

Requirements for energy performance certificates (EPCs) when marketing homes for sale or let



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NOTE

This guide describes the scope and requirements of the regulations applying to EPCs when homes are being sold or let and provides guidance on how these are applied. While this guidance aims to explain how the requirements will work in practice, any interpretation of the Regulations is offered only as a guide, as Communities and Local Government cannot provide legal advice. Therefore, it is important to read and understand the regulations as well. In cases of doubt independent legal advice should be sought.

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Section 1

Sales of homes requiring a home improvement pack (HIP)

A HIP must be available to potential buyers as soon as marketing commences. Under current rules, if the HIP is not ready it must have been requested before marketing starts.¹

The energy performance certificate (EPC)² is a required HIP document. An EPC included in a HIP must be no more than three years old at the first point of marketing (from 1 October 2008 when this period will be extended from 12 months).

If a newer EPC is produced for the property, only the latter is valid.

The asset rating graphs from the EPC must be included on any written sale particulars (including those provided electronically) given to interested persons if those particulars include at least two of the following:

- A photograph of the building or any room in the building
- A floor plan of the building
- A description of the size of the rooms in the building.

Alternatively, a copy of the EPC itself can be attached to the particulars.

The asset rating graphs from the EPC need not be included in estate agents' newspaper adverts or estate agents' window cards. Where the window card includes two or more of the above, it would be good practice to include the asset rating graphs from the EPC.

Estate agents are not required to provide written property particulars but will almost always do so.³

Estate agents should send written property particulars to the seller for verification, in accordance with OEA Guidelines.

¹ The temporary exception, "first day marketing during a temporary period", is found in regulation 34 of the HIP Regulations. It allows marketing to start without a HIP, provided one has been requested and has either been paid for or a commitment to pay for it has been made, if an EPC or predicted energy assessment (PEA) is not yet available. In these cases, the duty to have a HIP arises when the responsible person receives the EPC or PEA. The temporary exception ends on 31 December 2008.

² Any reference in this document to an EPC means the EPC and its accompanying recommendations report.

³ The duty to make an EPC available applies whether written particulars are produced or not, arising at the earliest opportunity and no later than when the building is viewed, or any written information about it is provided on request, and in any event before contracts are exchanged.

If the property is not physically complete when marketing starts, a predicted energy assessment (PEA) must be included in the HIP instead of an EPC. The PEA must be replaced by an EPC when the property is physically complete.⁴

As far as a HIP is concerned the estate agent is usually the 'responsible person' and should ensure a HIP is available¹ before starting to market a property. Estate agents should check the HIP to ensure the required documents are included but are not responsible for the content of HIP documents provided by third parties – ie the EPC, Land Registry title information and standard searches.

The seller is, however, independently responsible for ensuring an EPC is available under the EPBD Regulations. Therefore if a HIP does not contain an EPC, both seller and estate agent can be issued with penalty notices under the respective legal provisions.

At the beginning of the marketing process you would normally be required to assemble a new HIP containing documents which are up to date according to the requirements of the Home Information Pack Regulations. However, the seller can carry on using the original HIP where there is a break in marketing in the following circumstances:

- where a property is taken off the market but is put back on the market again within 12 months of when marketing first began; and
- where a property is taken off the market because the seller accepted an offer but is put back on the market because the sale has fallen through within 28 days of that event. This applies irrespective of when marketing first began.

A copy of the EPC must be provided by the seller to the eventual buyer free of charge. It is assumed that the seller's solicitor will provide a copy to the buyer's solicitor, who in turn will provide it to the buyer, and that this will be done before exchange of contracts.

⁴ When a building being **constructed** is physically complete, it is the responsibility of the **person carrying out the construction** to give an EPC and recommendation report to the building owner and to notify Building Control that this has been done. The EPC must then be made available to prospective purchasers under EPC duties and must also replace the PEA in the HIP.

Section 2

Homes already on the market and homes not requiring a HIP

An EPC is required for the sale of **all** homes⁵ from 1 October 2008. This includes properties that do not require a HIP, either because they are exempt, or because they were placed on the market before the requirement to have a HIP commenced for their category.

An EPC included in a HIP must be no more than three years old at the first point of marketing. Any other EPC is valid for up to 10 years, unless a newer EPC is produced for the property, in which case only the latter is valid.

The EPC² must be made available for any home, free of charge, to a prospective buyer from the 1 October 2008, at the earliest opportunity and in any event where **any** of the following events happens:

- when the building is viewed (even if that means providing the EPC before any written information is provided)
- if written information about the building is provided as a result of a request by a prospective purchaser
- before contracts are exchanged.

It is not placing a property on the market that defines the point at which an EPC must be available, but any of the circumstances listed above.

The EPC graphs need not be included in the written/electronic property details for non-HIP properties. However, it would be good practice to include them.

The **seller** is the 'relevant person' under EPC legislation and is responsible for making the EPC available. The seller, **not** the agent, is liable to a penalty charge if the EPC is not made available. It would be good practice, however, for any estate agent offering a property for sale on a seller's behalf to inform the seller of the legal obligation and to recommend that an EPC is obtained, even though a HIP is not required and the agent is not liable to a penalty.

⁵ EPCs are not required on sale or rent for dwellings due to be demolished, if the seller or landlord can demonstrate that: the dwelling is suitable for demolition, the resulting site is suitable for redevelopment, and all the appropriate permissions are in place for both the demolition and the redevelopment.

A seller should make a proper request to a provider for an EPC in good time and at least 14 days before it is required to avoid any penalty charges. Therefore if your property is on the market and you expect to have viewings, provide written information or to exchange contracts, you should consider obtaining an EPC as soon as possible.

Section 3

Letting a home

An EPC is required for any dwelling⁵ offered to let as of 1 October 2008.

The EPC used in these circumstances can be up to 10 years old, though if a newer EPC is produced for the property only the latter is valid.

The EPC² must be made available for any home, free of charge, to a prospective tenant from the 1 October 2008, at the earliest opportunity and in any event where **any** of the following events happens:

- when the home is viewed (even if that means providing the EPC before any written information or particulars are provided)
- if written information about the home is provided as a result of a request by a prospective tenant
- before the tenant signs a contract to rent the home.

It is not placing a property on the market that defines the point at which an EPC must be available, but any of the circumstances listed above.

The EPC graphs need not be included in the written/electronic property details for rental of the home. However, it would be good practice to include them.

The **Landlord** is the 'relevant person' under EPC legislation and is responsible for making the EPC available. The seller, **not** the agent, is liable to a penalty charge if the EPC is not made available. It would be good practice, however, for any estate agent offering a property to let on a landlord's behalf to inform the landlord of the legal obligation and to recommend that an EPC is obtained as soon as possible, even though the agent is not liable to a penalty.

Where a tenant is in occupation before the 1 October 2008 and continues to be occupation after this date an EPC is not required. If at a later point the tenant changes an EPC will be required to show prospective tenants.

A landlord should make a proper request for an EPC to a provider in good time and at least 14 days before it is required to avoid any penalty charges.

The EPC in full must be provided to the eventual tenant. It would be good practice for a landlord or Estate Agents to attach the full EPC to the tenancy agreement and ensure that it is initialled as received by the tenant in order to avoid any later questions about whether the EPC was given or not.

The most recent EPC is the only valid EPC.

Section 4

Q&A

Do I have to stop marketing a home for sale or let if I do not have an EPC on the 1 October 2008?

No. However, you should not undertake any viewings, provide any written information or enter into a contract with a prospective buyer or tenant.

If at the point you conduct a viewing, provide written information or exchange contracts, you do not have an EPC, you will be liable to a penalty charge of £200 unless you have ordered the EPC at least 14 days previously and make all reasonable efforts and enquiries to obtain it in time.

What happens if I ordered an EPC before the 1 October 2008 and it hasn't arrived?

If you have ordered it at least 14 days before this point and make all reasonable efforts and enquiries to obtain it in time, you can continue marketing as normal.

If you have ordered it less than 14 days previously, you should not undertake any viewings, provide any written information or enter into a contract with a prospective buyer or tenant until you have the EPC, or until 14 days after you have ordered it if you have made all reasonable efforts and enquiries to obtain it in time. Otherwise, if at the point you conduct a viewing, provide written information or exchange contracts, you do not have an EPC, you will be liable to a penalty charge of £200.

Do I need an EPC where a tenant is in occupation?

Where a tenant is in occupation before the 1 October 2008 and continues to be in occupation after this date an EPC is not required. If at a later point the tenant changes, an EPC will be required to show prospective tenants.

The EPC is valid for up to ten years, unless a newer EPC is produced for the property, in which case only the latter is valid.

What is written information?

Written information covers information about the building, whether provided in paper or electronic form.

It is information provided in response to a request about a building. It is our view, therefore, that brief information advertising a building for sale or let e.g. in a window or a thumbnail on a website, is not the provision of written information in response to a request.

However, a further request specifically about a property e.g. walking into a shop and asking for information, or selecting a website link to more detailed information, or selecting a website link to more detailed information about a specific building, constitutes a request.

What does make an EPC available mean?

It is our view that this means at the least:

- making the prospective buyer or tenant aware that the EPC is available
- having the EPC ready to be shown if asked; and
- giving a copy of the EPC and recommendations report, if asked without charge, either at once, or if that is not practical at the first available opportunity.

It would be good practice to therefore:

- have it in your possession if you are conducting a viewing of a property;
- provide a copy EPC or a link to the EPC if you hand over or send out any written information about a building.

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