



Making better use of Energy Performance Certificates and data

Consultation



Making better use of Energy Performance Certificates and data

Consultation

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 0303 444 0000
Website: www.communities.gov.uk

© Crown Copyright, 2010

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence.
Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU

e-mail: licensing@opsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
Tel: 030 0123 1124
Fax: 030 0123 1125

Email: product@communities.gsi.gov.uk
Online via the Communities and Local Government website: www.communities.gov.uk

March 2010

ISBN: 978 1 4098 2280 6

Consultation summary

Topic of this consultation:	Making better use of Energy Performance Certificates (EPC) and data
Scope of this consultation:	To seek views on the proposals set out in the consultation paper.
Geographical scope:	England and Wales.
Impact Assessments:	Published separately.

Basic Information

To:	Everyone involved in improving the energy efficiency of buildings.
Body responsible for the consultation:	Department for Communities and Local Government (CLG).
Duration:	2 March – 25 May 2010.
Enquiries:	Eve Martin Eve.martin@communities.gsi.gov.uk 0303 444 2704
How to respond:	Preferably by email to: EPC.consultation@communities.gsi.gov.uk Alternatively, you can send written responses to: Eve Martin Communities and Local Government Eland House Bressenden Place London SW1E 5DU
Additional ways to become involved:	This written consultation exercise complements ongoing consultation with a wide range of stakeholders who have an interest in improving the energy efficiency of buildings.

After the consultation:	All responses will be considered and a feedback document will be published as soon as possible after the end of the consultation period.
Confidentiality	See pages 7-8.
Compliance with the Code of Practice	See pages 7-8.

Background

Getting to this stage	<p>The Energy Performance of Buildings Directive introduced the following requirements:</p> <ul style="list-style-type: none"> • EPCs for all buildings (domestic and non-domestic) when they are built, sold or rented • regular energy assessments of large public buildings and that Display Energy Certificates (DECs) are displayed so that users and visitors are aware of their of the energy use of buildings • regular inspections of, and recommendations about improving, the energy performance of Air Conditioning installations • regular inspection of boilers above a certain size or the provision of advisers to users. <p>The England and Wales domestic and non-domestic EPC registers were set up monitor take up and provide a database for analysis.</p>
Previous engagement	<p>Recent Government consultations have sought views on whether access to the data should be extended beyond current arrangements and to whom.</p> <ul style="list-style-type: none"> • The Next Steps: EPCs and the establishment of the Green Homes Service consultation paper (June 2008) asked for views on proposals to make data on EPCs and DECs more accessible to a range of bodies including the Energy Saving Trust (EST), the Carbon Trust, energy assessors and the public. • The Heat and Energy Saving Strategy consultation (February 2009) (HESS) also asked who should have access and to what level they should have access to EPC data. An initial response is available at: http://hes.decc.gov.uk/view_results. More detailed proposals are to be published in 2010. • <i>The Government response to the Rugg Review: Consultation</i> (May 2009) identifies the EPC data potentially providing a way to target offers for landlords and potentially also, information to local authorities in support of their enforcement work. It asks for views on whether government should explore whether the EPC data should be made available in this way.

Contents

Executive summary	9
Chapter 1 Introduction	11
Chapter 2 Making better use of energy performance data	15
Chapter 3 Energy Performance Certificates for houses in multiple occupation	21
Chapter 4 Energy performance certificates for short-term holiday lets	24
Chapter 5 Energy performance certificate ratings in property advertisements	27
Chapter 6 Extending Display Energy Certificates to commercial buildings	30
Chapter 7 Mandatory lodgement of air conditioning reports	33
Chapter 8 Clarifying when an Energy Performance Certificate is required on the sale or letting of buildings	37
Chapter 9 EPC online tool	40
Annex A The Legislative Framework	41
Annex B Current level of access	44
Annex C Criteria for proposed tiered access to data	45
Annex D Data protection principles	47

About this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation, and
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA 1998) and the Environmental Information Regulations 2004 (EIR 2004)).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of

your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

CLG will process your personal data in accordance with DPA 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Co-ordinator
Zone 6/H10
Eland House
London SW1E 5DU

or by email to: consultationcoordinator@communities.gsi.gov.uk

Executive summary

1. Buildings account for almost 50 per cent of the UK's carbon emissions. The Climate Change Act 2008 commits the UK to a statutory target to reduce its carbon emissions (from all sources) by 80 per cent by 2050. The Heat and Energy Saving Strategy: a consultation (HESS)¹ in February 2009 proposed the Government's approach for reducing carbon emissions from existing homes by 2050, setting ambitious milestones for:
 - all houses to have cavity wall and loft insulation by 2015
 - all homes and other buildings to have received all available cost-effective measures by 2030
 - emissions from buildings to be as close to zero as possible by 2050.
2. In line with these milestones, the UK Low Carbon Transition Plan (DECC, July 2009) commits to reducing annual emissions from residential buildings by 29 per cent by 2020 and to almost zero by 2050.
3. In response to the HESS consultation, *Warm Homes, Greener Homes: A Strategy for Household Energy Management (2010)* sets out detailed plans to 2020 to achieve these targets. This will mean, as well as insulating all lofts and cavities where practicable by 2015, up to 7 million homes will receive an eco-upgrade, including major measures such as solid wall insulation or heat pumps. This will rely on motivating consumers to take up available support for retrofitting their homes, through better information and engagement on home energy efficiency.
4. EPCs and DECs have an important role to play in supporting our carbon reduction aims by providing vital information about the energy efficiency of buildings in England and Wales and advice about measures to improve their energy performance. To enhance their contribution, we are consulting on a number of measures to help improve the effectiveness of EPCs and to make better use of energy performance data. In particular we are seeking views on proposals for:
 - making better use of the energy performance data by extending and managing access to EPC data held on the England and Wales domestic and non-domestic EPC registers;
 - enabling local authorities (LAs) to use EPC data to support development of wider purposes such as support of local Carbon Frameworks as set out in the Household Energy Management Strategy (HEM) 2010;

¹ A summary of consultation responses can be found here <http://hes.decc.gov.uk/alongside> Government's initial response. A final policy package will be published later this year.

- EPCs for houses in multiple occupation (HMOs) when rooms in such buildings are rented out
- EPCs for short-term holiday lets
- property adverts to show the EPC rating
- extending the use of DEC to commercial buildings
- making lodgement of ACRs on the England and Wales non-domestic EPC register mandatory
- clarifying when EPCs are required for sale or renting out of domestic and non-domestic properties.

Chapter 1

Introduction

Background

1. The Heat and Energy Saving Strategy: a consultation (HESS) (2009) sets out a road map of Government's plans to virtually eliminate carbon emissions from existing homes by 2050. This policy package set out the short-term action which will help consumers save energy and save money. It also consulted on options for a longer term strategy to support and encourage everyone – individuals, communities and government – to work together and make the changes we need in the fairest way possible. The HESS set out ambitious milestones for reducing carbon emissions from domestic properties and to increase the proportion of renewable heat sources; all houses to have cavity wall and loft insulation by 2015, all homes and other buildings to have received all available cost-effective measures by 2030 and that emissions from buildings to be as close to zero as possible by 2050.
2. The UK Low Carbon Transition Plan (DECC, July 2009) sets out Government's broad road map for tackling climate change. It recognises that three quarters of the energy we use in our homes is for heating rooms and water, most of which comes from gas-fired boilers. This accounts for 13 per cent of the UK's greenhouse gas emissions and by 2050 emissions from homes needs to be almost zero by using energy more efficiently and using more low carbon energy. The Plan further commits to reducing annual emissions from residential buildings by 29 per cent by 2020.
3. The *Warm Homes, Greener Homes: A Strategy for Household Energy Management (2010)*, responds to the HESS consultation and sets out detailed plans to 2020 to achieve this commitment, and to put us on the right trajectory to meet the 2050 milestone. This will mean, as well as insulating all lofts and cavities where practicable by 2015, up to 7 million homes will receive an eco-upgrade, which will include major measures such as solid wall insulation or renewable heat, alongside smart meters and other smaller measures. An important element of the strategy will be to motivate consumers to take up the support which will be available for home energy retrofit, through better information and engagement. This includes:
 - plans for a new free and universally available advice service on increasing home energy efficiency and the support available to do this

- access to more tailored advice through Home Energy Advice packages
- a new certification system that will include standards for people who provide advice
- Improvements to EPCs to encourage take-up of energy efficiency recommendations, as set out in this consultation document

Energy performance of buildings

4. The Energy Performance of Buildings Directive (EPBD) was implemented in England & Wales on a phased basis between August 2007 and October 2008 and required:
 - EPCs for all buildings (domestic and non-domestic) when they are built, sold or rented
 - regular energy assessments of large public buildings and that DEC's are displayed so that users and visitors are aware of the energy use of buildings
 - regular inspections of, and recommendations about improving, the energy performance of Air Conditioning installations
 - regular inspection of boilers above a certain size or the provision of advisers to users.
5. A recast of EPBD (EPBD2) has been agreed in principle and will need to be implemented by 2012–13. The purpose of the recast is to extend the scope of the original Directive, strengthen certain provisions, and clarify other aspects. It gives the public sector a lead role in improving the energy efficiency of its building stock. Annex A sets out the detail.
6. To date the energy performance of over 4.3 million domestic and non-domestic buildings in England and Wales have been assessed and captured through EPCs, DEC's and ACRs since 2008. Details of EPCs and DEC's for properties in England and Wales are stored in the England and Wales domestic and non-domestic EPC registers.
7. In respect of EPCs, the England and Wales domestic and non-domestic EPC registers contain information about the fabric of a building, the plant (air conditioning, heating, etc) used in a building and its existing energy performance. In respect of DEC's, information is collected on the actual energy use of the building based on energy consumption. This information, with the advisory report, can be used by the building owner to inform their choices for reducing both the energy usage of the building and energy/fuel bills.

8. This is the first time that this data has been collected in one place and it provides an increasing dataset of the energy efficiency of all types of buildings in England and Wales. Over time this will build up into a comprehensive database on the energy efficiency of the nation's building stock.
9. EPCs have the potential to play a vital role in delivering the Government's household energy management objectives because they provide key information about a building's carbon emissions and the types of improvements that can be made to improve the buildings energy efficiency. They can therefore provide an important basis for advising, encouraging and incentivising people to improve the energy efficiency of buildings and for supporting the policy developments and actions of the public, private and voluntary community sectors.

Proposals

10. This paper firstly explains the steps we are taking to improve the quality of the EPCs and DECAs and our plans to improve the detail of information that consumers will be able to access from their EPCs. It then sets out our proposals for further enhancing the ability of EPCs to realise their potential by extending the scope of EPCs and DECAs, improving levels of compliance and making better use of EPC data,. In particular, we are consulting on proposals for:
 - making better use of energy performance data by extending appropriate access to EPC data to other Government Departments and agencies, local authorities, institutions and private organisations and members of the public
 - property adverts to show the EPC rating
 - EPCs for houses in multiple occupation (HMOs) when rooms in such buildings are rented out
 - EPCs for short-term holiday lets
 - extending DECAs to commercial buildings
 - making lodgement of ACRS on the England and Wales non-domestic EPC register mandatory
 - clarifying when EPCs are required for sale or renting out of domestic and non-domestic properties.
11. Subject to the outcome of our analysis of consultation responses we will consider the most appropriate enabling measures that would be needed to implement proposals, including legal instruments.

Quality of energy performance data

12. In order to realise the potential of EPCs in supporting our carbon reduction objectives, we must first ensure that they are of high quality and contain accurate information. While the vast majority of EPCs prove an accurate assessment of a dwelling's energy efficiency, there is some evidence, including emerging results from our research of the operation of the EPBD arrangements that the quality of EPCs needs to be improved. We have already taken a number of steps to address early issues; however, we are taking further action to ensure that consumers can have confidence in the quality and accuracy of their EPCs. In particular we are:
- revising, tightening up and consolidating our guidance and standards for the operation of Accreditation Schemes and the process of producing EPCs and DEC's to reduce the scope for misinterpretation
 - harmonising and making clear the requirements of Accreditation Schemes, including standardising and specifying new reporting arrangement and requirements for auditing the quality of EPCs
 - rationalising both the amount of guidance and the way that it is organised and presented on our website
 - rationalising the process of updating software to minimise disruption and ensure greater periods of stability
 - looking to improve the level of training energy assessors receive.

Scope

13. The proposals in this consultation apply to England and Wales only, in accordance with the current legislative framework. Northern Ireland and Scotland have adopted a separate legislative framework and powers for implementing the EPBD.

Costs and benefits

14. Estimated financial costs and benefits of these proposals have been calculated and are set out in the Impact Assessments.

Chapter 2

Making better use of energy performance data

Issue

1. Access to the England and Wales domestic and non domestic EPC registers is currently controlled by Part 6 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 as amended. Annex A details the existing legislative framework and Annex D details the Data Protection Principles. The existing legislative framework controls who may access what data and also restricts the purposes for which the data may be used in different circumstances. These disclosure restrictions were put into place to maintain the integrity of the data and to ensure that any disclosures were made in the public interest. Access is currently available for:
 - CLG: the Secretary of State for Communities and Local Government, as the 'keeper of the register', may disclose any document or data to an officer of CLG: to enable the Secretary of State to monitor the application and enforcement of, and compliance with, the duties imposed by the 2007 Regulations; or for statistical or research purposes, provided that no particular property is identifiable from the document or data disclosed; and any DEC
 - approved Accreditation Scheme operators: any document which was prepared by an energy assessor who was a member of the scheme at the time the document was entered into the register; and any associated data
 - energy assessors: any document or data concerning a dwelling for the purpose of the assessment of the dwelling concerned; or for any other purpose undertaken on behalf of the owner or tenant of the dwelling concerned
 - Trading Standards authorities: any document or data for their duties as the enforcement authority
 - approved inspectors: any document or data in connection with functions under Part 2 of the Building Act 1984 in relation to the building to which the document or data relates

- those that can provide a reference number: the document, that they request relating to that reference number only and any others produced in the previous ten years relating to the same building, or part of building
- any person, in relation to a specified building other than a dwelling: whether an EPC is entered on the register for the building in question; and the date on which any such certificate was issued
- EST: In August 2009 revised Regulations (The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2009 came into force to allow for disclosure from the England and Wales domestic EPC register that have been produced in order to comply with duties arising on sales of dwellings and that show an F or G asset rating along with their recommendation reports to EST for specified purposes only. The purposes are to provide owners and occupiers of those lowest energy rated dwellings with information on measures that may be taken to improve the energy performance of the dwelling and on any financial assistance that may be available for such measures.

2. There are however, growing calls for access to energy performance data and to review these arrangements, to better support the development of policy and the actions of organisations and individuals to improve the energy efficiency of buildings and reduce their carbon emissions. This includes requests from other Government departments and their agencies to have access to the data to support efforts to:

- inform policy development for tackling climate change, for example by developing a clear understanding of existing energy use of buildings and assessing the effectiveness of actions to improve energy performance
- assist research and development, for example by promoting awareness and education on EPC ratings
- help in targeting energy efficiency support, for example providing support and advice to owners or occupiers of dwellings, commercial or public buildings with an EPC or DEC to improve the energy efficiency of the building
- support the central role that LAs play in enforcing the EPBD requirements and in developing Local Carbon Frameworks to tackle climate change.

Consideration

3. In determining the best approach for responding to these requests we have been mindful of the data protection and legal considerations which govern the use of data in general and energy performance data in particular. The main considerations are:
 - data must only be used to promote and improve energy efficiency in buildings in line with the EPBD 2002/91/EC under which the 2007 Regulations are made
 - data may only be used for analysis and research to directly support Government policy; monitoring of Government targets; and/or to undertake Government-funded or endorsed activity/programmes to provide impartial information and advice to owners or occupiers of dwellings or commercial or public buildings with an EPC or DEC to improve the energy efficiency of the building²
 - data may not be used for commercial or profitable gain
 - there would be no obligation on building owner to take action (either in responding to information or in undertaking energy efficiency works).
4. There is a need to be clear at the outset as to what data is to be shared; for example EPCs will need to contain a fair processing notice which informs people with whom and for what purpose their EPC will be shared.
5. Disclosure of an individual's personal data engages in particular rights under Article 8(1) of the European Convention on Human Rights (ECHR). We need to ensure that the proposal to share data does not interfere with an individual's right to respect for his private and family life, his home and his correspondence. While this is not an absolute right, any interference must be justified in accordance with the law, proportionate, in pursuit of a legitimate aim and necessary in a democratic society. Furthermore, we have to ensure that it does not breach any common law obligations of confidence. We would also need to ensure compliance with data protection principles.
6. We have also considered the possible impacts on an individual's human rights in terms the right to a fair hearing, the right not to be deprived of property and the right to equal treatment and also the common law obligations of confidence. Our view is that any interference with Convention Rights as a result of these proposals is justified given the benefits which would result provided we put in place safeguards to ensure that those with whom the data is shared adhere to the principles set out in the DPA 1998.

² We are currently considering whether we have the legal powers to share EPC data where it might lead to enforcement. Access to EPC data may help LAs identify properties with low energy efficiency, and in turn, dwellings that may also fall under the Housing Health and Safety Rating System (HHSRS) definition of a 'cold' home (those with the lowest SAP ratings (equivalent to SAP 35 under the 2001 SAP methodology); a SAP rating under 39 equates to F and G rated properties.) LAs have existing powers to provide financial assistance and advice to, and even to compel, landlords to make improvements to homes, which can include energy efficiency measures to address excessive cold.

7. We have also considered any possible financial impacts of changes widening access to EPC data. The lodgement fee is currently £1.15 for domestic EPCs and £5.36 for non-domestic EPCs and DEC. The lodgement fee is paid when the EPC or DEC is lodged on the England and Wales domestic and non-domestic EPC registers by the energy assessor. We are not proposing a change to the lodgement fee.

Proposals

8. We have sought to balance the requirements of data protection and the need to control data with the desire to increase access to the energy performance data. For these reasons we believe a criteria approach to access to the data offers the best approach for balancing the possible use of data whilst protecting the privacy of individuals and providing appropriate safeguards to data protection considerations.
9. Accordingly, we propose to provide the Secretary of State with the power to grant access to:
 - i). address level data to specified organisations including LAs for approved purposes
 - ii). anonymised data³.
10. In addition, we propose that the Secretary of State should grant access to local authorities to address level data for dwellings with EPCs in their area. This would provide the opportunity for local authorities to identify properties with low energy efficiency to which they may then offer advice and better target support on energy efficiency.
11. In determining applications for access to the data the Secretary of State would be guided by the following:
 - Level 1: Access to data including address level data – other organisations on application to the Secretary of State for purposes of research and policy development. This will include address level data which we consider to be personal information; there will be no retrospective access. If we were to grant this access we would need to inform individuals so that they are aware of where their information is going to be disclosed and for what purpose. Where access is granted such access would be conditioned as specified in a letter of agreement as outlined in paragraph 9.

³ Anonymisation means the effectively permanent removal of personal identifiers from personal data.

- Level 2: Access to address level data – LAs for purpose of developing targeted local Carbon Frameworks. All LAs would need to enter into a letter of agreement as outlined in paragraph 9.
 - Level 3: Access to anonymised data either as published reports or by the provision of ad hoc reports to meet bespoke requests to allow more sophisticated analysis for research purposes – for example other Government Departments and agencies and research and academic institutes.
 - Level 4: Access to individual EPCs by those with the specific reference number, in line with the current 2007 Regulations.
 - DECs: Public access to individual DECs and aggregated data reports to show general statistics and trends.
12. In practice the Secretary of State would decide on whether to allow access to the data based on an assessment of the merits of each application.
13. Where applications for access to address level data are approved and granted, arrangements would be governed by conditions set out in the letter of approval and agreement between CLG and the organisation in receipt of the data which would incorporate various safeguards to address the principles of data protection. The agreement would cover a range of safeguards including:
- the purposes for which the data will be used
 - the level of the data required and the access granted, including the nature and detail of contract with individual addresses
 - terms of disclosure and sanctions for misuse
 - who within the organisation may have access to the data, including whether or not data may be shared with third parties (in exceptional and defined circumstances only)
 - processes and standards for secure data transfer from the England and Wales domestic and non-domestic EPC registers
 - technical procedures for how the data will be kept securely
 - processes and standards for data loading, storage and maintenance including periodic data removal and disposal.
14. Should any breach of these conditions be identified, the Secretary of State could withdraw permission for both access to and use of the data. Criminal sanctions could apply if provisions in the DPA 1998 are infringed.

15. DEC's differ to EPC's in so far as they are already publicly accessible documents under the current 2007 Regulations, albeit in a fairly constrained way. We therefore propose to publish a list of currently available DEC's. We are considering where this information will be hosted and how it will be presented to the public. One possibility is that the information would be published on the England and Wales non-domestic EPC register
16. We propose that the proposals should apply to all EPC's, DEC's and ACR's.

Question: Do you agree with our approach to giving access to 1) address level data and 2) anonymised data.

Question: Are the safeguards relating to the sharing of address data adequate?

Question: Do you agree that a list of DEC's for public buildings should be published?

Chapter 3

Energy Performance Certificates for houses in multiple occupation

Issue and consideration

1. Under the EPBD, EPCs are currently required whenever a building or part of a building is sold, constructed or rented out. EPCs allow potential purchasers and tenants to compare the energy efficiency of a building upfront. Prepared by accredited and suitably qualified energy assessors they provide an A to G rating of a property's energy efficiency, like the labels provided with domestic appliances such as refrigerators and washing machines. The EPC also provides advice on measures that can be carried out to improve a building's energy efficiency.
2. The requirement for an EPC covers HMOs where the property as a whole is either sold or rented out but not when individual rooms are rented out. EPCs are not currently required when a room in an HMO is rented out because when the Regulations were prepared, rooms in HMOs were not considered to be 'buildings' in their own right. However, it would be sensible for the renting of such rooms to act as a trigger for the building as a whole to obtain an EPC. Many HMOs are old and highly inefficient in terms of energy use. If EPCs trigger improvements to rented property extending EPCs in this way could help stimulate improvements to those properties and cut carbon emissions. There are approximately 300,000 HMOs in England and Wales.
3. In considering how to address this issue, the options that have been considered are:
 - do nothing – maintain the current 2007 Regulations without requiring EPCs when rooms in an HMO are rented out
 - require an EPC for HMOs that have been licensed by the local authority when rooms are rented out as part of the license conditions
 - require an EPC for an HMO when a room in the property is first rented out.
4. The first option is not preferred because of the benefits of extending EPCs to HMOs that are described below. The second option would only cover approximately 56,000 HMOs that are currently licensed by LAs. As we would like to cover as many HMOs as possible the third option is preferred.

5. Under the third option, landlords would be required to make an EPC for the entire building available whenever a room in the HMO was rented out. As most facilities are often shared in HMOs it would be technically difficult and an unnecessary burden to require an EPC for each section of the property that is used by each household therefore it is proposed that an EPC be produced for the property as a whole.
6. We therefore propose to extend EPCs to HMOs – they should be produced for the property as a whole. The proposal will:
 - give prospective tenants information about the energy performance of the property
 - provide the landlord with information about the building’s energy performance and how it could be made more efficient
 - help to improve awareness of energy efficiency and the contributions that buildings can make to reducing carbon emissions
 - lower utility bills for the tenant and a reduction in CO₂ emissions, if the recommendations are taken up, and
 - bring HMOs into line with rented self-contained dwellings for which an EPC is already required.
7. The financial costs and benefits of all three options are examined in detail in the impact assessment. The cost of an EPC is set by the market. As with other types of rented dwellings, the EPC would be valid for ten years and can be re-used as often as necessary within that timescale.

Coverage

8. We propose that the scheme should apply to all HMOs that are defined as HMOs under the Housing Act 2004 with the exception of the following:

‘a building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies’.

Such buildings are already covered by the current requirements.

9. Under this revised definition, the following buildings would be affected by this proposal:
- an entire house or flat which is let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet
 - a house which has been converted entirely into bedsits or other non-self-contained accommodation and which is let to three or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities, and
 - a converted house which contains one or more flats which are not wholly self contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by three or more tenants who form two or more households.
10. In order to be an HMO the property must be used as the tenants' only or main residence and it should be used solely or mainly to house tenants. Properties let to students and migrant workers are treated as their only or main residence and the same will apply to properties which are used as domestic refuges.

Question: Do you agree that an EPC for a HMO should be required and triggered when a room in an HMO is rented out?

Question: Do you agree that EPCs extended to HMOs should have a validity period of 10 years?

Chapter 4

Energy performance certificates for short-term holiday lets

Issue and consideration

1. At present an EPC is required whenever a building or part of a building is sold, constructed or rented out.
2. An exception was made in guidance for accommodation that was being let out for a short period of holiday occupation only and no intention to create a tenancy could be inferred. This is because it was considered unlikely that someone renting a holiday home for a short period of time – typically one or two weeks – would take energy efficiency into account when selecting a holiday home.
3. However, between 55,000–70,000 properties are let out on a short-term basis in England every year. The combined carbon footprint of these properties is likely to be substantial. Even if obtaining an EPC for properties in this sector prompted a small number of owners to implement the recommendations, the potential reduction in carbon emissions could be relatively significant. In many cases, the owners of holiday lets are responsible for paying the fuel bills so they will benefit directly from improving the energy efficiency of the property.
4. In considering how to address this issue, the options that have been considered are either (i) do nothing; or (ii) amend the guidance so that it provides that EPCs are required for short-term holiday lets. The first option is not preferred due to the potential benefits of the proposal described in this chapter in more detail. The second option is preferred for the reasons set out below.
5. The second option of extending EPCs to short-term holiday lets is being proposed because it will:
 - give the owner of the dwelling information about its energy performance and cost-effective measures that could be taken to improve energy performance
 - provide information about the energy performance of the dwelling to people who are considering renting it as a holiday let

- reduce utility bills if the recommendations are taken up
- improve awareness of energy efficiency and the contributions that buildings can make to reducing carbon emissions.

Coverage

6. For the purposes of this consultation a building can be classified as a short-term holiday let when it:
 - is a permanent structure that meets the definition of a building in the 2007 Regulations⁴
 - does not constitute the main residence of a household or individual
 - is not occupied all year round, and
 - is occupied as a result of short-term letting arrangements typically not exceeding four weeks.
7. It should be noted that this definition is not intended to include temporary or mobile structures such as park homes and caravans.
8. The proposal would not include a requirement for people with a second home to get an EPC if they do not let it out on a commercial basis.
9. We propose that the policy would only apply to properties that are rented out for a combined total of four months or more in one year. This is to ensure that properties that are only rented out for a short part of the year are not covered by the requirement.

⁴ The 2007 Regulations define a building as 'a roofed construction having walls, for which energy is used to condition the indoor climate, and a reference to a building includes a reference to a part of [a] building which has been designed or altered to be used separately'.

Question: Do you agree that the guidance should be amended to provide that an EPC must be produced when a holiday let is rented out on a short-term basis?

Question: Do you agree that this should only apply to holiday lets that are rented out for a combined total of four months or more of the year?

Question: Do you agree that the EPC should have a validity period of 10 years?

Chapter 5

Energy performance certificate ratings in property advertisements

Issue and consideration

1. At present EPC ratings must be included in the written particulars of dwellings that are being marketed for sale if they include two of the following:
 - a) a photograph of the building or any room in the building
 - b) a floor plan of the building, or
 - c) a description of the size of the rooms in the building.
2. This ensures prospective buyers have the opportunity to factor the energy efficiency of the property they are considering into their decision making as early as possible.
3. It is not currently a requirement for properties (both domestic and non-domestic) marketed for sale or rent to carry an EPC rating on the advertisement.
4. In considering how to address this issue, the options that have been considered are:
 - do nothing
 - introduce a voluntary scheme so that owners are encouraged to display the energy rating of the property they are renting out or selling in any advertisements, and
 - introduce a mandatory scheme so that all properties marketed for rent or sale, are required to include their EPC rating in the advert.
5. Requiring EPC ratings on adverts is being proposed because it will:
 - ensure that prospective tenants and purchasers of domestic and non-domestic property are provided with details of the EPC rating at the earliest possible stage
 - enable prospective tenants and purchasers to focus their search on properties above a certain band or rating if they wish to

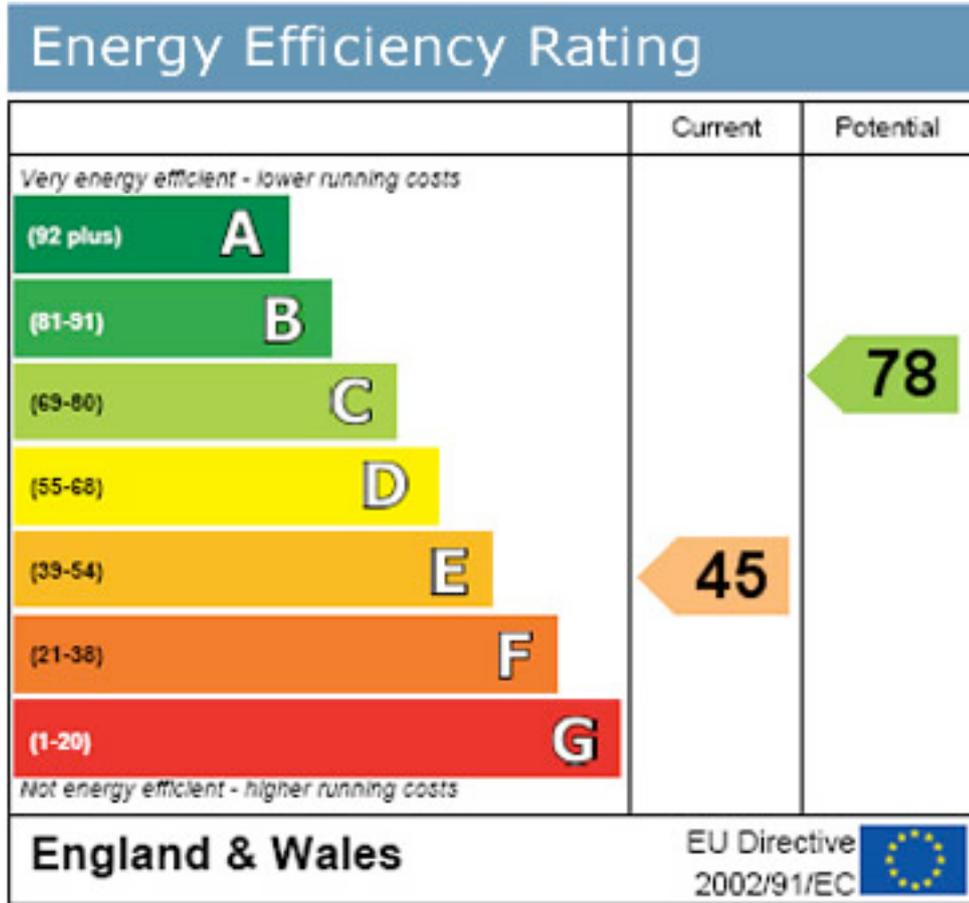
- allow landlords and vendors of properties with high levels of energy efficiency to highlight that feature in the advertisement
 - improve awareness of energy efficiency and the contributions that buildings can make to reducing carbon emissions, and
 - improve compliance with the current requirements.
6. The Government believes that there is considerable merit in requiring adverts for all property marketed for sale or rent to carry details of that property's EPC rating.
 7. As detailed above, EPC ratings in property advertisements could be introduced on either a voluntary or compulsory basis. Doing nothing is not a preferred option due to the possible benefits of requiring EPC ratings on adverts discussed above and below.
 8. EPBD2, which will have to be implemented by 2012–13, includes a requirement for advertisements to carry the EPC rating. We propose implementing this part of EPBD2 early and making it mandatory for advertisements to carry the EPC rating.
 9. The financial costs and benefits of the three options are discussed in the Impact Assessment.

Coverage

10. We propose that the scheme should apply to all properties. However, in the social rented sector, it would only apply where a dwelling is being offered for rent through a landlord's choice-based letting system.
11. In terms of the way in which the information is presented there are a number of options:
 - the EPC A-G chart (an example is given below)
 - the number rating of the property e.g. 45/100
 - the letter rating of the property e.g. E, and
 - an A-G chart or a letter/number rating depending on the size and type of advert. For example, a small newspaper advert could require the letter or number rating but for an estate agent's particulars or in an online advert a full EPC chart could be required.
12. The Government believes that the A-G chart would be the most informative approach and is likely to have the greatest impact. However, it may not be practical for classified adverts to include such charts. For those types of adverts,

a more practical solution may just be to include a letter denoting the relevant EPC rating.

EPC Chart



Question: Do you agree that advertisements for the sale or rent of domestic and non-domestic property should include details of the EPC rating?

Question: Do you agree that the scheme should be made compulsory by implementing the relevant provision in EPBD2 at an early opportunity?

Question: Do you agree with the proposed coverage of all properties advertised for sale and rent including social rented dwellings marketed through choice-based lettings?

Chapter 6

Extending Display Energy Certificates to commercial buildings

Issue and considerations

1. DEC's were introduced in 2008 as part of the EPBD and are required in buildings larger than 1,000m² that are occupied by public authorities and frequently visited by the public. Over 44,000 DEC's have now been issued.
2. DEC's show how efficiently a building is operated. They are an important tool in helping to reduce both running costs and carbon emissions in the buildings to which they relate. The certificate is accompanied by an Advisory Report which sets out three levels of cost-effective improvements which can be taken to improve the building's energy efficiency. The payback periods are within three years, between three and seven years and seven years plus.
3. DEC's are not currently required for commercial buildings however the Government thinks there is a growing case to extend DEC's to such buildings.
4. Non-domestic buildings account for about 18 percent of carbon emissions. An increasing number of large commercial landlords and others recognise the merits of DEC's in helping to improve the energy performance of buildings. They recognise that the benefits of getting a DEC will frequently outweigh the costs of assessment and will provide information about how much energy commercial buildings use and how much carbon they emit.
5. The Committee on Climate Change (CCC) recently released a report that recommended extending DEC's to all non-residential buildings by 2017. Their recommendation is based on the premise that this will give owners and users of buildings:
 - a better understanding of their CO₂ emissions
 - increased transparency, and
 - an effective monitoring of progress in reducing emissions via implementation of underlying measures.

6. In addition, rolling out DEC's to commercial buildings would give Government a better understanding of where emissions reduction potential lies and form the basis for further policy to cut emissions.

Proposal

7. DEC's could be introduced into the commercial sector either on a voluntary or compulsory basis. There are arguments for and against both approaches. Under a voluntary approach, businesses would be encouraged and enabled to obtain and display a DEC. However, take-up is likely to be patchy with a strong likelihood of 'cherry-picking', whereby companies only arrange certificates for those buildings that have high levels of energy efficiency.
8. We therefore propose requiring DEC's for commercial buildings. The main advantages/benefits to this would be:
 - Raising awareness of energy efficiency amongst the general public
 - Giving owners, occupiers and building users clear information about the energy performance of the building
 - Giving clear, cost-effective recommendations about where and how improvements can be made; saving businesses carbon and cash.
9. Requiring DEC's for commercial buildings is currently outside of the scope of the current EPBD regulations and will require primary legislation. Therefore, we would be seeking an appropriate legislative vehicle for implementing this change, which may take some time. Ahead of this, however, we will enable the display of DEC's in commercial buildings on a voluntary basis.
10. The financial costs and benefits of all options have been detailed in the Impact Assessment.

Frequency of renewal

11. The Regulatory Impact Assessment undertaken for the implementation of EPBD demonstrates that updating a DEC every year delivers significantly higher savings in both monetary terms and carbon emissions compared with a ten year renewal period. Similarly, a seven year gap between revising the accompanying Advisory Report makes sense as all of the cost-effective improvements can reasonably be expected to have been implemented in that time period.

12. We believe therefore that it would make sense for the DEC to be updated each year and an Advisory Report to be updated every seven years. Of course, under a voluntary scheme, deciding when to update any of the documents would be a matter for the individual building owner or occupier.

Software

13. DECs are currently produced using the ORCalc software. Basic methodology is produced for the Department and then commercial enterprises are licensed to adapt it.
14. The software is designed to be used with public buildings and we recognise that it may have to be adapted to cope with the wider commercial sector. For instance, the software may have to distinguish between food and non-food premises in the retail sector, or between over ground and metro-type stations.

Coverage

15. Currently, DECs are compulsory for public buildings, frequently visited by the public, with a total useful floor area above 1000m². EPBD2 lowers this threshold and provides that a DEC must be displayed in public buildings above 500m². As before this applies to those frequently visited by the public. Within five years of EPBD2 coming into force, this threshold will fall to 250m².
16. Under EPBD2 another requirement will be that where a commercial building above 500m² is frequently visited by the public and an energy certificate has already been issued, it would have to be displayed. Extending DECs to commercial buildings above 500m² would, therefore, be in line with developments in Europe.
17. The Government proposes that initially only buildings larger than 1,000m² would be required to get a DEC; with a view to progressively reducing the threshold so that it would eventually apply to buildings larger than 250m².
18. Where a building has only recently been occupied, it would be sensible to wait until the owner or tenant has had fuel bills for the first 12 months of their occupancy before providing a DEC.

Question: Do you agree that the requirement to produce DECs should be extended to commercial properties?

Question: Do you agree that DECs in commercial buildings should be updated every year and Advisory Reports updated every seven years in line with the current requirements for buildings occupied by public authorities?

Chapter 7

Mandatory lodgement of air conditioning reports

Issue

1. Buildings currently account for 50 per cent of the UK's carbon emissions, and air conditioning installations account for up to a third of energy consumed in buildings which have one installed.
2. The 2007 Regulations require building owners/occupiers to:
 - have had any new air conditioning installations or those above 250kW inspected by January 2009; and
 - any air conditioning installations above 12kW inspected by January 2011 and every five years thereafter.
3. However, there is currently no central register of the air conditioning inspections that have been carried out. This means that we have little or no information on ACR energy performance or efficiency savings; we have no way of monitoring standards of ACR inspections or ensuring quality control; and we do not know what impact energy saving recommendations are having on CO₂ emissions.
4. There is a growing case for addressing these issues by mandating the lodgement of air conditioning reports. The core arguments which support this approach include:
 - Improve compliance with the ACR requirements, by providing Trading Standards Officers with the information needed to assess whether building owners or occupants are complying with the requirements of both the EPBD and the 2007 Regulations.
 - Improve quality control, by developing a standard ACR reporting template which incorporates the key technical requirements from a broad range of ACR types. This would also make it easier to lodge the data in a central register.
 - Realise greater energy and carbon reductions from commercial buildings. With a register of ACRs, it will be possible to identify the amount of energy that is consumed by air conditioning installation and the amount of energy

that could be saved if air conditioning installations were used more efficiently. This will encourage owners or occupants of buildings to have air conditioning installations inspected in line with the 2007 Regulations and encourage them to implement the simple low cost/no cost measures from the report, which may lead to increased energy efficiency of their buildings, leading to reduced carbon emissions and potentially fuel costs to the individuals.

- Improve information to the energy industry. Aggregate information about the energy assessments of air conditioning installations would help industry plan energy improvement products and their marketing more effectively, again contributing to the achievement of energy and carbon reductions.
5. In addition, mandatory lodgement of ACRs on the central register would afford the benefits currently enjoyed DEC and EPCs, in particular:
- Ease of management and associated low cost – electronically lodged reports are simpler to administer, audit and are lower cost than paper based alternatives.
 - Improve verification and reduce the risk of forgery or fraud by the lodging of ACRs in a secure register by the Accreditation Scheme to which the energy assessor who produced it belongs.
 - Facilitate ease of securing replacement reports. Replacing paper based ACRs carry significant extra costs for the consumer including the cost of a further air conditioning energy assessment. A register of ACRs allows the quick and cheap recreation of any mislaid report.
 - Enable benchmarking – a register of ACRs and associated input data provides the basis for the analysis of information to establish benchmarks.

Legislative considerations

6. It is not mandatory to lodge the reports from inspections of air conditioning installations on the England and Wales non-domestic EPC register. This means there is currently no central record of the air conditioning inspections that have been carried out and therefore no effective means of enforcing these requirements.
7. Under the EPBD it is already mandatory to lodge EPC and DEC certificates on the England and Wales domestic and non-domestic EPC registers. Lodging air conditioning reports on the England and Wales non-domestic EPC register would bring consistency to the EPBD regime.

8. It would be necessary to amend the 2007 Regulations to make it mandatory to lodge the reports produced as a result of air conditioning inspections on the England and Wales non-domestic EPC register.

Other considerations

9. There is currently no universal industry standard for the format or content of ACRs. However, where it is proposed to lodge ACRs on the England and Wales non-domestic EPC register, they must conform to the model report that has been approved by the Secretary of State. This software is available free of charge.
10. The absence of a universal standard presents a number of practical difficulties including what information should be mandatory or optional to collect and what scope should there be for freeform text. It would therefore be necessary to agree with industry professionals:
 - what information it is essential to collect when carrying out air conditioning inspections; and
 - the extent to which this information can, or should, be collected and presented in a standardised manner.

Cost considerations

11. Landmark Information Group, who operate the England and Wales domestic and non-domestic EPC registers on behalf of the Secretary of State, will need to charge air conditioning inspectors a lodgement fee for every report they lodge on the England and Wales non-domestic EPC register. As explained in the March 2007 'Regulatory Impact Assessment, Energy Performance of Buildings' the cost of lodgement depends on the type and volume of information to be held and the uses to which the information will be put.
12. Costs will be incurred for data entry and updates, retrieval of records and long term storage (20 years from the date of first registration). The England and Wales non-domestic EPC register has already been set up to accept voluntary lodgement of air conditioning reports. The fee for lodging ACRs on the England and Wales non-domestic EPC register is currently £5.36, the same as that for lodging non-domestic EPCs.
13. Air conditioning installations can range in complexity from the very simple to the very complex. The size of ACRs and the range of information they record, varies in accordance with the degree of complexity. We propose to keep the cost of lodging ACRs the same as for lodging non-domestic EPCs.

14. The impact assessment uses the discounted average annual costs and the discounted total costs over a 30 year period to calculate the overall cost of this proposal.

Coverage

15. The proposed changes would apply to all reports generated as a result of air conditioning inspections in England and Wales, prepared on buildings that have air conditioning installations over 12kW.

Proposal

16. We propose to make it mandatory to lodge ACRs on the England and Wales non-domestic EPC register.

Question: Do you agree that the 2007 Regulations should be amended to make it mandatory to lodge ACRs on the England and Wales non-domestic EPC register?

Question: What information would you consider should be recorded on standardised ACRs?

Question: Do you agree that the fee for lodging ACRs on the England and Wales non-domestic EPC register should remain the same as for lodging non-domestic EPCs? If not, how do you think the fee should be structured?

Chapter 8

Clarifying when an Energy Performance Certificate is required on the sale or letting of buildings

Issue

1. The EPBD and the 2007 Regulations require the owner or landlord of a buildings being sold or rented out to make an EPC available free of charge to any prospective buyer or tenant. The intention is to ensure that the prospective buyer or tenant has the information from the EPC available before they make a decision about whether to buy or rent a particular building and certainly before they exchange contracts. There is however evidence that the 2007 Regulations are open to misinterpretation with the consequence that owners and landlords of non-domestic buildings are deferring provision of an EPC until contracts are exchanged.

Consideration

2. Regulation 5(2) of the 2007 Regulations, which applies both to domestic and non-domestic buildings, states that the owner or landlord of the building being sold or marketed is obliged to make available free of charge a valid energy performance certificate to any prospective buyer or tenant
 - '(a) at the earliest opportunity; and
 - (b) in any event before entering into a contract to sell or rent out the building or, if sooner, no later than whichever is the earlier of
 - (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or
 - (ii) in the case of a person who makes a request to view the building, the time at which the person views the building.'

3. There is evidence from several sources, including industry surveys⁵ and the England and Wales non-domestic EPC register⁶, that there is uncertainty amongst building owners, landlords, tenants and trading standards officers, who are responsible for enforcement, about the interpretation of these requirements.
4. This could mean that up to 50 per cent of owners or landlords of non-domestic buildings being marketed for sale or rent are not complying with their obligation to make an EPC available to prospective buyers or tenants at the appropriate time. Instead they appear to be delaying provision of an EPC until contracts are exchanged, which is too late to influence the prospective buyer or tenant's decision about which building to buy or rent. Another consequence of this is that it can create uncertainty for trading standards officers, who are responsible for enforcement of the 2007 Regulations, about whether building owners or landlords are complying with the obligation to make an EPC available to prospective buyers or tenants of buildings being marketed for sale or rent at the appropriate time.

Proposal

5. We propose to amend the 2007 Regulations with the purpose of clarifying when an EPC is required during the process of selling or letting a building, with a particular emphasis on addressing concerns about the lack of compliance in the non-domestic sector.
6. To achieve this we propose to amend Regulation 5(2) to:
 - make it clear that the 2007 Regulations require building owners or landlords to make an EPC available to a prospective buyer or tenant as soon as they request either information about, or to view, a building; and
 - remove the opportunity for building owners or landlords to defer making an EPC available until contracts are exchanged:

⁵ 'Commercial Property EPCs – Compliance on the High Street' NHER (part of National Energy Services), June 2009. See link to NES survey at http://www.nher.co.uk/pages/about/nher_news.php and 'Non Domestic EPCs for Commercial Properties Market Analysis Report', Elmhurst Energy Systems Ltd, January 2010. See link to Elmhurst survey at <http://www.elmhurstenergy.co.uk/news/29-non-domestic-epcs-for-commercial-properties-market-analysis-report.html>

⁶ The Regulatory Impact Assessment for articles 7-10 of the EPBD estimated that, following implementation, approximately 216,000 EPCs would be lodged annually in the non-domestic sector, but only 110,483 were in fact lodged during the course of 2009, the first full year for which information about the number of EPC lodgements in the non-domestic sector is available. This tends to suggest that approximately 50%, rather than 75-80%, of owners or landlords of non-domestic buildings are not complying with the requirements of the 2007 Regulations

Coverage

7. The proposed amendment would only be intended to clarify the existing requirement that building owners and landlords must make an EPC available to prospective buyers or tenants at the earliest opportunity.

Cost

8. There will be no additional costs since the intention is to clarify what is already an existing requirement under the 2007 Regulations.

Question: Do you agree that that the 2007 Regulations should be amended as proposed to clarify when an EPC is required during the process of selling or renting out a non-domestic building?

Question: Do you agree that the option to defer making an EPC available until exchange of contracts should be removed?

Chapter 9

EPC online tool

1. To date, approximately 4 million EPCs have been produced. However, there is limited evidence that the recommendations in EPCs are being taken up. This is partly because people often do not relate to the recommendations which they think are too high level, implying major works or a high cost. People are also unsure how improvements to the energy efficiency of their home would translate into lower fuel bills and reduced carbon emissions.
2. To tackle these issues we need to make the recommendations in EPCs and the effects of implementing them more understandable and accessible to householders.
3. We want to break the recommendations down into manageable chunks that are more likely to be taken up. We also want householders to be able to choose the improvements they want to do, in the order they want to do them and see how this will reduce their fuel bills and carbon emissions.
4. To do this, we will launch an innovative online tool by the end of 2010 that enables householders to model a range of energy efficiency improvements. The tool will show how much cash and carbon they could save from making different improvements to their property. As the tool calculations will be based on a professional survey it will be much more sophisticated than current tools that require householders to input their household information manually.
5. Seeing the effect even small and low cost improvements could have will encourage people to take up the recommendations, reduce carbon emissions and lower household fuel bills.
6. The tool will be simple to use and available free of charge to all via the DirectGov website. It will play a key role in improving confidence in EPCs and raising awareness of energy efficiency.

Annex A

The Legislative Framework

Energy Performance of Buildings Directive 2002/91/EC

1. The Energy Performance of Buildings Directive (EPBD) is designed to tackle climate change by reducing the amount of carbon produced by buildings. Under the terms of the Directive, as implemented in England and Wales:
 - an EPC must be produced whenever a building is sold, constructed or rented out. The EPC gives the energy efficiency of a property and includes recommendations on how energy efficiency can be improved
 - a DEC must be produced every year for buildings over 1,000m² that are occupied by a public authority and frequently visited by the public. A DEC shows the operational rating of the building and must be displayed in a prominent place;
 - air-conditioning installations above 12kW must be inspected every five years; and
 - boiler installations above a certain size must either be inspected regularly or advice must be provided to users.

Implementation of EPBD2

2. The EPBD requirements were introduced on a phased basis between August 2007 and October 2008. A recast of the Directive (EPBD2) has now been agreed. The key provisions in the recast are:
 - minimum energy performance requirements to be set for all new and refurbished buildings and compared against requirements calculated in accordance with cost-optimal requirements;
 - energy use of technical building systems to be optimised by setting requirements relating to installation, size etc. Covers heating, hot water, air-conditioning and large ventilation systems;

- all new buildings developed after 2020 to be nearly zero energy buildings, with an earlier target date of 2018 where the building will be owned and occupied by a public authority;
- property advertisements to include details of EPC rating;
- Member States to provide details of the fiscal incentives in place (if any) which could be used to improve the energy efficiency of their buildings;
- content of EPCs to be improved by making them more specific to a particular building and including more detailed information on the cost-effectiveness of recommendations, along with the steps to be taken to implement those recommendations;
- DEC to be issued and displayed in buildings larger than 500m² (current threshold is 1,000m²) that are occupied by a public authority and frequently visited by the public. This threshold will fall to 250m² after five years;
- EPCs to be displayed in commercial premises larger than 500m² that are frequently visited by the public and where one has previously been issued; and
- a statistically significant percentage of EPCs and ACRs to be checked by independent experts for quality assurance purposes.

EPBD2 will be implemented by Member States by 2012–13.

Legal powers

Current position

3. Access to energy performance data is controlled by Part 6 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 as amended. This Part utilised the powers in section 2(2) of the European Communities Act 1972 (ECA 1972) in relation to Article 7 of EPBD. The current disclosure restrictions maintain the integrity of the data and ensure that any disclosures made are in the public interest. Recent Government consultations have indicated widespread support for increasing access to the information. There is growing demand to gain access to data from the data warehouse because it is considered a useful tool in supporting efforts to tackle climate change.

Consideration of powers

4. There are also some important legal and data protection issues to be considered in developing proposals for increasing access to EPC data and in relation to extending EPC requirements to include HMOs, in particular. We will need to consider the powers we have under the ECA 1972. We will consider whether we can extend the scope of the current 2007 Regulations. To the extent that some

of these proposals go beyond the scope of powers we have via the EPBD and EPBD2 (once our implementation obligations arise under the latter Directive) and ECA 1972, then we may need primary legislation to allow such proposals to be implemented.

Annex B

Current level of access

- CLG: the Secretary of State for Communities and Local Government, as the 'keeper of the register', may disclose any document or data to an officer of CLG: to enable the Secretary of State to monitor the application and enforcement of, and compliance with, the duties imposed by the 2007 Regulations; or for statistical or research purposes, provided that no particular property is identifiable from the document or data disclosed; and any display energy certificate.
- Approved Accreditation Scheme operators: any document which was prepared by an energy assessor who was a member of the scheme at the time the document was entered into the register; and any associated data.
- Energy assessors: any document or data concerning a dwelling for the purpose of the assessment of the dwelling concerned; or for any other purpose undertaken on behalf of the owner or tenant of the dwelling concerned.
- Trading Standards authorities: any document or data for their duties as the enforcement authority.
- Approved inspectors: any document or data in connection with functions under Part 2 of the Building Act 1984 in relation to the building to which the document or data relates.
- Those that can provide a reference number: the document, that they request relating to that reference number only, and any others produced in the previous ten years relating to the same building, or part of building.
- Any person, in relation to a specified building other than a dwelling: whether an EPC is entered on the register for the building in question; and the date on which any such certificate was issued.
- EST: In August 2009 revised Regulations (The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2009 came into force to allow for disclosure from the England and Wales domestic EPC register of EPCs that have been produced in order to comply with duties arising on sales of dwellings and that show an F or G asset rating along with their recommendation reports to EST for specified purposes only. The purposes are to provide owners and occupiers of those lowest energy rated dwellings with information on measures that may be taken to improve the energy performance of the dwelling and on any financial assistance that may be available for such measures.

Annex C

Criteria for proposed tiered access to data

To gain address data the data user would need to demonstrate:

- that data must only be used to promote and improve energy efficiency in buildings (in line with the EPBD 2002/91/EC under which the 2007 Regulations are made)
- that data may only be used for analysis and research to directly support Government policy; monitoring of Government targets; and/or to undertake Government-funded or endorsed activity/programmes to provide impartial information and advice to owners or occupiers of dwellings or commercial or public buildings with an EPC or DEC to improve the energy efficiency of the building⁷
- that data may not be used for commercial or profitable gain
- that there would be no obligation on building owner to take action (either in responding to information or in undertaking energy efficiency works).
- that data use would be governed by a letter of agreement setting out appropriate safeguards:
 - purposes for which data will be used
 - scope of data required and access granted
 - terms of disclosure and sanctions for misuse
 - who can have access to data, including whether data may be shared with third parties (in defined circumstances only)
 - process and standards for secure data transfer from the England and Wales domestic and non-domestic EPC registers operator
 - process and standards for data loading, storage and maintenance, including periodic data removal, and

⁷ We are currently considering whether we have the legal powers to share EPC data where it might lead to enforcement. Access to EPC data may help LAs identify properties with low energy efficiency, and in turn, dwellings that may also fall under the Housing Health and Safety Rating System (HHSRS) definition of a 'cold' home (those with the lowest SAP ratings (equivalent to SAP 35 under the 2001 SAP methodology); a SAP rating under 39 equates to F and G rated properties.) LAs have existing powers to provide financial assistance and advice to, and even to compel, landlords to make improvements to homes, which can include energy efficiency measures to address excessive cold.

- the nature and detail of contact with individual addresses, including assurances about accuracy and impartiality of information and advice to be given.

We propose the following levels of access:

- Level 1: Access to data including address level data – other organisations on application to the Secretary of State for purposes of research and policy development. This will include address level data which we consider to be personal information; there will be no retrospective access. If we were to grant this access we would need to inform individuals so that they are aware of where their information is going to be disclosed and for what purpose. Where access is granted such access would be conditioned as specified in a letter of agreement as outlined in paragraph 9, Chapter 2.
- Level 2: Access to address level data – LAs for purpose of developing targeted local Carbon Frameworks. All LAs would need to enter into a letter of agreement as outlined in paragraph 9, Chapter 2.
- Level 3: Access to anonymised data either as published reports or by the provision of ad hoc reports to meet bespoke requests to allow more sophisticated analysis for research purposes – for example other Government Departments and agencies and research and academic institutes.
- Level 4: Access to individual EPCs by those with the specific reference number, in line with the current 2007 Regulations.
- DEC: Public access to individual DECs and aggregated data reports to show general statistics and trends.

Annex D

Data protection principles

The DPA 1998 sets out eight data protection principles, summarised below, which we will need to comply with:

- Personal data shall be processed fairly and lawfully
- Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes
- Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed
- Personal data shall be accurate and, where necessary, kept up to date
- Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes
- Personal data shall be processed in accordance with the rights of data subjects under this Act
- Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data
- Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

For further information on data protection issues please refer to:

The Information Commissioner's Office: www.ico.gov.uk/

The Ministry of Justice: www.justice.gov.uk/index.htm

ISBN: 978 1 4098 2280 6

