

EXPLANATORY MEMORANDUM TO
THE CONSUMER CREDIT (GREEN DEAL) REGULATIONS 2012

2012 No. 2798

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

This instrument relates to the Green Deal energy efficiency scheme. It specifies the duration of green deal plan in respect of which creditors can claim compensation under section 95B of the Consumer Credit Act 1974 (“1974 Act”) and makes provision relating to the amount that a creditor can claim from a debtor under that section. Section 95B was inserted by section 29 of the Energy Act 2011 (“2011 Act”) and enables a creditor to claim compensation from a debtor where all or part of the credit outstanding under a green deal plan is repaid early. This instrument also makes amendments to consumer credit secondary legislation in consequence of section 95B of the 1974 Act and the creation of the Green Deal energy efficiency scheme.

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 established by Chapter 1 of Part 1 of the 2011 Act. It is being made in exercise of various powers contained in the 1974 Act. The powers in section 95B are being used for the first time.

4.2 The 2011 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 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). These Regulations, which were subject to the affirmative procedure, were debated and approved by Parliament in July. Some provisions came into force on 7 August 2012 and 1 October 2012, with the remainder coming into force on 28 January 2013. (A draft affirmative instrument, the Green Deal Framework (Disclosure, Acknowledgment, Redress etc)

(Amendment) Regulations 2012, amending regulation 1 of S.I. 2012/2079 was laid before Parliament on 30 October 2012.)

- (b) The Green Deal (Energy Efficiency Improvements) Order 2012 (S.I. 2012/2106). This Order, which was subject to the affirmative procedure, was debated and approved by Parliament in July, and came into force on 7 August.
- (c) The Green Deal (Qualifying Energy Improvements) Order 2012 (S.I. 2012/2105). This Order, which was subject to the affirmative procedure, was debated and approved by Parliament in July and will come into force on 28 January 2013.
- (d) The Green Deal (Disclosure) Regulations 2012 (S.I. 2012/1660), which were subject to the negative procedure, were made on 26 June 2012 and come into force on 28 January 2013.
- (e) The Green Deal (Acknowledgment) Regulations 2012 (S.I. 2012/1661), which were subject to the negative procedure, were made on 26 June 2012 and come into force on 28 January 2013.
- (f) The Green Deal (Acknowledgment) (Scotland) Regulations 2012 (S.S.I. 2012/214), which were subject to the negative procedure in the Scottish Parliament, were made on 28 June 2012 and come into force on 28 January 2013.
- (g) The Green Deal Code of Practice, which was subject to the Parliamentary procedure described in section 39 of the 2011 Act, was laid before Parliament at the end of June 2012 and issued by the Secretary of State on 27 September 2012.

4.4 The Secretary of State intends to make a further suite of instruments relating to the Green Deal. It is expected that these instruments will be laid before Parliament in the second half of November and will come into force on or slightly before 28 January 2013. This suite includes a further affirmative instrument amending the Framework Regulations; an affirmative instrument to make a small amendment to the Consumer Credit Act 1974 for Green Deal purposes; and a negative instrument made under section 2(2) of the European Communities Act 1972 to amend section 11 of the Energy Act 2011 to reflect changes that have been made to the energy performance certificate regime since the 2011 Act received Royal Assent. In addition, the Department intends to make a small amendment to the Enterprise Act 2002 to facilitate authorisation, monitoring and enforcement under the Green Deal. This amendment will be made using a negative instrument and is likely to be made on a similar timetable to the instruments referred to above. The Secretary of State also expects to lay an updated version of the Code of Practice before Parliament in the second half of November, with the intention of issuing the revised Code shortly before the Green Deal scheme launches on 28 January 2013.

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 Consumer Credit (Green Deal) Regulations 2012 are compatible with the Convention rights.

7. Policy background

- 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 Green Deal's 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 improvements, 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 2011 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 passes to the new bill payer.
- 7.5 Many green deal plans, particularly those in the domestic sector, will be regulated consumer credit agreements under the 1974 Act. That Act gives debtors under such agreements a right to repay outstanding credit early, either in full or in part. Where early repayment is made, creditors are entitled, under section 95A of the CCA, to claim limited compensation provided certain conditions are met. This entitlement to compensation derives from the Consumer Credit Directive (CCD).
- 7.6 Article 16.4 of the CCD enables Member States, if they so wish, to allow creditors to claim a higher level of compensation in exceptional circumstances. Green deal plans are an exceptional type of credit, in that it is expected that many plans will be of a particularly long length, which far exceeds the more usual 7-10 year standard credit arrangement.

These more usual consumer credit agreements do not, because of their duration and length, tend to be financed by long-term funding mechanisms. However, it is likely that green deal plans will be financed by long-term funding mechanisms, meaning that Green Deal Providers are likely to be committing to providing a particular rate of return to investors in the Green Deal. If a customer pays off early, the Green Deal Provider will still therefore be required to meet their own financial obligation to the investor, potentially paying an interest rate which they could no longer achieve themselves. It is therefore considered appropriate to allow an extra degree of compensation to be charged in certain limited circumstances, to enable Green Deal Providers to recover a fair level of compensation, in line with the provisions of the CCD.

- 7.7 If we had failed to address this problem, there was a risk that Green Deal Providers (who will be the creditors under green deal plans) would raise the cost of finance across all Green Deals in an effort to offset the risk of losing money whenever a customer paid a Deal off early.
- 7.8 Section 29 of the 2011 Act inserted a new section 95B in the 1974, in accordance with the provisions of the CCD, to enable Green Deal Providers, if they so wish, to claim some additional compensation beyond what is normally allowed under section 95A of the 1974 Act.
- 7.9 Section 95B provides that additional compensation may only be claimed in limited circumstances, where the credit offered is in the form of a green deal plan which is a regulated consumer credit agreement under the 1974 Act and the plan has a fixed interest rate which was set out at the start of the agreement. The amount of compensation that can be claimed under this new provision is limited, in accordance with the provisions of the CCD, to the total interest the Provider would have received in the period from the date of the early repayment to the date fixed by the agreement for the discharge of the debtor's indebtedness. Moreover compensation can only be charged if the Provider can demonstrate that they will suffer an objectively justifiable loss as a result of the early repayment. Where no loss can be demonstrated, Providers will not be permitted to recover additional compensation. Where the Provider is eligible to claim compensation under either the existing CCA provision (at section 95A) or the new provision (at section 95B), the Provider will be able to choose which provision to use.
- 7.10 This instrument provides that additional compensation may only be claimed where the green deal plan is over 15 years in length. It also sets out the method which Providers must use to calculate the amount of compensation they are entitled to claim. This is based on a comparison between the amount of interest that the creditor would have received under the agreement if there was no early repayment and the amount of interest the creditor will receive under the agreement as a result of the early repayment being made. In working out the creditor's loss, account will need to be taken of the amount of interest that the Provider could expect to obtain by lending the repayment amount on the market and any administration cost savings that the Provider could expect to make as a result of the early repayment. Therefore, if a Provider is able to re-invest the funds (in another Green Deal Plan or another credit agreement) at the same or a better rate of interest, no

compensation could in fact be claimed. This means that instances where this charge would be levied are likely to be limited.

- 7.11 This instrument also makes consequential amendments to consumer credit secondary legislation to ensure that it takes account of the Green Deal scheme and the inclusion of section 95B in the 1974 Act.
- 7.12 Where a Green Deal Provider claims additional compensation, they will be required by the Code of Practice referred to in section 4 above to respond to a debtor's request to repay early with a settlement statement setting out the amount of compensation being claimed under section 95B and how this has been calculated. Debtors will be able to challenge Providers if they disagree with the Provider's approach, and refer the matter to the Financial Ombudsman in appropriate cases.

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, including the policy which underlies this instrument. The Department participated in stakeholder events across Great Britain and hosted workshops to further explain and take comments on the details of the proposals. The consultation was complemented by the Department's participation in various stakeholder events, and a web chat, industry workshops, and stakeholder factsheets on the DECC website to help make 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 the Department's 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, the Department tightened protections for Green Deal and ECO customers in some areas, giving them confidence and providing improved safeguards for the vulnerable. Meanwhile, the Department removed some of the burdens on Green Deal Providers, to prevent unnecessary costs.

- 8.4 The early repayment rules were consulted on and considered carefully to help ensure that customers would not be subjected to excessive charges, whilst at the same time ensuring creditors are able to receive appropriate compensation when necessary.
- 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

Government intends to publish guidance to assist Green Deal Providers who wish to claim compensation under section 95B where an early repayment is made. It is envisaged that this guidance will, in particular, assist Providers in calculating the amount of interest that they could expect to obtain by lending the repayment amount on the market. This guidance will be made available on the DECC website.

10. Impact

- 10.1 The Green Deal is a voluntary scheme. This instrument and those referred to in section 4 above only apply to business, charities, voluntary bodies and others if they choose to participate in the Green Deal scheme. In addition, it is for Green Deal Providers to decide whether to claim compensation under section 95B in the event of early repayment by the debtor.
- 10.2 A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. However, a full regulatory impact assessment of the effect that the Green Deal 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, SW1A 2AW and is published alongside the Green Deal Framework (Disclosure, Acknowledgment, redress etc.) Regulations 2012 (S.I 2012/2079) on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The Green Deal is a voluntary scheme and it does not therefore place mandatory regulation on small businesses. However, SMEs can play a vital role in the Green Deal market and the Green Deal has been designed to allow a variety of models to develop which may include for example SME participation:
- as part of the supply chain for a larger firm;
 - as partners to Providers or, in some cases, as Providers in their own right.
- 11.2 Should a small business wish to become a Green Deal Provider, the additional compensation that a Provider could claim under Section 95B is likely to help to reduce the risk of that business losing money in the event of early repayment by the debtor.
- 11.3 Some small businesses may be covered by the CCA if they do not enter into a green deal plan wholly for business purposes. In such a scenario, small businesses could also be

liable to pay some additional compensation where the plan exceeds 15 years in length and the other conditions in section 95B are met. However, they would not be treated any differently to any other consumer.

12. Monitoring & review

12.1 These regulations will come into force on 28th January 2013.

12.2 The Secretary of State is not obliged to carry out a review of this instrument but in accordance with best practice the Secretary of State will carry out a review and publish a report on the findings five years after they come into force.

13. Contact

Jenna Owen at the Department of Energy and Climate Change Tel: 0300 068 5285 or email: jenna.owen@decc.gsi.gov.uk can answer queries regarding this instrument.