

## ENGLAND AND WALES

# Guidance Note: Roof Top Solar for Commercial Property

With Government and social pressure to reduce carbon emissions from the built environment coupled with rising energy costs, it is not surprising that more and more landlords are looking to install solar panels on their buildings to create green electricity and lower energy bills.

## FACTORS FOR LANDLORDS AND TENANTS TO CONSIDER

### Cost of installation

The installation of new plant (as opposed to repair or replacement of existing plant) and landlord improvements are not usually recovered from tenants through service charge. However, tenants (particularly those on longer leases) are likely to benefit from the installation of solar panels in two ways. Firstly, the electricity generated by the solar panels is cheaper than purchasing energy from the grid and so the tenants' operating costs are reduced. Secondly, there can be a reputational benefit as the solar panels add to the tenants' green credentials. As such, responsibility for the cost of installation is a matter for discussion between the landlord and tenant. This should include a conversation about whether or not the equipment is to be disregarded on rent review as rents are generally higher for more sustainable buildings.



### Ownership

There are two parts to the question of ownership – ownership of the equipment and ownership of the electricity that is generated by the equipment. The two usually go hand in hand. The ownership of the solar equipment will usually depend on whether the building is occupied by a single tenant or if it is multi-let. If a building is occupied by a single tenant, it is not unusual for the equipment to form part of the property that is let to the tenant i.e. the tenant has ownership for the term of the lease.

That is not, however, a rule and it is possible for the landlord to retain ownership of the equipment together with the airspace above the roof of the building. In a multi-let building, the landlord will retain ownership of the equipment.

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Generally, whichever party owns the equipment will also want to own the electricity generated by the equipment. If this is the landlord, they will sell the electricity to the tenant(s) and then will sell any surplus to the grid. If the tenant has ownership, they will use as much as they need free of charge and again will sell any surplus to the grid. The party with the ownership will want to ensure that the other party cannot do anything that may damage the equipment or interfere with the production of electricity. For example, they will want a prohibition against the other party erecting any structure or planting anything which will obstruct the light to the solar panels.

### Cost and responsibility for maintenance

The cost and responsibility for maintenance does not always fall to the party with ownership of the equipment. This is a matter for discussion between the landlord and the tenant. Whichever party is responsible for maintenance will want to ensure that they have sufficient access to the equipment to carry out any necessary works.

### Data collection

Whichever party owns the equipment and the electricity produced by the equipment will need to collect data on energy production and usage so that they know how much to charge for electricity usage and whether there are any inefficiencies with the solar equipment that need to be repaired. It is becoming common for the parties to insist on smart metres so that live data can be accessed without entry onto the property or the reliance on the other party providing the data.

## WHAT TYPES OF ARRANGEMENT ARE WE SEEING?

There are three main types of arrangement that appear to be emerging as the norm in the current market:

### Tenant owns at tenant's cost

In this arrangement, the tenant pays for the installation and maintenance of the solar equipment which forms part of their ownership during the term of the lease. The tenant may or may not be permitted to remove the equipment at the end of the lease. The tenant also owns the electricity produced by the solar equipment and can use such electricity or sell it to the grid as the tenant sees fit.

There are also instances where the landlord will cover the cost of the initial installation of the equipment, but will include the equipment in the property let by the tenant. This means that, following installation, the tenant takes over ownership and also responsibility for maintenance. This will usually be reflected by a higher rent. As mentioned above, we are seeing higher rents payable for more sustainable buildings.

### Landlord owns at landlord's cost

In the case of multi-let buildings, the landlord will often pay for the initial installation and also retain ownership and responsibility for maintenance. The landlord may or may not recover these costs through the service charge. This arrangement is also sometimes seen for single-let buildings.

The landlord retains all of the benefit from the electricity produced by the solar equipment. The landlord will generally be under an obligation to offer the electricity for purchase by the tenants at a pre-agreed price and will then be free to sell any surplus to the grid.

### Landlord owns but tenant maintains

In this arrangement, it is usual for the landlord to pay the initial installation costs for the solar equipment. The landlord retains ownership of the equipment and the electricity produced by the equipment, which they will sell to the tenants with any surplus being sold to the grid.

The tenant is responsible for the maintenance of the equipment in exchange for the lower price of the electricity from the solar panels when compared with the cost of electricity from the grid.



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### POWER PURCHASE AGREEMENTS

Once the electricity has been produced by the solar equipment, it is sold to the tenant(s) of the building and or to the grid. The contract entered into to govern that sale is called a power purchase agreement (“PPA”).

Assuming that the landlord owns the electricity, they will enter into a PPA with the tenant which will include provisions such as:

- the cost of the electricity per unit, which may be a fixed amount or may fluctuate so that it is always lower than the cost of electricity from the grid;
- any minimum usage – i.e. a minimum amount the tenant is required to pay even if they use less electricity, which is sometimes included where the landlord has paid for the installation of the equipment to recover the costs within an expected timeframe;
- whether the tenant is required to prioritise the supply from the solar equipment above supplies from the grid or any other third party;
- that the tenant may not sell on the electricity to a third party and if the tenant receives any benefit from the electricity (other than its own usage) that they have to transfer that benefit to the landlord;



- notice requirements for planned outages and maintenance works;
- rights to relocate the equipment; and
- data sharing obligations regarding usage.

Some of these provisions will also be replicated in the lease for completeness.

Whichever party owns the equipment, they may also enter into a PPA with the local or national energy supplier to sell the surplus electricity to the grid, but with far fewer restrictions and requirements on the local/national energy supplier. In this case the PPA will likely be substantially in the local/national energy supplier’s standard form.



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