

EXPLANATORY MEMORANDUM TO
THE ENERGY ACT 2011 (AMENDMENT) (ENERGY PERFORMANCE OF
BUILDINGS) REGULATIONS 2012

2012 No. 3170

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.

2. Purpose of the instrument

These Regulations make a small number of minor, technical amendments to section 11 of the Energy Act 2011 (“the 2011 Act”), which relates to the green deal energy efficiency scheme, to ensure that section is consistent with changes made to the implementation in England and Wales and Scotland of article 7 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings (2002/EC, OJ No L 1, 4.1.2003, p65) since the 2011 Act received Royal Assent.

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

None.

4. Legislative Context

4.1 This instrument relates to the green deal energy efficiency scheme (“the green deal scheme”) established by Chapter 1 of Part 1 of the 2011 Act. It is being made in exercise of powers contained in section 2(2) of the European Communities Act 1972 to ensure that section 11 of the 2011 Act is consistent with changes made to the implementation in England and Wales and Scotland of article 7 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings (2002/EC, OJ No L 1, 4.1.2003, p65) since the 2011 Act received Royal Assent.

4.2 The green deal scheme enables property owners and occupiers to enter into 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 through electricity bills for the property.

4.3 This instrument is part of a suite of instruments relating to the green deal. The other instruments in this suite include the following:

(a) The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (S.I. 2012/2079) (“the Framework regulations”). These regulations contain provisions relating to the authorisation of green deal assessors, installers, providers and certification bodies; the terms of green deal plans; the requirement for consent from those

who may have to pay the instalments due under a green deal plan; the formal requirements relating to confirmation of a green deal plan once it has been set up; the requirement to disclose information about the green deal plan to those who may move into a property and have to pay the instalments due under the plan; and the enforcement of the various obligations imposed by the green deal scheme.

The Framework Regulations were amended by S.I. 2012/3021, which came into force on 5 December 2012. A further instrument amending the Framework Regulations was laid before both Houses of Parliament on 10 December 2012. Subject to Parliamentary approval, it is envisaged that that instrument will be made towards the end of January 2013.

(b) The Green Deal (Energy Efficiency Improvements) Order 2012 (S.I. 2012/2106) and the Green Deal (Qualifying Energy Improvements) Order 2012 (S.I. 2012/2105). These regulations contain provisions relating to the energy efficiency improvements which can be installed under a green deal plan.

(d) The Green Deal (Disclosure) Regulations 2012 (S.I. 2012/1660), which contain provisions relating to the point at which a seller or person letting out a property must provide a copy of a document containing information about the green deal plan at a property to a prospective buyer or tenant in order to comply with the disclosure obligation contained in the 2011 Act.

(e) The Green Deal (Acknowledgment) Regulations 2012 (S.I. 2012/1661), which specify the forms of words that must be used when a person gives an acknowledgment pursuant to the obligations contained in the 2011 Act and the Framework Regulations.

(f) The Green Deal (Acknowledgment) (Scotland) Regulations 2012 (S.S.I. 2012/214), which make similar provision in respect of Scotland as the instrument referred to in paragraph (e).

(g) The Green Deal Code of Practice, which contains provisions regulating the conduct of green deal assessors, installers, providers and certification bodies. The current version of the Code of Practice was issued by the Secretary of State on 27 September 2012. A revised version of the Code of Practice was laid before both Houses of Parliament on 27 November 2012. Provided that Parliament does not resolve not to approve the draft Code, it is anticipated that the revised version of the Code will be issued towards the end of January 2013.

4.4 In addition, the Department of Energy and Climate Change (“DECC”) plans to lay two further negative resolution instruments relating to the green deal scheme. The first makes amendments to the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118) to require information about green deal plans to be included in the energy performance certificate (“EPC”) for a property with a green deal plan. This instrument will be made and laid before Parliament in early January 2013, once S.I. 2012/3118 has come into force. (The Scottish Government is making similar changes to

the Scottish Energy Performance of Buildings Regulations on a similar timetable.) The second instrument amends the Enterprise Act 2002 to facilitate authorisation, monitoring and enforcement under the green deal scheme. We are working to prepare this instrument for making as soon as possible in January 2013.

- 4.5 The Department will, in the new year, be bringing forward a set of amendments to the Consumer Credit Act 1974 using the power in section 30 of the Energy Act 2011. These amendments, which will be subject to the affirmative resolution procedure, will clarify how a number of the provisions in that Act operate in the context of the green deal scheme.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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

In my view, the provisions of the Energy Act 2011 (Amendment) (Energy Performance of Buildings) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- 7.1 The 2011 Act made provision for the development of the green deal scheme. Through the consequential secondary legislation referred to in section 4 above, a novel scheme has been developed which provides that the instalments due 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, for example when a property is sold or let out, the obligation to pay the green deal instalments passes to the new electricity bill payer. The disclosure requirements (set out in section 12 of the Act and Chapter 2 of Part 7 of the Framework Regulations) are designed to ensure that the new electricity bill payer is given information about the green deal plan before they take on the property.
- 7.2 In England and Wales, information regarding the green deal plan is to be included in the EPC for the property. In Scotland, that information is to be included in a “recommendations report”, which is a document that is required to be attached to an EPC for a property. These documents (which are referred to in the Framework Regulations as the “disclosure document”) must be given to prospective electricity bill payers.
- 7.3 When a green deal plan is confirmed in accordance with section 8 of the 2011 Act, the green deal provider is required to secure that a new version of the disclosure document is produced, which contains information about the green deal plan that has been entered into for the property.

- 7.4 Section 9 of the 2011 Act provides a power for the Secretary of State to amend the EPC regime in England and Wales to require EPCs to include information about green deal plans. Section 10 provides a similar power for the Scottish Ministers to amend their EPC/recommendations report regime for the same purpose. When a new disclosure document is produced, the EPC/recommendations report regimes will require those documents to contain information about green deal plans.
- 7.5 Section 11 of the 2011 Act enables the Secretary of State to make provision requiring the disclosure document to be updated in certain circumstances in accordance with requirements specified in the Framework Regulations. The wording of this section reflects the fact that, at the time the 2011 Act received Royal Assent, the register used to store documents in both England and Wales and Scotland was a register of documents.
- 7.6 The amendments made by this instrument ensure that section 11 of the 2011 Act is consistent with recent changes to the implementation in England and Wales and Scotland of article 7 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings (2002/EC, OJ No L 1, 4.1.2003, p65). That Directive lays down the requirements for the production of an EPC when a building is constructed, sold or rented out and for the display of such certificates in large public buildings.
- 7.7 After the 2011 Act received Royal Assent, the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/809) (“the 2008 Regulations”) amended regulation 31 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) (“the 2007 Regulations”) so that the register used to store documents is required to be a register of data, rather than a register of documents as previously. (The 2007 Regulations will be replaced by the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118) with effect from 9th January 2013. The EPC register will, under these new regulations, continue to be a register of data.)
- 7.8 A similar amendment to that made by the 2008 Regulations was made to the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I. 2008/309) in respect of the Scottish register arrangements by the Energy Performance of Buildings (Scotland) (Amendment) Regulations 2012 (S.S.I. 2012/190).
- 7.9 This instrument therefore makes minor, technical amendments to the power contained in section 11 of the 2011 Act to reflect these changes and will enable the Secretary of State to include provision in the Framework Regulations, via the amending instrument that was laid before Parliament on 10 December 2012 (referred to in paragraph 4.3(a) above) requiring a green deal provider to update data from which an EPC or a recommendations report is produced, rather than updating the EPC or recommendations report document itself. Those provisions will then reflect the technical arrangements relating to the EPC registers in England and Wales and in Scotland.

7.10 Given the minor, technical nature of the amendments made by this instrument and the fact that they do not make any substantive changes to the powers in section 11 of the 2011 Act, DECC considers that it is appropriate for the instrument to be subject to the negative resolution procedure.

8. Consultation outcome

8.1 On 23 November 2011, DECC launched a consultation on proposals for the green deal scheme. 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.

8.2 The consultation sought views across England, Wales and Scotland on all aspects of the proposals, including the policy relating to disclosure of information about green deal plans and the use of the EPC regime for that purpose. DECC 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 DECC's participation in various stakeholder events, hosting of blogs and a webchat, industry workshops, and stakeholder factsheets on DECC's website to help make the content accessible. The consultation closed on 18 January 2012 and received over 600 written responses from a variety of organisations and individuals. Respondents were broadly supportive of the proposals relating to disclosure and the use of the EPC regime for this purpose. In response to the consultation DECC amended its policy in one important regard: giving 90 rather than 30 days to seek redress in response to disclosure-related disputes to provide additional consumer protection.

8.3 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.

8.4 Given the minor, technical nature of the amendments made by this instrument, no further consultation was considered necessary.

9. Guidance

DECC does not consider that the amendments provided for in this instrument are such that specific guidance is required. DECC is, however, producing guidance on the green deal scheme more generally. DECC's guidance for green deal providers (published on 19 November 2012) includes guidance on the confirmation process. DECC will also be issuing guidance on the disclosure obligations referred to above.

10. Impact

- 10.1 The green deal is a voluntary scheme. As such, the legislation relating to the green deal scheme only applies to business, charities, voluntary bodies and others if they choose to participate in the scheme.
- 10.2 An Impact Assessment has not been produced for this instrument as no specific impact on the private, voluntary or public sectors is foreseen. However, an Impact Assessment relating to the green deal scheme itself has been prepared and is published alongside the Framework Regulations on www.legislation.gov.uk.

11. Regulating small business

This instrument makes minor, technical amendments to section 11 of the 2011 Act and does not make substantive changes to the green deal scheme. Therefore, this instrument gives rise to no particular issues for small businesses.

12. Monitoring & review

- 12.1 This instrument will come into force on 25 January 2013.
- 12.2 The Secretary of State is not obliged to carry out a review of this instruments, but in accordance with best practice the Secretary of State will carry out a review of the regulatory system established under Chapter 1 of Part 1 of the 2011 Act and the Framework Regulations and publish a report on the findings five years after it comes into force.

13. Contact

Stephen Penlington at the Department of Energy and Climate Change Tel: 0300 068 5282 or email: stephen.penlington@decc.gsi.gov.uk can answer any queries regarding the instrument.