The Renewable Heat Incentive: a reformed and refocused scheme

Response by the Council of Mortgage Lenders to the Department of Energy and Climate Change (DECC) consultation paper

Introduction

1. The CML is the representative trade body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 135 members currently hold around 95% of the assets of the UK mortgage market. In addition to lending for home-ownership, CML members also lend to support the social housing and private rental markets.

2. We welcome the opportunity to respond to DECC’s consultation proposals for reforms to the existing Domestic and Non-Domestic RHI Schemes.

3. In this response, we have focused on the proposals relating to the domestic scheme, and in particular the proposals in section 5 of the consultation document which are intended to increase deployment of renewable heating technologies among customers who are less able to pay.

DECC’s earlier call for evidence on flexible financing options

4. We responded to the Department’s earlier call for evidence on proposals to increase the flexibility of financing options for energy efficiency measures. In particular, we highlighted:

   • If there is any charge/ rights over the property as the result of a financial interest, this creates saleability and marketability issues and requires consent of lenders. In turn, this creates additional resource implications and may, if the property is sold on, create additional delays as the conveyancer would need to check the implications for buyer and lender if there is mortgage finance involved.

   • Any charge/ rights over the property would also create additional complications should the property come into possession, as lenders would not wish to be liable for any financial charges created if they take possession of the property.

5. For these reasons, we favoured an Assignment of Rights (AOR) approach rather than that of Third Party Ownership (TPO).

The current consultation (section 5; question 18 refers)

6. The points we made previously in relation to AOR remain valid, and should be taken into account in further development of this approach.

Assignment of Rights approach

7. Subject to detail, we welcome the proposal (para 5.28) to introduce an Assignment of Rights (AOR) approach that would allow householders to assign their rights to RHI payments to a company that has financed their renewable heating technology. We welcome that, under this approach, householders would own the system/ renewable heat technology installed by the financing provider.

8. We do not propose alternatives to AOR, such as Third Party Ownership (TPO) for reasons detailed previously. Additionally, we would not wish to see a mixed approach that combines elements of AOR and TPO, on the basis that this would be unnecessarily complex for both householders and mortgage lenders.

9. In addition to the points made in our submission to the earlier call for evidence, it will be important to focus AOR development work on key areas such as the need for standard documentation and lender consents, where required. Additionally, it will be key to the success of the
proposed AOR approach that it does not operate so as to bind subsequent homeowners/ occupiers or mortgage lenders.

**Standard documentation**

10. The AOR approach should be underpinned by standard documentation to be used across the industry by all providers. The documentation should be in a form that is acceptable to mortgage lenders; the CML would be happy to consider providing input to this work.

**Lender consents**

11. Administration arrangements for the scheme under the AOR approach should ensure that homeowners must confirm that they have consent from their mortgage lender(s) to enter into the scheme and authorise the scheme administrator to deal with any lender having a registered charge over the property. This would include a requirement for consent to any required lettings or easements to facilitate the location/ installation of plant and any required connections.

12. We would like to see the detailed arrangements for the scheme and application process to include a consent section where the homeowner authorises the scheme administrator to deal with any lender having a court order for possession of the property (or a LPA receiver).

13. It would also be helpful to have a tick-box clause reminding consumers that lender consent to the arrangements might be needed.

**Not binding on successors in title**

14. Any AOR approach should operate in a way that does not bind successors in title of the homeowner/ occupier. Successors in title do not always want to be bound in this way, and the scheme detail should accommodate exit strategies, which are free of break fees or penalties, so that householders are not locked-in to arrangements agreed by previous owners/ occupiers.

15. It should be a minimum requirement of a reformed and refocused domestic RHI scheme that any obligations under any finance agreement are personal to the homeowner/ occupier signing the contract and that they do not in any way bind successors in title, including lenders or their receivers.

**Further development and engagement**

16. The CML stands ready to engage with government on the further development of a reformed domestic RHI scheme, based on an Assignment of Rights approach.

**Contacts**

17. To discuss this submission further, please contact:

- John.Marr@cml.org.uk for policy issues relating to energy efficiency initiatives and mortgage lending generally; or
- Jennifer.Bourne@cml.org.uk for legal issues relating to lender consents and standard legal documentation

25 April 2016
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Response by the Council of Mortgage Lenders
to the Department of Energy and Climate Change (DECC) Call for Evidence

Introduction

1. The CML is the representative trade body for the residential mortgage lender industry that includes banks, building societies and specialist lenders. Our 128 members currently hold around 95% of the assets of the UK mortgage market. In addition to lending for home-ownership, the CML members also lend to support the social housing and private rental markets.

2. We welcome the opportunity to respond DECC’s call for evidence on “Increasing the flexibility of financing options in the Domestic and Non-domestic Renewable Heat Incentives”.

3. We have some general comments on the impact Renewable Heat Incentives (RHI) and other similar schemes have had on first charge mortgage lending firms. We have also responded to some, but not all, of the questions in the paper and have limited our response to domestic RHI.

Summary

• First charge mortgage lenders recognise the importance of transforming the domestic renewable heat market particularly in areas not served by the gas grid. They are aware that the costs involved in installing a renewable heating system can be high and that installation cost is therefore likely to act as a barrier to take up.

• The impact of RHI and Feed in Tariff type products on the first charge mortgage lending industry is significant and we do not believe that this has been fully taken into consideration to date. To lessen this impact we believe DECC should agree standard form documentation which is in an acceptable form to lenders and we would be happy to assist with this.

• We favour the assignment of rights model and would be opposed to a plethora of different funding models/products in the market.

• Any funding agreements entered into by consumers would be taken into account in affordability assessments made by first charge mortgage lenders.

• RHI and any arrangement with third parties appear to bind successors in title of the homeowner/occupier. Successors in title do not always want to be bound in this way and the scheme should accommodate exit strategies.

• The administration system should be amended so that home owners must confirm that they have consent from their lender(s) to enter into the scheme and authorise the administrator to deal with any lender having a registered charge over the property.

• The Land Registry is introducing a property information product. DECC might want to consider whether RHI agreements could be listed against any properties affected by such agreements.

General comments

4. The first charge lending industry recognises the importance of renewable energy. However, the introduction of schemes such as the RHI places a considerable administrative and, therefore, resource burden on members.
5. Under mortgage terms and conditions any letting needs the lender’s consent. For example, each lease of roof space for solar panels needs consent from the lender otherwise the customer will be in breach of its mortgage conditions. Even with an agreed set of minimum requirements this is the case and there is no short cut in dealing with this. In addition, a lender may need to give consent to the lease being registered at the Land Registry.

6. For an idea of the volumes lenders are facing it may be worth your while contacting the Land Registry for information about the number of applications it is receiving that relate to leases for solar energy. Each of those applications will need to be dealt with by a lender. First the lender will need to consider whether to agree to the customer entering into the lease. Second where the lender has a restriction at the Land Registry consent will need to be given to the registration of the lease. We appreciate these leases relate to feed in tariffs but the information should give you an idea of the administrative burden placed on lenders by schemes of this type.

7. A similar situation to that experienced in relation to leases for roof space is starting to arise with bio-mass boilers. Lenders are receiving an increasing number of requests for consents to bio-mass boiler installations, both for individual schemes and district schemes.

8. We understand providers are seeking to lease the space where the boilers are to be installed. As with solar panels, lenders will want to ensure that leases meet their requirements; in particular lenders will want to know that no security of tenure arises. Since there is no standard form lease these are likely to be considered on a case by case basis at present, which is time consuming and requires legal advice. Lenders may well decide to pass on the cost to the customer. In some cases it is likely that easements for access etc. will be required. Again this is resource intensive. It is worth noting that lenders do not have to give consent to lettings.

9. It would be very helpful for the lending industry if, for whatever scheme is settled on, DECC would work with the CML to arrive at standard form documentation that is acceptable to all parties involved.

10. In terms of the new proposals it is hard to assess the impact on lenders. Without seeing documentation there are too many unknowns at present. As a general principle however any arrangement that is binding on subsequent homeowners/occupiers or lenders in possession is problematic.

Specific questions

Question 6 What effect might the introduction of third party finance have on your business or organisation?

Assuming it increases demand this is likely to have a significant impact on lenders. As set out above, and depending on the model(s) adopted, it is likely to lead to an increase in requests for approval. Any financing agreement may also affect affordability assessments for borrowers.

Question 12 Please let us know (with reasons) your preference for which third party finance model (AOR, TPO or both) we should introduce into the Domestic RHI.

We believe lenders would prefer the assignment of rights option as ownership of the heating technology rests with the borrower and not with a third party. We think that a variety of models would be unnecessarily complex – for consumers and lenders.

Lenders favour an arrangement where the heating technology belongs to the homeowner/borrower because the equipment would then stay with the property. It should also obviate the need for any lease arrangement in favour of the provider and therefore remove the need for lenders to approve and consent to such leases.

However, much depends on the nature of the agreement with the provider. If the agreement allows the provider to enter the property to remove the heating technology in the event of breach of contract (for example the homeowner revokes the authority of payment of RHI to the provider) then ownership is irrelevant. This sort of arrangement would not suit lenders.
On the face of it the AOR option should mean that if for any reason the arrangements fell apart the provider would not need access to the property to reclaim the heating technology. This would be a preferred approach for lenders. Properties lose their value if the heating technology has been removed particularly if this is done without due care.

Regardless of which approach is adopted we think it is important that any obligations under any finance agreement are personal to the homeowner/occupier signing the contract and do not bind successors in title (including lenders or their receivers). We ask DECC to make this a minimum requirement.

If there are any payment arrangements in the contract between the provider and the homeowner that go beyond the assignment of RHI to the provider than this might affect the homeowner’s affordability assessment for its mortgage. The Financial Conduct Authority’s rules require this.

We would not favour option 1 – third party ownership. Any agreement of this type is likely to include rights to enter the property and recover the heating technology if the homeowner breached the contract. Lenders would not want to give such rights of entry to third parties over a security property and would not want to find heating technology removed from the property. As a minimum the third party should be prevented from removing plant from the property. It is worth noting that lenders can withhold consent to the granting of lease or easements to third parties. Whilst keen to assist if a RHI could adversely affect the lender’s security or approval of documentation becomes an excessive burden then a lender may consider refusing consent.

Q 24 Would it be overly restrictive to enable payments only to either a single third party organisation or to a third party and the homeowner?

We would prefer this to be as limited as possible. A lender will not be party to any arrangement of this type. However, if the lender takes possession or appoints a receiver it will need to be aware of any such arrangement. Tracking down beneficiaries could be very complex. Also explaining contracts to successors in title without necessarily knowing the parties involved will be difficult for lenders.

Assuming such a facility does not already exist, it would be very helpful to lenders if the application process included a consent section where the homeowner authorises the scheme administrator to deal with any lender having a court order for possession of the property (or a Law of Property Act receiver).

It would also be helpful to have a tick box clause reminding consumers that lender consent may be needed to the arrangements.

Q 27 If third party financing is introduced who should complete the RHI Form?

In order to protect consumers, we believe that the homeowner/occupier should always complete the RHI application form. We cannot see any reason why the third party should not also complete appropriate sections.

Q32 What changes to existing powers or additional powers do you think that Ofgem might need in order to accredit applications and administer the scheme if either AOR or TPO were introduced?

We would like Ofgem to have powers to introduce standard form documentation or at least minimum requirements that would be acceptable to secured lenders.

Q33 Are you in favour of Ofgem having the power to request to view contracts between the homeowner and third party organisations as part of the accreditation process?

Again for consumer protection we strongly support Ofgem having power to view contracts as part of the accreditation process. We would support Ofgem using this as part of a process to ensure such contracts were fair.
Q34 Are you in favour of the homeowner and/or the occupier of the dwelling having the right to contact Ofgem and for Ofgem to have the authority to stop payments if notified of a dispute between the homeowner and the third party organisation?

We are not in favour of the homeowner/occupier having the right to contact Ofgem to stop payments to the third party if the outcome of this was to allow the third party to remove the heating technology from the property. We believe that the rules should allow a lender in possession or a Law of Property Act Receiver to do this. We also believe that a subsequent homeowner/occupier should have the right to cancel.

Q35 What additional measures (if any) beyond those already in the Domestic RHI and delivered through MCS and RECC would you introduce to protect consumers?

It is important to ensure that any financing arrangement gives the homeowner/occupier Consumer Credit Act protection and Financial Conduct Authority regulation as an absolute minimum. For purposes of affordability assessments for mortgages any payments under such agreements would need to be taken into account.

Q36 To what extent do you think that the RHI scheme should regulate or restrict the contracts between consumers and third party organisations?

We think transparency is very important for consumers so any regulation should include an obligation to make products clear and transparent. We believe that close regulation of this market will be required at least at the outset until market practice is established. Standard form documentation acceptable to all including lenders would greatly assist the lending industry.

Q39 Are you aware of any impacts on the Domestic RHI its participants and industries or potential participants or the wider environment that are not already listed above.

Yes – please see our comments about the impact this scheme has had on first charge mortgage lenders. We do not believe that this impact has been taken into account to date.

Comments

Please address any comments on this reply to Samantha Barnett sam.barnett@cml.org.uk.