

CML/BSA guidance and minimum requirements regarding leases of roofspace for fitting photovoltaic (solar) panels



Introduction

This guidance provides information for photovoltaic (PV) panel providers and the public about lender's minimum requirements with respect to consenting to a lease of roofspace for the installation of PV panels ('the panels').

The lease of roofspace for panel installation is a relatively new development, triggered by government policies designed to encourage the generation of low-carbon energy.

Anyone considering agreeing to a lease of their roof space for fitting PV panels should be aware that most lenders' mortgage conditions will require the lender's consent to be obtained to any lease. 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 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 can be registered the lender may not be bound by it in, the absence of their consent.

The requirements relate to the installation of panels on properties in England and Wales. We will consider developing guidance for Northern Ireland and Scotland.

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 roofspace. PV panel providers can use this template letter to assist in the process of seeking consent from lenders to registering the lease.

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

Where a borrower seeks to re-mortgage, or purchase a property with an existing PV panel lease, it is likely the lender will review the lease 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 does not meet their requirements, they may request that the lease is varied, or may choose not to lend on the property.

In addition, a list of [lender point of contacts](#) for panel lease 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

The Department of Energy and Climate Change, via the Energy Act 2008, introduced a system of Feed in Tariffs (FITs) to incentivise small-scale low carbon electrical generation. The FITs are paid to providers of small-scale low-carbon electrical technologies, including photovoltaic (solar) panels.

FITs went live on 1 April 2010. Since then, a market of PV panel providers has emerged, offering free

Installation of the panels onto roofs of residential and social housing. The providers receive a FIT payment calculated on pence per kilowatt hour, and those who have the PV panels installed on their property, receive free electricity generated by the panels. Many providers have settled on the use of a lease of airspace above the roof to protect their interest, as they retain ownership of the PV 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 the airspace above a 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. 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
 - * Evidence that there has been a valid contracting out of the security of tenure provisions under the Landlord and Tenant Act 1954, where the lease applies to a property in England and Wales. In order to validly contract out, the landlord (borrower) must serve notice on the tenant (provider) in the prescribed form and the tenant must sign a declaration that he has received the notice and that they accept the consequences of contracting out. The lease must also contain reference to the exclusion agreement, notice and declaration. In practice, this will mean that the lender will need to see the signed contracting out notice and sworn declaration.
 - * 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 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)/ or reference to where the lender may access a copy of the lease(s)
- 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 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 which do not conflict with lender's minimum requirements. For example, where the provider amends the lease 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.