



# Briefing Note **The relevance of Energy Performance Certificates to new leases**

*This Briefing Note is not part of the Code for Leasing Business Premises*

New legislation requiring energy performance certificates (EPCs) to be provided on the leasing of commercial property comes into effect in 2008. It is being introduced in phases, applying to properties greater than 10,000 sq m (approx 100,000 sq ft) from 1 April 2008, to those greater than 2,500 sq m (approximately 25,000 sq ft) from 1 July 2008, and to all properties (with certain exceptions) from 1 October 2008.

When a building is being marketed from the relevant date above, your landlord will need to make available to you, at his own cost, an EPC relating to the space that you are interested in acquiring. This will show the energy rating of the property on a scale from A (very efficient) to G (very inefficient), and will also contain recommendations on how the energy efficiency of the property can be improved.

It is important that you obtain a copy of the EPC, which will initially be valid for ten years. You will need to discuss the energy rating and recommendations with your professional advisers. You should also keep the EPC safe so you can pass it on to someone else if you sell your lease or grant a sub-lease of your property.

## **The costs of the EPC**

It is also important that you and the landlord agree in the lease who is to bear costs arising out of the new EPC requirements. Since this is a new area of law, there is not yet any standard market practice. This is likely to need more thought for occupiers of shopping centres, retail parks, office blocks and any other building that is occupied by several tenants.

Owners should ensure that any charges for EPCs are proportionate and that they reflect both the EPC's period of validity and the particular circumstances that require a new EPC to be issued. You should bear in mind that in due course the period of validity of EPCs might be reduced from the current ten years to perhaps as low as two or three years.

It is important to remember when considering this issue that occupiers will need an EPC in order to be able to assign or sub-let their space, but that the landlord will also need an EPC in order to be able to sell its interest. In a building with many different occupiers, there may be one EPC for the whole building, but it is possible that there may be individual EPCs for each separate unit of occupation. Which route is chosen depends on the layout of the individual building and its heating and ventilation systems.

There are a number of different arrangements that could be agreed between landlords and tenants in a lease for the landlord to recover the cost of obtaining an EPC. These include:

- 1** The landlord to pay the whole cost. Usually the trigger for an EPC will be a landlord's wish to let the whole or part of the property or sell the whole of the property. Here it may be reasonable for the landlord to bear the cost itself.
- 2** The tenants to pay the cost through the service charge. An example of where this might be fair is where the landlord agrees to make the EPC available to the tenants should they need to pass on a copy to anyone to whom they are selling their lease, or sub-letting their property.
- 3** The landlord and the tenant to split the cost between them in proportions specified in the lease – for example 50% paid by the landlord and the other 50% paid by the tenants through the service charge.
- 4** Landlords to pay initially. Where the tenant requests a copy of the EPC, the tenant to pay its service charge proportion of the cost incurred.
- 5** Where all or part of the cost of the EPC is to be paid by the tenants, the landlord is not to charge for an EPC more than (say) once every 3 years, to mirror what is often agreed for the re-charging of insurance valuations.

## Other provisions

The parties should also consider requiring the landlord to provide a copy of its EPC to the tenant on request.

Separately, landlords should consider requiring an obligation on the tenant not to obtain its own EPC (which might invalidate the landlord's existing EPC) where the landlord agrees to provide a copy to the tenant at reasonable cost.

Landlords should also consider requesting a right of entry to assist in the preparation of an EPC in a situation where an EPC is being prepared voluntarily (in which case the statutory duty to co-operate will not be triggered).

## Lease renewals

Guidance produced by the Government (see below) advises that an EPC is not required on the renewal or extension of a lease.

## Further information

The Department for Communities and Local Government has published guidance on its website:

[www.communities.gov.uk/planningandbuilding/theenvironment/energyperformance/](http://www.communities.gov.uk/planningandbuilding/theenvironment/energyperformance/)

If you are in any doubt about how this will affect your business, please take advice from an appropriate qualified professional surveyor or lawyer.