

Rail Property - New climate change directive - Energy Performance Certificates, Display Energy Certificates and Inspection of air conditioning systems

June 2007

Energy Performance Certificates (EPCs) have been in the news recently as a result of their association with Home Information Packs (HIPs) for home buyers. EPCs are part of the requirements of a European Directive, the Energy Performance of Buildings Directive (the "Directive"). This relates to the users of all properties not just residential dwellings. This could have a significant implication for the managers of properties in the rail sector. This briefing explains the main requirements of the Directive and its implementing Regulations in UK law.

Background

Governments across the world are introducing legislation to deal with the issue of climate change. The EU and the UK Government are at the forefront of these changes to legislation. It is thought that in the EU buildings account for approximately 40% of the total energy consumption (and 50% of the UK's total carbon dioxide emissions). One of the ways to tackle this is by a series of measures aimed at reducing emissions by improving the energy performance of buildings. This is the reason for the Directive.

The Directive came into force on 3 January 2003. It had three basic objectives:

- To provide minimum requirements for the energy performance of buildings when they are constructed (and for large buildings when they are renovated).
- To establish a system of certification of the energy performance of buildings; and
- To establish a system of regular inspection of boilers and air conditioning systems in buildings (which are recognised as large users of energy).

Member states were required to bring into force appropriate legislation to comply with the Directive by 4 January 2006. Member states were also given a further three years to bring some of the provisions into force to allow time for sufficient energy assessors to be trained.

Although the UK Government failed to implement the Directive by the above deadline, it has now been implemented into UK law. This has been done in two parts; by the Building Approved Inspectors (Amendment) Regulations 2006 (the "2006 Regulations") and the Energy Performance of Buildings (Certificates and Inspectors) (England and Wales) Regulations 2007 (the "2007 Regulations").

The 2006 Regulations dealt with the first objective of the

Directive by amending the Building Regulations 2006. This briefing does not deal with those issues. This briefing addresses how the second two objectives of the Directive have been implemented.

Energy Performance Certificates

An EPC is a certificate containing information about the energy efficiency of a building. The form of an EPC is not prescribed but the 2007 Regulations set out certain information that is required, such as an asset rating of the energy performance of the building (similar to that found on white goods). In addition the EPC must be accompanied by a recommendation report which will contain recommendations about cost effective alterations to the building that would improve energy performance and measures requiring a higher level of expenditure (such as installation of renewable energy systems) which could be adopted to improve the building's energy performance.

EPCs are required when buildings are constructed, sold or rented. On those occasions EPCs will be required for all buildings except:

- Buildings which are used primarily or solely as places of worship.
- Temporary buildings with a planned period of usage of two years or less.
- Certain types of building with low energy demand, including industrial sites, workshops and non residential agricultural buildings.
- Stand alone buildings with a total useful floor area of less than 50m², which are not dwellings.

As far as can be ascertained EPCs will be required for a large number of buildings used by rail operators such as stations, depots and so forth. The obligations to obtain an EPC are placed upon the landlord (in the case of the leasing of a building), the owner (in the case of a sale of a building) and the contractor (in the case of the construction of a new building). EPCs must be handed over to the potential purchaser, potential tenant or owner (in the case of construction) at the appropriate time.

The timetable for the implementation of these requirements is set out in the table below.

Display Energy Certificates (DECs)

From 6 April 2008 occupiers of certain buildings will be required to show a DEC in a prominent place. The requirement

to display a DEC will apply to "buildings with a total useful floor area over 1,000m² occupied by public authorities and by institutions providing public services to a large number of persons and therefore frequently visited by those persons".

Guidance has been issued by the Government stating that public museums and swimming pools will fall within this requirement, but hotels and retail outlets will not. It is not clear at present whether, for example, train stations will be required to display a DEC. Further guidance is expected imminently and, in addition, the Government has announced its intention to consult on whether the requirement should be extended to private sector buildings occupied by commercial organisations where large numbers of members of the public regularly visit the building. As a result, it is very likely that many of the buildings operated by those in the rail industry will be caught by the requirement.

The 2007 Regulations require certain information to be contained in a DEC including the asset rating of the building and the operational rating of the building (an indication of the amount of energy consumed at the building over a period of twelve months).

As well as displaying a DEC, occupiers are obliged also to obtain an advisory report containing recommendations for improving the energy performance of the building.

Inspection of Air Conditioning Systems

The 2007 Regulations place a duty on the person who has control of the operation of the air conditioning system to ensure that the system is inspected by an energy assessor at regular intervals not exceeding five years. The requirement applies to air conditioning systems with an effective output of more than 12kW.

Enforcement

The Local Authority is responsible for enforcing the 2007 Regulations. The Local Authority is empowered to issue Penalty Charge Notices to those who fail to comply with the Regulations. The level of the penalty charge varies and is set out in the Regulations. For example the penalty for failing to display a DEC is £500 and the penalty for failure to have a valid advisory report is £1,000. Other penalties are based upon a percentage of the rateable value of the building which, in some cases, could be significant.

Timetable for Commencement

Date Coming Into Force	Duties Coming Into Force
1 January 2008	Air conditioning inspections introduced
6 April 2008	EPCs required on construction of all non-dwellings. EPCs required for the sale or renting out of non-dwellings for the total useful floor area over 500m ² . DECs required for buildings with a total useful floor area over 1000m ² which are caught by the Regulations.
1 October 2008	EPCs required for the sale and rent of all buildings that are not dwellings.
4 January 2009	Deadline for the possession of a valid report following the first inspection of air conditioning systems with an output of more than 250kW.
4 January 2011	Deadline for the possession of a valid report following the first inspection of remaining air conditioning systems with an output of more than 12kW.

Conclusion

The DCLG proposes to hold further discussions with the commercial property sector before 6 April 2008 when the requirement for EPCs for some commercial properties comes into force. There may be some amendments to the requirements following that consultation. However, the basic requirements to have an EPC, display a DEC and to inspect air conditioning systems will definitely apply to ensure that the UK complies with its obligations under the Directive. These obligations will result in increased short-term costs but, if the system works, it should

result in buildings that require less energy, are less expensive to run and contribute less to climate change. Whatever the outcome, TOCs and others in the rail industry should start now and consider what they should do in relation to these issues.

Further Information

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Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

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