

ENERGY ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Energy Efficiency

Chapter 1: Green Deal

General

Section 34: Power of Secretary of State to deal with special circumstances

109. *Subsection (1)* allows the Secretary of State to make regulations setting out: the circumstances in which a bill payer's liability to make green deal payments is suspended or cancelled; the circumstances in which the suspension of any liability ends; the consequences of any suspension or cancellation; and the circumstances in which the green deal provider may require the early repayment of the whole or part of the total of the payments outstanding under a green deal plan.
110. *Subsection (2)* states that the regulations may provide for: the procedure to be followed in order to secure a cancellation or suspension which may include the payment of an administration fee; how payments are to be paid which are due during and following a suspension period; and as to the calculation of the amount payable on early repayment.
111. *Subsection (3)* defines the 'bill payer' to include the person who would be bill payer if the supply were not temporarily disconnected or the liability to make green deal payments was not suspended and 'payments' as green deal payments if they are made under a green deal plan.

Section 35: Appeals

112. This section requires the Secretary of State to provide a right of appeal against any sanction imposed or other action taken by the Secretary of State (or a specified public body) under section 3(3)(h) or (i) (non-compliance with conditions or other requirements of the scheme, code or agreement), section 6(4) (redress where the permission or consent mentioned in section 5(2)(b) was not obtained or was improperly obtained) or section 16 (non-compliance with sections 12 to 15).
113. The right of appeal which the Secretary of State must provide for is a right of appeal to a court or tribunal (*subsection (2)*). *Subsections (3) and (4)* set out the provision which the Secretary of State may make in respect of the right of appeal including, in particular, provision as to the court's or tribunal's powers in respect of an appeal application. *Subsections (5) and (6)* enable the Secretary of State and Scottish Ministers respectively to revoke or amend any subordinate legislation for the purpose of or in consequence of any provision falling within subsection (3)(a), (d), (f) or (g) (jurisdiction and powers of the court or tribunal, appeal procedure, and recovery of sums determined to be payable). The Scottish Ministers' power in subsection (6) is limited to making provision to revoke or amend subordinate legislation where making that provision would be within the

legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

Section 36: Funding for energy efficiency advice

114. This section enables the Secretary of State to incur expenditure in providing advice or information about green deal plans or energy efficiency generally to individuals and organisations or in making payments to persons providing such advice or information.

Section 37: Preparatory expenditure: framework regulations

115. This section enables the Secretary of State to incur expenditure in preparing for a scheme provided for in section 3 before the framework regulations are made.

Section 38: Green deal installation apprenticeships

116. This section requires the Secretary of State to report to Parliament, before the first framework regulations are made, on any steps he has taken to encourage apprenticeships for installers of energy efficiency improvements.

Section 39: Parliamentary procedure in relation to code of practice

117. **Section 39** provides for the Parliamentary procedure in relation to code of practice under the framework regulations (i.e. under section 3(3)(d)).

Section 40: Regulations and orders

118. This section enables the Secretary of State, when making orders or regulations under Chapter 1, to make different provision for different cases or circumstances or for different purposes. It provides for orders and regulations, other than those made by Scottish Ministers, to be made by statutory instrument. Statutory instruments made by the Secretary of State are subject to the negative procedure, except in the case of statutory instruments containing the framework regulations, regulations under sections 2, 13, 15(1), 16, 34 or 35(2) or an order under sections 1, 2 or 30. These require the affirmative procedure. Regulations made by the Scottish Ministers under sections 10(2), 14(7) and (8) and 15(4) are subject to the negative procedure and regulations under section 35(6) are subject to the affirmative procedure.
119. *Subsection (8)* provides that the Secretary of State must consult Scottish Ministers in respect of any regulations or orders extending to Scotland, and that if the regulations or order contain anything within the legislative competence of the Scottish Parliament, Scottish Ministers' consent is required.
120. *Subsection (9)* provides that Welsh Ministers' consent is required to provision under section 35 which amends or revokes instruments made under a Measure or Act of the National Assembly for Wales, or any other subordinate legislation made by the Welsh Ministers. *Subsection (10)* provides that Welsh Ministers' consent is required before amending under section 9 a provision of the Building Regulations 2010 if and so far as the function under which the provision is made is exercisable by the Welsh Ministers. *Subsection (12)* provides that Welsh Ministers must be consulted on regulations or orders which apply to Wales.

Section 41: Crown application: Chapter 1

121. This section provides that Chapter 1 binds the Crown.