

EPC's Explained



Waldrons
SOLICITORS

Table of Contents

1. Introduction.....	2
2. EPC's, a bit of back ground	2
3. What is an EPC?	3
4 What is an EPC 'trigger event'?.....	4
5. So who is responsible?	5
6. How much will an EPC cost ?.....	5
7. Penalties if its not in place	5
8. Implications for Landlords and Tenants	6
9. In conclusion	7

1. Introduction

1.1 As property professionals, we may not all welcome the introduction of these additional, and costly, obligations but they are now here and we aim today to highlight the commercial implications and economic effects of the new laws surrounding Commercial Energy Performance Certificates (EPC's).

1.2 We believe EPC's will have a much greater commercial impact than residential HIPs have had: purchase decisions in the residential market are less likely to be affected by an energy grading assessment.

1.3 Although only required by law when a 'trigger event' occurs, in some instances, it may make greater commercial sense to put the certificate in place early.

1.4 You will already be familiar with asbestos reports, however these do not have a trigger event and they do not incur penalties. The EPC legislation is altogether 'heavier' and may well have implications for the speed of property transactions if not in place.

1.5 The bulk of the building stock within the Black Country is most likely to be at the lower end of the efficiency grading. Our advice would be to fully understand all the implications and ramifications for your particular circumstances and then decide if you would benefit from a voluntary assessment at an early stage.

2. EPC's, a bit of back ground

2.1 Commercial Energy Performance Certificates are a filtered-down out put of the **1997 Kyoto Protocol** which set targets for industrialised countries to cut their greenhouse gas emissions.

2.2 As a signatory to the Protocol, The EU implemented the **European Energy Performance Directive** in January 2003 with a view to cutting energy consumption in the buildings sector.

2.3 The stats that sit behind this initiative are that around **40% of the total energy consumed** within the EC is from **the building sector** and that improving energy efficiency of buildings **could cut carbon emissions by up to 22%**.

2.4 So the goals and drivers behind EPCs are laudable and worthwhile...but what does this practically mean for business?

3. What is an EPC?

3.1 An EPC is a document which sets out a **buildings energy rating** with 'A' being the most efficient and 'G' the most inefficient.

3.2 This rating is generated by assessing the fabric of the building and the services it contains – heating, ventilation, etc.

3.3 The process is undertaken by an **accredited energy assessor** who will gather information during a site visit, analysing the data which is then entered into an approved software model.

3.4 The assessor must undertake one **of two approved training** courses (SBEM or DSM). In-house assessors are permitted providing the business relationship is disclosed.

3.5 The assessor will look at:

- Thermal characteristics of the building
- Heating and hot water systems
- Artificial ventilation and natural ventilation
- Air conditioning

3.6 The assessor has a duty of care to carry out the assessment with reasonable skill and care, and must act independently of those who instructed them.

3.7 The report will include **recommendations** of how you may improve the energy efficiency of the building together with estimated payback time.

3.8 There is currently **no legal requirement** to implement these recommendations, however industry pundits predict this may well change, the example cited is the current speculation that energy efficiency rates may tie into business rates.

3.9 The EPC register (administered by the Landmark Information Group Limited) will only be searchable by the unique certificate registration number.

3.10 We advise you to keep these numbers safe. Log the building, or part of building, each EPC relates to, the date it was completed and who undertook the work.

4 The EPC: a quick guide

4.1 From **1st October 2008** all commercial buildings will require an EPC when it is **first built, sold, let, assigned or sublet**

A building being: *“a roofed construction having walls, for which energy is used to condition the indoor climate.”¹*

However, on the 4th September an amendment was made to the regulations which also comes into force on the 1st October 2008.

“Under the transitional provisions, a non residential property that has come on to the market before the 1st October 2008 will (in specified circumstances) not require an EPC until 4th January 2009, or the date it ceases to be marketed (which is the earlier)”²

4.2 The main **exemptions** are:

- Places of worship
- Stand alone buildings of less than 50m² (except dwellings)
- Temporary buildings (less than 2 years planned usage)
- Low energy demand buildings (e.g. barns)
- In some cases, buildings to be demolished

4.3. The introduction of the EPC has been staged over the year:

6 April 2008	10,000 m ²
1 July 2008	2,500m ²
1 October 2008	All other commercial buildings

4.4 The **trigger event** for an EPC is when a building is first marketed, when a new build has been completed or when extensive modifications have occurred to an existing building.

A **valid certificate is required** for commercial properties of the size indicated

“(a) at the earliest opportunity

(b) in any event before entering into a contract to sell or rent out the building”¹

4.4 Transactions currently **not considered to need an EPC** are:

- Lease renewals or extensions
- Compulsory purchase orders
- Lease surrenders

4.5 The Government Guidance is not too helpful in clarifying exemptions (giving not-for-value transactions as an example) stating that it “will depend on the individual circumstances of any case”.

4.6 It is currently unclear as to the need for insolvent companies, corporate reorganisations and sales and leasebacks and clarification is being sought.

¹ Statutory Instruments 2007 No. 991 *Building and Buildings, England and Wales The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007*

² Changes to EPC regulations come into force on 1 October 2008, practical law.com

4.7 Getting and EPC in place will have two principle benefits. Current predictions indicate a shortage of qualified assessors so having the EPC may well tip the commercial decision of a prospective buyer. Not having the EPC at the point of exchange, although defensible in certain circumstances, is risky and may well hold up completion for weeks or months.

4.8 Secondly, with the rise of energy costs, implementing the recommendations (which have suitable payback) can produce substantial cost savings.

5. So who is responsible?

Transaction	Relevant Person	Prospective buyer or tenant
New buildings	Building contractor	Building owner
Sold	Building owner	Buyer
Let	Landlord	Tenant
Assigned Lease	Granting assignor	Assignee
Sub let	Outgoing tenant	Incoming tenant

6. How much will an EPC cost ?

6.1 There is no 'official' price for an EPC and costs will be dictated by market forces but it has been suggested, for simple buildings, **you will pay around £0.50 per square metre**. More complex buildings will be significantly more.

6.2 Costs will be driven by the amount of time the assessor needs to time spend on site to **preparation will keep costs to a minimum**.

- Ensure plans or drawings are available, in advance if possible
- Operating and maintenance manuals are up to date
- the facilities manager can accompany the assessor.

6.3 An EPC is valid for 10 years or until it superseded by a more up to date version. For this reason landlords and tenants need to ensure both are clear who is doing what for multi-occupancy buildings or a whole building EPC may be invalidated by a later unit based version.

7. Penalties if its not in place

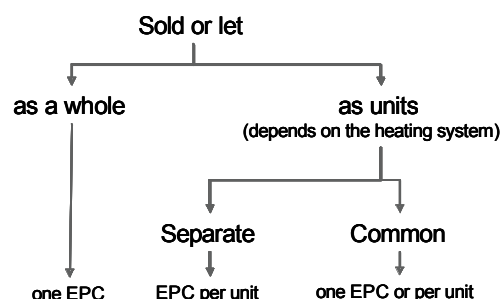
7.1 Weights and Measures authority (trading standards) will police the system with a penalty of 12.5% of the rateable value capped at £5000.

7.2 With the initial shortage of trained assessors, it is believed that a suitable defence can be put up, if you can show that the process was commissioned 14 days before it was required and that "all reasonable efforts" had been made.

8. Implications for Landlords and Tenants

8.1 Landlords and tenants will be affected in three main ways:

1. Should a multi-occupancy building be assessed as a whole or as individual units
2. Can the Landlord recover the cost through the service charge
3. Will lease terms need to be amended and the potential rise of the 'green lease'



8.2 Multiple occupancy buildings

8.2.1 Arguably it is better to obtain an EPC for a whole building. With the difficulty of searching the register by unique number only, having one EPC is administratively much simpler to track

- Costs will probably be less due to the amount of on-site time an assessor will need for multiple EPCs.
- Lease terms permitting, costs for whole buildings can be shared by tenants. However, if you are the tenant you may choose to disagree.
- If an EPC is commissioned for individual units and there are areas of common parts which incur, say, heating costs, a separate EPC will be created for the communal area and issued with each individual certificate.

8.3 Recovery of costs

8.3.1 Rule of thumb is to assume cost of producing an EPC cannot be recovered with the possible exception of the 'greater good'.

8.3.2 However for multi occupancy buildings Government Guidance states:

"Whilst the Regulations state that an EPC should be provided free of charge to prospective buyers or tenants, a landlord may organise an EPC for the whole building and may be able to recover the cost of producing a certificate via the service charges. However, this will depend on how the lease is defined..." Paragraph 4.1

8.3.3 To do so the landlord may well have to agree new lease terms with tenants to charge back costs with services costs or to implement energy efficiency recommendations issued with the EPC that do not fall under existing repair and maintenance clauses.

8.3.4 A final area for consideration is whether a landlord has the right to refuse a change of use request on the grounds that it will adversely affect the buildings rating. And it is this last point that prompts industry commentators to predict the uptake of the Green Lease.

8.4 Green Leases

8.4.1 The Green Lease originated in Australia and in essence is an additional schedule geared to improving energy efficiency.

8.4.2 For example it may include:

- Service charge contributions and rent reviews dependent on the tenants ability to meet specified energy efficiency targets.
- The necessity for tenants to implement recycling regimes
- The right of the landlord to refuse consent if alterations proposed by tenants will affect the energy efficiency rating of the building.

8.5 The effect in the Real World

8.5.1 Although initially inspired by Kyoto, the lasting impact of the EPC is more likely to be commercial. Buildings rated with a more efficient grading are likely to be more attractive to prospective tenants or purchasers and may well attract higher rental or sale values.

8.5.2 If this occurs then the accuracy and consistency of the assessment process itself have significant importance to the commercial value of a building.

9. In conclusion

This session will have provided you with a brief overview of the new requirements but with over 30 pages in the regulations and amendments, clearly there is a lot more detail. So in summary:

9.1 It is inevitable that there will initially be some debate between landlords and tenants with regard to this new requirement and with the expected shortage of trained assessors a settling down period will be needed.

9.2 Having your EPC in place early may help with quick disposal of a property and the recommendations will provide a commercial assessment of the cost/ benefits of undertaking efficiency works.

9.3 We believe that the EPC may well have an effect on the market attractiveness of a commercial building

9.4 Although legislation comes into effect on the 1st October 2008, in practice it would appear that with recent amendments, the requirement to hand over an EPC may be extended to 4th January 2009.

A little about Waldrons

Waldrons offer a comprehensive set of services for Business clients including commercial property, corporate and commercial, disputes and litigation and employment services.

Commercial Property Services

Waldrons act for commercial and residential developers in estate developments; local authorities in leasehold developments and planning agreements; the sale of development land for local authorities and overage agreements for developers.

In addition, we negotiate section 106 agreements for developers, undertake local authority regeneration work including options.

The firm are also experienced in Regeneration, Landlord & Tenant leasehold work; Town & Country Planning advice; Licensed premises, Post offices, Medical centres, Dentists and Care homes.

Corporate and Commercial services

Waldrons have extensive experience of all aspects of company law, acquisitions and disposals, management buy outs and buy ins, floatations on the AIM market of companies providing building services to the social housing sector.

In addition, the team has experience in joint venture agreements and shareholder agreements, preparation of commercial contracts for supplies of goods, services and IT contracts.

The firm also advise on intellectual property rights and disputes, acting for lenders and banks in connection with security documents, debentures and factoring documents and advise an international religious charity on all aspects of charity law and property transactions.

Litigation Services

Waldrons have an experienced team of litigation Solicitors who specialise in commercial matters, commercial property disputes, and judicial review with particular experience in complex high value areas of work.

The firm act approximately 50/50 for Claimant and Defendant in advising upon and assessing prospects of success leading to optimised outcome in proceedings both before and after issue. We deal with all sizes of private and commercial client but with particular experience and specialism in complex and high value matters.

Case example: multi million pound group company litigation with a European multi national with numerous sub litigation claims successfully brought to settlement.

Being vastly experienced in managing and prosecuting proceedings, the firm prepare all of our evidence and witness statements with a large database of experienced tried and tested experts. We are expert at preparing and managing trial documents and complex trial bundles.

Advocacy is split between in-house and the use of specialist Counsel. We consider the merits and costs/benefits appropriate to each case to maximise success for the client. We have longstanding links with several of the highest quality Chambers in the Country allowing us to cover the full spectrum of civil proceedings including administrative and public law.

Employment Services

Waldrons employment team advises on all aspects of employment contracts from commencement to termination.

Our specialist employment lawyers advise on:

- Terms and conditions of employment
- Directors Service Contracts and Contracts of employment
- Staff handbooks, including a wide range of procedures covering issues such as maternity, disciplinary and grievance matters.
- Representation before Tribunal for Unfair Dismissal, Redundancy or Discrimination
- Redundancy programmes
- Negotiating, preparing and advising on compromise agreements
- Employment issues and advice on sale or acquisition of companies and business assets including advice and a detailed knowledge of the practical application of TUPE
- Race, sex or disability discrimination
- Health and safety issues

Employment Advice

In addition to the legal services listed above, Waldrons also offer an HR and employment advice service providing telephone advice on any employment or HR matter.

If a telephone conversation cannot satisfactorily resolve your matter due to its complexity or sensitivity we offer an appointment service for face to face advice.

The Waldrons team also offer access to on site training, briefing or coaching for HR matters.

Our People

Corporate and Commercial Team



Peter Waldron, Partner

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Peter is the Senior Partner of Waldrons and has a breadth of experience covering many fields of the law acquired in his career of over 30 years.

He focuses on commercial property in conjunction with corporate work, leading teams in both fields. He aims to bring a practical approach with an overriding emphasis upon delivery of results to clients.

Within his areas of law Peter has advised a wide range of clients, including large companies and owner managed businesses, charities, clubs, housing associations and local authorities. He has been an active committee member of a local housing association.

Peter works closely with the business leaders of the West Midlands Asian, Irish, Cypriot and Chinese communities.



Daniel Gwynn, Associate

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Daniel specialises in all areas of commercial property dealing with commercial development, business acquisitions, option and overage provisions, landlord and tenant leases, property portfolio management, corporate support, and residential development.

Daniel gained his experience in a leading National firm and acts for clients ranging from owner managed business, public sector bodies and PLC's.

Examples of current relevant projects are for Dudley Metropolitan Borough Council in the disposal of a strategic site and also agreements for lease relating to a national home brand superstore. Daniel also provided commercial support in the sale of a multi million pound company to be listed on the AIM market.



Mason Qureshi, Associate

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Mason specialises in commercial property and has experience working within both commercial and litigation law. He deals with land acquisition and sale and commercial leases, as well as the acquisition and sale of small business and licensed premises. In addition, Mason is experienced in land acquisition and plot sales for residential development and lease renewals. He also acts for banks, charities and trusts.

Examples of recent deals include: the acquisition of a chain of betting shops; the acquisition of large commercial premises for one of the UK's largest air (conditioning) handling manufacturers, the purchase of a Unibond League football club and the sale of a large garden centre business. He also assisted the Corporate Department with the sale of an established nursing home for a seven figure sum and acted for a bank on a multi-discipline medical surgery development

He has also dealt with landlord and tenant disputes, civil disputes and other property litigation matters.



Jane Lewis, Solicitor

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Jane has experience in all areas of commercial work from acquisitions and disposals – including admissions to AIM - to share buy backs, general shareholder, director and partnership matters.

She advises a wide range of clients from large companies to owner managed businesses having completed her training contract with the firm.

Examples of current work include the corporate aspects of the sale of a multi-million pound building company to a PLC and the corporate advice for the sale of a 32 bed nursing home.

Civil Litigation Team



Stephen Green, Partner

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Stephen has vast experience in the field of civil litigation and dispute resolution and his work often includes high value complex contractual disputes. With a particular interest in Chancery contested probate, and disputed estates of between £1million and £5 million, he also deals with a wide range of general civil litigation disputes, including restraint of trade injunctions and

commercial confidentiality enforcement.

Stephen is experienced in all tiers of the commercial courts, including the Technology and Construction Court, the Chancery Court and the Court of Appeal.



David Edwards, Associate

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David has considerable experience in the field of commercial and civil litigation dealing primarily with often complex contractual and tortious claims including professional negligence.

He has a particular interest in contentious insolvency work and property litigation and acts on behalf of both

landlords and tenants of commercial and private property.

In addition, he has developed his interest in insolvency and property litigation.

David is currently working towards becoming a member of the Property Litigation Association and has been published in the Law Gazette.



Ian Sheppard, Solicitor

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Ian has 4 years experience in litigation and over the past two years has specialised in the area of Public Law and Judicial Review Proceedings.

He has successfully settled many claims and taken a number of cases to the High Court in London.

Employment Team

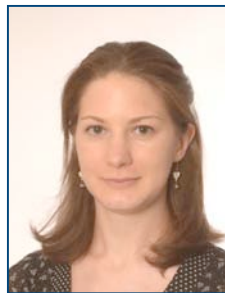


Andrew Burn, Senior Solicitor

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Andrew is a Solicitor of many years' standing who has an extensive background in litigation and commercial contracts but who has specialised in employment law for a number of years.

Recent work includes conducting employment tribunals, advising client on an extensive redundancy programme, drafting Directors Service Agreements and Executive Service Contracts. Andrew also has extensive experience in defending prosecutions under the Health & Safety at Work Act 1974 and related sub legislation.



Hannah Scott, Trainee Solicitor

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Now starting her second year of her training contract, Hannah has a special interest in Employment matters.

She advises both employer and employee clients on many aspects of employment law and has successfully settled employment claims.

Before coming to Waldrons to train to become a solicitor Hannah was a qualified advisor at the Citizen's Advice Bureau and advised on a wide range of issues from employment to housing and consumer issues



Vanessa Powell, HR Specialist

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Vanessa has over 20 years experience as an HR Manager working across a range of sectors including retail, social housing and property.

As a fellow of the Chartered Institute of Personnel Development Vanessa has experience in designing and implementing HR frameworks including key elements such as appraisal systems, policies and procedures, pension scheme consultations, and training and development.

She has formal training in Transactional Analysis, NEBOSH – the health and safety qualification, and volunteers at a bereavement counselling service.

About Waldrons

Waldrons is one of the Black Country's largest and longest established legal practices specialising in highly accredited services for companies, private individuals, compensation claims and the specialist services of crime and care.

With offices in Brierley Hill, Dudley and Kingswinford, the firm is among only 6% of solicitors nationwide to be accredited with the Law Society's Lexcel mark.

This accolade is only awarded to firms that meet the required standards of excellence in customer care, case management and risk management.

Waldrons Business Services team have specialist services for all sizes of business, from small start ups to large AIM listed companies. In addition to employment law the team also specialise in litigation, mergers and acquisition and commercial property.

The firm also acts for private individuals with specialist services in wills, probate, contested probate; family law including collaborative family law; criminal and care and compensation for medical and personal injury.

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