

# TURCAN CONNELL

## BRIEFING NOTE

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Energy Performance Certificates

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This note provides an overview of energy performance certificates. Whilst energy performance certificates are also relevant to property transactions in other parts of the United Kingdom, this note refers to the position in Scotland only.

## **Energy Performance Certificates**

An energy performance certificate (EPC) provides information about the energy efficiency of a building and rates it from A (good) to G (poor). An EPC is accompanied by a report with recommendations as to how the energy efficiency of the building might be improved. The recommended improvements are not currently compulsory, although financial incentives may be available in some cases (e.g. through the Home Energy Scotland scheme in the case of domestic properties).

An EPC should only be ordered from an assessor who is accredited to produce EPCs for that type of building. EPCs are registered in the “Scottish Energy Performance Certificate Register” which can be searched online. An existing EPC can be downloaded free of charge from this Register.

EPCs are now an established feature of transactions involving the sale and letting of residential and commercial properties. However, the rules can be difficult to follow and have undergone significant changes since they were originally introduced. The Scottish Government have consulted on making further changes.

### **Do all buildings require an EPC?**

For EPCs, a “building” is a “roofed construction having walls, which uses energy to condition the indoor climate” and includes a section, floor or an apartment within a building which is designed or altered to be used separately.

The following buildings do not require an EPC:

- Temporary buildings with a planned use of two years or less.
- Workshops and non-residential buildings with low energy demand.
- Standalone buildings with a total useful floor area of less than 50 square metres which are not dwellings.
- A building owned, occupied or used from time to time by any of the naval, military or air forces of the Crown, the Security Service, the Secret Intelligence Service, GCHQ or the Royal Family or used as a prison or young offenders’ institution.

*Unlike England & Wales, places of worship and historic buildings are not subject to an exemption in Scotland (unless they fall within one the above categories).*

### **For how long is an EPC valid?**

An EPC is valid for ten years and can be re-used within that period. There is no requirement to renew the EPC at the end of the ten year period and the requirement will not be triggered again until the building is sold or let.

*In July 2023, the Scottish Government consulted on proposals to reform EPCs. The proposals included reducing the validity period from ten to five years. The consultation closed on 16 October 2023 and it was anticipated that legislation would be introduced during the winter of 2023/24. The Scottish Government has since announced that it intends to publish a response to this consultation and the consultation around heating systems and energy efficiency improvements referred to below at the same point later this year.*

### **When is an EPC required?**

An EPC is required when a building is to be sold or let to a new tenant. An EPC is also required when a new building has been constructed at the completion stage of the building warrant process. Those letting properties within the private rented sector may have to provide an EPC as part of the landlord registration process, as may those operating short-term lets as part of the licence application.

It is worth noting that an EPC is not required where only a room within a building is being let. This is particularly relevant in the case of short-term lets, as it means that an EPC is not required where a hotel room is being let. Other examples of where an EPC is not required include B&B or guest house accommodation and caravan holiday homes.

### **Sales and leases**

The owner of a building has the following duties on sale or letting:

- The A to G rating must be stated in any advertisement to sell or let the building.
- A copy of the valid EPC and related recommendations report must be made available to (1) a prospective buyer or tenant (unless the building is still under construction, in which case no EPC needs to be made available until construction is completed) and (2) the buyer or tenant once the building is actually sold or let.

A breach of these duties can lead to a penalty charge notice of £500 (for dwellings or buildings ancillary to dwellings) or £1,000 (in all other cases).

An EPC is not required for the renewal (or extension) of an existing lease with the same tenant. An EPC is also not required upon the assignation of a tenant's interest in an existing lease.

In the case of private residential tenancies, the landlord may need to submit a copy of an EPC with their application to register or renew their existing registration.

In the case of short-term lets, where an EPC is required by law, the A to G rating must be stated in any listing or advertisement. A breach of this duty can lead to a penalty notice of £500. Those operating short-term lets may need to submit a copy of the EPC as part of the licence application.

*In November 2023, the Scottish Government consulted on proposals to make new laws around heating systems and energy efficiency improvements. These proposals include:*

- *Private landlords of domestic properties to comply with the “minimum energy sufficiency standard” (“MESS”) by the end of 2028. The MESS is intended to be a list of straightforward and cost effective measures. It is proposed that the MESS could alternatively be met by EPC category C.*
- *All other owners of domestic properties (including empty homes and short-term lets) would have to comply with the MESS by the end of 2033, unless their use of polluting heating systems (see below) has ended. There are no proposals to set a MESS for non-domestic properties.*
- *All buildings are to end their use of “polluting heating systems” (i.e. those that burn fossil fuels) by the end of 2045. This means that they will need to use alternatives such as heat pumps and heat networks instead.*
- *Some buildings may have to end their use of polluting heating systems before then e.g. purchasers of domestic properties (within a grace period after purchase, two to five years being suggested in this regard) and buildings (especially non-domestic buildings and new developments) within a designated heat network.*
- *Funding support is proposed e.g. interest free loans, grants and expenditure caps. It is acknowledged that modified requirements and timescales might be appropriate in certain circumstances e.g. building limitations or rural properties (where different considerations apply and the availability of options may be affected). The extent to which such funding support and/or flexibility would be extended to the private rental sector is not clear at this stage.*

*The consultation closed on 8 March 2024. The Scottish Government has announced that it intends to publish a response to this consultation and the consultation on proposals to reform EPCs referred to above later this year. The target date for passing the bill is May 2026. Secondary legislation would need to follow which would be subject to consultation.*

## **Large non-domestic buildings**

In the case of the sale or lease of a qualifying non-domestic building with a gross internal area more than 1,000m<sup>2</sup>, the owner may, in addition to the requirement for an EPC, have to carry out a further assessment to identify a target for improving the energy efficiency of the building and an “action plan” setting out how this target will be met through improvements to the building. A copy of this action plan must be made available to prospective buyers or tenants when marketing the property and to the purchaser and tenant upon completion of the transaction.

The owner must then either carry out the works identified within the action plan within 42 months or defer the works and instead measure and display the operational basis in a display energy certificate (also known as a “DEC”). How the terms of the action plans are complied with are likely to form part of the sale or lease negotiations, particularly in relation to the timing of any works, costs and access.

A breach of the above duties can lead to a penalty charge notice of £1,000.

## **Mixed use buildings**

In the case of a mixed use building (i.e. one that contains both domestic and non-domestic parts), an EPC will be required for each dwelling and a further EPC will be required for the non-domestic part (or parts) of the building.

Where individual parts of the non-domestic parts of a building are designed or altered to be used separately (e.g. retail units within a shopping centre), separate EPCs may be produced for each building unit part rather than one EPC. In such cases, an EPC assessor will advise on the most suitable option.

## **Construction**

As part of the building warrant process, an EPC must be submitted with other documentation when applying for a completion certificate following the construction of a new building.

From April 2024, changes to building regulations mean the new buildings and some conversions will not be allowed to use polluting heating systems and will need to instead use alternatives such as heat pumps and heat networks.

*In May 2024, the Scottish Government confirmed that it is reviewing the above changes to building regulations to address concerns about the use of woodburning stoves and the wider use of bioenergy systems, particularly in rural and island communities.*

## **Display of EPCs in public buildings**

An EPC must be on display in a “public building”. A “public building” is one which is visited by members of the public on at least a weekly basis and is either:

- a building occupied by a public authority where the floor area is greater than 250 square metres; or
- any other building which is greater than 500 square metres, but only if an EPC has been issued in relation to that building. There is no requirement for the owner to commission an EPC for this purpose.

It is the owner’s duty to ensure that the EPC is displayed within the building in a prominent place clearly visible to the public. If the owner is not in occupation of the building, this duty passes to the occupier. A breach of the duty to display the EPC can lead to a penalty charge notice of £1,000.

This note is intended as a brief summary of energy performance certificates for properties in Scotland. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell will be happy to provide such advice.

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