

## **The Advisory Working Group on Domestic Private Rented Sector Regulations (Under The Energy Act 2011)**

### **Date:**

Monday 11th March 2013, 11am-1pm

### **Location:**

British Property Federation, St Albans House, 5th Floor, 57-59 Haymarket, London, SW1Y 4QX.

### **Attendees:**

Chair – Dave Princep (DP) (Residential Landlords Association)  
Association for the Conservation of Energy (ACE) – Jenny Holland (JH)  
British Property Federation (BPF) - Tom Younespour (TY)  
Chartered Institute of Environmental Health (CIEH) - Bob Mayho (BM)  
Country & Land Business Association (CLBA) - Danielle Troop (DT)  
Department for Communities & Local Government (DCLG) - Mark Malvisi (MM)  
Department of Energy & Climate Change (DECC) - Marcia Poletti (MP),  
Chenab Mangat (CM) and Alison Oliver (AO)  
Energy UK – Frances Williamson (FW)  
National Energy Action (NEA) – Peter Smith (PS)  
National Union of Students (NUS) – Neil Jennings (NJ)  
Residential Landlords Association (RLA) – Simon Gordon (SG)

### **Apologies:**

See Remainder of Membership List.

### **Welcome:**

1.1 The Chair welcomed the attendees to the 2nd Working Group on the PRS Domestic Regulations.

### **Update on the Green Deal/ECO.**

1.2 CM provided an update on the Green Deal informing DECC is currently liaising with Ofgem and a message on ECO and void periods will issued shortly with guidance available on the [www.gov.uk](http://www.gov.uk) website.

1.3 CM also mentioned the Maximisation Forum taking place on 12 March at the Energy Efficiency Partnership for Buildings Offices in Holborn and the Landlord Conference at the Barbican between 13-14 March.

### **Workstream 1 discussion:**

1.4 The Chair thanked members for their responses to the workstream 1 questions and said DECC would welcome any additional questions after the meeting. JH apologised that a paper was not submitted by ACE. Each of the workstream questions was discussed in turn.

### **Questions 1 & 2– Reasonable refusal of a tenant request & Definition of a tenant**

1.5 NEA raised concern of a 'reasonable landlord' being considered as the benchmark for reasonableness and commented that an explicit definition of reasonableness should be used in the regulations.

1.6 The lists of reasonableness presented in the BPF and RLA papers were used as a starting point for a discussion on the definition of reasonableness. A summary of the discussion around each item in the lists is detailed in Annex B.

1.7 The group members agreed that the current definition of a tenant in the regulations is suitable, however, further clarity is required in relation to HMOs and RSLs before the group can discuss this further.

1.8 DT informed that licensees may need to be included in the definition of a tenant, however, this would be clarified with DECC once other work had been completed. DT added that clarity was required whether agricultural building and churches should be included in the list of exemptions.

1.9 NJ informed of cases where agents represent the landlord in letting of student accommodation. He questioned whether such cases should be included in the regulations. JH stated that she could provide further information on agents for the group to consider. It was agreed further clarity was required on who would pay the energy bills where properties are let by an agent and therefore who would be liable for Green Deal payments.

1.10 There was discussion around definitions used in the PRS regulations overlapping with those used in other existing regulations and in these cases which regulations would take precedence. There was particular concern about the links between the PRS regulations and the Hazard and Health and Safety Rating System (HHSRS) guidance. It was agreed clarity was required on how these regulations work together and on the target EPC rating level to be used in the PRS regulations to ensure additional complexity was not added to the HHSRS regulations.

### **Question 3 - Procedure for a tenant's request.**

1.11 There were mixed views on the procedure that should be followed from a tenants request to the landlord response with suggestions that a standard form would be appropriate. It was decided that there should be

further consideration of the procedure proposed by RLA particularly focussing on ensuring there were not unnecessary costs to the tenants e.g. having to pay for several Green Deal quotes.

1.12 It was agreed by Group members that the procedure should cover both Green Deal finance and other finance options.

1.13 It was also noted that in future there will be the issue of how tenants will become aware of their new rights under this legislation and the procedure that must be carried out. It was agreed the communication of the tenant rights under PRS required consideration.

#### Question 4–Landlord Counterproposal.

1.14 It was agreed landlord counterproposals had been discussed as part of the list of reasonableness under question 1 above. The group also agreed further clarity was required on how SAP ratings were calculated and whether they could be used to compare improvements in a tenant request and a landlord counterproposal.

#### Question 5–Timescales

1.15 Group members agreed that timescales needed to be added to the procedure including for a landlord response, energy efficiency improvements to be installed and the case to be considered by a tribunal. It was agreed a proposal on timescales should be put forward to the group for further consideration.

#### Question 6 & 7–Local Authority role and evidence.

1.16 It was agreed evidence would be gathered for all the questions under workstream 1 individually as appropriate. The issue of retaliatory evictions was raised. MP mentioned that a DECC/DCLG working group had considered this issue in 2010. The decision at the time was that DECC needed to monitor the issue and gather further evidence to determine the extent of any problem. Information from the the English Housing Survey seems to indicate that it isn't currently an issue. It was agreed this group is not the forum to discuss the issue.

1.17 The group members questioned whether the Local Authority (LA) role in the PRS regulations needs to be explicitly mentioned because LAs are already actively involved in the Green Deal. It was agreed that clarity was required on what the Minister had said about LA involvement during the Energy Act committee proceedings, in particular in relation to compliance costs.

#### Question 8–Multiple Requests.

1.18 The group had mixed views on the number of requests that could be made by a tenant and agreed more detail is required for the group to be

able to discuss this further. It was suggested this topic would be covered by question 2 on reasonableness.

#### Question 9–Sub-metering

1.19 The group agreed sub metering had already been discussed under question 2 on unreasonableness and extra information was required before this could be considered further by the group.

#### Question 10–Consents

1.20 The group agreed consents had already been discussed under other questions above.

#### Question 11–Financing

1.21 The group discussed whether Local Authority grants which could be used by landlords to install energy efficiency measures are taxable. Further clarity is required on whether such LA grants are available under LESA. The general consensus was that the regulations could enforce landlords to take up tax free grants but not where grants are taxed. It was recognised that Green Deal and ECO would be the most widely used form of funding but other ad hoc funding may also be available.

1.22 There issue of ancillary costs was raised, as there will be costs that are not captured under the Green Deal. One option discussed was that the regulations could only be enforced if there are no significant upfront costs to landlords.

1.23 PS raised issues about finance and questioned whether subsequent tenants who use less energy than the tenant who signed the Green Deal would end up paying more in Green Deal payments than the savings on their energy bills.

1.24 FW raised concern that finance under ECO is only currently agreed to 2015 and stated that clarity was required on ECO post 2015. MP clarified that this would obviously affect the number of measures that were Green Dealable, but that this should not impact the regulations themselves.

#### Workstream 2:

1.25 The Chair noted there is currently only one question to discuss under workstream 2 (on minimum standards) at the next meeting in April. He asked members to email thoughts or issues under this question or further questions related to this workstream to DECC before the next meeting.

#### AOB:

1.26 DECC outlined that as per existing procedures for legislative working groups it was noted that actions may not be completed as the evidence

may be incomplete, expensive or difficult to obtain, but the attempt would still be considered valuable as the Groups needs to map out if information is available or not, and make efforts to map out which areas may need further research, and that best endeavours were what we are being requested by the Chair and Secretariat.

1.27 The chair thanked attendees for their input and highlighted the date for the next meeting of 15 April 2013. The chair said that a list of follow up work including action leads and supporters would be circulated after the meeting, and urged group members to offer their support and input.

### **Actions:**

All - To:

-Note meetings will take place on the 2<sup>nd</sup> Monday of each month with the exception of April (date TBC). **Closed.**

-Send additional list of Issues that may need to be considered to the Secretariat (DECC), ideally before Wednesday 20<sup>th</sup> February.

**Closed.**

-Consider positions & ideas on the 1st part of the PRS Dom Regs (2016 Tenants request). **Closed.**

DECC/ Secretariat - To:

-Collate these with the existing Issues and consult the Chair on how best to group these (and discuss them, between April and June). **Closed.**

-Obtain Templates for evidence to be gathered/reviewed. **Closed.**

-Update the ToRs. **Closed.**

- Re-invite a rep from Residential Lettings Agencies to the Group.

**Closed.**

- Place the final Minutes & additional papers on the website. **Closed.**

### **Websites:**

<https://www.gov.uk/government/policy-advisory-groups/130>

(Along with a link to the separate Non Dom Group)

<https://www.gov.uk/government/policy-advisory-groups/133>

They have also been linked to the Green Deal householders/landlords page.

<https://www.gov.uk/getting-a-green-deal-information-for-householders-and-landlords>

28/03/2013

## Annex A - Summary of Actions Outstanding from 11 March meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date
1	To develop a technical paper with list of scenarios where property capital or rental values may be reduced due to installation of energy efficiency improvements (e.g. where internal insulation reduces square floor area below certain level).	<u>Tom Younespour (BPF)</u>	RICS, Richard Jones	8 <sup>th</sup> April
2	To check what the available grants from Local Authorities or other public bodies are, whether they are taxable and if they are available to landlords under LESA.	<u>DECC</u>	-	25 <sup>th</sup> March
3	To produce a paper outlining how the links/overlaps/precedence between the PRS regulations and other existing regulations such as health and safety and HHSRS might work, particularly focusing on Excess Cold under the HHSRS regulations.	<u>DECC/DCLG</u>	Peter Smith, Bob Mayho	8th April
4	To produce a paper proposing how HMO's may be taken into account in the PRS regulations and a list of HMO's to be within scope of the regulations. The paper should take into account bedsits, student accommodation, joint tenants and how the Green Deal handles HMOs.	<u>DECC/DCLG</u>	Bob Mayho/CIEH rep	8th April
5	To map out the end to end process of a tenant request for energy efficiency improvements including landlord response and tribunal proceedings to include timescales and ancillary costs (e.g. fire certificates or gas safety certificates) both in and out of scope of Green Deal. This should also take into account wording for PRS regulations on finances for energy efficiency improvement installation not needing to be covered upfront by the landlord but that there may be other costs to be payable.  Group members to send DECC examples where ancillary costs may occur.	<u>DECC</u>	All	8 <sup>th</sup> April
6	To discuss with internal communications team how to take forward the future need to raise awareness of PRS regulation rights and responsibilities to all relevant parties e.g. tenants and	<u>DECC</u>	-	25 <sup>th</sup> March

	landlords.  (note: this can also be discussed by the Green Deal private rented sector group at a later stage)			
7	To provide understanding of how the Green Deal works in relation to instances where subsequent tenants may use less energy and therefore may pay more in Green Deal paybacks than savings from energy bills.	<u>DECC</u>	-	25 <sup>th</sup> March
8	To provide understanding of how the process for ECO Post 2015 and PRS regulations will be linked together.	<u>DECC</u>	-	25 <sup>th</sup> March
9	To clarify whether a tenant in rent arrears would fail the Green Deal credit check.	<u>DECC</u>	-	25 <sup>th</sup> March
10	To produce a general principle definition for reasonable and a revised list of examples of where it is reasonable for a landlord to refuse a request from a tenant to install energy efficiency improvements. This should include a request being refused where a new gas connection is not cost effective.	<u>DECC</u>	-	8 <sup>th</sup> April
11	To clarify from a legal perspective whether some situations regarding private lets by RSLs should be included under the PRS regulations given that RSLs are generally out of scope.	<u>DECC</u>	BPF	28 <sup>th</sup> March
12	To produce a list of exemptions to the PRS regulations that are not already listed as exemptions.  Group members to send DECC/BPF potential exemptions as they arise.	<u>DECC</u>	All	Ongoing
13	To clarify whether instances where agents act for tenants and where the bill payer is neither the landlord nor the tenant but a third party such as the student letting agent are covered by the regulations. NUS to also clarify details of these real world examples and why they are not covered by the regulations.	<u>DECC</u>	NUS	25 <sup>th</sup> March
14	To provide actual examples where installations may cause noise issues and be grounds on the basis of unreasonableness for a landlord to refuse a tenant request for energy efficiency improvements.	<u>DECC</u>	All	8 <sup>th</sup> April

	Group members to send DECC/BPF examples of where a tenant request could be refused due to noise issues.			
15	To provide a paper on the issue of sub metering in properties and how this may affect the implementation of the PRS regulations. This should include wording on how issues of non-domestic meters in domestic properties can be addressed.	<u>Hannah Mummery</u> - (Consumer Focus)	DECC	8 <sup>th</sup> April
16	To clarify how SAP rating calculations are determined and whether they include the operational costs of energy efficiency measures installed.	<u>DECC</u>	David Weatherall (EST)	25 <sup>th</sup> March
17	To clarify the relevant comments made by the Minister during the proceedings of the Energy Act around Local Authorities covering the compliance costs for the PRS regulations. This should include clarifying views about this and the types of costs involved with Camden, Bournemouth and LGA.	<u>DECC</u>	-	8 <sup>th</sup> April

\* If Action Leads/Owners need clarification as to their brief, please contact Alison Oliver who will liaise with the Chair.



## **Annex B - Summary of discussion on the lists of reasonableness**

### **The list of reasonable refusal to a tenant's request for improvements in the BPF paper**

1. Where a landlord has a reasoned intention to develop or undertake refurbishment to a property (how this is proved in the commercial property sector may help in setting the parameters for proof in the residential sector).

*JH stated that a tenant request should not be refused based on an intention to develop/refurbish a property but could be refused with evidenced plans with timescales to develop/refurbish a property. DT added that an asset management plan should be considered. PS suggested that if plans had not been completed within a set timescale the request could no longer be refused.*

2. Within a prescribed timeframe the landlord had offered a similar Green Deal package to the tenant but it was rejected, a landlord has responded to a previous request and provided a reasonable refusal to the request.

*Attendees agreed it would also be acceptable grounds for refusal of the tenant request if the landlord had offered a similar or identical request using financial means other than the Green Deal.*

3. Where a landlord has served notice to a tenant.

*It was agreed the tenant could still be evicted if a Green Deal assessment/installation is in train and so this is not grounds for refusal of a tenant request.*

4. Where the tenant is in rent arrears.

*Attendees agreed any rent arrears issues should be independent of the Green Deal and so this would not be grounds for refusal of a tenant request. However, MP noted that it should be checked whether a tenant who is in rent arrears would fail the Green Deal credit check.*

5. Where the landlord has reason to believe the works are likely to cause disruption to other tenants in a block.

*The general consensus was that to avoid discontent amongst landlords and tenants of neighbouring properties open communication about measures being installed was required. FW raised that a practical approach was required and in most situations tenants would understand that repairs/improvements are sometimes needed (as has been shown through CERT). Noise was seen as the main criteria for being able to stop works by other people however these types of situations were not fully understood and so actual examples where noise is an issue are required.*

*In general the need to gain consents from interested parties should avoid the need for additional clauses in the regulations,*

6. Where the works are requested to a flat within a block and the works requested would result in mismatching fittings (for example different types of glazing) between flats. This could impact the presentation of the building and planned maintenance.

*There were mixed views on this with some members suggesting this should not be a reason for refusal of a tenants request and it instead highlights the validity of allowing counterproposals from landlords. It was recognised that some tenants requests may cause property value issues e.g. external insulation on only one property in a block however the solution would be for all tenants/landlords to work together to obtain joint consent for these types of improvements.*

7. Where a newgas connection is required.

*The group agreed that a landlord should not be able to refuse a request solely on the grounds that a gas connection is required but could in situations where a gas connection is required and this option is not cost effective. This item should be reworded accordingly. PS questioned who would be responsible for extra costs such as gas safety checks. This is seen as the responsibility of the landlord as it is a health and safety issue.*

8. Where improvements are likely to have adverse implications on the health and safety of the occupants (carbon monoxide risk, health and safety etc).

*There was general consensus from group members that such situations relating to health and safety issues would be covered by other existing legislation and so would not need to be explicitly mentioned in the PRS regulations. It was recognised that clarification was required whether existing regulations would take precedence over the PRS regulations.*

The list of reasonable refusal to a tenant's request for improvements in the RLA paper

1. Where adverse consequence/impact for the structure, fabric, fittings or decorations in a property or the remainder of the building which includes it.

*There were mixed views from group members on what types of impact on the property structure/fabric/fittings could be grounds for refusal of a request. It was agreed further information is needed on what would be considered a significant impact on the structure/fabric/fittings and as such may be considered grounds for refusal of a request.*

2. The work proposed is inappropriate in relation to the remainder of the building (where applicable).

*The group agreed that further information is required from RLA in relation to the item before it can be further considered.*

3. A more effective improvement or scheme or improvements could be installed at no greater cost whether in the property or the building.

*Similarly to item 6 on the BPF list above, there were mixed views on this with some members suggesting this should not be a reason for refusal of a tenants request and it instead highlights the validity of allowing counterproposals from landlords.*

4. The works would not bring the property to the minimum standard required under the Domestic Energy Efficiency Regulations (i.e. E).

*The group agreed that further information is required from RLA in relation to the item before it can be further considered. FW added that often F & G rated properties may be at that rating because they are difficult to improve from an energy efficiency perspective rather than the properties being neglected by the landlord. Furthermore, in the absence of any action by landlord, it would seem reasonable to improve the energy efficiency of a property even where this did not bring it up to E.*

5. The proposed works would adversely impact on the ventilation of the property or its internal environment (e.g. air quality).

*The group members agreed this item was not required on the list for reasonable refusal of a tenant request. It is recognised that under the Green Deal issues related to adverse effects on ventilation and the internal environment is safeguarded. However, there was some concern that this would not be similarly addressed through other finance routes. There was agreement that in these cases such issues should be covered by building regulations.*

6. The proposed works would adversely affect the installations or appliances in the property (or the building which includes the property) for the supply, storage or use or removal of gas, electricity, water, fumes, waste, sewerage, telephone, broadband, or other utilities.

*The group members agreed this item was not required on the list for reasonable refusal of a tenant request.*

7. The proposal involves changes from gas to electricity for space heating, water heating or cooking (or vice versa).

*There was agreement from group members that proposals for heating to be changed from gas to electric were unlikely due to cost but should be allowed if the landlord was willing to meet the cost. It was suggested this item should be reworded to reflect this.*

8. The proposed works cannot be funded by ECO or Green Deal finance whether wholly or in part.

*The group discussed that in the Energy Act 2011 the wording states that installed measures have to be available under Green Deal although there is also an option for other finance mechanisms to be used for energy efficiency improvements. It was suggested this item should be reworded and expressed in terms of what would be unreasonable costs to the landlord. There was a discussion around whether landlords should be expected or not to cover installation costs upfront. There were also mixed views about whether additional costs should be funded by the landlord at all. JH added that clarity is required on how the primary legislation should be interpreted on this. The group agreed new wording was required for this item.*

9. The proposed works are impractical.

*The group members agreed this item was not required on the list for reasonable refusal of a tenant request because it will be picked up as a cost issue through a Green Deal assessment.*

10. The proposed works would adversely impact on the value of the property (whether the capital or rental values) (or that of the building which includes the property).

*FW stated that there will not be evidence on whether property values will be adversely affected by improvements until the longer term impact of Green Deal/ECO is understood as properties are sold. Others noted that clauses such as these could result in complex, unworkable regulations.*

11. The proposed works would reduce the available letting accommodation in the property or make it less capable of beneficial use.

*The group agreed that there are some potential situations e.g. installation of internal wall insulation where available letting space (number of lettable bedrooms) may be decreased as a result of installing measures and consequently rental values may decrease. It was suggested that lowered rental values would be addressed as part of item 10 above and so this additional item was not required. Another option discussed was specifically excluding cases such as these from the regulations.*

12. The proposed works would make it more difficult to achieve a letting of the property by those who could be expected to rent it.

*The group agreed this item would also be covered as part of item 10 above and so this additional item was not required, but it was noted again that this could create complex unworkable regulations.*

13. There is no electricity meter which solely comprises the property without excluding any part of the property or the meter also serves other premises not comprised in the property (where some or all of the works are to be financed by the Green Deal).

*The group acknowledged views presented before the meeting by group member Hannah Mummery on domestic and non-domestic metering and tariffs. There was agreement that this item required rewording based on expert knowledge of this topic. There was also suggestion that metering issues may be resolved with the rollout of smart metering. It was agreed that this issue required further work.*

14. Proceedings for possession have been commenced or an order for possession has been made in relation to the property.

*There was general consensus from the group that this item does not apply to the PRS regulations and it not required in the list for reasonable refusal of a tenant request unless further evidence is provided at which stage it can be reconsidered.*

15. Smaller scale works would be more appropriate.

*The group members agreed this item was not required on the list for reasonable refusal of a tenant request.*

16. A consent required from a third party or public authority cannot be obtained.

*The group members agreed this item was not required on the list for reasonable refusal of a tenant request because consent is automatically required for energy efficiency improvements to go ahead under the PRS regulations.*

17. A more comprehensive approach would be more appropriate (so long as it could be funded).

*The group members agreed this item was not required on the list for reasonable refusal of a tenant request.*

18. Different improvements would be more appropriate (if they can be funded).

*The group members agreed this item was not required on the list for reasonable refusal of a tenant request although a landlord would be able to put forward a counterproposal to the tenant's request.*

19. Further requests are inappropriate having regard to any permission already granted previously.

*Group members agreed this was the same as item 2 on the BPF list and it would be acceptable grounds for refusal of the tenant request if the landlord had offered a similar or identical request using financial means other than the Green Deal or through Green Deal/ECO.*

20. The landlord is willing to do the works or carry out a more comprehensive scheme of works to bring the property up to at least the same energy rating as would result from the tenant's proposals.

*The group members agreed this item was not required on the list for reasonable refusal of a tenant request as it has been covered by other list items.*