

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

### **Date:**

Thursday 15th August 2013, 10.45am-1.15pm

### **Location:**

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

### **Attendees:**

Chair – Tom Younespour (TY) DECC  
Association for the Conservation of Energy (ACE) - Jenny Holland (JH)  
British Property Federation (BPF) - Ian Fletcher (IF) & Matthew O'Connell (MO)  
Camden Federation of Private Tenants (CFPT) – Robert Taylor (RT)  
Country & Land Business Association (CLA) – Danielle Troop (DT)  
Department for Communities & Local Government (DCLG) - Mark Malvisi (MM)  
Department of Energy & Climate Change (DECC) - Alison Oliver (AO)  
Friends of the Earth (FOE) – Jennifer Rosenberg (JR)  
National Energy Action (NEA) – Peter Smith (PS)  
National Landlords Association (NLA) – David Cox (DC)  
National Union of Students (NUS) – Neil Jennings (NJ)  
North West Tenants and Residents Assembly– Jimmy Devlin (JD)  
Residential Landlords Association (RLA) – Simon Gordon (SG)  
UKGreenBuilding Council (UKGBC) – Richard Twinn (RT)

### **Apologies:**

See Remainder of Membership List.

### **Welcome:**

- 1.1 The Chair welcomed the attendees to the 7th Working Group on the Private Rented Sector (PRS) Domestic Regulations. He thanked all members for their contributions both at the meetings and between meetings and invited additional comments from members outside the meetings if topics are not fully covered during the meetings due to time constraints. The Chair acknowledged that whilst 100% agreement on recommendations for workstream issues is ideal this may not always be possible, and there would be scope for recording dissenting views.

### **Minutes and Actions from 18 July meeting:**

- 1.2 The minutes from the meeting on 18 July were discussed and agreed with no changes.

### **Outstanding Actions**

- 1.3 Regarding action 16 from the 15 April meeting, it was acknowledged by the group that the BPF had produced guidance on choosing and financing energy efficiency measures in the private rented sector and the group queried whether DECC should produce some similar but formal guidance.

### **Recommendations – Tenants Rights**

- 1.4 The recommendations paper circulated prior to the meeting was discussed with particular focus paid to the tenant request recommendations.
- 1.5 Recommendation 1 about the tenancies in scope of the regulations was discussed. It was agreed licenses ought to be out of scope. DC suggested lodgers should be out of scope. PS queried the definition of lodgers. MM clarified that lodgers rent a room in a property from an owner occupier who also lives at the same property. RT queried whether NIDO student accommodation would be in scope where students have individual rooms but will not have individual meters.
- 1.6 Recommendation 2 about costs and financing was discussed. It was agreed that using the word 'significant' about no upfront costs was very broad. Group members suggested the recommendation could be reworded to 'no upfront costs subject to a minimum spend'. DC raised that a minimum spend should only be considered in situations where it was not physically possible to obtain a Green Deal rather than in situations where the tenant had not given consent for a Green Deal. MM stated CLG are unlikely to favour of having a minimum spend and he would obtain a view on this from the Special Advisors at CLG.
- 1.7 Recommendation 2.2 about ancillary costs was discussed. TY outlined that the RLA had fed back that some tenancies may be able to pass on ancillary costs to the tenant. The group agreed a definition of ancillary costs was required. The group generally agreed that ancillary costs should include the cost of the Green Deal Assessment, any costs around gaining necessary permissions (e.g. planning) and costs to cover the tenant moving out whilst works were being carried out. Some group members expressed concern that other costs would not be covered. PS asked if the recommendation could be made explicit that tenants do not have to pay capital costs towards any other ancillary costs that may be required. The group agreed this. It was also noted that the Green Deal would cover other ancillary costs such as scaffolding and 'making good'. It was noted by the group that these costs may be an issue when the Green Deal was not used to install measures.
- 1.8 DC asked whether it would be reasonable for the cost of a Green Assessment to be covered by the tenant in situations where the tenant requested the

energy efficiency work. DC added that this may be an area where the 2016 and 2018 regulations differ because the 2018 regulations do not have a tenant involvement other than requiring tenant consent. It was queried whether a tenant refusing to pay for the Green Deal Assessment would allow the landlord to reasonably refuse for the energy efficiency improvements to go ahead.

1.9 DC suggested that a tenant request should not be allowed towards the end of a tenancy or during any court action. DC queried at what point in the process does a formal request for energy efficiency measures get made from a tenant. It was suggested that a tenant should make a formal request following a Green Deal Assessment that the tenant would pay for although it was acknowledged that the tenant should be encouraged to inform the landlord that a Green Deal Assessment was going to be carried out. It was agreed that it is a reasonable request from the tenant to the landlord for getting the improvements carried out not the reasonable request for a Green Deal Assessment that is covered by the regulations. DT suggested guidance should be issued to encourage tenants to inform their landlord about carrying out a Green Deal Assessment.

1.10 It was clarified and agreed by the group that for the 2018 regulations the list of ancillary costs outlined above in 1.8 would be paid by the landlord and for the 2016 regulations it would be the same list without the cost of the Green Deal Assessment being covered.

1.11 Recommendation 3 about reasonableness was discussed. DC suggested that where tenants requested measures in a block of flats, internal solid wall insulation should not be permitted. This is because external wall insulation ought to be undertaken by the freeholder, and it would not be efficient to install internal wall insulation to each individual unit. Furthermore, owners of such units would subsequently be unlikely to agree to a freeholder request for consent to external solid wall insulation. There was not agreement within the group on this, and so it was agreed this proposal would be recorded in the 'areas of concern' column on the recommendations paper.

1.12 DT queried whether guidance should be issued about the need to install appropriate measures in traditional buildings. If such guidance was not issued it was suggested this situation could be seen as reasonable refusal of a tenant request by a landlord. It was agreed by the group that guidance would be a communications exercise to raise awareness of special requirements of traditional buildings because a tenant would be seeking landlord consent for works only after the completion of a Green Deal Assessment.

1.13 Recommendation 4 was discussed about the procedure for a tenant request. The group agreed that the timescale for a landlord to respond in writing to a tenant request should be within 3 months from receiving the request. However, concern was raised that this timescale would be an issue if freeholder consent was not received which may be possible. Concern was raised if the landlord was not contacting the actual freeholder, or actively pursuing consent and then would use this as a reason to reasonably refuse a

tenant request. It was agreed by the group that the landlord would have to be able to demonstrate that consent had been pursued actively but not obtained. PS queried whether a landlord would need to show the clauses in the lease that have stopped particular measures from being installed. It was agreed by the group that if possible the tribunal used for the regulations should consider such freeholder consent exemption cases

- 1.14 It was agreed that Recommendation 5 about Valuation Exemption should be moved to the section on the 2018 regulations.
- 1.15 Relating to recommendation 6 on valuation exemptions, the group agreed that if a property were to decrease in value due to the implementation of the energy efficiency works then this would have to be material and evidenced. The group agreed that the use of the word 'material' for this recommendation needed to be defined.
- 1.16 The group agreed to arrange a separate meeting to discuss in detail the recommendations relating to the minimum standard (2018) regulations. It was agreed that a further meeting was required to discuss these recommendations before the next planned working group meeting on 9<sup>th</sup> September 2013.

**AOB:**

- 1.17 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 the Group's best endeavours are sought by the Chair and Secretariat.
- 1.18 The Chair thanked attendees for their input and highlighted the date for the next planned meeting as 9 September 2013 adding that a further meeting would be scheduled to discuss the minimum standard recommendations before then. TY noted the next planned meeting would focus on the draft report from the working group.

**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>

04/09/2013

## Annex A – Update on Actions from 11 March meeting

Action Number	Action	Lead/Owner *	Contributors	Report back date	Status	Comments
1	Revised Action: To update the working group on work currently going on about potential property capital/rental values being reduced due to energy efficiency improvements. (Original Action: 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>Ian Fletcher</u> (BPF)	RICS, Richard Jones	8 <sup>th</sup> April	Ongoing	The potential issue of reduced property capital/rental values has been flagged with RICs and will be taken forward with the Residential Evaluation Committee. TY to report back to working group the consideration of the Committee.
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 and with Green Deal Cashback.	<u>DECC</u>	-	25 <sup>th</sup> March	Open	HMRC website states energy efficiency grants are tax free. Follow up to check this with HMRC. LESA is not available to landlords where energy efficiency measures have been paid for with grants. Clarify whether grants and loans for energy efficiency are tax free
3					Closed	
4					Closed	

Action Number	Action	Lead/Owner *	Contributors	Report back date	Status	Comments
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	Ongoing	Paper circulated around group before 13 May meeting. Comments to be forwarded to DECC. No comments received so far.
6					Closed.	
7					Closed.	
8					Closed	
9					Closed	
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	Open	Updated list of reasonable refusal circulated around working group. Awaiting comments.
11					Closed	
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	7 <sup>th</sup> June	Open	Group encouraged to send any new exemptions for consideration to DECC. Put list of exemptions in recommendations paper.

Action Number	Action	Lead/Owner *	Contributors	Report back date	Status	Comments
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	Open	DECC to check with legal. Follow up action.
14					Closed	
15					Closed	
16	To clarify how SAP rating calculations are determined and whether they include the operational/running/maintenance costs of energy efficiency measures installed.	<u>DECC</u>	David Weatherall (EST)	25 <sup>th</sup> March	Open	Further action below. Ask David W and Amy S DECC.
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	Ongoing	Comments have not been located to date, however DECC/BPF will continue to follow up. DECC to propose next steps on how funding will be taken forward.

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

\*\* Please note, that the text for completed actions is hidden from the table apart from the action number. The rest of the text can be unhidden for viewing if required by using the show/hide facility.

## Summary of outstanding Actions from 15 April meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date	Status	Comments
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 <sup>th</sup> April	Open	Awaiting response from Ofgem before answer can be added to Green Deal Q&A document and circulated to group. Provisional response that Green Deal charges cannot be passed to tenant on maximum resale rules. Would need clause in tenancy agreements for charges to be passed on. Further action raised.
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 <sup>th</sup> April	Open	Awaiting response from Ofgem before answer can be added to Green Deal Q&A document and circulated to group.
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 <sup>th</sup> April	Open	Ongoing internal discussion at DECC before answer can be added to Green Deal Q&A document and circulated to group. David Cox put forward proposal that properties requiring such joint consent should be made exempt from the regulations. Further action raised.
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 <sup>st</sup> May	Open	Action superseded by further action
5					Closed	



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 <sup>th</sup> May	Open	Ongoing internal discussion at DECC before answer can be added to Green Deal Q&A document and circulated to group. Provisional response that Green Deal is based on the definition of the person at the property and not the meter/tariff.
7					Closed	
8					Closed	
9					Closed	
10					Closed	
11					Closed	
12					Closed	
13					Closed	
14					Closed	
15					Closed	
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 <sup>th</sup> May	Open	Ongoing internal discussion at DECC before answer can be added to Green Deal Q&A document and circulated to group.

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### Summary of outstanding Actions from 13 May meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date	Status	Comments
1					Closed	
2	Check whether redacted Green Deal Assessments can be made available to the working group to illustrate examples where energy use by subsequent tenants is lower than savings.	<u>DECC</u>		24 May	Open	No redacted Green Deal Assessments are available from DECC. Check whether NLA are able to share any Assessments.
3					Closed	
4	Issue of Green Deal charge not being able to be passed on to tenant under maximum resale rules to be further discussed by Green Deal group. Action to be raised with Green Deal group.	<u>DP</u>		10 June	Open	Richard Jones has completed a paper on this.
5					Closed	
6					Closed	
7					Closed	
8	Provide information from Statistics team on what will be average measures installed under Green Deal under Golden Rule, what measures are likely to be Green Dealable and clarify whether people will only have to implement Green Dealable work	<u>DECC</u>		31 May	Ongoing	Once the statistics are received they will be circulated.
9					Closed	
10					Closed	
11	Add examples and scenarios of whether energy efficiency	<u>DECC</u>		31 May	Open	Evictions should not stop a

	measures should still be installed by landlord if the tenant making the request has moved out or is evicted.					Green Deal request from being progressed.
12					Closed.	
13					Closed	
14					Closed	
15					Closed	
16	Circulate additional information on SAP rating calculations (to that being collected for action 16 from 11 March meeting)	<u>Marcia Poletti</u>		31 May	Open	Paper is awaiting checking by CLG before circulation.

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### Summary of outstanding Actions from 10 June meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date	Status	Comments
1	Minutes from 13 May meeting to be revised based on the comments at 10 June meeting and put on the Government website.	<u>Alison Oliver</u>		17 June	Open	
2					Closed	
3					Closed	
4	Provide route maps for how EPC ratings contribute to future carbon targets.	<u>DECC</u>		28 June	Open	
5					Closed	
6					Closed	
7					Closed	
8					Closed	
9					Closed	

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### Summary of outstanding Actions from 18 July meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date	Status	Comments
1					Closed	
2					Closed	
3	Discuss the requirement for funding for Local Authorities to enforce the regulations	<u>DECC</u>	DCLG	12 August		
4	Clarify the powers have under the regulations for penalties and the types of scenarios that could be used for penalties	<u>DECC</u>		12 August		
5	Resend information on advertisements, letting agents and epcs that may be useful for discussion around enforcement	<u>Jenny Holland</u>		19 July		DECC to circulate Jenny's email.

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## Summary of outstanding Actions from 15 August meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date
1	Check whether anyone can act as an agent on behalf of someone else for the Green Deal process.	<u>DECC</u>		31 August
2	Speak to VOA or National Housing Federation 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>		5 September
3	Circulate all the answers to previous actions around the Green Deal.	<u>DECC</u>		5 September
4	Produce a timeline for all the activities around EPCs and the research being carried out on u-values and solid wall insulation	<u>DECC</u>		5 September
5	Circulate a redacted version of the information provided by David Cox on properties that require multiple consents for the Green Deal.	<u>DECC</u>		5 September
6	Sent through comments on reasonable refusal of a tenant's request	<u>Jenny Holland</u>		5 September
7	Re-circulate Peter Smith's paper relating to the tenant's request workstream	<u>DECC</u>		3 September
8	Revise the recommendations paper to reflect comments on tenants request recommendations discussed during the meeting.	<u>DECC</u>		31 August
9	Send to the group the summary list of tenancies	<u>BPF</u>		5 September
10	Speak to CLG Special Advisors about the wording around no upfront costs	<u>DCLG</u>		5 September
11	Check whether the Energy Act specifies whether a particular tribunal needs to be used for cases relating to the regulations.	<u>DECC</u>		5 September

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