



Department of
**Finance and
Personnel**

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**From the Office of the
Minister of Finance & Personnel**

**DFP Private Office
2nd Floor
Clare House
303 Airport Road West
Belfast BT3 9ED**

Telephone: 028 90816711

Email: private.office@dfpni.gov.uk

Your reference:

Our reference: AQT/1275/11-15

Steven Agnew MLA
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

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Dear

STEVEN

During DETI oral questions on 16 June you asked a question about the Business Tenancies (NI) Order 1996 ("the Order") and the differences between the Order and equivalent legislation in Great Britain which you say restricts the growth of free solar PV schemes. The Order is within the purview of my Department, and, I agreed to write to you further about this.

The Order gives business tenants in Northern Ireland a measure of security of tenure. The corresponding legislation in England and Wales enables parties to "contract out" of the protection of its legislation. In Northern Ireland, however, the Order contains an absolute prohibition on any agreement which purports to "contract out" from the security of tenure regime. Scotland has never introduced a comprehensive system of business tenancy protection legislation.

It is possible that solar panel agreements can be outside of the scope of the Order (e.g. if a licence as opposed to a lease is agreed).

However, it seems that solar panel providers (and their funders) often prefer a lease because they actually want security of tenure over the roof/roofspace of the property. A lender will often have a veto over the property owner's decision on whether to enter into a solar panel agreement since it will usually have obtained a covenant from the borrower not to make or permit any planning application without the lender's consent. In addition, a lender will usually have included provision in a mortgage requiring its consent to create any third party rights affecting the mortgaged property. A lender may not want to consent to a lease because a "break" clause (purporting to enable the lender to terminate the lease and have the panels removed if it is selling the property as mortgagee in possession), is not possible because of the absolute prohibition on "contracting out" of the security of tenure provisions.

I mentioned that my Department is looking at work on business tenancies. As you may know, the Northern Ireland Law Commission ("the Commission") undertook a

comprehensive review of the Order and reported in 2011. In the context of that review, the Commission considered in some detail the case for and against removing the absolute prohibition on contracting out. However, ultimately it recommended an exemption in respect of complex transactions, rather than absolute market freedom. My Department is currently considering the terms of the Commission's recommendation. However, even if it was to be implemented, it would not bring the provisions of the Order into line with the provisions in England and Wales.

Even if the Order were to be amended, both parties would still have to agree to "contract out" of the Order's protective regime. However, as stated above the solar panel provider/funder normally prefers a lease (even when a licence arrangement is possible) because they actually want security of tenure. It is difficult to see how a party who adopts this position under the current law (when there is scope for a licence to be agreed and for the terms of the Order to be avoided) would agree to contract out of the provisions of the Order if it was amended to bring it into line with England and Wales.

The Order *per se* is not, therefore, the barrier to the installation of solar PV panels.

As the Commission has recently reviewed the Order, I have no plans, at this stage, to undertake a further review.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Simon', written in a cursive style.

SIMON HAMILTON MLA