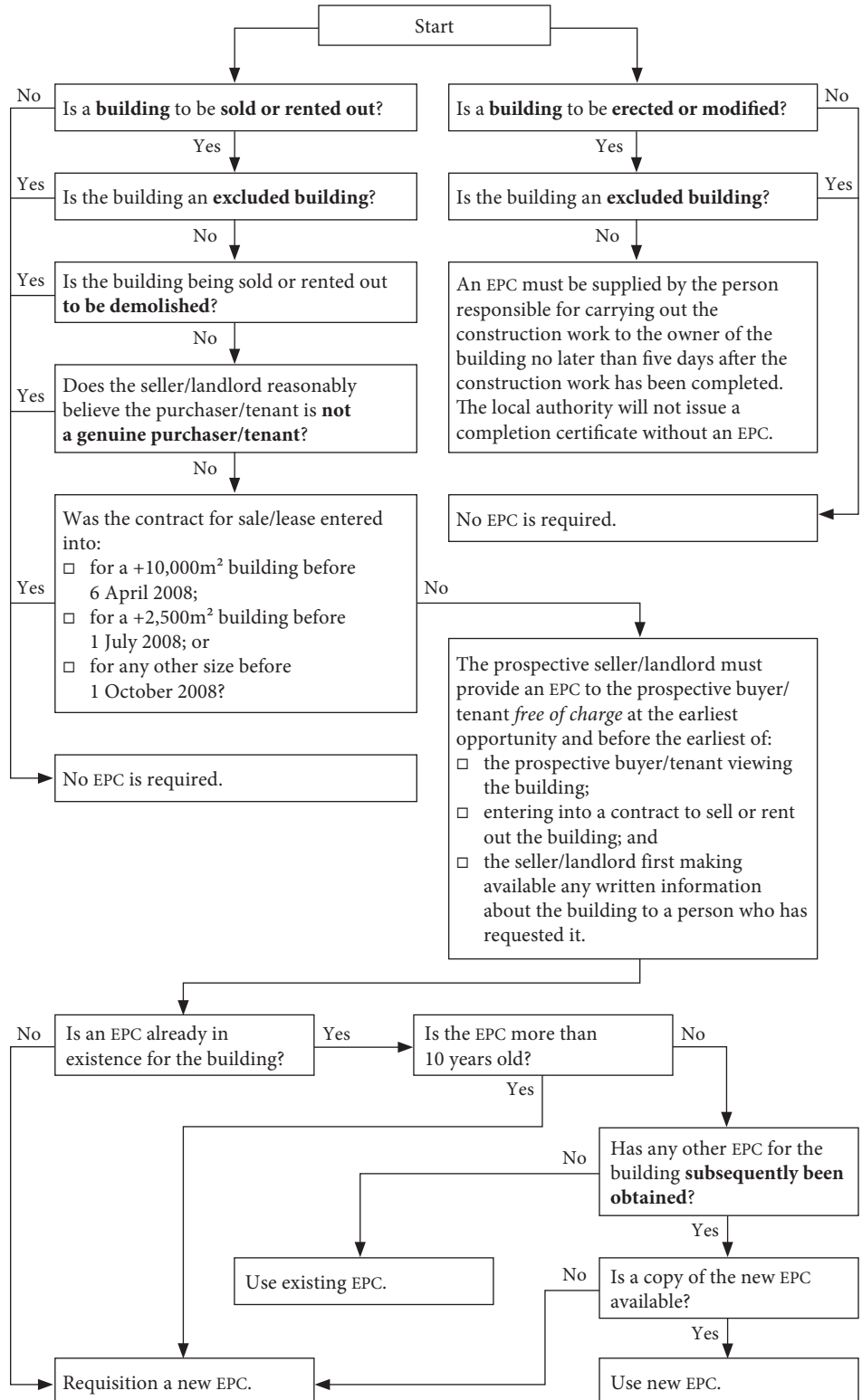




When is an energy performance certificate (EPC) required for a non-residential building?



Note: words and expressions in bold are defined or further explained over the page.

Definitions

Building	A roofed construction having walls, for which energy is or would be used to condition the indoor climate. So, no EPC is required for a building that does not use energy to heat or cool it and is not mechanically ventilated. 'Building' includes a part of a building that has been designed or altered to be used separately, so would include, for example, a separate shop unit or a separate floor in an office building. If a building is designed with a communal heating system, either one EPC may be prepared for the whole or one EPC may be prepared for each part of the building to be separately occupied. If a building has separate heating systems, you should prepare an EPC for each part that is separately offered for sale or let.
Sold or rented out	There is no definition of 'sold or rented out' in the regulations. However, the government has issued guidance that transactions not amounting to a sale/let to a new owner/tenant would not require an EPC. The government's view is that no EPC is required for lease renewals or extensions, compulsory purchase orders, lease surrenders or sales of shares in a company where buildings remain in company ownership.
Erected or modified	This means: <ul style="list-style-type: none"><input type="checkbox"/> a new building being built; or<input type="checkbox"/> an existing building being modified in a way that increases or reduces the number of parts 'designed or altered' for separate use and the changes include the provision or extension of fixed services for heating, hot water, air conditioning or mechanical ventilation. So, for example, if a tenant subdivides its space in part of a building in contemplation of a subletting, involving changing its fixed services for air conditioning, the tenant will be required – as the person responsible for carrying out the works – to obtain a new EPC for his space.
Excluded buildings	No EPC is required for the following types of building: <ul style="list-style-type: none"><input type="checkbox"/> buildings used primarily or solely as places of worship;<input type="checkbox"/> temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with 'low energy demand'; and<input type="checkbox"/> stand-alone buildings that are not dwellings and have a 'total useful floor area' of less than 50m².
To be demolished	No EPC is required if: <ul style="list-style-type: none"><input type="checkbox"/> the building is to be sold or rented out with vacant possession;<input type="checkbox"/> the building is suitable for demolition;<input type="checkbox"/> the resulting site is suitable for redevelopment; and<input type="checkbox"/> the seller/landlord believes on reasonable grounds that the prospective buyer/tenant intends to demolish the building.
Not a genuine purchaser/tenant	The seller/landlord does not have to supply an EPC if he believes on reasonable grounds that that particular prospective buyer/tenant: <ul style="list-style-type: none"><input type="checkbox"/> is unlikely to have sufficient means to buy/rent the building;<input type="checkbox"/> is not genuinely interested in buying/renting that type of building; or<input type="checkbox"/> is not a person to whom the seller/landlord is 'likely to be prepared to sell or rent the building'.
Subsequently been obtained	A new EPC for a whole building invalidates an earlier EPC for the whole building. However, a new EPC for part of a building (for example, for a floor in an office) does not invalidate an existing EPC for the whole of the building. That said, the new EPC for part must be used for transactions relating solely to that part. Conversely, if an EPC is subsequently produced for a building as a whole, or a part of a building, any EPCs for smaller or different parts of the building will remain valid.

For further information please contact

Ursula Harriss Partner, real estate T +44 20 7832 7483 E ursula.harriss@freshfields.com	Andrew Fleetwood Senior associate, real estate T +44 20 7427 3264 E andrew.fleetwood@freshfields.com
--	---

This material is for general information only and is not intended to provide legal advice.

© Freshfields Bruckhaus Deringer LLP 2009
www.freshfields.com

Freshfields Bruckhaus Deringer LLP is a limited liability partnership registered in England and Wales with registered number OC334789. It is regulated by the Solicitors Regulation Authority. For regulatory information please refer to www.freshfields.com/support/legalnotice. Any reference to a partner means a member, or a consultant or employee with equivalent standing and qualifications, of Freshfields Bruckhaus Deringer LLP or any of its affiliated firms or entities.