

Draft Regulations laid before Parliament under section 40(5) of the Energy Act 2011, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

ENERGY CONSERVATION

**The Green Deal Framework (Disclosure, Acknowledgment,
Redress etc.) (Amendment) Regulations 2013**

Made - - - - *****

Coming into force in accordance with regulation 1

A draft of this instrument has been laid before Parliament in accordance with section 40(5) of the Energy Act 2011⁽¹⁾ and approved by a resolution of each House of Parliament.

To the extent 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.

The Welsh Ministers have been consulted in accordance with section 40(12) of the Energy Act 2011.

Accordingly, the Secretary of State makes the following Regulations, in exercise of the powers conferred by the following sections of the Energy Act 2011—

- (a) section 3(1), (3) and (7);
- (b) section 4(8);
- (c) section 6(4) and (5);
- (d) section 11(6);
- (e) section 16(1) and (2);
- (f) section 34(1); and
- (g) section 40(1).

Citation and commencement

1. These Regulations may be cited as the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2013 and come into force on the day after the day on which they are made.

Amendments to the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012

2. The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012(2) are amended as follows.

Amendments to regulation 2

3. In regulation 2(1) (interpretation – general)—

- (a) in sub-paragraph (b) of the definition of “accredited installer certification body”, for the words after “persons” substitute “as able to install microgeneration improvements under the MCS;”;
- (b) after the definition of “disclosure document” insert—

“disclosure document data” means data from which a disclosure document may be produced;”
- (c) after the definition of “energy plan” insert—

““EPC register” means the register maintained under the Energy Performance Regulations to hold disclosure document data;” and
- (d) after the definition of “green deal certification body” insert—

““green deal information” means the information about a green deal plan that is included in the disclosure document;”.

Amendments to regulation 19

4. Regulation 19 (requirements which apply to green deal certification bodies) is amended as follows—

- (a) in paragraph (1)(d), for “year” substitute “month”;
- (b) in paragraphs (2) and (3), for “reporting period” in each place it appears substitute “previous month”;
- (c) in paragraph (4), for “by 30th November immediately after the end of the reporting period” substitute “by the seventh day of each month commencing on 7th February 2013”.

Amendments to regulation 24

5. Regulation 24 (requirements which apply to green deal providers) is amended as follows—

- (a) in paragraph (1)(d)(ii), after “in” where it last appears insert “section 2 of”;
- (b) after paragraph (1)(d)(ii) insert—

“(iii) each month, in respect of the previous month, with a report containing the information listed in section 1 of Schedule 2;”;
- (c) after paragraph (3) insert—

“(3A) A report under paragraph (1)(d)(iii) must be provided by the seventh day of each month commencing on 7th February 2013.”.

Amendment to regulation 30

6. In paragraph (6) of regulation 30 (instalments not to exceed savings), for “in the first year of the plan” substitute “in the 12 months commencing on the date with effect from which instalments are to be included in electricity bills for the property”.

Updating of disclosure document

7. After regulation 42 insert—

“CHAPTER 1A

Updating of disclosure document

Circumstances in which green deal information in disclosure document must be updated

42A.—(1) For the purposes of section 11(6)(3), the circumstances in which disclosure document data are required to be updated or further updated in accordance with regulation 42B are where—

- (a) any of the matters described in paragraph (2) occur; and
 - (b) the green deal information lodged on the EPC register becomes inaccurate in consequence of that matter occurring.
- (2) The matters referred to in paragraph (1)(a) are—
- (a) the interest rate under a green deal plan changes;
 - (b) the green deal instalments change;
 - (c) the liability to make payments under a green deal plan is discharged early in part or in full;
 - (d) the liability of the bill payer and the liability of a subsequent bill payer to make payments under a green deal plan is reduced or cancelled;
 - (e) the green deal provider knows or has reasonable cause to believe that—
 - (i) an improvement has been removed from a green deal property before the end of the improvement-specific payment period applicable to that improvement; or
 - (ii) an alteration has been made to a green deal property which, had it existed when the estimated first year savings were calculated, would have materially affected that calculation;
 - (f) the green deal plan becomes a regulated consumer credit agreement;
 - (g) the green deal provider changes;
 - (h) the contact details of the green deal provider change.
- (3) For the purposes of this regulation, green deal information lodged on the EPC register is inaccurate if it does not meet the requirements of the Energy Performance Regulations.
- (4) In paragraph (2)(h), “contact details” means one or more of the following—
- (a) postal address;
 - (b) electronic mail address;
 - (c) telephone number.

(3) 2011 c.16; subsections (6) and (9) of section 11 were amended by S.I. [] so as to refer to the updating of data from which a document specified for the purposes of section 8(4)(b) may be produced, rather than the updating of that document.

Requirement to update green deal information in disclosure document

42B.—(1) Where disclosure document data are required to be updated or further updated under regulation 42A, the green deal provider must secure that the green deal information lodged on the EPC register is replaced by green deal information which meets the requirements of the Energy Performance Regulations.

(2) The requirement in paragraph (1) must be satisfied within 14 days of a matter described in regulation 42A(2) occurring.

Updating of disclosure document where the green deal provider is no longer authorised

42C. Where, at the time the requirement under regulation 42A(1) arises, the person named as the green deal provider under the green deal plan is not authorised as such a provider, any reference to the green deal provider in regulations 42A and 42B is to be read instead as a reference to the person who is for the time being entitled under the plan to receive the green deal instalments.”.

Amendments to regulation 52

8. Regulation 52 (no sanctions without receipt of complaints or information) is amended as follows—

- (a) in paragraph (1), for “The Secretary of State” substitute “Subject to paragraph (4), the Secretary of State”;
- (b) in paragraph (1)(b), after “regulation 60” insert “or 60A”;
- (c) in paragraph (3), after sub-paragraph (b) insert—
 - “(c) the green deal accreditation body;
 - (d) a local weights and measures authority(4).”;
- (d) after paragraph (3) insert—
 - “(4) Paragraph (1) does not apply where the Secretary of State is satisfied that an authorised person has breached a requirement to provide information to the Secretary of State under regulation 86.”.

Amendment to regulation 57

9. For regulation 57 (eligible complaints – breach of the relevant requirements) substitute—

“Eligible complaints – breach of the relevant requirements by the green deal provider or the green deal installer

57. An eligible complaint in respect of a breach of the relevant requirements by the green deal provider or the green deal installer is a complaint—

- (a) by the improver or the bill payer;
- (b) to the green deal provider; and
- (c) which the green deal provider is required to handle under the code of practice.”.

(4) Section 69 of the Weights and Measures Act 1985 (c.72) gives the meaning of the term “local weights and measures authority”. Section 69 was amended by the Local Government (Wales) Act 1994 (c.19), section 66(6) and Schedule 16, paragraph 75, the Local Government etc. (Scotland) Act 1994 (c.39), section 180(1) and Schedule 13, paragraph 144, and the Statute Law (Repeals) Act 1989 (c.43).

Eligible complaints – breach of the relevant requirements by a green deal assessor

10. After regulation 57 insert—

“Eligible complaints – breach of the relevant requirements by a green deal assessor

57A.—(1) An eligible complaint in respect of a breach of the relevant requirements by a green deal assessor is a complaint—

- (a) if made when there is no energy plan or green deal plan with a green deal provider for installation of any of the improvements recommended by the assessor—
 - (i) to the assessor;
 - (ii) by the owner or occupier who arranged for a qualifying assessment to be carried out by the assessor; and
 - (iii) which the assessor is required to handle under the code of practice; or
- (b) if made when there is an energy plan or green deal plan with a green deal provider for installation of one or more of the improvements recommended by the assessor—
 - (i) to the green deal provider;
 - (ii) by the improver or the bill payer; and
 - (iii) which the green deal provider is required to handle under the code of practice.”.

Amendments to regulation 59

11. Regulation 59 (referral of eligible complaints to the Secretary of State) is amended as follows—

- (a) in paragraph (1), after “paragraph (2)” insert “or (3)”;
- (b) for paragraph (1)(b) substitute—
 - “(b) either—
 - (i) the complaint has not been resolved to the satisfaction of the complainant; or
 - (ii) having considered the complaint, the ombudsman considers that it may be appropriate to impose cancellation, reduction, withdrawal or suspension.”;
- (c) after paragraph (2) insert—
 - “(3) An eligible complaint in respect of a breach of the relevant requirements by a green deal assessor may only be referred to the Secretary of State by the complainant where the complaint—
 - (a) has been referred to and considered by the certification body on whose membership list the assessor is included; and
 - (b) has not been resolved to the satisfaction of the complainant.”.

Complaints – breach of the relevant requirements by a green deal certification body

12. After regulation 60 insert—

“Complaints – breach of the relevant requirements by a green deal certification body

60A. A complaint in respect of a breach of the relevant requirements by a green deal certification body may be made to the Secretary of State by—

- (a) the improver;
- (b) the bill payer; or
- (c) an owner or occupier who has arranged for a qualifying assessment of a property to be carried out by a green deal assessor.”.

Amendment to regulation 62

13. For regulation 62 (breach of the disclosure and acknowledgement provisions) substitute—

“Breach of the disclosure and acknowledgment provisions

62. A breach of the disclosure and acknowledgment provisions occurs where—

- (a) the notifier has failed to provide—
 - (i) the disclosure document relating to the green deal property; or
 - (ii) if the obligation in section 8(4) has not yet been complied with, a document containing the same information in connection with the green deal plan as the disclosure document would have contained,to the recipient in accordance with, as applicable, section 12 or chapter 2 of Part 7 of these Regulations; or
- (b) the recipient did not give an acknowledgment.”.

Amendment to regulation 63

14. In paragraph (d) of regulation 63 (breach of the relevant requirements), after “regulations 24 to 26” insert “or 42B”.

Amendments to regulation 65

15.—(1) Regulation 65 (sanctions for breaches of the consent provision) is amended as follows—

- (a) in paragraph (2)(a), for “may” substitute “must”; and
- (b) in paragraph (2)(b), for “must” substitute “may”.

Amendments to regulation 66

16.—(1) Regulation 66 (sanctions for breaches of the disclosure and acknowledgment provisions) is amended as follows.

- (2) In paragraph (2)(a), for “must” substitute “may”.
- (3) After paragraph (3) insert—
 - “(4) In deciding whether to impose the sanction of cancellation under paragraph (2), the Secretary of State must have regard to—
 - (a) whether, a reasonable period of time before the commitment date, the recipient had knowledge of all or some of the information about the green deal plan that is required to be included in the disclosure document; and
 - (b) in circumstances where the Secretary of State is satisfied that the recipient had such knowledge a reasonable period of time before the commitment date, whether the recipient has suffered or will suffer substantive loss in consequence of the breach of the disclosure and acknowledgment provisions.
- (5) In this regulation, “commitment date” means—

- (a) where section 12 applied, the date on which the contract for sale or lease or licence agreement was entered into;
- (b) where regulation 44, 46 or 50 applied, the date on which the transaction or arrangement was entered into.”.

Amendment to regulation 67

17. In regulation 67(3) (sanctions for breaches of the relevant requirements by green deal providers), after “suffered” insert “or is likely to suffer”.

Amendment to regulation 68

18. In regulation 68(3) (sanctions for breaches of the relevant requirements by green deal installers), after “suffered” insert “or is likely to suffer”.

Amendment to Schedule 2

19. For Schedule 2 substitute—

“SCHEDULE 2

Reports by green deal providers

SECTION 1

Monthly Reports

1. The information to be included in a report provided under regulation 24(1)(d)(iii) is—
 - (a) the number of—
 - (i) green deal plans that the green deal provider has entered into during the previous month;
 - (ii) energy plans that the green deal provider has entered into during the previous month;
 - (iii) customer complaints received during the previous month and the issues that these complaints related to;
 - (iv) unresolved customer complaints at the end of the previous month;
 - (v) customer complaints that were resolved during the previous month with details of how they were resolved and the period for which those complaints remained unresolved;
 - (b) in relation to any customer complaint which has been unresolved for a period of 8 weeks or more, the steps being taken to resolve it;
 - (c) in relation to energy plans and green deal plans made by the provider during the previous month, how many qualifying assessments were carried out by green deal assessors who were not—
 - (i) employed by; or
 - (ii) acting on behalf of,the green deal provider;

- (d) in relation to improvements installed during the previous month under energy plans or green deal plans made by the green deal provider, whether the installers of those improvements were employed or sub-contracted by the green deal provider;
- (e) the total amount of green deal instalments that the green deal provider expects to be paid over the lifetime of the green deal plans it has entered into in the previous month;
- (f) the sum of green deal instalments received and any amounts repaid early under green deal plans in the previous month;
- (g) the total number of green deal plans cancelled in the previous month;
- (h) the sum of outstanding green deal instalments that would have been payable under the green deal plans cancelled in the previous month;
- (i) the number and type of improvements installed under energy plans and green deal plans in the previous month; and
- (j) the identification numbers of the green deal installers who installed the improvements reported under sub-paragraph (i).

SECTION 2

Annual Reports

2. The information to be included in a report provided under regulation 24(1)(d)(ii) is—
 - (a) details of whether the green deal provider has been party during the reporting period to any partnership arrangements with other organisations;
 - (b) details of any action taken following—
 - (i) a customer complaint;
 - (ii) a breach of these Regulations by a green deal participant;
 - (iii) a breach of the requirements of the code of practice by a green deal participant;
 - (c) notification as to whether the green deal provider has taken a decision during the reporting period either to increase or to reduce its green deal operations during the next reporting period, including details of the intended geographical coverage of its green deal operations and the number of energy plans and green deal plans it expects to enter into in the next reporting period;
 - (d) details of any decisions taken during the reporting period regarding how the green deal provider intends to market and sell energy plans and green deal plans in the next reporting period.

SECTION 3

Interpretation

3. In this Schedule—
 - (a) “customer complaint” is a complaint made by an improver or a bill payer in relation to an energy plan or a green deal plan;
 - (b) “green deal plans cancelled” means green deal plans cancelled by the green deal provider due to non-payment of green deal instalments;
 - (c) “green deal operations” means marketing and other activities related to the establishment of green deal plans or energy plans, including arrangements with other green deal participants;
 - (d) “partnership arrangement” is an arrangement in which organisations agree to work together in relation to—

- (i) green deal plans;
- (ii) energy plans; or
- (iii) proposed green deal plans or energy plans,

but does not include an arrangement with another green deal participant, a supplier of energy efficiency improvements or materials or products for such improvements or a person engaged as an adviser to the green deal provider.”.

Date

Name
Secretary of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (S.I. 2012/2079) (“the Framework Regulations”).

Regulation 3 inserts a number of new definitions in regulation 2 of the Framework Regulations in relation to the new provisions regarding the updating of the disclosure document inserted by regulation 7 and amends the definition of accredited installer certification body.

Regulations 4 and 5 amend the reporting requirements for green deal certification bodies and green deal providers in regulations 19 and 24 of the Framework Regulations.

Regulation 6 amends the definition of “first year instalments” in regulation 30 of the Framework Regulations.

Regulation 7 inserts new regulations 42A, 42B and 42C in Part 7 of the Framework Regulations. These new regulations require information about a green deal plan stored on the EPC Register to be updated in certain circumstances.

Regulation 8 amends regulation 52 of the Framework Regulations to enable the Secretary of State to impose a sanction following a complaint about a breach of the relevant requirements by a green deal certification body, on receipt of information from the green deal certification body or a local weights and measures authority, or following a failure by an authorised person to provide information required under regulation 86.

Regulation 9 amends regulation 57 of the Framework Regulations so that it applies in relation to complaints about a breach of the relevant requirements by a green deal provider or a green deal installer, but not a green deal assessor.

Regulation 10 inserts a new regulation 57A, which applies in relation to complaints about breaches of the relevant requirements by a green deal assessor.

Regulation 11 amends regulation 59 of the Framework Regulations, to provide that an ombudsman can refer an eligible complaint to the Secretary of State if the remedies available under that ombudsman’s scheme are not adequate. It also makes new provision regarding the referral to the Secretary of State of an eligible complaint in respect of a breach of the relevant requirements by a green deal assessor.

Regulation 12 inserts a new regulation 60A, which provides that complaints in respect of a breach of the relevant requirements by a green deal certification body can be made to the Secretary of State.

Regulation 13 amends regulation 62 of the Framework Regulations by substituting a revised regulation describing the circumstances in which there will be a breach of the disclosure and acknowledgment provisions.

Regulation 14 amends regulation 63 so that a failure by a green deal provider to update a disclosure document in accordance with regulation 42B of the Framework Regulations (inserted by regulation 8) amounts to a breach of the relevant requirements.

Regulation 15 amends regulation 65 of the Framework Regulations to substitute “must” for “may” in paragraph (2)(a) and “may” for “must” in paragraph (2)(b).

Regulation 16 amends the sanctions provisions in regulation 66 of the Framework Regulations so as to require the Secretary of State to have regard to various matters when deciding whether to impose a sanction under regulation 66(2).

Regulations 17 and 18 amend the sanctions provisions in regulations 67 and 68 of the Framework Regulations so that the Secretary of State can impose reduction or cancellation if the bill payer is likely to suffer substantive loss.

Regulation 19 provides for the replacement of Schedule 2 to take account of the new monthly reporting requirements established by regulations 4 and 5.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. However, this instrument amends the Framework Regulations, which are one of a number of statutory instruments which establish the green deal energy efficiency scheme. A full regulatory impact assessment of the effect that that scheme will have on the costs of business and the voluntary sector is available from the Green Deal Legislation Team, Department of Energy and Climate Change at 3 Whitehall Place, London SW1A 2AW and is published alongside the Framework Regulations on www.legislation.gov.uk.