

## PainSmith Solicitors Legal Update

28 August 2008

### Energy Performance Certificates in Residential Property

From 1 October 2008 residential let property will require an Energy Performance Certificate (EPC). The provisions are part of The Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007 SI 2007/991. This can be found in full at [http://www.opsi.gov.uk/si/si2007/uksi\\_20070991\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20070991_en_1).

The requirement is set out in regulation 5 which demands that a prospective tenant be provided with an EPC at the earliest opportunity and certainly prior to entering into any contract to rent out the property. The regulation goes on to state that the certificate must be provided at the earlier of the prospective tenant being provided with written details about the building or the prospective tenant viewing the building. If the prospective tenant consents the certificate can be provided electronically, this presumably includes provision via display on a website. Therefore the key trigger point in most cases will be the provision of written details to the tenant and it is probably worth attaching the EPC to all written details.

EPCs are provided by an approved Domestic Energy Assessor (DEA). DEAs will need to undergo training and assessment by one of a number of government-approved organisations and will then need to pay an annual subscription to maintain their status. Qualified surveyors do not automatically qualify as energy inspectors but they will be able to qualify more easily.

Note that the only requirement for let property is to provide an EPC and that no other part of the HIPs regulations applies to rental property. EPCs remain valid for 10 years or until another certificate is produced for the same property. Therefore agents and landlords must make sure they always have the most recent certificate on file.

The upshot is that from October 2008 agents will need to get EPCs for properties that they are marketing to new tenants. As the requirement is on marketing there should be no need to get EPCs for current tenancies or renewals to the same tenants. The EPC will then need to be renewed every ten years. Where properties enter the market prior to 1 October the position is a little unclear. Experience from the introduction of HIPs suggests that there will be no need to produce EPCs for these properties but the regulations do not say this specifically and so it would be safest to get an EPC for all properties on the market after 1 October.

There is absolutely no requirement for the EPC to be at a specific level, for the landlord to seek to improve the rating, or for the tenant to be compensated for a poor rating. Landlords who wish to improve their rating should concentrate primarily on boilers and insulation making sure that they have the most efficient condensing combination boiler available and ensuring that all parts of the property are insulated to minimum building regulations standards. The rating system produces a far greater effect for installation of items than it does for their improvement, so installing insulation where there is none will produce a greater effect than adding more.

In terms of the practical position there will be a large number of EPCs required as the regulations come into force and this will then tail off after a few months as many properties coming onto the market will have their own EPCs already from previous sale or rental. Agents will need to consider the best way to deal with the initial spike and then how they will handle matters long-term. Most agents will be best to contact their HIPs provider (if they have a sales arm) or make an arrangement with an energy inspector in their area. Larger agents, who anticipate a significant volume of work may be better to consider employing an energy inspector 'in-house' on a short-term contract to cover the initial rush and then contract the work out once this has been dealt with.

Not having a certificate is a criminal offence punishable by a fine. This is enforced by local authority Trading Standards departments. On balance, they are unlikely to take aggressive

To subscribe to PainSmith Solicitors free email update service send an email to [update-subscribe@painsmith.co.uk](mailto:update-subscribe@painsmith.co.uk). To unsubscribe email [update-unsubscribe@painsmith.co.uk](mailto:update-unsubscribe@painsmith.co.uk)

The information contained in this Advisory is a general guide and does not constitute legal advice. Information in this Advisory should not be relied on as if it were legal or professional advice.

Regard should be had to the publication date of this Advisory when reading it.

PainSmith Solicitors are regulated by the Solicitors Regulation Authority.

David Smith is a trainee solicitor with PainSmith Solicitors, a niche practice specialising in residential landlord and tenant law. He can be contacted on 01420 565310 or by email at [david@painsmith.co.uk](mailto:david@painsmith.co.uk).



action on those who mistakenly fall foul of the legislation provided they come into line swiftly once they have been warned.

Agents should put suitable clauses into their Terms of Business and Tenancy Agreements to cover this situation. Suggested samples are available in our Document Vault for Helpline subscribers or to purchase.