

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

Date:

Monday 18th July 2013, 10.45am-1.15pm

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) - Ian Fletcher (IF)
Consumer Focus (CF) – Hannah Mummery (HM)
Country & Land Business Association (CLA) – Danielle Troop (DT)
Department for Communities & Local Government (DCLG) - Mark Malvisi (MM)
Department of Energy & Climate Change (DECC) - Marcia Poletti (MP), Tom Younespour (TY) and Alison Oliver (AO)
Electricity Safety Council (ESC) - Daniel Walker-Nolan (DWN)
National Energy Action (NEA) – Peter Smith (PS)
National Landlords Association (NLA) – David Cox (DC)
North West Tenants and Residents Assembly – Jimmy Devlin (JD)
Residential Landlords Association (RLA) – Simon Gordon (SG)
Royal Institute of Chartered Surveyors (RICS) – Martin Russell-Croucher

Apologies:

See Remainder of Membership List.

Welcome:

- 1.1 The Chair welcomed the attendees to the 6th 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.

Minutes and Actions from 10 June meeting:

- 1.2 The minutes from the meeting on 10 June were discussed and agreed with no changes.

Workstream 5 – Compliance and Enforcement

- 1.3 There was a discussion around compliance and enforcement. It was recognised that the private rented sector regulations will only apply if a property has an EPC and therefore the compliance rates with existing EPC requirements will have an important impact on the PRS regulations. DC said that the fine for EPC non-compliance does not seem to be a sufficient deterrent.
- 1.4 DP highlighted that Environmental Health Officers have used EPCs to support their enforcement work, and could play a role in enforcing the PRS regulations. PS agreed that using local authorities to enforce the regulations was logical but expressed concern that the existing HHSRS was not widely enforced and any additional enforcement procedures for local authorities may be burdensome.
- 1.5 DC highlighted that the four recommendations outlined for enforcement and compliance in the paper circulated for the meeting do not address how the penalty may be set. DC highlighted the penalty could be a flat rate or otherwise follow a standard scale such as the ones used by criminal statutes. DC added that with the Tenant Deposit Protection (TDP) scheme a flat penalty rate was used and judges did not favour the lack of flexibility for setting fines, however, it is recognised that a flat penalty would be easier for people to understand. MP questioned whether a sliding scale penalty rate would require guidance for deciding the penalty level.
- 1.6 PS informed the group that under HHSRS the penalty collected from landlords is sometimes used to pay for the energy efficiency improvements. MP added that the Energy Act stipulates the maximum penalty for the minimum energy efficiency standard regulations is £5,000. DC questioned whether the £5,000 penalty could be in addition to the landlord paying for the energy efficiency improvements. MM agreed this could be the case.
- 1.7 DC suggested the penalty rate should be a) proportionate up to maximum of £5,000; b) linked to the degree of non-compliance with the regulations; c) in addition to the payment for the energy efficiency works and d) set by a judge on a case by case basis. The group agreed with this recommendation and that additional wording was required to the recommendation around surcharges.
- 1.8 PS suggested that the level of penalty could be linked to the amount of benefits that would have been realised if the energy efficiency measures had been installed. MP suggested that DECC should look at the powers under the Energy Act and given this, the types of scenarios that could be used for penalties. TY added that would have to ensure all loopholes are sorted out under the regulations and such scenarios would be useful for this.
- 1.9 MP added that a funding stream would be needed for local authorities to enforce the regulations and this would require a discussion between DECC

and DCLG. PS raised concern that without ring-fencing any funding, local authorities may use the additional resources on other areas.

1.10 PS suggested that if a tenant was required to take a case to court this may jeopardise their relationship with the landlord and lead to retaliatory evictions. PS recognised that getting a tenant to want to raise a case against their landlord will be a big and complex issue.

1.11 HM suggested there should be two levels of enforcement, firstly if the property is let out when it does not meet the minimum standard and secondly if the property continues to be let out whilst the energy efficiency improvements have still not been completed. HM questioned how enforcement would work if there were tenants in situ and there was no way of getting them to leave. DP highlighted that there would be nothing to stop a landlord being taken to court whilst a tenant eviction was happening.

1.12 There was discussion around how a landlord would evidence that a property complies with the regulations where the minimum standard is not reached but all Green Dealable measures have been installed. JH highlighted that not all working group members were in agreement with a minimum standard of 'E' not being required for all properties due to the dependency of what measures were Green Dealable. If all properties were required to meet an 'E' then compliance with the regulations would be easily recognisable.

1.13 DP highlighted that it would be difficult for local authorities to enforce the regulations because enforcement was around the Green Deal and eligibility and this is a complex matter. MP added that this is the reason for the recommendation around changing the EPC to state whether a property is compliant to make it easier for local authorities to enforce the regulations. PS added that even if the regulations used alternative capped funding to the Green Deal then it should be straightforward to identify compliance.

1.14 DWN suggested that it should be Environmental Health Officers (EHOs) rather than Trading Standards Officers that should enforce the regulations. DT questioned whether EHOs would get extra funding for this role. It was recognised that reporting mechanisms would be useful for local authorities to feed back on the levels of compliance and enforcement action. DC argued that tenants should not be expected to play a role in enforcement as it is important that the landlord-tenant relationship is not soured. PS recognised that a fully funded national enforcement body would be preferable however this may not be possible.

1.15 DP outlined that one of the recommendations suggests that the EPC database is open and accessible. Some local authorities have purchased the EPC data for their area and anyone can access individual property EPCs, however, this data could be easier to use.

1.16 HM asked if the ultimate liability for compliance is with the landlord. MP informed that letting agents may also be liable if a non-compliant property was marketed as this could breach existing consumer law. DC added that even

after a landlord evicts a tenant they would still be liable to complete the works and even before an attempt to sell the property. A time limit could be applied for when the landlord needs to install the measures by. MP asked that if a property was passed to someone else through receivership then how would an outstanding non-compliance by dealt with. IF said that it may be more likely that properties taken into receivership would be of poorer quality and some form of grace period could be given to provide time to improve the property so it meets with the minimum energy efficiency standard.

1.17 TY asked if there was any data that could be shared from the Tenancy Deposit Protection schemes to help local authorities identify properties being rented; however, DC suggested this may not be appropriate as there are tight controls on what data can be shared. The group discussed the challenges of identifying private rented property and landlords without a national register. SG suggested that there was much debate around the advantages and disadvantages of landlord accreditation, licensing and registration, and that the consideration of such debate is outside the scope of the group. However, JH added that the group can still highlight any issues that prevent effective enforcement. SG stated that there are currently many licensing laws that local authorities use which could be linked to enforcement. DT agreed that selective licensing could be a good option. DC added that local authority licensing schemes are only to be implemented for very specific reasons, not relating to energy efficiency issues. DP added that licensing rarely tackles the worst parts of the private rented sector and can too easily end up serving to only penalise law abiding professional landlords with additional administrative burdens.

1.18 MP highlighted that the estimated historic low levels of compliance with EPC requirements should not be taken as indication of future compliance. This is because the existing EPC requirements have tightened overtime and now requires the EPC rating in advertisements, raising the profile of EPCs and therefore aiding compliance levels. However, DC said the new rules on displaying EPC ratings on adverts are not enforced. JH said that she had some information around advertisements and EPCs that she will look for after the meeting.

1.19 It was suggested that the group make the following recommendations:

- Local authorities should use all suitable routes/groups for enforcements including PRS property teams, EHO and TSOs.
- All properties that should have an EPC do have an EPC.
- EPCs should be labelled to show a property is compliant.

1.20 There was general agreement on these recommendations although JH clarified that if a flat rate of an 'E' EPC rating was required for the minimum standard then the recommendation regarding the need to label EPCs as compliant would not be needed. AO suggested that an indicator on the EPC would be useful to raise awareness of the minimum standard regulations anyway. JH questioned how the indicator on the EPCs would be implemented and who would judge compliance of the minimum standard. DP

suggested the EPC software would have to take into account factors such as variations in ECO funding. JH noted that an assessment carried out before and after any changes in ECO funding could affect the compliance of the property. DP suggested to avoid this, the EPC document could be made a dynamic document that is updated automatically. PS added that the EPC could include general information on the PRS regulations. MM shared that Sheldon Ferguson at DCLG is currently looking at the technical feasibility of putting a compliance flag on EPCs and the results of the study can be fed back to the group. It was agreed by the group to recommend having standard wording on the EPC to reflect what the PRS minimum standard is, but there was low support within the group for a compliance indicator on the EPC.

1.21 PS suggested that at the point of challenge for non-compliance the landlord should show an audit trail to prove everything had been done to meet compliance. DT suggested the regulations should stipulate what the evidence base would be.

1.22 There was discussion around the recommendation about local authorities requiring more support to enable more targeted enforcement activity. The recommendation was generally supported by the working group however, it was noted that funding support may be expensive. PS asked if funding for HHSRS enforcement would also be considered. DP highlighted that there should be national reporting of compliance rather than requiring a national oversight body. The recommendation was agreed with the addition of the need for national reporting which could be linked to other similar reporting already done.

1.23 The question was raised about how a landlord could prove they had tried and failed to get a property to an 'E' rating. DC suggested that 1) A Green Deal Assessment would be required, 2) 3 quotes to show the financing was not viable under Green Deal in accordance with other financing under the regulations, 3) tenant or freeholder consent could not be obtained in written form. There was discussion about whether written consent could always be obtained. It was agreed it would be for the judge to decide the outcome of the case if this was not available. Therefore evidence would be required that the landlord had tried to obtain consent from the freeholder/tenant. Guidance could be given on the types of evidence that could be provided.

1.24 The question was discussed about how long a property should be exempt from the regulations. DC stated that the property would be exempt for the duration of the tenancy and at the start of every tenancy the landlord would have to demonstrate that the property was still exempt. There was group agreement for this. HM asked about how long regulated tenancies would be exempt. The group agreed the property would be exempt for five years and every five years it would have to be demonstrated that the property was still exempt.

1.25 DP queried what would happen in the situation where a tenant obtained an EPC for the property but the landlord is not aware of this. MP suggested that it might be possible that the regulations could state that if an EPC is obtained

for a property then the landlord should be made aware of this. The group questioned whether the five year exemption should link in with the timescale for a back stop date. The group agreed evidence of compliance would be required either for a new tenant moving into a property or every five years, whichever was the shorter.

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 the Group's best endeavours are sought by the Chair and Secretariat.

1.27 The Chair thanked attendees for their input and highlighted the date for the next meeting as 15 August 2013. DP noted the next meeting would focus on additional issues to the workstreams and the recommendations.

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>

07/08/2013

Annex A - Update on Actions from 11 March meeting

Action Number	Action	Lead/Owner *	Contributors	Report back date	Status	Comments
1	<p>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.</p> <p>(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).)</p>	Ian Fletcher (BPF)	RICS, Richard Jones	8 th 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.	DECC	-	25 th 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.
3					Closed	
4					Closed	
5	<p>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.</p> <p>Group members to send DECC examples where ancillary costs may occur.</p>	DECC	All	8 th April	Ongoing	Paper circulated around group before 13 May meeting. Comments to be forwarded to DECC. No comments received so far.

Action Number	Action	Lead/Owner *	Contributors	Report back date	Status	Comments
6					Closed.	
7					Closed.	
8	To provide understanding of how the process for ECO Post 2015 and PRS regulations will be linked together.	<u>DECC</u>	-	25 th March	Ongoing	DECC is trying to ensure the Impact Assessments for ECO2 and PRS Regulations are aligned however the Green Deal will still work for the PRS regulations without this.
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 th 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	7th June	Open	Group encouraged to send any new exemptions for consideration to DECC.
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	Open	DECC to check with legal

Action Number	Action	Lead/Owner *	Contributors	Report back date	Status	Comments
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	Open	Ongoing – no examples received to date. Group encouraged to send any examples for consideration to DECC.
15					Closed	
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	Further action below.
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	Comments have not been located to date, however DECC/BPF will continue to follow up.

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

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Summary of outstanding Actions from 15April 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.	DECC		26 th 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.	DECC		26 th 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.	DECC	David Cox	26 th 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.	DECC	Peter Smith	1 st May	Open	Awaiting response from Gentoo before answer can be added to Green Deal Q&A document and circulated to group.
5	Clarify how the Green Deal payments work with prepayment	DECC		7 th May	Open	Add answer to Green Deal Q&A

	meters					document and circulate to group. Green Deal Quick Guide on prepayment meters available on Government website.
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	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	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	Ongoing	Further action raised.
9	Circulate the outcome of the internal DECC discussion on the STBA Research to Working Group members	<u>DECC</u>		1 st May	Ongoing	Awaiting to be circulated
10	Circulate the research completed in Scotland about energy efficiency of pre 1919 properties.	<u>Danielle Troop</u>	DECC	26 th April	Open	Part of EPC sub group papers to be circulated
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	Ongoing	Part of EPC sub group papers to be circulated
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	Open	Part of EPC sub group papers to be circulated
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	Open	Part of EPC sub group papers to be circulated
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 th 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	
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	Speak to the Building Regulations person at CLG to clarify whether SBEM and EPCs can be used for HMOs	<u>Mark Malvisi</u>	Dave Timms	31 May	Open	
7	Add exemptions from proceedings of Energy Act 2011 to recommendations paper.	<u>Alison Oliver</u>		24 May	Open	This needs to be added to the recommendations paper.
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		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	

	measures should still be installed by landlord if the tenant making the request has moved out or is evicted.					
12					Closed.	
13					Closed	
14					Closed	
15	Draw up proposal for additional meetings and schedule for future meetings	<u>DECC</u>		24 May	Closed	AO to confirm dates with TY and circulate.
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		
2	Clarify whether Green Deal work needs to be signed off by both the tenant and landlord.	<u>DECC</u>		28 June		
3	Clarify whether it is when the Green Deal finance is agreed or actually transferred that the Green Deal contract is legally binding.	<u>DECC</u>		28 June		
4	Provide route maps for how EPC ratings contribute to future carbon targets.	<u>DECC</u>		28 June		
5	Organise a sub group to look at start dates and trajectories.	<u>DECC</u>		28 June	Closed	
6	Circulate EPC sub group paper to main working group	<u>DECC</u>		28 June	Closed	
7	Revise costs sub group paper and circulate to main working group.	<u>DECC</u>		28 June	Closed	
8	Circulate the recommendations paper to the working group.	<u>DECC</u>		28 June	Closed	
9	Send comments and views on the recommendations paper to DECC	<u>Group</u>		28 June		

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Summary of outstanding Actions from 18 July meeting

Action Number	Action	Lead/Owner*	Contributors	Report back date
1	Send an email to the working group members outlining the documents to be reviewed.	<u>DECC</u>		19 July
2	Update the recommendations paper based on the workstream 5 discussion.	<u>DECC</u>		2 August
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