

EXPLANATORY MEMORANDUM TO

**THE GREEN DEAL FRAMEWORK (DISCLOSURE, ACKNOWLEDGEMENT,
REDRESS ETC.) REGULATIONS 2012
2012 No. 2079**

**THE GREEN DEAL (ENERGY EFFICIENCY IMPROVEMENTS) ORDER 2012
2012 No. 2106**

**THE GREEN DEAL (QUALIFYING ENERGY IMPROVEMENTS) ORDER 2012
2012 No. 2105**

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instruments**

- 2.1 These instruments make provision to implement the Green Deal. The Energy Act 2011 (the “Act”) provides for a new type of arrangement for the installation of energy efficiency measures, called a “green deal plan”. Under a green deal plan, energy efficiency measures are installed in a property and then paid for wholly or partly in instalments which are collected on electricity bills for the property.

Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (the “Framework Regulations”)

- 2.2 The Framework Regulations create an authorisation regime to regulate the conduct of key players in the assessment, provision and installation of energy efficiency improvements under green deal plans. The regulations also include (i) conditions that must be met when a green deal plan is established, (ii) requirements to ensure that people moving into or acquiring an interest in a property are made aware of a green deal plan in advance, and (iii) provision for enforcement.

Green Deal (Energy Efficiency Improvements) Order (the “Energy Efficiency Order”) and Green Deal (Qualifying Energy Improvements) Order (the “Qualifying Improvements Order”)

- 2.3 The Energy Efficiency Order sets out sources of energy and types of microgeneration measure for the purpose of defining “energy efficiency improvements” in the Act.

2.4 The Qualifying Improvements Order sets out the kinds of energy efficiency improvements that can be installed under a green deal plan.

3. Matters of special interest to the Joint Committee on Statutory Instruments

Framework Regulations

3.1. None.

Energy Efficiency Order and Qualifying Improvements Order

3.2. The grounds on which the Government can be sure that the measures listed in this instrument result, in fact, in the more efficient use of energy are set out below in paragraphs 7.1 to 7.4.

4. Legislative Context

4.1 These instruments are almost all being made in exercise of powers in Chapter 1 of Part 1 of the Act, which are being used for the first time. The exception is Regulation 87 of the Framework Regulations, which insofar as it provides for an appeal against a decision by the Secretary of State to refuse an application under Part 3 of these Regulations, is made under section 2(2) of the European Communities Act 1972. This is because it ensures continued compliance with article 10(6) of the Directive on services in the internal market (2006/123/EC), which requires Member States to ensure that decisions on refusal or withdrawal of authorisation under an authorisation scheme are open to challenge. No appeal to the First Tier Tribunal is provided in relation to decisions concerning green deal providers under Part 3, because judicial review should be sufficient in these cases and the Services Directive is unlikely to apply to the credit aspects of the provider's authorised activities.

4.2 Although the Qualifying Improvements Order and the Energy Efficiency Order are being laid in Parliament together at the same time and approval for both will be sought at the same time. However, the Secretary of State will make the Energy Efficiency Order first and the Qualifying Improvements Order will not be made until such time as the Energy Efficiency Order has come into force.

4.3 These regulations and the orders are part of a group of instruments being made under the Act to implement the Green Deal. The group will also include:-

- (a) the Green Deal (Disclosure) Regulations 2012, which are subject to the negative procedure and which the Government intends to make and lay before Parliament in June 2012;
- (b) the Green Deal (Acknowledgment) Regulations 2012, which are also subject to the negative procedure, and which the Government intends to make and lay before Parliament in June 2012;

- (c) the Green Deal (Acknowledgment)(Scotland) Regulations 2012, which Scottish Ministers intend to make this summer; and
- (d) the Green Deal Code of Practice, which will be laid before Parliament this summer, and then issued by the Secretary of State, and with which authorised Green Deal Providers, Assessors, Installers and certification bodies will have to comply.

4.4 It is envisaged that after the Framework Regulations have been made, the Secretary of State and the Scottish Ministers will make amendments to the energy performance certificate framework using powers in, respectively, sections 9 and 10 of the Act. This will ensure that information about the green deal plan at a property is included in the energy performance certificate (in England and Wales) or the recommendations report (in Scotland) for the property. (Further details regarding disclosure and the role of the EPC and recommendations report are set out in paragraphs 7.18-7.21 below.) Once those amendments have been made, the Secretary of State intends to make provision under section 11(6) of the Act to specify the circumstances in which the information will need to be updated.

5. Territorial Extent and Application

- 5.1 These instruments apply to Great Britain.
- 5.2 As required by section 40(8)(a) of the Energy Act 2011 the Scottish Ministers have given consent and in accordance with section 40(8)(b) they have been consulted.
- 5.3 The Welsh Ministers have been consulted in accordance with section 40(12) of the Energy Act 2011.

6. European Convention on Human Rights

- 6.1 The Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Green Deal Framework (Disclosure, Acknowledgement, Redress Etc.) Regulations 2012, Green Deal (Qualifying Energy Improvements) Order 2012 and Green Deal (Energy Efficiency Improvements) Order 2012 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 Greenhouse gas emissions from buildings (domestic and non-domestic) in 2009 were 43% of total UK Greenhouse gas emissions. Improving energy efficiency in properties in Great Britain will help the Government achieve the following objectives: (i) contribute towards reducing the UK's harmful greenhouse gas emissions; (ii) help improve energy security by reducing overall demand for energy; (iii) help tackle fuel

poverty by helping to reduce the cost of heating a home to a reasonable level; (iv) increase productivity (with the potential to boost growth and business competitiveness) and (v) reduce the costs of meeting the UK's renewable energy target through more efficient energy use.

- 7.2 At present there are market failures along with some barriers which are reducing the take up of cost effective energy efficiency measures. To address these issues several options were considered (detailed in the Impact Assessment) and the preferred option was enabling a more market-focussed approach to delivering energy efficiency measures, where competition amongst Green Deal providers is likely to drive take-up.
- 7.3 The Green Deal aims to overcome difficulties accessing capital for energy efficiency improvement measures, mismatched incentive problems, such as individuals only investing in energy efficiency measures for the length of their own expected tenure in a property and provide a trustworthy framework of advice, assurance and accreditation for the energy efficiency supply chain.
- 7.4 The Act made provision for the development of a Green Deal. Through the consequential secondary legislation a novel scheme has been developed which provides that the instalments under a green deal plan are paid via the electricity bill for the property, by the person who is the bill payer at the time the instalment is due. Accordingly, when the electricity bill payer for a property changes, the obligation to pay Green Deal instalments remains with the property and is passed to the new bill payer. The disclosure and acknowledgment requirements that will be in place are designed to ensure that the new energy bill payer is made aware of the Green Deal plan.

Framework Regulations

Authorisation scheme

- 7.5 The Act requires the Secretary of State to establish a scheme for the authorisation of green deal assessors, installers and providers (collectively "green deal participants"). Parts 1 to 4 of the Framework Regulations establish this scheme.
- 7.6 Part 3 of the Framework Regulations provides for applications for authorisation. Authorisation of assessors and installers is to take place via membership of an authorised certification body. This could be any organisation that has demonstrated it meets a defined standard for the registration and ongoing quality assurance of the professionals they certify, for example a dedicated private sector body or a trade association, provided it is capable of meeting the standards set out in the specifications. Before applying to the Secretary of State for authorisation, certification bodies will need to be accredited by UKAS to certify their members as able to act. Once accredited, it will be able to certify individual assessors or installers (as applicable) and add them to its membership list. The Framework Regulations provide that installers and assessors who are on the membership list of an authorised certification body will be authorised to act as a green deal assessor or installer. By authorising assessors and

installers using an established accreditation and certification process under EN45011, the regulatory structure provides for a robust consumer protection and quality assurance framework, whilst allowing for a range of businesses to offer a quality service to the consumer under the Green Deal. This approach was supported by both assessor and installer stakeholder groups, as well as during the consultation process.

- 7.7 Green deal providers are authorised individually by applying to the Secretary of State. As part of this authorisation process, Government will carry out a fitness test for each prospective Green Deal Provider, to assess whether they as a business are fit to act in the Green Deal market. This is necessary given their core role in relation to such a novel type of financial arrangement. The Secretary of State will only grant an application if he considers that the applicant is a fit person to be a green deal provider. The Government intends to publish guidance on the matters that will be taken into account in deciding whether an application should be granted.
- 7.8 Part 2 of the Framework Regulations provides for the establishment of separate public registers of each category of green deal certification body and participant, and provides that a person is authorised if they appear on the relevant register. This has been done to ensure that members of the public can obtain accurate information as to whether a particular person is authorised.
- 7.9 Part 4 of the Framework Regulations sets out requirements with which authorised certification bodies and green deal participants must comply. These include a requirement to comply with the Code of Practice and, for certification bodies and green deal providers, to submit an annual report to the Secretary of State regarding their activities and (for certification bodies) the activities of their members. This annual report will enable the Government to monitor the effectiveness of the scheme in protecting consumers.

Estimates of savings and conditions relating to green deal plans, early repayment, cash advances and terms which bind and benefit bill payers

- 7.10 Chapter 1 of Part 5 of the Framework Regulations sets out the basis upon which a green deal provider must carry out (i) the estimate of savings on energy bills if improvements are installed under a green deal plan, required by section 4(4) of the Act, and (ii) the estimate of the period in which those savings are likely to be made, required by section 4(5) of the Act.
- 7.11 Chapter 2 then sets out conditions that must be met in order for an arrangement to qualify as a green deal plan. These conditions are in addition to the conditions set out in the Act.
- 7.12 The conditions implement the Government's policy that (i) the instalments in the first year of a green deal plan should not exceed the green deal provider's estimate of the annual savings on energy bills, and (ii) the period over which instalments are payable should not exceed the period for which the improvements are likely to be effective.

This principle is at the heart of the Government's policy on the Green Deal, and is often referred to as the "Golden Rule". The safeguards built into the Golden Rule will ensure customers can have a reasonable expectation of the savings estimates predicted for the first and subsequent bill payers.

Interest rates are fixed for plans for domestic properties. This is to ensure that the amount of instalments does not fluctuate unexpectedly for domestic consumers, and makes it more likely that the amount of instalments over the lifetime of the plan continues to be no more than the amount of the estimated energy bill savings, an important protection for domestic consumers. Regulation 33 provides, however, that the overall amount of instalments (including the component representing interest) can increase by 2 per cent per year, in order to account for likely increases in energy prices. For plans for non-domestic properties there is no restriction on interest rates. This is because Government considers the non-domestic sector to be experienced in dealing with flexible interest rates and to understand the risks associated with credit.

- 7.13 The regulations prevent a green deal plan from including a term in which customers are prohibited from switching energy supplier and is included as an important protection to ensure that customers with a green deal plan are still able to switch supplier. Green deal providers must provide a guarantee regarding the functioning of the improvements and any damage to the property resulting from the improvements. Minimum standards regarding the guarantee are set out in Schedule 2. Government regards this position as striking the right balance between ensuring appropriate consumer protection whilst not adding unnecessary costs to Green Deal which will ultimately borne by the consumer.
- 7.14 Improvers are required to obtain confirmation from the bill payer for the property and certain other categories of person who could become liable for energy bills in future (e.g. a landlord) that they consent to the plan, and that they understand that the bill payer for the property is liable to make payments and bound by the certain terms of the plan. Government's objective is to protect the rights of original and subsequent customers and property owners (and electricity bill payers where they are different from the owner) by ensuring that the correct confirmations are obtained before measures are installed and the green deal charge becomes payable.
- 7.15 Certain terms of a green deal plan will bind and benefit a bill payer or a subsequent bill payer. The principle is that bill payers are responsible for complying with the terms of a plan only in respect of the period they are the bill payer. They are not, for example, responsible for a previous bill payer's failure to pay instalments. However, they will remain responsible, after leaving the property for any arrears that have built up while they were the bill payer. Where a term benefits a bill payer (for example, the guarantee), the benefit is for the period they are the bill payer.

Disclosure and acknowledgment

- 7.16 Part 7 supplements disclosure and acknowledgment provisions in the Act to ensure that someone who is to occupy the property, or may do so in future, becomes aware of the

existence of the plan.

- 7.17 In England and Wales, information regarding a green deal plan is to be included on the Energy Performance Certificate for the property. In Scotland, that information is to be included in a “recommendations report”, which is a document which will have to be attached to an EPC for a property. Government decided to use the EPC Framework for disclosure purposes because it is an existing method of conveying information about the energy performance of a property and it is an established part of many property transactions in Great Britain. The existence of a green deal plan must be disclosed by providing, free of charge, the EPC (and, in Scotland, the recommendations report) to the potential bill payer. Where information about the green deal has not yet been added to the EPC or recommendations report for the property, the plan must be disclosed by giving, free of charge, the potential bill payer another document with information about the green deal in it.
- 7.18 In order to support the disclosure system, the potential bill payer will also give a written acknowledgment, to show that they are aware of the green deal plan and the bill payer’s obligations under the plan.

Enforcement

- 7.19 Parts 8 and 9 make provision for enforcement of the requirements in the Framework Regulations and provide a right of appeal to the First Tier Tribunal in respect of enforcement decisions for all green deal participants and decisions of the Secretary of State to refuse authorisations to act as green deal assessor and green deal installer certification bodies.
- 7.20 Government is trying to establish a system which encourages resolution of customer complaints by participants where possible; avoids duplicating existing mechanisms; but ensures that the Secretary of State is able to enforce the requirements of the authorisation schemes, consent and disclosure/acknowledgment where appropriate.
- 7.21 The regulations set out the enforcement measures that are available in respect of the different categories of breach. These include cancellation of a plan, or reduction of the amount due under a plan, which will be available where the Secretary of State considers it would be unfair for the bill payer to continue to pay some or all of the instalments due under the plan. Where green deal certification bodies or participants commit a severe or repeated breach of requirements of the authorisation schemes, the possible sanctions include withdrawal of authorisation and, for green deal providers, a civil financial penalty.

Energy Efficiency Order and Qualifying Improvements Order

- 7.22 The Act provides that only energy efficiency improvements which are described in an order made by the Secretary of State can be installed under a Green Deal plan.
- 7.23 The Energy Efficiency Order lists sources of energy (other than electricity and mains

gas, which are already provided for in the Act) which can be taken into account when considering whether an improvement will save energy at a property, and is therefore an “energy efficiency improvement” for the purpose of the Green Deal. The sources of energy listed are biofuels, biomass, coal and petroleum products (which includes oil and liquid petroleum gas). These fuels are being included to ensure that properties which use these fuels for heating can benefit from the Green Deal.

- 7.24 The Energy Efficiency Order also lists microgeneration measures that are to be treated as energy efficiency improvements, even though they may not actually reduce energy use or increase efficiency in the use of energy in every case. These measures should, however, reduce use in properties of electricity supplied from the grid, and fossil fuels, and therefore result in savings on energy bills.
- 7.25 The Qualifying Improvements Order then describes all the types of energy efficiency improvement that can be installed under a green deal plan. The Green Deal has been designed to be as inclusive as possible. Measures which the Government is satisfied are capable of resulting in savings on energy bills which can be quantified and modelled in our assessment tools are included. Improvements which are capable at present of only partially paying for themselves in energy savings are included, and the off-set can be paid by customers contributing to the cost, or by using other means of financing. This approach enables customers to benefit from a broad range of improvements and a large number of sectors to supply into the Green Deal.
- 7.26 The improvements specified in this instrument will not always be capable of making energy savings in all buildings, and any levels of savings will vary from property to property. For example, the level of savings that a new condensing boiler will create is dependent on the efficiency of the boiler it is replacing. However, before a green deal plan can be entered into, a customer has to have a Green Deal assessment, which will only recommend improvements that will improve the energy performance of the building in question and will quantify the potential savings. As explained above, the amount of the charge attached to an energy meter under a Green Deal plan, is limited, under the Framework Regulations, to the estimated savings on energy bills resulting from the installation of the improvements.
- 7.27 The actual products installed under a Green Deal plan must fall within a category of qualifying improvement that has been recommended during the Green Deal assessment and must meet the requirements of the Green Deal Code of Practice. The Green Deal Code of Practice will require Green Deal providers to confirm with their suppliers that the products to be installed under a Green Deal plan are a type capable of - or designed to - deliver the level of energy bill savings estimated for the measures by the Green Deal provider.
- 7.28 The Government cannot guarantee the savings that individual occupiers will achieve, since these are highly dependent on many factors including behaviour of the property’s occupants and on changes in energy prices. However, by using a combination of the Green Deal assessment and the Code of Practice we can increase confidence that when

the measures specified in this instrument are installed under a Green Deal plan, they should lead to savings on energy bills.

8. Consultation outcome

- 8.1 On 23 November 2011 the Department of Energy and Climate Change launched a consultation on proposals for the Green Deal. The consultation also covered the Energy Company Obligation (ECO) which is being implemented through separate legislation. The consultation proposals were published on the DECC website alongside a number of supporting documents, including a draft impact assessment and draft statutory instruments (SIs).
- 8.2 The consultation sought views across England, Wales and Scotland on all aspects of the proposals. The Department participated in stakeholder events across Great Britain and hosted workshops and a web chat to further explain and take comments on the details of the proposals. The consultation was complemented by our participation in various stakeholder events, our hosting of blogs and a webchat, industry workshops, and stakeholder factsheets on our website to help make the content accessible. The consultation closed on 18 January and received over 600 written responses from a variety of organisations and individuals.
- 8.3 Feedback from the consultation directed our revisions towards strengthening consumer protection, reducing industry burdens and improving behind-the-scenes operations. Crucial to the success of the Green Deal is a robust customer protection regime that will inspire confidence and provide a secure platform on which all Green Deal and ECO participants can operate. Nonetheless, it is important that Green Deal and ECO policies achieve the right balance between customer protection and costs for commercial participants. Excessive costs will either act as a barrier to entry, preventing a diverse and competitive market, or will be transferred to customers. In order to achieve this balance, we have tightened protections for Green Deal and ECO customers in some areas, giving them confidence and providing improved safeguards for the vulnerable. Meanwhile, we have removed some of the burdens on Green Deal Providers, to prevent unnecessary costs.
- 8.4 We have also added 15 measures to the list of Green Deal qualifying improvements. Our approach is to have a single list of qualifying energy improvements for domestic and non-domestic buildings. This is because in some cases, recommended measures will be similar in domestic and non-domestic properties e.g. a dwelling converted into a shop.
- 8.5 Further details of respondents' views, together with Government's response, Impact Assessment and associated publications are available on the Department's website at http://www.decc.gov.uk/en/content/cms/consultations/green_deal/green_deal.aspx.

9. Guidance

- 9.1 Regulation 10 of the Framework Regulations states that the Secretary of State must issue a code of practice for Green Deal certification bodies and participants. The Code of Practice will also set out the additional requirements that relate to the products and systems that can be included in and installed under Green Deal Plans. This will be published on the DECC website.
- 9.2 Advisory documents for potential participants in the Green Deal scheme and guidance setting out how the Secretary of State expects to exercise his powers to impose sanctions (including suspending and withdrawing authorisation of green deal participants and certification bodies) will also be made available on the DECC website.

10. Impact

- 10.1 The Green Deal is a voluntary scheme. The impact of these Regulations on business, charities or voluntary bodies is only applicable if they apply to participate in the Green Deal scheme.
- 10.2 The impact on the public sector is limited to the cost borne by Government of administering certain aspects of the scheme, including paying for the set up costs, and other fixed running costs for the first two years for the Green Deal such as the Ombudsman.
- 10.3 The Qualifying Improvements Order and Energy Efficiency Order will provide clarity for the supply chain on the types of improvements that can be installed under a Green Deal plan.
- 10.4 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

- 11.1 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to broadly mirror the existing installer certification requirements of the CERT and CESP schemes. The only additional requirement on businesses will be to read the relevant sections of the Code of Practice and to subscribe to Publicly Available Specification (PAS) 2030.
- 11.2 In total, it is estimated that the new requirements could lead to a modest one-off cost to microbusinesses. These estimated costs are small in comparison to the size of risks they mitigate and the overall importance of the accreditation framework to Green Deal. Consumer confidence in the Green Deal will be vital if it is to encourage significant take-up of energy-efficiency retrofitting. A strong accreditation framework will help ensure that consumers can have confidence in the products and services they receive without worrying about the risks of rogue businesses.

12. Monitoring & review

- 12.1 Part 1 to 3 of the Framework Regulations come into force on the day after these regulations are made but any authorisation granted under Part 3 will not have effect until 1 October pursuant to regulations 12(4), 14(4) and 16(4). Subject to certain provisions relating to entering into a green deal plan, Part 4 also comes into force on the day after these regulations are made. Parts 5 to 7 and the remaining provisions of Part 4 will come into force on 28th January 2013. Part 8 comes into force on 1st October 2012 for the purpose of dealing with a breach of the requirements of the authorisation scheme, and for remaining purposes (for example, breach of the disclosure and acknowledgment provisions) on 28th January 2013. Part 9 will come into force on 1st October 2012.
- 12.2 The Secretary of State is not obliged to carry out a review of these instruments, but in accordance with best practice the Secretary of State will carry out a review of the regulatory system established under the Framework Regulations and publish a report on the findings five years after they come into force.
- 12.3 The Energy Efficiency Order will come into force the day after it is made, and the Qualifying Improvements Order will come into force on 28 January 2013. The Government intends to review these Orders five years after it comes into force.

13. Contact

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