mean?

If property agents wish to attach the first page of the Energy Performance Certificate by including it in the brochure itself this is acceptable. If property agents wish to attach the first page by fastening, affixing or joining the Energy Performance Certificate to the written particulars this is also acceptable.

In brochures and auction catalogues, must a copy of the first page of the Energy Performance Certificate be included on the same page as the written particulars?

There is no requirement for the written particulars and the Energy Performance Certificate relating to that building to be on the same page. It must, however, be clear from the brochure or auction catalogue which written particulars the Energy Performance Certificate refers to and that the Energy Performance Certificate is legible. In these circumstances the Energy Performance Certificate and written particulars do not have to be included on the same page

Where the address of the building is not included in the written particulars can the address be omitted from the Energy Performance Certificate?

The address on the commercial Energy Performance Certificate can be concealed if the address has also been omitted from the written particulars.

Where there is a confidentiality issue surrounding a commercial property transaction, the Energy Performance Certificate register operator has provided a technical solution to enable the Energy Performance Certificate to be retrieved from the national register and attached to online written particulars with the address removed. The regulations only permit the register operator to remove the address from a commercial Energy Performance Certificate. This enhanced service has been provided at the request of property agents. More detailed information for property agents is available on request at: epc.enquiry@communities.gsi.gov.uk

Can the address be removed from the domestic Energy Performance Certificate?

No, the regulations do not allow this. Following discussions with property agents' representatives, it was agreed there was no requirement to extend this service to domestic sales and rentals.

Why is the register operator charging a fee of £0.50 for the enhanced property agents Energy Performance Certificate retrieval service?

The enhanced service, which will enable the address of a commercial building to be removed from the Energy Performance Certificate, was specifically set up at the request of property agents. We, therefore, believe it is not appropriate for the tax payer to subsidise the cost of providing this service through the national register lodgement fee.

Will general marketing details, which do not provide specific information about a building, require an Energy Performance Certificate to be attached to the written particulars?

If the information provided in the general marketing details meet the definition of written particulars as defined in Regulation 6 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations (as amended) then a copy of the first page of the Energy Performance Certificate must be given to prospective buyers or tenants with those particulars.

Q: Do I need to publish the full address of the property in marketing material because of these Regulations?

No. Only the more detailed descriptions (referred to as written particulars) produced for potential buyers or tenants will require this. In essence this is where an agent provides written particulars to a person (i.e. a specific individual) who may be interested in buying or renting the building.

Will the use of quick response codes in property brochures meet the requirement to attach a copy of the first page of the Energy Performance Certificate to written property details?

We do not consider that providing a copy of the Energy Performance Certificate solely by way of a quick response code in a property brochure would meet the requirement to attach a copy of the first page of the Energy Performance Certificate to written particulars for prospective buyers or tenants. It is important to recognise that the person giving the written particulars must ensure that a copy of the Energy Performance Certificate has been provided in readable form to all prospective buyers and tenants.

Power to require the production of documents

What kind of evidence will Trading Standards Officers accept?

The regulations do not specify this but it could be written confirmation from the seller or landlord that an Energy Performance Certificate has been commissioned or a copy of the commission itself. This is a judgement call for the Trading Standards Officer.

Statutory lodgement of air conditioning inspection reports

Is the proposal to introduce statutory lodgement supported by industry groups?

The change being proposed has been discussed with approved air conditioning Accreditation Schemes and other industry bodies as part of a wider engagement with our partners, who have contributed to the development of this proposal. A consultation exercise in March 2010, 'Making better use of Energy Performance Certificates and data', showed that 84% of respondents were in favour of statutory lodgement.

Are there measures other than statutory lodgement which could have been introduced to improve the air conditioning inspection process?

Other options were considered. However, industry believes that without statutory lodgement the important practice of air conditioning inspection reports being created will not happen and energy assessors not filing these reports with their Accreditation Scheme will continue. This will allow standards to fall and the quality of reports and the assessors who produce them to deteriorate.

How will statutory lodgement improve the quality of air conditioning inspection reports and the assessors who produce the reports?

Statutory lodgement will ensure that reports lodged on the national non-domestic Energy Performance Certificate register can be assessed for quality assurance purposes, which will provide an indication on whether assessors are complying with current quality assurance auditing requirements.

Who will have access to the information provided in the air conditioning inspection reports?

Those persons authorised by the current Energy Performance of Buildings (Certificates and Inspections) Regulations 2007 will have access to the air conditioning inspection reports and the information they contain.

How will the information in the air conditioning inspection reports be used?

Statutory lodgement will provide data which can be used to develop policies that will be crucial for non-domestic buildings carbon reduction, provide meaningful information about the amount of energy consumed by air conditioning systems and the amount of energy that could be saved by operating those systems more efficiently.

Will those building owners and managers who currently hold a valid air conditioning inspection report be expected to lodge that report on the national non-domestic register when statutory lodgement comes into force?

No, there is no requirement for valid air conditioning inspection reports, which have been produced before the statutory lodgement date, to be lodged on the register.

How has the figure of 300,000 air conditioning systems over 12 kW in England and Wales been estimated?

This figure has been estimated from research undertaken by the Department for Environment, Food and Rural Affairs on Central Air Conditioning Plant and Packaged Air Conditioning Units Evidence Base 2009 reports. [Document references: BNCAC01 and BNPAC01]

Is the estimated figure of 300,000 air conditioning systems over 12 kW too low?

There is no exact record on the number of air conditioning systems in place. The estimate on the number of air conditioning systems is based on the information provided in the Department for Environment, Food and Rural Affairs reports. There is anecdotal evidence to suggest that the figures could be much higher but the Department for Communities and Local Government has not been provided with any evidence to substantiate these claims.

Why was statutory lodgement not implemented when the requirement for air conditioning systems to have an inspection reports was first introduced?

The Department for Communities and Local Government agreed a light touch approach as a trial period with industry when the regulations were first implemented.

Is statutory lodgement an unnecessary burden which building owners and managers could well do without?

No, we have a duty to protect consumers and to ensure that only accredited air conditioning assessors undertake inspections and prepare subsequent reports. Statutory lodgement will enable us to verify the identity of air conditioning assessors and to monitor the standard of the reports which have been produced.

Will statutory lodgement lead to increased compliance with the regulatory requirements for air conditioning systems over 12 kW to have an air conditioning inspection report?

Without statutory lodgement we have no way of easily identifying those air conditioning systems, which we have estimated exist, and may require an air conditioning inspection report. Making lodgement statutory is the first step in a series of proposals to gather data in order to improve compliance.

What other measures will be adopted to gather data and improve compliance?

Non- domestic Energy Performance Certificates and Display Energy Certificates lodged on the national Energy Performance Certificate register can identify which buildings have an air conditioning system. We will use this information to identify which buildings do not have an air conditioning inspection report.

Will introducing statutory lodgement impose an additional cost on building owners and managers?

There will be an additional cost of £5.36 for lodging the air conditioning inspection report on the register. However, acting on the advice in the inspection report and rectifying the faults or making the appropriate improvements, where this is attractive and cost effective, may result in immediate improvements to the effectiveness of the air conditioning system and therefore, reduce the operational costs.

Will costs for statutory lodgement be incurred each year?

No, air conditioning inspection reports are valid for 5 years so the costs for statutory lodgement are spread over 5 years.

Will the lodgement fee for the statutory lodgement of air conditioning inspection reports change over time?

The lodgement fee is based on the current fee for lodging Energy Performance Certificates and Display Energy Certificates on the national non-domestic Energy Performance Certificate register. This reflects the operational costs for maintaining and developing the register. The lodgement fee may, therefore, rise or fall over time.

Will statutory lodgement lead to a reduction in the cost of air conditioning inspection reports?

This is for industry to decide. Statutory lodgement will, however, make it easier to replace lost reports and will not require building owners and managers to incur additional costs by having to commission a new air conditioning inspection.

Has the cost of introducing statutory lodgement been under estimated in the Impact Assessment?

Statutory lodgement will improve compliance over time and is the first step in a series of measures to provide the evidence which is required to improve compliance with the current Energy Performance of Buildings Regulations. When an Energy Performance Certificate or Display Energy Certificate is produced for a building, it is noted whether the building has an air conditioning system. Based on this information, and the evidence provided on the number of air conditioning inspection reports held by air conditioning accreditation schemes, it has been estimated that just over 34,000 air conditioning systems will have an inspection report in the first year.

How are building owners meant to know that their systems need regular inspections – is the Government planning a publicity campaign on this?

Publicity campaigns in 2008 and 2009 introducing a range of initiatives, including air conditioning inspections, aimed at helping the UK improve the

energy efficiency of its buildings and meet its carbon emission reduction targets have already been undertaken. It is not the Department for Communities and Local Government's intention to run a publicity campaign about regulatory requirements which building owners should be aware of.

How do enforcement authorities know that an inspection is required?

Local weights and measures authorities have been issued with guidance which informs them of the duties for ensuring that owners of air conditioning systems with an effective rated output over 12kW are in possession of an inspection report. This guidance has been updated to include the statutory lodgement of air conditioning inspection reports.

Do they have all the necessary powers to make enquiry of building owners?

Yes, the powers which require the owners of air conditioning systems to produce air conditioning inspection reports if requested to do so is set out in the Local Weights and Measures Authority guidance provided by the Department for Communities and Local Government. The penalty charge notices which can be issued for failure to comply with the duties are clearly defined in the Energy Performance of Buildings Regulations.

What is the penalty for failing to have an inspection done?

The penalty is £300.

Are there any other penalties?

Yes. The person who controls the operation of the air conditioning system must retain the most recent inspection report and pass it on if there is a change of controller. If there is a change of controller and the new controller is not given an inspection report the new controller must ensure that the system is inspected within three months. There is a penalty of £300 for a breach of any of these duties.