

2014 No. 1850

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014

Made - - - - *14th July 2014*

Coming into force in accordance with article 1

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

The Secretary of State has consulted the Financial Conduct Authority and such other persons as the Secretary of State considers appropriate in accordance with section 30 of the Energy Act 2011^(b).

The Scottish Ministers and the Welsh Ministers have been consulted in accordance with section 40(8)(b) and (12) of the Energy Act 2011.

Accordingly, the Secretary of State makes the following Order, in exercise of the power conferred by section 30 of the Energy Act 2011.

Citation, commencement, application and extent

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014.

(2) This Order comes into force on the day after the day on which this Order is made.

(3) This Order does not apply to a green deal plan (within the meaning of section 1 of the Energy Act 2011) made before 28th February 2014.

(4) This Order extends to England and Wales and Scotland only.

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(c) is amended as follows.

(a) 2011 c.16.

(b) Section 30 was amended by S.I. 2013/1881, article 28 and paragraph 17 of the Schedule.

(c) S.I. 2001/544. S.I. 2001/544 was amended by S.I. 2013/1881 and S.I. 2014/366.

Amendments to article 3

- 3.**—(1) Article 3(1) (interpretation)(a) is amended as follows.
- (2) In the definition of “borrower”—
- (a) in paragraph (a)—
 - (i) for “or” substitute “,”;
 - (ii) after “given by article 36H)” insert “or an agreement that is a green deal plan”; and
 - (b) after paragraph (b) insert—
 - “(c) in relation to a credit agreement that is a green deal plan, has the meaning given by article 60LB;”.
- (3) For the definition of “credit agreement” substitute—
““credit agreement”—
- (a) in relation to an agreement other than a green deal plan, has the meaning given by article 60B;
 - (b) in relation to a green deal plan, has the meaning given by article 60LB;”.
- (4) After the definition of “funeral plan contract” insert—
““green deal plan” has the meaning given by section 1 of the Energy Act 2011;”.
- (5) In the definition of “lender”—
- (a) in paragraph (c)—
 - (i) for “or” substitute “,”;
 - (ii) after “given by article 36H)” insert “or an agreement that is a green deal plan”; and
 - (b) after paragraph (d) insert—
 - “(e) in relation to a credit agreement that is a green deal plan, has the meaning given by article 60LB;”.

Amendments to article 39I

- 4.** In article 39I(3) (activities carried on by certain energy suppliers)(b)—
- (a) omit sub-paragraph (a); and
 - (b) in sub-paragraph (b), for “that Act” substitute “the Energy Act 2011”.

Amendment to article 60B

- 5.** In article 60B(3) (regulated credit agreements)(c), for the definition of “credit agreement” substitute—
““credit agreement”—
- (a) in relation to an agreement other than a green deal plan, means an agreement between an individual or relevant recipient of credit (“A”) and any other person (“B”) under which B provides A with credit of any amount;
 - (b) in relation to a green deal plan, has the meaning given by article 60LB;”.

Amendments to article 60C

- 6.** For article 60C(4)(c) (exempt agreements: exemptions relating to the nature of the agreement)(d) substitute—

(a) Article 3(1) was amended by S.I. 2013/1881, articles 2 and 3 and S.I. 2014/366, article 2.
(b) Article 39I was inserted by S.I. 2013/1881, articles 2 and 5.
(c) Article 60B was inserted by S.I. 2013/1881, articles 2 and 6.
(d) Article 60C was inserted by S.I. 2013/1881, articles 2 and 6.

“(c) the agreement is a green deal plan made in relation to a property that is not a domestic property (as defined by article 60LB).”.

Amendment to article 60F

7. In article 60F(2)(a) (exempt agreements: exemptions relating to number of repayments to be made)(a), after “for fixed-sum credit” insert “, other than a green deal plan”.

Amendments to article 60L

8.—(1) Article 60L (interpretation of Chapter 14A etc)(b) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “borrower”, after “means” insert “(except in relation to green deal plans: see instead article 60LB)”;
- (b) for the definition of “credit agreement” substitute—
 - ““credit agreement”—
 - (a) in relation to an agreement other than a green deal plan, has the meaning given by article 60B;
 - (b) in relation to a green deal plan, has the meaning given by article 60LB;”;
- (c) in the definition of “lender”, after “means” insert “(except in relation to green deal plans: see instead article 60LB)”.

(3) After paragraph (1) insert—

“(1A) For the purposes of this Chapter, a credit agreement that is a green deal plan is to be treated as—

- (a) a borrower-lender-supplier agreement falling within paragraph (a) of the definition of “borrower-lender-supplier agreement”;
- (b) a restricted-use credit agreement falling within paragraph (a) of the definition of “restricted-use credit agreement”.”.

Amendment to article 60LA

9. In article 60LA(3) (meaning of consumer etc.)(c), after “in article 60L” insert “or, where the credit agreement is a green deal plan, article 60LB”.

Insertion of new article 60LB

10. After article 60LA (meaning of consumer etc.) insert—

“Green deal plans

60LB.—(1) A green deal plan is to be treated as a credit agreement for the purposes of this Order if (and only if)—

- (a) the property in relation to the plan is a domestic property at the time when the plan is commenced, or
- (b) if sub-paragraph (a) does not apply, the occupier or owner of the property who makes the arrangement for the plan is an individual or relevant recipient of credit.

(2) In the application of this Order to a green deal credit agreement—

- (a) the lender is to be treated as being—

(a) Article 60F was inserted by S.I. 2013/1881, articles 2 and 6.

(b) Article 60L was inserted by S.I. 2013/1881, articles 2 and 6 and amended by S.I. 2014/366, article 2.

(c) Article 60LA was inserted by S.I. 2014/366.

- (i) the green deal provider (within the meaning of Chapter 1 of Part 1 of the Energy Act 2011) for the plan, or
- (ii) a person who exercises or has the right to exercise the rights and duties of the green deal provider under the plan,
- (b) credit is to be treated as advanced under the agreement of an amount equal to the amount of the improvement costs, and
- (c) the advance of credit is to be treated as made on the completion of the installation of the energy efficiency improvements to the property (but this sub-paragraph is subject to any term of the green deal plan providing that part of the advance is to be treated as made on completion of any part of the installation).

(3) A reference in a provision of this Order listed in the first column of the table in Schedule 4A to the borrower is, in the application of the provision in relation to a green deal credit agreement, to be read as a reference to—

- (a) a person who at the relevant time falls (or fell) within the description or descriptions specified in the corresponding entry in the second column of the table, or
- (b) if more than one description is specified and at the relevant time different persons fall (or fell) within the descriptions, each of those persons,

and except as provided by this paragraph, a person is not and is not to be treated as the borrower in relation to the agreement.

(4) References in Schedule 4A to the “improver”, “first bill payer”, “current bill payer” and “previous bill payer” are to be read as follows—

- (a) a person is the “improver” if the person—
 - (i) is the owner or occupier of the property, and
 - (ii) is the person who makes (or has made or proposes to make) the arrangement for the green deal plan;
- (b) a person is the “first bill payer” if the person is liable to pay the energy bills for the property at the time when the green deal plan is commenced;
- (c) a person is the “current bill payer” if the person is liable by virtue of section 1(6)(a) of the Energy Act 2011 to pay instalments under the plan as a result of being for the time being liable to pay the energy bills for the property;
- (d) a person is a “previous bill payer” if, as a result of previously falling within sub-paragraph (c) for an earlier period, the person has an outstanding payment liability under the plan in respect of that period.

(5) In this article—

“domestic property” means a building or part of a building that is occupied as a dwelling or (if not occupied) is intended to be occupied as a dwelling;

“energy bill” has the same meaning as in section 1 of the Energy Act 2011;

“energy efficiency improvements” has the meaning given by section 2(4) of the Energy Act 2011;

“green deal credit agreement” means a green deal plan that is to be treated as a credit agreement for the purposes of this Order by virtue of paragraph (1);

“improvement costs”, in relation to a green deal plan, are the costs of the energy efficiency improvements to the property which are to be paid by instalments under the plan after the time when credit is to be treated as being advanced by virtue of paragraph (2) (but ignoring any interest or other charges for credit in determining those costs);

“occupier” and “owner” have the same meanings as in Chapter 1 of Part 1 of the Energy Act 2011;

“property”, in relation to a green deal plan, means the property to which the energy efficiency improvements under the plan are or are intended to be made.

- (6) For the purposes of this article—
- (a) a green deal plan is commenced when—
- (i) the occupier or owner of the property signs in the prescribed manner a document in relation to the plan in accordance with section 61(1) of the Consumer Credit Act 1974 (requirements as to form and content of regulated agreements)(a), or
- (ii) if the occupier or owner of the property does not sign such a document, the green deal plan is made;
- (b) a person is liable to pay the energy bills for a property at any time if the person would be treated as the bill payer for the property at that time for the purposes of Chapter 1 of Part 1 of the Energy Act 2011 (see section 2(3) and (10)).”.

Meaning of “borrower” in relation to green deal plans

11. After Schedule 4 (relevant text of the insurance mediation directive)(b) insert the following Schedule—

“SCHEDULE 4A

Article 60LB

**MEANING OF “BORROWER” IN RELATION TO GREEN
DEAL CREDIT AGREEMENTS**

<i>Article of this Order</i>	<i>References to “borrower” are to be read as references to the—</i>
Article 36B(c)	improver
Article 36H(d)	improver
Article 36J(e)	improver
Article 39D(f)	current bill payer previous bill payer
Article 39E(g)	current bill payer previous bill payer
Article 39M(h)	current bill payer previous bill payer
Article 60C	improver
Article 60H(i)	improver
Article 60L, so far as relating to definitions of “deposit” and “security”	improver
Article 60LA	improver first bill payer current bill payer previous bill payer

- (a) 1974 c.39. Section 61 was amended by S.I. 2004/3236, article 2.
- (b) Schedule 4 was inserted by S.I. 2003/1476, articles 2 and 12.
- (c) Article 36B was inserted by S.I. 2013/1881, articles 2 and 4.
- (d) Article 36H was inserted by S.I. 2013/1881, articles 2 and 4.
- (e) Article 36J was inserted by S.I. 2013/1881, articles 2 and 4.
- (f) Article 39D was inserted by S.I. 2013/1881, articles 2 and 5.
- (g) Article 39E was inserted by S.I. 2013/1881, articles 2 and 5.
- (h) Article 39M was inserted by S.I. 2013/1881, articles 2 and 5.
- (i) Article 60H was inserted by S.I. 2013/1881, articles 2 and 6.

<i>Article of this Order</i>	<i>References to “borrower” are to be read as references to the—</i>
Article 60M(a)	improver first bill payer current bill payer previous bill payer”

Transitional provision in relation to this Order

12.—(1) This article makes provision in connection with the application of the provisions of the Consumer Credit Act 1974 (the “1974 Act”) to a green deal plan which—

- (a) is made in the period starting with 1 April 2014 and ending with the day on which this Order is made, and
- (b) is not a regulated credit agreement for the purposes of Chapter 14A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 at the time it is made, but
- (c) becomes on the coming into force of this Order a regulated credit agreement for those purposes in consequence of provision made by this Order (an “interim plan”).

(2) Sections 55(b), 55C(c), 60(d), 61(e), 61A(f), 62(g), 63(h), 64(i), 65, 66A(j), 67 to 73(k), 75A(l), 80, 94 to 97A(m), 102, 105 to 107(n), 129(o) to 130, 136 and 173(p) of the 1974 Act do not apply to an interim plan.

(3) Sections 76, 86, 87(q) and 98 of the 1974 Act do not apply in respect of an entitlement of the creditor to take a step or action which arises in connection with an interim plan before this Order comes into force.

(4) Sections 77(r), 77B(s) and 110(t) of the 1974 Act do not apply to an interim plan in respect of a request which is received by the creditor before this Order comes into force.

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- (a) Article 60M was inserted by S.I. 2013/1881, articles 2 and 6.
 - (b) Section 55 was amended by S.I. 2010/1010, regulations 2 and 16.
 - (c) Section 55C was inserted by S.I. 2010/1010, regulations 2 and 6, and amended by S.I. 2013/1881, regulation 20.
 - (d) Section 60 was amended by section 278 of and Schedule 25 to the Enterprise Act 2002 (c.40), S.I. 2010/1010, regulations 2 and 7, S.I. 2013/1881, article 20, and S.I. 2013/1882, article 7.
 - (e) Section 61 was amended by S.I. 2004/3236, article 2.
 - (f) Section 61A was inserted by S.I. 2010/1010, regulations 2 and 8, and amended by S.I. 2013/1881, article 20.
 - (g) Section 62 was amended by S.I. 2010/1010, regulations 2 and 10.
 - (h) Section 63 was amended by S.I. 2004, 3236, article 2 and S.I. 2010/1010, regulations 2 and 11.
 - (i) Section 64 was amended by section 278 of and Schedule 25 to the Enterprise Act 2002, S.I. 2004/3236, article 2, and S.I. 2013/1882, article 7.
 - (j) Section 66A was inserted by S.I. 2010/1010, regulations 2 and 13 (as amended by S.I. 2010/1969, regulations 2 and 8).
 - (k) Section 67 was amended by S.I. 2010/1010, regulations 2 and 14. Section 69 was amended by S.I. 2004/3236, article 2. Section 70 was amended by S.I. 1998/997, article 3 and Schedule.
 - (l) Section 75A was inserted by S.I. 2010/1010, regulations 2 and 25 (as amended by S.I. 2010/1969, regulations 2 and 8), and S.I. 2013/1881, article 20.
 - (m) Section 94 was amended by S.I. 2010/1010, regulations 2 and 30, and section 29 of the Energy Act 2011. Section 95 was amended by S.I. 2010/1010, regulations 2 and 31. Section 95A was inserted by S.I. 2010/1010, regulations 2 and 32. Section 95B was inserted by section 29 of the Energy Act 2011. Section 97 was amended by S.I. 2008/1277, regulation 30, Schedules 2 and 4, and S.I. 2010/1010, regulations 2 and 33. Section 97A was inserted by S.I. 2010/1010, regulations 2 and 34, and amended by section 29 of the Energy Act 2011.
 - (n) Section 107 was amended by S.I. 1998/997, article 3 and Schedule, and S.I. 2008/1277, regulation 30 and Schedules 2 and 4.
 - (o) Section 129 was amended by section 108 of and Schedule 6 to the Debtors (Scotland) Act 1987 (c.18), and section 16 of the Consumer Credit Act 2006 (c.14).
 - (p) Section 173 was amended by section 278 of and Schedule 25 to the Enterprise Act 2002, and S.I. 2013/1881, article 20.
 - (q) Section 87 was amended by S.I. 2010/1010, regulations 2 and 37.
 - (r) Section 77 was amended by S.I. 1998/997, article 3 and Schedule, S.I. 2008/1277, regulation 30 and Schedules 2 and 4, and section 27 of the Energy Act 2011.
 - (s) Section 77B was inserted by S.I. 2010/1010, regulations 2 and 26, section 27 of the Energy Act 2011, and S.I. 2013/1881, article 20.
 - (t) Section 110 was amended by S.I. 1998/997, article 3 and Schedule, and S.I. 2008/1277, regulation 20 and Schedules 2 and 4.

(5) Section 78A(a) of the 1974 Act does not apply to an interim plan in respect of a change in interest rate which takes effect before this Order comes into force.

(6) Section 82(1) to (1E)(b) of the 1974 Act does not apply to a variation to an interim plan which takes effect before this Order comes into force.

(7) Sections 86E(c), 86F(d) and 93(e) of the 1974 Act do not apply to an interim plan in respect of a sum which first becomes payable before this Order comes into force.

(8) Section 130A(f) of the 1974 Act does not apply to an interim plan in respect of a sum that is required to be paid under a judgment given before this Order comes into force.

14th July 2014

Gregory Barker
Minister of State
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Order)

This Order relates to the green deal energy efficiency scheme established by Chapter 1 of Part 1 of the Energy Act 2011 (the “2011 Act”).

This Order applies in Great Britain and is made under section 30 of the 2011 Act. It makes amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the “Regulated Activities Order”) in consequence of the provisions of Chapter 1 of Part 1 of the 2011 Act.

This Order makes provision as to the treatment of green deal plans under the Regulated Activities Order. In particular, it makes provision as to the circumstances in which a green deal plan is a credit agreement for the purpose of the Regulated Activities Order and the persons who are to be treated as being the lender and borrower in relation to a green deal plan.

In the case of the borrower, the Order makes provision as to the articles of the Regulated Activities Order in respect of which different categories of person are to be treated as the borrower.

Article 12 makes provision as to the application of the provisions of the Consumer Credit Act 1974 (the “CCA”) to a green deal plan which is made in the period starting with 1 April 2014 and ending with the date on which this Order is made, and which is not a regulated credit agreement when made, but becomes regulated when this Order comes into force. It disapplies certain provisions of the CCA in respect of these green deal plans. It also clarifies the way in which, after this Order comes into force, certain provisions of the CCA will apply in respect of these green deal plans.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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- (a) Section 78A was inserted by S.I. 2010/1010, regulations 2 and 27.
 - (b) Section 82(1A) to (1E) was inserted by S.I. 2010/1010, regulations 2 and 28.
 - (c) Section 86E was inserted by section 12 of the Consumer Credit Act 2006.
 - (d) Section 86F was inserted by section 13 of the Consumer Credit Act 2006.
 - (e) Section 93 was amended by S.I. 2013/1881, article 20.
 - (f) Section 130A was inserted by section 17 of the Consumer Credit Act 2006.

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