



The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 SI 2007/991, amended by SI 2007/1669, SI 2007/3302, SI/2007 647 and SI 2008/2363

Advice to Local Weights and Measures Authorities on Enforcement of Energy Certificates and Air-Conditioning Inspections for Buildings

Key Facts

When is an EPC, DEC or AC inspection required?

- Sellers and landlords are responsible under the regulations for providing energy performance certificates (EPCs) on their properties when these are sold and rented. Builders are required under the Building Regulations 2000 to provide EPCs for newly constructed buildings to the building owner. The latter duty is not covered in this guidance.
- For all sales or lettings, in both the domestic and the non-domestic sector, an EPC must be made available to any prospective buyers or tenant 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 EPC made available for these purposes must be accompanied by its recommendation report.
- Furthermore, written particulars, paper or electronic, for domestic properties placed on the market for sale or let, must include either the asset rating from the EPC or the copy EPC itself.
- Occupiers of larger public buildings (such as hospitals or government offices) are responsible for showing a display energy certificate (DEC) in a prominent place. This must be renewed every year. The occupier must

also be in possession of an advisory report, valid for seven years.

- Local weights and measures authorities are the enforcement authority responsible for ensuring that valid EPCs or DECAs are provided or shown.
- Local weights and measures authorities have similar duties for ensuring that owners of air-conditioning systems with an effective rated output over 12kW are in possession of an inspection report. Systems will have to be inspected at least once every five years. Systems put into service on or after 1st January 2008 must be inspected first within five years, and older systems must be inspected first before 4th January 2009 for systems over 250kW and 4th January 2011 for the rest.
- Local weights and measures authorities as enforcement authorities have powers to require the production for inspection of EPCs and recommendation reports, DECAs and advisory reports, and air conditioning inspections. They may serve penalty notices for failure to comply with duties in respect of any of these documents for buildings
- Energy assessor accreditation bodies will handle other aspects of regulation, including ensuring that assessors work to appropriate standards, checking the quality and accuracy of certificates, and handling complaints against assessors for unacceptable work or behaviour.

Exempt buildings

The following buildings do not need EPCs:

- buildings used primarily or solely as places of worship
- temporary buildings with a planned time of use of two years or less, and 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.

Who is responsible for ensuring certificates and inspections are done

Regulation	Area of responsibility	Relevant person
5(2) and 5(5)	The EPC is made available to prospective buyers and tenants, and given to eventual buyers and tenants.	The seller or landlord
6(2)	Written particulars on dwelling sales covered by HIPs requirements include the asset rating of the building or the whole EPC.	The person providing the particulars (ie this may be a seller or an estate agent)
9(2)	EPCs are given to the owners of newly constructed Crown or statutory undertakers' buildings.	The builder
10	EPCs must be accompanied by recommendation reports	The relevant person for the EPC on sale or rent, that is the seller or landlord, or the builder under reg. 9(2)
16(2)	Public buildings to display DEC's and have advisory reports	The building occupier
21(1), 23 and 24	Air-conditioning systems over 12kW must have inspections at least every 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 system controller, usually the owner
39(4)	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 system controller respectively

Enforcement of the regulations

Summary of enforcement provisions

The main features of the enforcement provisions are as follows.

1. Regulations 38 – 48 of The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) deal with enforcement and outline the powers and the responsibilities of enforcement authorities and their officers.
2. It is the duty of every local weights and measures authority to enforce the EPC, DEC and air-conditioning inspection duties in its area. (regulation 38).
3. They have power to require a person to produce within seven days an EPC and recommendation 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 39).
4. Where a breach of duties is believed to have taken place, including the duty under regulation 39 to produce a document for inspection, an enforcement authority may, if it considers that 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 40).
5. 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 44).
6. If the notice is confirmed on review, an appeal may be made to a County Court, and must be lodged within 28 days of the day after that confirmation or such extended time as the county court may allow (regulation 45).
7. The penalty charge amount is recoverable as a debt (regulation 46).

8. 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 48).

Appendix A

What are the requirements

An energy performance certificate (EPC) is required when a building, which definition includes a part of a building which has been designed or altered to be used separately, is constructed, sold and let:

A display energy certificate (DEC) must be displayed by occupiers of public buildings:

- where the Total Useful Floor Area (TUFA) of the building is greater than 1000m²; and
- the building is occupied by a public authority or an institution providing public services to a large number of persons; and
- the public frequently visit the building.

An air-conditioning inspection is required if the effective rated output of systems within a building is more than 12kW.¹

Air-conditioning systems must be inspected at intervals not exceeding five years.

The EPC Register

All energy certificates (EPCs and DEC)s and associated recommendation reports or advisory reports must be entered into a central register maintained on behalf of the Secretary of State.

There are two separate databases within the register, one for dwellings and the other for non-dwellings.

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 or verify that the person who produced the assessment is properly qualified and accredited, go to **www.epcregister.com** for domestic properties and

¹ See above for the commencement of this requirement for systems under 250kW capacity.

www.ndepcregister.com for non-domestic properties. 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 EPC Register website, can be found in the following document: 'Domestic and Non Domestic EPC Registers - Enforcement Officer User Guide'

This document is available on request from LACORS at:

cheri.lloyd@lacors.gov.uk

Appendix B

Penalty charge notices

A suggested Penalty Notice pro-forma can be found in Appendix C. The penalty 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 selling or renting a home, the penalty is £200 for failing to make available an EPC or recommendation report to any prospective buyer or tenant or to give an EPC or recommendation report to the person who ultimately becomes the buyer or tenant
- The penalty for failing to make an EPC 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 rateable² 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 DEC 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, or retain or pass on the inspection report, 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

² 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.

with the duty for breach of which it was given.

The enforcing authority may withdraw the notice if it 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 42.

The relevant person is not liable to a penalty charge for a breach of duty by failing to make available an EPC or recommendation report to a potential purchaser if he or she has been given a penalty charge notice under the HIPs legislation in respect of that same failure (regulation 41).

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

Defences

Reg 42 of the Regulations establishes two defences where an EPC is not obtainable in time:

A person will not be liable to a penalty charge where they can show that they made a request to an energy assessor to obtain an EPC at least 14 days before it was needed and that despite all reasonable efforts and enquiries have been unable to obtain it. The request for an EPC in these circumstances must have been addressed to an energy assessor likely to be able to provide an EPC for the category of building in question, and accompanied by the necessary payment or an undertaking to pay.

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 EPC available, and 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 EPC 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 the 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 did not 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.

Appendix C

Penalty Charge Notice – suggested pro-forma

**[THE AUTHORITY]
FIXED PENALTY NOTICE**

FIXED PENALTY NOTICE	Reference Number:
Energy Performance of Buildings (Certificates and Inspections) England and Wales) Regulations 2007 regulation 40	
1. NOTICE OF BREACH	
NOTICE GIVEN TO (name of defendant) – OF (address) -	
NOTICE GIVEN BY (name of authorised officer) – OF (name of local authority) –	
I am an authorised officer of the above-named local authority. I believe that you have committed a breach of the following duty/duties under either the Energy Performance of Buildings (Certificates and Inspections)(England & Wales) Regulations 2007 and/or the Housing Act 2004.	
Breach Code Date of breach <i>(The breach is described in the row relating to this code in Part 6 of this notice)</i>	
Details of breach:	
Signature of authorised officer	
Date	
This notice requires that you within the period of 28 [or such longer period as the authority may choose to specify] days of the date of the postmark on this notice	
A. Pay the fixed penalty charge of £ or	
B. Give notice to this authority that you wish the notice to be reviewed.	
You may ask for this period to be extended, but it is at the discretion of this Authority whether or not to grant any such extension.	
2. HOW THE PENALTY CHARGE MAY BE PAID	
To be paid to: The penalty charge should be paid to [name the AUTHORITY].	
Address: [name and address of the AUTHORITY]	
Payment may be made in person within the hours [enter hours] or by post to that office (a receipt will be sent on request).	
Method of payment: Payment may be made by:	
<ul style="list-style-type: none"> • cheque or postal/money order (made payable to [The AUTHORITY]); • cash (please do not send cash by post) • [internet (i.e. by credit or debit card 24 hours a day at www.the.AuthorityName.gov.uk/payments)] • [phone (i.e. by credit or debit card on [Tel No.])] 	

3. WHAT YOU SHOULD DO IF YOU WOULD LIKE THE COUNCIL TO REVIEW THIS NOTICE

Please send notice in writing to [Insert name and address] to request a review of this notice

Please include any representations that you wish to make relating to the review. We may withdraw the penalty charge notice if we consider that the penalty charge notice should not have been given, and must do so if any of the following is the case:

- (a) you can demonstrate that you took all reasonable steps and exercised all due diligence to avoid breaching the duty;
- (b) this notice was issued more than six-months after the date on which the breach of duty occurred (or the date of the last day if a continuing breach), or otherwise fails to comply with the requirements of the regulations;
- (c) you have paid a penalty charge under section 168 of the Housing Act 2004 for the same breach .;
- (d) you have a defence under regulation 42 (unobtainable certificates and emergency rentals).

4. WHAT YOU SHOULD EXPECT AFTER A REVIEW

We will consider any representations you make and the circumstances of the alleged breach and will decide whether to confirm or withdraw this notice. We will notify you of our decision in writing.

If we confirm the penalty charge, you may then appeal to the county court within the period of 28 days from the day after the date of our confirmation. The County Court may extend the period for appealing against the notice. An appeal to the county court must be on one or more of the grounds listed in regulation 45(3)(a), (b) or (c). If a notice is confirmed on review, the notice of confirmation will advise you of the effect of regulation 45.

5. IF YOU DO NOT PAY THE PENALTY CHARGE OR YOU DO NOT PAY IT FOLLOWING AN UNSUCCESSFUL REVIEW OR APPEAL

Unless we withdraw this notice, or a court quashes it, if you do not pay this penalty charge, we can recover the amount as a debt through the County Court.

Debt recovery proceedings cannot however be started any earlier than:

- (a) the end of the period allowed for the payment of this charge or any extended period that has been allowed; or
- (b) where a review has been requested, 28 days from the day after any confirmation of the penalty charge; or
- (c) where you appeal to the county court following confirmation on review, 28 days from the day on which the appeal is either withdrawn or determined.

If the penalty charge notice is withdrawn or quashed we will repay any amount previously paid as a penalty charge in pursuance of the notice.

6. BREACH CODES AND DESCRIPTIONS OF BREACHES AND PENALTY				
Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007 regulations 40 and 43				
Breach Code	Legislation	Duty under Regulation	Description of breach	Fixed Penalty Level
EPB5(2)	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 5(2)	Breach of duty of seller or prospective landlord to make available free of charge a valid energy performance certificate to any prospective buyer or tenant	For dwellings: £200 For non-dwellings: calculated at 12.5% of rateable value with a minimum of £500 and maximum £5000, (See note at the end of this table)
EPB5(5)	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 5(5)	Breach of duty of seller or landlord to give a valid energy performance certificate free of charge to the ultimate buyer or tenant	For dwellings: £200 For non-dwellings: calculated at 12.5% of rateable value with a minimum of £500 and maximum £5000, (See note at the end of this table)
EPB6	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 6(2)	Breach of seller's or agent's duty concerning particulars. Where a building is to be sold and home information pack duties apply (i.e. marketed sales of dwellings), any written particulars given to a prospective purchaser by the seller or by anyone on the seller's behalf must either (a) include the asset rating of the building as given on the energy performance certificate; or (b) have a copy of an energy performance certificate for the building attached to them.	£200
EPB9	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 9(2)	Breach of constructor's duty on construction of Crown and statutory undertakers' buildings. When such a building is constructed the relevant person shall, no later than five days after the construction work has been completed, give to the owner of the building an energy performance certificate for the building	For dwellings: £200 For non-dwellings: calculated at 12.5% of rateable value with a minimum of £500 and maximum £5000, (See note at the end of this table)
EPB10	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 10	Breach of duty in relation to recommendation reports. Where a relevant person is under a duty under regulation 5(2) , 5(5) or 9(2) to make available or give an energy performance certificate to any person, the certificate must be accompanied by a recommendation report	For dwellings: £200 For non-dwellings: calculated at 12.5% of rateable value with a minimum of £500 and maximum £5000, (See note at the end of this table)

EPB16(a) EPB16(b)	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 16(2)(a) and (b)	Breach of duty in relation to display energy certificates and advisory reports. Every occupier of any building to which this regulation applies must— (a) have in its possession or control at all times a valid advisory report; and (b) display at all times a valid display energy certificate in a prominent place clearly visible to the public	£1000 (EPB16(a)) £500 (EPB16(b))
EPB21	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 21(1)	Breach of duty of controller of an air-conditioning system to which this Part applies to ensure that the system is inspected by an energy assessor at regular intervals not exceeding five years.	£300
EPB23(1) EPB23(2)	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 23(1) and 23(2)	Breach of controller's duty to- (1).Keep the most recent inspection report made by an energy assessor. (2) Where there is a change of control, to give to the new controller any inspection report kept by him under this regulation	£300 for either breach
EPB24	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 24	Breach of new controller's duty- Where on or after 4th January 2011— (a) the controller changes; and (b) the new controller is not given any inspection report, the new controller must ensure that the system is inspected within three months of the day on which he becomes the controller.	£300
EPB39	Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007	Regulation 39(4)	Breach of duty of a person subject to a duty in relation to an energy performance certificate, recommendations report, advisory report, or air conditioning inspection or report to produce the document when required by an officer of the enforcing authority within the seven days beginning with the day after that requirement is imposed	£200

NOTE: CALCULATION OF PENALTY CHARGES FOR NON-DWELLINGS FOR BREACH OF REGULATIONS 5(2), 5(5), 9(2) and 10

The rules for this are found in Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007 regulation 43(2). The charge is 12.5% of the rateable value, subject to a minimum of £500 and a maximum of £5000. This will apply where a building forms a rateable unit, or is the only building in a rateable unit. Where the building comprises several rateable units, the charge is calculated on the sum of the rateable values of each unit, subject to the same maximum and minimum. There is a default penalty of £750 for cases where the building is one of two or more buildings that form part of the same rateable unit, or is not on the local non-domestic rating list or part of a unit on such a list.