

UK Finance/BSA guidance and minimum requirements regarding the form of legal documentation for fitting photovoltaic (solar) panels on roof spaces in Northern Ireland.

Introduction

The installation of panels on the roof spaces of properties in Northern Ireland is a relatively new development, triggered by government policies designed to encourage the generation of low-carbon energy.

This guidance provides information for photovoltaic (PV) panel providers and the public about lender's minimum requirements with respect to consenting to entering into of legal documentation in respect of the installation of PV panels ('the panels') on roof spaces in Northern Ireland as envisaged by the UK Finance/BSA guidance and minimum requirements regarding leases of roof spaces the fitting of the panels on properties in England and Wales (version 2: 18 March 2013) ("the England and Wales guidance")

Unlike the position in England and Wales, it is not lawful to "contract out" of the business tenancy protection offered by the Business Tenancies (Northern Ireland) Order 1996 ("the 1996 Order") in Northern Ireland. One of the criterion included in the England and Wales guidance to obtain a lender's consent to the grant of a lease in respect of installation of panels is that the borrower must be able to evidence that there has been a valid contracting out of the security of tenure provisions under the Landlord and Tenant Act 1954 (which largely affords the same protection in England and Wales as the 1996 Order does in Northern Ireland). Therefore, a lease should not be granted by the property owner in favour of the PV panel providers in Northern Ireland because this will confer business tenancy protection on the PV panel providers and instead a Lease of Rights should be entered into. The Lease of Rights will authorise the PV panel provider to install, maintain and operate the panels upon a property but should not operate in a manner which grants exclusive possession over the property or any part of the property.

Anyone considering agreeing to a Lease of Rights of their roof space for fitting PV panels in Northern Ireland should be aware that most lenders' mortgage conditions will require the lender's consent to be obtained to any Lease of Rights. Some lenders may also have in place protections (in the form of restrictions entered on the title at Land Registry) which prevent the registration of a Lease of Rights (which will typically take the form of registration of a burden) without the lender's written consent.

Borrowers may wish to consider contacting their lender at the earliest opportunity prior to entering into any arrangements to check their requirements. It's important to be aware that proceeding without a lender's consent where required, may be a breach of the mortgage terms and conditions and even if the Lease of Rights can be registered as a burden at Land Registry the lender may not be bound by it in, the absence of their consent.

The requirements relate to the installation of panels in Northern Ireland. The guidance includes:

- Background and information on the general process of seeking consent; and
- A template letter which contains the minimum requirements of lenders, in order to consent to a Lease of Rights in respect of roofspaces. PV panel providers can use this template letter to assist in the process of seeking consent from lenders to registering the Lease of Rights.

Note: The minimum requirements contained in the letter are intended as general guidance only. Individual lenders may have different or additional specific requirements based, for example, on the circumstances of the borrower and/or the properties subject to their security.

PV panel providers should always check with the lender if their requirements for consent differ from the template letter before signing and submitting it.

Re-mortgages or applications for mortgages on properties with existing leases of Rights

Where a borrower seeks to re-mortgage, or purchase a property with an existing PV panel Lease of Rights, it is likely the lender will review the Lease of Rights with reference to the minimum requirements set out here and with reference to any specific requirements they have. If the lender feels that the Lease of Rights does not meet their requirements, they may request that the Lease of Rights is varied, or may choose not to lend on the property.

Where a borrower seeks to re-mortgage or purchase a property with an existing PV panel lease, it is possible that the lender will refuse to lend against the property.

In addition, a list of lender point of contacts for panel lease of Rights consents is available as a quick reference for PV panel providers. The contact list is intended to give providers an initial contact point, however depending on the nature of the provider enquiry, the lender may require verification of the provider's identity before releasing information.

Background

Due to the availability in recent years of renewables obligation certificates (ROCs) in Northern Ireland, a market of PV panel providers has emerged, offering free installation of the panels onto roofs of residential and social housing. The providers receive payment from the ROCs calculated on pence per kilowatt hour, and those who have the PV panels installed on their property, receive free electricity generated by the panels..

Process for obtaining a lender's consent

- The PV panel provider (with appropriate consent from the borrower) should contact the mortgage lender to request consent on behalf of the borrower to the registration of a Lease of Rights in relation to the roof of a mortgaged property, in order to install the panels. The lender may advise the borrower that they have been contacted by the provider.
- The provider should supply the relevant information to lenders, to enable the lender to make a decision about whether to grant consent to the Lease of Rights. The information includes:
 - Evidence of accreditation which shows that the panels will be installed to a suitable standard. Currently, this can be satisfied by showing the installer's Microgeneration Certification Scheme (MCS) accreditation. Lenders can verify this via www.microgenerationcertification.org
 - Evidence that the provider and installer are members of the REAL Assurance Scheme
 - Signed confirmation by a suitably authorised representative that the provider satisfies the lender minimum requirements, and any specific requirements of the individual lender. The template letter, accessible here, contains the minimum requirements. The letter was developed to provide a way of certifying to lenders that providers, and their Lease of Rights agreements, meet those minimum requirements.
 - Signed authorisation of borrower(s) for provider to contact lender directly with respect to the consent
 - Contact details of the provider
 - Copy of Lease(s)/ of Rights or reference to where the lender may access a copy of the Lease(s) of Rights
- The lender will either base their decision on satisfactory initial up-front information from the provider, rather than case-by-case review OR review each consent individually, using provider information to fast-track the process.
- The provider should inform the lender of any changes to the Lease of Rights which are likely to impact on the lender's decision to consent, in order for the lender to review whether they can

continue to give consent. Lenders do not need to be advised of minor changes to the Lease of Rights which do not conflict with lender's minimum requirements. For example, where the provider amends the Lease of Rights to remove the requirement for a maintenance fee to be charged to the borrower, this would remain within the spirit of the minimum requirements and the lender would not need to be advised of the change.

- The lender decision on consent will be communicated to the provider and/or borrower.

Updated 29 December 2014