

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

Date:

Monday 15th April 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)
British Property Federation (BPF) - Tom Younespour (TY)
Camden Federation of Private Tenants (CFPT) – Robert Taylor (RT)
Chartered Institute of Environmental Health (CIEH) - Bob Mayho (BM)
Citizens Advice Bureau (CAB) - Anne Pardoe (AP)
Consumer Focus (CF) – Hannah Mummery (HM)
Country & Land Business Association (CLBA) - Danielle Troop (DTr)
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)
Electricity Safety Council (ESC) - Daniel Walker-Nolan (DWN)
Energy UK – Daniel Alchin (DA)
Friends of the Earth (FOE) – Dave Timms (DTi)
Islington Council (IC) -John Kolm-Murray (JKM)
Local Government Association (LGA) – Hilary Tanner (HT)
National Energy Action (NEA) – Peter Smith (PS)
National Landlords Association (NLA) – David Cox (DC)
National Union of Students (NUS) – Neil Jennings (NJ)
Residential Landlords Association (RLA) – Simon Gordon (SG)
Trowers&Hamlins (Legal) (TH) – Chris Paul (CP)
UK Green Building Council (UKGBC) – Richard Twinn (RT)

Apologies:

See Remainder of Membership List.

Welcome:

1.1 The Chair welcomed the attendees to the 3rd Working Group on the PRS Domestic Regulations.

Workstream 1 discussion:

- 1.2 The Chair thanked members for their contributions to delivering on the actions from the 11 March meeting and for the production of a number of valuable discussion papers.
- 1.3 There was discussion about the paper developed by HM about the issues around metering and particularly maximum resale of energy. MP outlined that in situations where the landlord's name was on the bill they would take out the Green Deal and be responsible for payments. In other situations the landlord had the option to increase the rent to cover the costs or add the costs to the electric bill charges. It was discussed the maximum resale rules from Ofgem are very specific and so clarity on this was required. DC also asked for clarity on situations where sub metering is used in blocks of flats.
- 1.4 DT informed that under the 1976 Rent Act rent levels the Green Deal charge could not be added to the rent and so clarity was required on how the Green Deal would work in these situations. It was agreed clarity was also required about prepayment meters, how the Green Deal would apply to properties on commercial tariffs particularly as they would not be regulated under CCA and whether interest is added to outstanding Green Deal payments if payments are not met or during void periods. MP confirmed ECO can be obtained where there are either domestic or non-domestic meters and ECO is based on the primary resident of the property.
- 1.5 There was discussion about the paper about how HHSRS and the PRS may work together. BM outlined that some Local Authorities keep the housing stock in their region under review and use HHSRS for enforcement many local authorities have overlooked this use of HHSRS. The paper suggests that the PRS Regulation proposals do not impact on the enforcement enabled under HHSRS. RT said clarity was required on how the Green Deal will work on top of the HHSRS practicalities.
- 1.6 MP added that over time the communication and awareness of PRS and the links to HHSRS will increase and tenants will have the option to move out of properties not meeting the minimum standard. PS recognised that people on low incomes may not always have the option to move from such properties. DP informed that it would be up to individual Local Authorities to decide on how to enforce HHSRS. DWN outlined that it should be recognised that HHSRS and Green Deal assessments are very different with only the Green Deal being based on SAP and assessors are unlikely to be trained in both.
- 1.7 The two papers on HMOs were discussed and the recommendation from both papers was that the PRS Regulations should apply to HMOs. The meeting agreed this recommendation, subject to the technical feasibility of the proposal. It was also agreed the EPC should be carried out at a property level as it was impractical to carry out an EPC on individual

bedsits or rooms. However, it was acknowledged by the group HMOs do not currently require an EPC until they are sold and therefore it was raised whether HMOs should be required to have an EPC in line with other properties. There are no current plans for CLG to change this and so the group members agreed to recommend that the EPC for HMOs would have to apply to the whole property. MP raised that it would have to be clarified how SAP would work in these cases.

Workstream 2 discussion:

- 1.8 The papers collated by DT on workstream 2 on minimum standards were discussed. In particular there was discussion on whether the EPC methodology is appropriate for use by the PRS Regulations. JKM recognised that there are issues with the EPC methodology however it is an established methodology. Other views from group members were that a methodology with known issues would cause problems with the implementation of the PRS Regulations. MP replied that the 2009 update to the EPC methodology limits the problems however, if evidence of any continued problems were presented to DECC then these would be used to consider pushing for an EPC improvement.
- 1.9 DT claimed that the EPC methodology may not be designed to accurately measure energy efficiency in traditional, pre 1919 properties and given this pre 1919 properties may need to be treated differently under the PRS regulations. MP informed that the STBA research circulated to members prior to the meeting has been forwarded to the research team at DECC for consideration. MP will report any resulting views to the group.
- 1.10 MP acknowledged that any research regarding how EPCs could be improved should be considered and mentioned that whilst little research has been carried out in the UK on solid wall properties, France has completed more research. The 9" brick research being carried out by Building Research Establishment (BRE) on behalf of DECC which could be used to provide a scientific basis to inform the EPC methodology in future although this research would not be complete until 2015.
- 1.11 DT stated that if the EPC methodology does not accurately rate the energy efficiency of older properties then properties may be given the incorrect banding and have to improve the energy efficiency of the properties unnecessarily under the regulations. DT also mentioned some Scottish research related to this topic which would be circulated around the group. She added that there may also be an issue with how accurately assessors rate properties and limitations of the EPC software for 1919 properties. DT proposed the view that for the regulations the EPC level should be set at 'E' for properties built post 1919 and set at a lower target EPC rating for older properties. Other members suggested pre 1919 properties should be exempt from the regulations.
- 1.12 MM informed that 60% of PRS stock is pre 1919 properties and therefore do need to be in scope for the regulations to effectively deliver

on their objectives. DTi added that the highest levels of fuel poverty are also in pre 1919 properties.

1.13 The group agreed further consideration was required on the margin of error on EPC ratings, how many properties in Britain may be affected and data on the accuracy of the EPC methodology. DT informed that she is awaiting further information relating to the EPC issues for pre 1919 properties from the DECC Older Properties Working Group as well as information on some Northern Ireland research. MP added that there will be a cost associated to making any exemptions to the regulations and so this needs to be considered.

Workstream 3 discussion:

1.14 There was discussion around the inclusion/exclusion of RSLs in the regulations and the group agreed the recommendation to include private rents by RSLs. AO informed that the primary legislation would have to be amended in order to accommodate this recommendation.

1.15 DTi informed that the list of exemptions in the primary legislation was added when Baroness Maddock asked for agricultural tenancies amongst others to be included in the regulations. It was agreed by the group that clarification of this and examples would be useful. DTi also raised that the regulations mention tenancies but not licenses so clarification is required on whether properties such as Pubs would be excluded. The group agreed that it would be useful to have data about the numbers of properties affected by any proposed exemption to inform the discussion around which, if any, properties should be exempt.

1.16 Group members were in general agreement that Regulated tenancies and short tenancies (a variation on assured short tenancies) should be included in the Regulations. The current definition and scope of tenants in the primary legislation was agreed by the Group to be adequate.

1.17 The group discussed the possible negative impact on property value and HM suggested that the value could be affected by many factors in addition to energy efficiency improvements and the negative impact should be assessed independently. MRC (Martin Russell-Croucher) said that there is not yet evidence of a positive link between energy efficiency and property values in the UK, although there is some evidence of a link in other countries such as Australia. TY said that according to feedback from valuers there is also not yet any evidence of energy efficiency measures causing properties to be devalued.

1.18 However, it is recognised that situations such as a room size decreasing as a result of energy efficiency improvements may have a negative impact on the property value. Other situations such as energy improvements to the external of properties in a conservation area will not get through planning and so will not affect the property value. The group agreed a list of factors that may have a negative impact on properties is

required in order to consider this further. DTi added the property market values change constantly over time and so it is difficult to pin point energy efficiency measures as the cause of a decrease in value. MP suggested measures such as double glazing and solid wall insulation may be the only measures that may cause an issue around property value.

1.19 HM raised a concern about whether sub tenants are adequately covered by the regulations. MP responded that they should be covered either by the domestic or non-domestic regulations.

1.20 DTi asked if all properties which cannot be improved to an 'E' rating through the Green Deal should be exempt. MP highlighted that other grants and money may be available for energy efficiency improvements and this would be considered to be used rather than the property automatically being exempt. Landlords would be expected to install measures where they were no net negative costs to landlords.

1.21 It was agreed the topics of consent and finance would be addressed at future meetings.

AOB:

1.22 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.

1.23 The chair thanked attendees for their input and highlighted the date for the next meeting of 13May2013. 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.

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>

26/04/2013

Annex A - Update on Actions from 11 March meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date	Status
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 th April	Ongoing. To note: the action is amended to 'Update the working group on work currently going on about potential property capital/ rental values being reduced due to energy efficiency improvements.'
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 th March	HMRC website states energy efficiency grants are tax free. Follow up to check this with HMRC.
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	Paper discussed at meeting on 15 April and recommendation put forward by group
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	Papers discussed at meeting on 15 April and recommendation put forward and follow on action around use of EPCs
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	<u>DECC</u>	All	8 th April	Ongoing: Update for circulation to group

	<p>efficiency improvement installation not needing to be covered upfront by the landlord but that there may be other costs to be payable.</p> <p>Group members to send DECC examples where ancillary costs may occur.</p>				
6	<p>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 landlords.</p> <p>(note: this can also be discussed by the Green Deal private rented sector group at a later stage)</p>	<u>DECC</u>	-	25 th March	Ongoing
7	<p>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.</p>	<u>DECC</u>	-	25 th March	<p>Update on action for circulation to working group.</p> <p>Golden Rule calculated on estimated energy usage for property so subsequent tenants may pay more in paybacks than savings. However, on moving in to the property the tenant will be aware of, and legally sign up to the level of paybacks.</p>
8	<p>To provide understanding of how the process for ECO Post 2015 and PRS regulations will be linked together.</p>	<u>DECC</u>	-	25 th March	Ongoing discussions internally in DECC to ensure links.
9	<p>To clarify whether a tenant in rent arrears would fail the Green Deal credit check.</p>	<u>DECC</u>	-	25 th March	<p>Update on action for circulation to working group:</p> <p>Credit check criteria down to the individual</p>

					Green Deal Provider they will decide if tenant in rent arrears will pass/fail credit check.
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 th April	Updated list of reasonable refusal for circulation around working group.
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 th March	Private lets by RSLs can legally be included in the regulations but will require changes to the primary legislation.
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	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 th March	Ongoing
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. Group members to send DECC/BPF examples of where a tenant request could be refused due to noise issues.	<u>DECC</u>	All	8 th April	Ongoing – no examples received to date
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	<u>Hannah Mummery</u> (Consumer Focus)	DECC	8 th April	Closed – paper discussed at 15 April meeting with follow on actions required before a

	addressed.				recommendation can be put forward to working group
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 th March	Open
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 th April	Ongoing

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

Annex B–Summary of outstanding Actions from 15 April meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date
1	Check with Ofgem whether under the rules of maximum resale landlords can include Green Deal charges in the costs of energy and reasonable administration costs they pass on to tenants.	<u>DECC</u>		26 th April
2	Clarify the liability for Green Deal payments particularly in situations where the rules of maximum resale apply and the bill is in the landlord's name.	<u>DECC</u>		26 th April
3	Investigate whether a Green Deal charge can be included in the service charge for a block of flats if the Green Deal is attached to the communal meter.	<u>DECC</u>	David Cox	26 th April
4	Speak to Gentoo solicitors about the issue of allowable charges and how Green Deal charges may be passed onto tenants, particularly the situation regarding allowable charges under the 1976 Rent Act.	<u>DECC</u>	Peter Smith	1 st May
5	Clarify how the Green Deal payments work with prepayment meters	<u>DECC</u>		7 th May
6	Provide a table of information to clarify the definition of consumers under ECO/Green Deal and when people can receive ECO and Green Deal and how this may change if on a domestic or non-domestic energy supply/meter.	<u>DECC</u>		7 th May
7	To provide DECC clarification on the specific issue that requires checking against the Ofgem guidance (relating to the availability of Green Deal/ECO where energy is supplied on a commercial tariff and/or through a non-domestic meter.)	<u>David Cox</u>		26 th April
8	Investigate with CLG the current use of EPCs for HMOs and whether this causes any issues for the PRS Regulations.	<u>DECC/DCLG</u>		7 th May
9	Circulate the outcome of the internal DECC discussion on the STBA Research to Working Group members	<u>DECC</u>		1 st May
10	Circulate the research completed in Scotland about energy efficiency of pre 1919 properties.	<u>Danielle Troop</u>	DECC	26 th April

11	Provide information to the Working Group about the 9" research being carried out on the behalf of DECC.	<u>DECC</u>		1 st May
12	Obtain information from Northern Ireland and the DECC Older Property Working Group about the use of EPCs pre 1919 properties.	<u>Danielle Troop</u>		7 th May
13	To produce a paper about how the accuracy of the EPC methodology including the magnitude of any inaccuracy, how many properties in Britain may be affected and timescales for any future changes to be made to the EPC methodology.	<u>DECC</u>		24 th May
14	Check the Energy Act 2011 debate proceedings for examples of tenancies that may be possible exemptions to the PRS Regulations that were assumed to be covered under clause 42 1 a) iii) that was inserted by Baroness Maddock.	<u>DECC/BPF</u>	Dave Timms	8 th May
15	Send examples of real world situations where there will be a negative impact on the property value due to energy efficiency improvements.	<u>All</u>		8 th May
16	Produce a table to outline the key costs and benefits and sources of funding available to tenants/landlords for installing energy efficiency measures, for example, LESA, whether Local Authority grants are available tax free and any VAT charges that may be associated with measures installed outside of the Green Deal.	<u>DECC</u>		7 th May

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