

## Guidance on CCA licence requirements for Green Deal participants

This document has been produced in conjunction with the Office of Fair Trading (OFT) in response to requests by Green Deal participants for guidance on whether a licence may be needed under the Consumer Credit Act 1974 (CCA). It solely concerns activities in relation to the Green Deal – if other activities are undertaken on the same occasion, or separately, these may be licensable.

Please note that this document does **not** constitute legal advice.<sup>1</sup> It is the responsibility of each individual or business to decide, taking legal advice as necessary, whether it needs a licence under the CCA and, if so, in which categories.

Please also note that the OFT does not provide advice on individual cases.

### Credit licensing

The OFT has published general guidance on the credit licensing regime, which is available on its website at <http://www.offt.gov.uk/OFTwork/credit-licensing/>

This sets out in general terms the circumstances in which a consumer credit licence may be required and the process involved in applying for a licence.

It is a criminal offence to carry on a licensable activity without a consumer credit licence which covers that activity.<sup>2</sup>

In addition, credit agreements entered into whilst unlicensed, or following an introduction by an unlicensed credit broker, will be unenforceable against the consumer without a validation order from the OFT.<sup>3</sup>

Green Deal participants should also familiarise themselves with relevant OFT guidance, including the Irresponsible Lending Guidance and the guidance for Credit Brokers and Intermediaries, available at:

<http://www.offt.gov.uk/about-the-offt/legal-powers/legal/cca/irresponsible>  
<http://www.offt.gov.uk/OFTwork/credit/credit-brokers/>

Green Deal participants are most likely to require either category A (consumer credit) or category C (credit brokerage) licences. In either case, it should be noted that canvassing off trade premises (such as in the consumer's home) requires specific authorisation under the terms of the consumer credit licence.<sup>4</sup>

If Green Deal participants advise consumers about the liquidation of debts under a consumer credit agreement, this is likely to require a category E (debt-counselling) licence.<sup>5</sup>

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<sup>1</sup> DECC cannot guarantee, and accepts no legal liability whatsoever arising from or connected to, the accuracy, reliability, currency or completeness of this information and accepts no liability whatsoever for losses of any kind arising as a result of reliance on it.

<sup>2</sup> Section 39 CCA.

<sup>3</sup> Sections 40 and 148-149 CCA.

<sup>4</sup> Section 23(3) CCA – 'canvassing' is defined in sections 48 and 153.

<sup>5</sup> Section 145(6) CCA – see also section 145(5) dealing with debt-adjusting.

### Category A licences (consumer credit)

All Green Deal Providers (other than local authorities<sup>6</sup>) require a consumer credit licence if they are offering Green Deal Plans which are regulated consumer credit agreements.<sup>7</sup>

As the Green Deal Provider will be the creditor<sup>8</sup> under the consumer credit agreement, the licence should cover category A (consumer credit). This is irrespective of whether the Provider sources finance from a third party. As above, the licence may need to include canvassing off trade premises.

If a Green Deal Provider engages in additional licensable activities, such as credit brokerage (see below), it will need to be licensed accordingly.

### Category C licences (credit brokerage)

Credit brokerage is defined in section 145(2) of the CCA as including the effecting of introductions to a creditor, or to another credit broker, of individuals desiring to obtain credit. This is not limited to regulated consumer credit agreements, and could include introductions with a view to an exempt non-domestic Green Deal Plan.

Individuals or businesses engaged in credit brokerage will generally require a category C licence. As above, the licence may also need to cover canvassing off trade premises.

The scope of 'credit brokerage' is summarised in Annexe A to the OFT's guidance for Credit Brokers and Intermediaries.

It should be noted in particular that:

- a recommendation to deal with a particular creditor (or credit broker) may amount to credit brokerage;
- there does not need to be any direct connection or contact between the person effecting the introduction and the creditor;
- it is not therefore necessary to demonstrate any arrangement (whether remuneration or otherwise) between the parties; and
- effecting an introduction may include bringing about, or being the cause of, an application for credit, for example by providing contact details of a creditor.

In addition, Green Deal participants need to be aware of section 160A of the CCA which concerns credit intermediaries.

A credit intermediary is a person who, in the course of business, carries out any of the activities specified in section 160A(2) for a consideration that is or includes a financial remuneration (whether from the consumer or from a creditor or third party). The activities specified include assisting consumers by undertaking preparatory work in relation to prospective consumer credit agreements.

Credit intermediaries must comply with subsections (3) to (5) of section 160A, which set out requirements regarding disclosure of status and fees. This is irrespective of whether the person is also a credit broker. Failure to comply is a criminal offence.

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<sup>6</sup> See section 21(2) CCA.

<sup>7</sup> 'Regulated' means regulated by the CCA.

<sup>8</sup> As defined in section 189(1) CCA.

## Situations where a credit licence *may not* be required

### *Scenario (a)*

If a Green Deal assessor does not engage in any licensable activity, for example an assessor confining itself *solely* to carrying out impartial assessments, without any marketing of Green Deal Plans or otherwise effecting an introduction for section 145(2) purposes, it will not require a consumer credit licence.

### *Scenario (b)*

If a Green Deal participant, for example an assessor or an installer, is *employed* by a Green Deal Provider, and acting *solely* in the course of its employment (and is not engaged in any business on its own account or on behalf of a third party), it will be covered by the Provider's licence.<sup>9</sup>

However, a person who is authorised in its own right as a Green Deal Assessor will be considered for licensing purposes to be acting in a personal capacity, rather than on behalf of its employer, when carrying out impartial assessments under the Green Deal scheme. It is important therefore that the assessment and marketing stages of any visit are kept entirely separate, and the assessor does not engage in licensable activity during the assessment stage. Otherwise the assessor would need to hold its own licence.

On the other hand, if the employing Green Deal Provider is *itself* authorised as a Green Deal Assessor, then its individual employees are likely to be covered by its CCA licence when carrying out an assessment as they will be acting in the course of their employment. It is not 'credit brokerage' to introduce a consumer to another part of the same business.

It is likely however to be credit brokerage where the assessor introduces the consumer to a third party, or where the Green Deal Provider itself acts as a credit broker, for example, if a Green Deal Provider refers a consumer on to another organisation for measures under the ECO scheme but with a view to entry into a credit agreement (in which case the Green Deal Provider will need to ensure that its consumer credit licence covers category C).

### *Scenario (c)*

If a Green Deal participant is an *agent* of a Green Deal Provider, whether it will need to be licensed will depend upon the individual facts and circumstances.

For example, a licence *may not* be needed if:

- the agent is acting *solely* on behalf of the Provider, and solely in respect of activities covered by the latter's consumer credit licence;
- it is not engaged in any licensable activity on its own account or on behalf of any third party;
- the nature of the relationship is made clear to consumers; *and*
- the Provider takes responsibility for acts or omissions of the agent.

Green Deal participants who believe that they fall into this category should consider seeking legal advice and/or applying for a licence if in any doubt.

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<sup>9</sup> Section 23(1) CCA.

In the OFT's view, the provisions are likely to be interpreted restrictively by the courts – the law in relation to agency is complex, and a person may be an 'agent' of another for contract law purposes but without being covered by the principal's CCA licence.

#### *Scenario (d)*

If a Green Deal participant (such as a community group or landlord) engages in activity of the kind described in section 145(2) *only* on an occasional basis<sup>10</sup> and, as such, is not carrying on a business for CCA purposes, then a licence is *unlikely* to be required.

This will, however, depend upon the individual facts and circumstances, including the frequency and nature of any introductions made to Green Deal Providers (or credit brokers), whether this is with a view to entry into a credit agreement, and whether there is any remuneration or other benefit.

Again, Green Deal participants who believe that they fall into this category should consider seeking legal advice and/or applying for a licence if in any doubt, given the consequences of unlicensed trading. They should also consider whether – even if they are not 'credit brokers' (and so do not need to be licensed) – they may be 'credit intermediaries' and so need to comply with section 160A of the Act.

#### *Scenario (e)*

If a Green Deal participant refers a consumer to ESAS, with a view to obtaining *general* information and advice about the Green Deal, or to contact a Green Deal Provider about an *existing* Green Deal Plan, this is *unlikely* to constitute credit brokerage even if the person is doing so in the course of a business.

However, if a person acting in the course of a business (rather than on an occasional ad hoc basis) refers a consumer to ESAS, with a view to the consumer obtaining a *new* Green Deal Plan, this is *likely* to constitute credit brokerage. This is on the basis that ESAS is itself engaged in credit brokerage and is licensed as such by the OFT.

It is also *likely* to be credit brokerage to suggest to a consumer seeking credit that they visit the ESAS website for a list of Green Deal Providers (as this amounts to effecting an introduction to a credit broker). On the other hand, if a Green Deal participant (for example, an assessor) is merely *responding* to a question by the consumer, and *limits* itself to mentioning the ESAS website as a source of general information and advice about the available options, this is *less likely* to constitute credit brokerage.

Again, if in doubt, Green Deal participants should consider seeking legal advice and/or applying for a licence.

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<sup>10</sup> Section 189(2) CCA.