

# Green Deal Provider Guidance

November 2012

# Green Deal Provider Guidance

## Scope and Purpose of Guidance

This guidance is intended to provide additional information for Green Deal Providers on the requirements of operating in the Green Deal market. It is not a comprehensive handbook to the market, but instead gives guidance on the underlying regulatory framework, in particular the requirements in developing a Green Deal Plan and the monitoring and sanctions processes. It should be read in conjunction with Part 1, Chapter 1 of the Energy Act 2011, the Green Deal Framework Regulations (Disclosure, Acknowledgement, Redress etc.) Regulations 2012 and the Green Deal Code of Practice.

# Green Deal Provider Guidance

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# 1 Green Deal Assessments

Green Deal Providers must use a Green Deal Advice Report produced by an authorised Green Deal Assessor<sup>1</sup> to identify the potential energy efficiency improvements that might be made to a property. Green Deal Advice Reports must be produced by Green Deal Assessors on an impartial basis so that customers can take their Green Deal Advice Report to any Green Deal Provider to obtain a quote for a Green Deal Plan. Green Deal Providers will not, therefore, be involved in the production of a Green Deal Advice Report and they must not seek to influence the content of a Green Deal Advice Report. This restriction is set out in the Code of Practice<sup>2</sup> and any Green Deal Provider found to have contravened this restriction may have their authorisation withdrawn by the Green Deal Oversight and Registration Body.

## 1.1 Green Deal Assessors and Green Deal Advisors

A Green Deal Assessor may be an organisation (for example, a limited or public company) or an individual (for example, a sole trader). In order to become a Green Deal Assessor, the organisation or individual must be certified to act as a green deal assessor by an authorised Green Deal Assessor Certification Body and that certification body must have registered them with the Green Deal Oversight and Registration Body so that their name appears on the register of Green Deal Assessors.

A Green Deal Assessor may employ or subcontract suitably qualified and competent individuals to carry out parts of the Green Deal Assessment on their behalf<sup>3</sup>. Such individuals are referred to as Green Deal Advisors. Green Deal Assessors may also conduct the assessment themselves.

Whilst Green Deal Advisors may discharge some of the Green Deal Assessors obligations in respect of a Green Deal Assessment, the legal relationship will always be between the customer and the Green Deal Assessor.

## 1.2 Generating a Green Deal Advice Report

There are five steps in the process for generating a Green Deal Advice Report, from initial pre-visit contact to the lodgement of the Green Deal Advice Report itself on the appropriate Energy Performance Certificate Register<sup>4</sup>. Once lodged on the appropriate Energy Performance Certificate Register, the customer will be able to use the Green Deal Advice Report to obtain quotes from one or more Green Deal

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<sup>1</sup> The Oversight and Registration Body ([www.greendealorb.co.uk/](http://www.greendealorb.co.uk/)) maintains a register of authorised Green Deal Assessors.

<sup>2</sup> See paragraph 7 of Annex B.

<sup>3</sup> Detail of the necessary qualifications and competencies for Green Deal Advisors may be found in the Specification for Organisations Providing the Green Deal Advice Service (also referred to as the Assessor Services Specification).

<sup>4</sup> Domestic and non-domestic Green Deal Advice Reports Assessments for English and Welsh properties will be lodged on the England and Wales Energy Performance Certificate Register; there is a separate Energy Performance Certificate Register for Scottish properties.

Providers of their choice, enabling them to shop around for the best deal if they so wish. If the finance element of a Green Deal Plan exceeds £10,000 the customer should seek quotes from at least three different Green Deal Providers unless they are unable to do so or waive this right. Green Deal Providers should not seek to influence the customer in any way to get them to waive their right to obtain three quotes. The quotes obtained from different Green Deal Providers must be for the same Green Deal Plan and the same measures to allow for an accurate comparison. In addition, a Green Deal Provider must not discourage consumers from shopping around and seeking more than one quote where the finance element of a Green Deal Plan does not exceed £10,000.

### **Step 1: Pre-visit questions and declarations by the Assessor**

The Green Deal Assessor arranges a visit to the property and will:

- provide information to the customer on the Green Deal at least 24 hours in advance of the Green Deal Assessment visit (unless the customer chooses to waive their right to this 24-hour period). Information should include an introduction to the Green Deal, set out the customer journey and make clear how customers can expect any concerns they have to be addressed. It will contain basic information on the Green Deal Assessment process including what the customer can expect it to involve;
- collect basic information about the customer to help inform whether the customer is able to access Green Deal finance (e.g. whether the property has an electricity meter through which Green Deal payments could be collected), and any particular considerations (e.g. the property has listed status, or is in a conservation area) that they may need to be aware of;
- determine whether a valid Energy Performance Certificate exists for the property;
- ensure that consent has been obtained from the customer at least 24 hours in advance of the visit taking place for any other services (falling outside the scope of a Green Deal Assessment) which may be delivered by the Green Deal Assessor (or Green Deal Advisor acting for the Green Deal Assessor) during the same visit, unless specifically requested otherwise by the customer. The request to waive the 24-hour rule should be initiated by the customer, no other person.

A Green Deal Assessor will arrange for a Green Deal Advisor to visit the property as agreed. Where a valid Energy Performance Certificate is already present the process may move on to Step 3.

### **Step 2: A Fabric Assessment and production of an Energy Performance Certificate**

The Green Deal Advisor will visit the property to carry out the Green Deal Assessment. This will involve a visual inspection of the property and the production of a standard Energy Performance Certificate. This visual inspection will record,

among other things: dwelling type and age, area, extensions, adjustments for window and roof areas, heating systems, and construction type and u-values. Using information about the dwelling coupled with climate data and standard assumptions about the property and energy savings, a calculation will be made and a standard Energy Performance Certificate produced that:

- sets out the current and potential energy efficiency of the property and the cost of heating it;
- recommends a range of measures that can help reach this potential energy efficiency; and
- includes an indication of whether measures or a package of measures are likely to be suitable for the Green Deal.

This Energy Performance Certificate will be lodged on the appropriate register and a proportion of lodged Energy Performance Certificates will be checked by the Green Deal Assessor's Certification Body for quality assurance purposes.

### **Step 3: A tailored Occupancy Assessment**

The Green Deal requires a tailored, impartial Occupancy Assessment to be prepared based on the Energy Performance Certificate. The Energy Performance Certificate can be a valid pre-existing certificate or a certificate created on the same day as the Occupancy Assessment. The energy-use estimates produced by the Energy Performance Certificate assessment represent an 'average household'. They do not take account of important factors, such as the size of the household; appliance usage; or non-standard heating patterns.

So, for the purpose of the Occupancy Assessment, the Green Deal Advisor will:

- collect information on the occupants and their particular energy use to help determine whether the household is a high or low energy user. Where available, information from energy bills, including fuel tariffs, should be used to further calibrate energy-savings estimates.
- determine whether :
  - the household is a high or low energy user and the impact of this on the likely suitability of measures for Green Deal finance; and
  - customers might be able to access any subsidy for certain measures under the Energy Company Obligation.
- prepare an Occupancy Assessment which details:
  - a proposed package of measures;
  - a calculation of 'typical savings'<sup>5</sup> and 'households estimated annual savings'<sup>6</sup> in respect of these measures; and

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<sup>5</sup> The typical saving is calculated using the standard savings assumptions from the EPC, adjusted down to reflect variation in buildings, products and installation techniques

- the maximum repayments that can be charged on the basis of typical savings.

#### **Step 4: Discuss draft report with customer**

- The Green Deal Assessor will prepare (impartially) a draft Green Deal Advice Report incorporating the Occupancy Assessment and Energy Performance Certificate.
- The draft Green Deal Advice Report must:
  - set out the current and potential energy efficiency of the property and the cost of heating it;
  - recommend a range of measures that can help reach this potential energy efficiency; and
  - include an indication of whether measures or a package of measures are likely to be suitable for Green Deal finance.
- On the basis of the draft Green Deal Advice Report the customer will be advised on:
  - the recommendations made in the Green Deal Advice Report and the package of measures that may be preferable for the customer;
  - further ways to reduce their energy consumption through behavioural changes (where the customer is deemed to be a high user);
  - opportunities that may exist to access additional or alternative sources of support for energy efficiency, including a subsidy for those on qualifying benefits (particularly for a low energy users identified as fuel poor). Customers may be referred to the Energy Saving Advice Service.

#### **Step 5: Lodgement of the Green Deal Advice Report**

Following the Green Deal Assessment the final Green Deal Advice Report (both Energy Performance Certificate and Occupancy Assessment elements) must be lodged by the Green Deal Assessor on the appropriate Energy Performance Certificate Register. They will have two weeks within which to do this. A Green Deal Plan cannot be finalised until this has happened.

#### **Non-domestic Assessments**

The non-domestic Green Deal Assessment process varies from the domestic process set out above. A detailed step-by-step description of the process for creating a non-domestic Green Deal Advice Report is set out in the Specification for Organisations providing the Green Deal Advice Service.

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<sup>6</sup> The households estimated annual savings takes into account whether the household currently has high, low or typical energy consumption.

<http://www.decc.gov.uk/assets/decc/11/tackling-climate-change/green-deal/4620-specification-for-organisations-providing-the-gree.pdf>

Once lodged on the appropriate Energy Performance Certificate Register, the non-domestic customer will be free to use the Green Deal Advice Report to obtain quotes from one or more Green Deal Providers of their choice, enabling them to shop around for the best deal.

### **Complaints about the Green Deal Assessment**

Complaints about a Green Deal Assessment should be directed to the Green Deal Assessor who conducted the assessment, except where a Green Deal Provider has decided to enter into a Green Deal Plan in reliance on the Green Deal Assessment. In the such cases, complaints should be directed to the relevant Green Deal Provider.

## 2 Green Deal Plans

Once a Green Deal Advice Report has been registered the customer can use it to obtain Green Deal Quotes for a Green Deal Plan from whichever Green Deal Provider or Providers they choose.

The Green Deal Provider must establish the Green Deal Plan in line with requirements set out in the Energy Act 2011, the Framework Regulations and the Code of Practice. Once a Green Deal Plan has been entered into, Green Deal Providers must also meet all of their ongoing obligations in the Framework Regulations and the Code of Practice.

Many Green Deal Plans will be regulated consumer credit agreements for the purpose of the Consumer Credit Act 1974 (“CCA”). If so, the finance aspects of the Green Deal Plan will be governed by that Act. (See more detail in Chapter 5 of this Guidance).

The Green Deal Plan is the contract between the Green Deal Provider and the Improver and bill payer (if different) at the property. The Green Deal Plan is a contract for energy efficiency improvements to be made to a property and for finance to pay for those improvements. Certain conditions, referred to in sections 1(4) and (5) of the Energy Act 2011, must be met in order for the plan to qualify as a Green Deal Plan and for the obligation to pay instalments to pass from bill payer to bill payer.

If these conditions are not met, the plan is not a Green Deal Plan and the obligation to pay instalments will not transfer to future bill payers. Regulation 26 of the Framework Regulations provides that the Green Deal Provider must ensure, as a requirement of its authorisation, that these conditions are met. If these conditions are not met, the Green Deal Provider will therefore have broken a requirement of its authorisation and sanctions could be imposed (including cancellation of the Green Deal Plan or reduction of the amount payable under the Plan).

This section covers the process that Green Deal Providers need to go through in developing a Green Deal Plan.

1. providing clarity for the customer
2. obtaining consents
3. specification of works
4. savings estimate
5. establishing payment plans
6. compulsory terms
7. confirming the Green Deal Plan
8. cooling off period
9. dealing with unexpected costs
10. dealing with material changes

## 2.1 Providing Clarity for the Customer

Green Deal Providers must obtain a Green Deal Advice Report for a property, before making an offer of a Green Deal Plan. Unless the circumstances have changed in any of the ways specified in the Code of Practice, Green Deal Providers must be prepared to use any Green Deal Advice Report for the property<sup>7</sup>. Green Deal Providers must therefore satisfy themselves that the Green Deal Advice Report is still appropriate for that property, by reference to paragraph 9 of the Code of Practice. Provided this is the case, once the customer has their Green Deal Advice Report, they will be able to take that Report to any Green Deal Provider and ask them to quote for installation of and finance for one or more of the recommended improvements. Quotes should take into account and clearly explain the costs associated with installing various improvements. Different products will have different costs and Green Deal Providers should make this clear.

### Green Deal Plan Details

Green Deal Providers<sup>8</sup> must notify Improvers, before a Green Deal Plan is entered into, of the savings estimates, savings period, first year instalments and payment period for each improvement<sup>9</sup> to be installed under a Green Deal Plan<sup>10</sup>. This should be presented to the customer in a clear and concise way which will allow customers to compare offers and shop around if desired. The information, discussed in conjunction with the output of the Occupancy Assessment (or, in the case of non-domestic properties, the Green Deal Advice Report) will help Improvers and bill payers to assess if the proposed Green Deal Plan is appropriate for their circumstances.

The Code of Practice requires Green Deal Providers to take reasonable steps to ensure the Improver and bill payer understand their obligations under the Green Deal Plan and that they understand which obligations which will pass to future bill payers<sup>11</sup>. This requirement could be fulfilled by providing Improvers and bill payers with a sheet setting out this information, and including a point of contact where customers can discuss these matters.

### Discussing savings estimates with customers

The Code of Practice requires Green Deal Providers to ensure that the customer understands that whether the savings estimates are realised in practice will depend on the way energy is used at the property and energy tariffs<sup>12</sup>. This might be done,

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<sup>7</sup> Paragraph 9 of Annex B of the Code of Practice

<sup>8</sup> Paragraph 8 of Annex B of the Code of Practice

<sup>9</sup> Framework Regulations, Regulation 30

<sup>10</sup> Definitions of these terms can be found in Section 2.4 of this guidance under ‘Savings Period’ and ‘Limits to Green Deal Finance’

<sup>11</sup> Paragraph 25 of Annex B of the Code of Practice

<sup>12</sup> Paragraph 18-22 of Annex B of the Code of Practice

for example, by explaining the impact of the occupier's energy use on the likely savings, and highlighting to customers that if they purchase energy on certain tariffs (e.g. volumetric contracts) there may be no cost saving by reducing consumption.

The Code of Practice requires Green Deal Providers to ensure, when discussing potential future energy price changes with Improvers or bill payers, that they use realistic figures and make clear that these figures are only estimates and prices could go up or down in the future<sup>13</sup>. It is recommended that Green Deal Providers use reputable published figures when discussing future energy price predictions, and that they inform customers of the source of their predictions.

There are a range of commercial sources of energy price indices which could be used to project future energy prices. In addition, DECC publishes quarterly statistics on energy prices ("Quarterly Energy Prices" <http://www.decc.gov.uk/en/content/cms/statistics/publications/prices/prices.aspx>), long-term projections for wholesale prices of energy ("DECC oil/gas/coal price projections" [http://www.decc.gov.uk/en/content/cms/about/ec\\_social\\_res/analytic\\_projs/ff\\_prices/ff\\_prices.aspx](http://www.decc.gov.uk/en/content/cms/about/ec_social_res/analytic_projs/ff_prices/ff_prices.aspx)) as well as estimated impacts of energy and climate change policies on energy bills ("Estimated impact of or policies on energy prices and bills" [http://www.decc.gov.uk/en/content/cms/meeting\\_energy/aes/impacts/impacts.aspx](http://www.decc.gov.uk/en/content/cms/meeting_energy/aes/impacts/impacts.aspx)).

## Finance

The Green Deal Provider should ensure that the quote issued to the customer covers all payments that are to be recovered from the Improver and bill payer for supply and installation of the improvements and the provision of credit. They must also make clear any amount that is to be paid other than via the electricity bill (e.g. upfront payments). Preparatory and make good costs can be included in instalments payable under a Green Deal Plan, provided they can reasonably be considered to be part of the work involved in installing the improvements. As a minimum the Code of Practice requires the Green Deal Provider to restore the fabric of the room to the same state as it was before commencement of works<sup>14</sup>. If the customer decides they do not want this, they should let the Green Deal Provider know.

Green Deal Providers may choose to quote for a package which covers more comprehensive preparatory or make good costs, for example loft clearance and redecoration. The Green Deal Provider must always ensure that the requirements in the Framework Regulations and Code of Practice regarding estimates and the amount of instalments are met (See '2.4 Limits to Green Deal Finance in this Guidance')

There may be cases where the cost of improvements installed under a Green Deal Plan is partly funded by an energy supplier under the Energy Company Obligation.

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<sup>13</sup> Paragraph 22 of Annex B of the Code of Practice

<sup>14</sup> Paragraph 74 of Annex B of the Code of Practice

Energy suppliers are not required, under Energy Company Obligation, to declare upfront the amount of Energy Company Obligation subsidy they are providing to individual consumers. It is therefore a decision for energy suppliers and their delivery partners whether they make this known to the consumer.

### **Compliance with Consumer Credit legislation**

DECC have not prescribed a format for quotes for Green Deal Plans. However, where a Green Deal Plan will be regulated under the CCA, Green Deal Providers must comply with the requirements of the CCA regime, which include obligations regarding the information that must be provided to customers at various stages in the transaction.

### **Cold calling and sales**

A Green Deal Participant may be able to generate interest in the Green Deal by visiting a property, or by contacting a consumer by other means of communication including by telephone, text and emails.

There are however, circumstances where cold calling is not allowed in the Green Deal. This will apply when “No Cold Caller” stickers are displayed on homes, or if the consumer has indicated by any means that they do not wish to be contacted in that way, as set out in the Code of Practice<sup>15</sup>.

Green Deal Participants must not engage in misleading, high pressure or aggressive sales techniques and must not accept sales leads from persons who are known or suspected to engage in such activities.

Green Deal Participants can take a number of steps to check how sales leads have been obtained, which may include amongst other things:

- being mindful of the types of consumers the sales leads generate, and whether they consider it appropriate for the sales lead to be followed through. Things to consider here could include the mental, physical infirmity, age or credulity of the consumer.
- how the sales person is being incentivised to generate sales
- consumer satisfaction questionnaire
- before an actual sale is entered into, ensure that the consumer is aware of relevant cooling off periods that may apply to them.

Green Deal Participants must allow at least 24 hours before they can conduct the assessment, unless written consent to a same day assessment is made.<sup>16</sup>

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<sup>15</sup> Paragraph 3.10-3.16 of the Code of Practice

<sup>16</sup> See Green Deal Assessments – step 1, in this guide.

Green Deal Participants should familiarise themselves with the Consumer Protection from Unfair Trading Regulations 2008. These regulations prohibit traders in all sectors from engaging in unfair commercial (mainly marketing and selling) practices against consumers and set out rules that determine when commercial practices are unfair.

## 2.2 Obtaining Consents

To protect current and future bill payers, it is important that the correct consents and confirmations are obtained for the Green Deal charge and improvements. The Green Deal consents framework is designed to protect the rights of current and future property owners and electricity bill payers by ensuring that these permissions are obtained before measures are installed and the Green Deal instalments become payable.

Responsibility for gathering relevant consents and confirmations fall to the Improver rather than the Green Deal Provider. However, Green Deal Providers are required to offer guidance and advice to Improvers in connection with the consent and confirmation requirements<sup>17</sup> and to ensure that certain conditions relating to those requirements are met when a Green Deal Plan is to be entered into<sup>18</sup>. Green Deal Providers must collect consent and confirmation documentation from the Improver before the Green Deal Plan is entered into, and store these, in either paper or electronic form, for the duration of the Green Deal Plan<sup>19</sup>.

Before entering into a Green Deal Plan, the Improver may, depending on their circumstances, need to:

- seek consent from a third party to make improvements to the property, for example, consent from:
  - a landlord;
  - the freeholder (in England and Wales);
  - the Local Planning Authority; and
  - if common property, consent of other owners; and
- obtain a confirmation in respect of the Green Deal Plan and the requirement to make payments from, for example:
  - the current electricity bill payer (if not the Improver); and
  - the owner of the property (if different from the bill payer and the Improver).

### Consent to install the energy efficiency improvements

The Energy Act 2011 requires a Green Deal Plan to include a term in which the Improver confirms that any necessary third party confirmations or consents relating to the energy efficiency improvements to be made under the Plan have been obtained.<sup>20</sup> Responsibility for gathering any necessary third party permissions or

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<sup>17</sup> Paragraph 60 of Annex B to the Code of Practice.

<sup>18</sup> See regulation 26 of the Framework Regulations.

<sup>19</sup> Paragraph 62 of Annex B to the Code of Practice.

<sup>20</sup> Section 5(2)(b).

consents rests with the Improver, but it is the Green Deal Provider's responsibility to ensure that the Green Deal Plan contains the term referred to above.<sup>21</sup>

### **Confirmation in respect of the Green Deal Plan including consent to pay the charge instalments**

The Framework Regulations require the Improver to obtain written confirmation from the relevant people that they:

- consent to the level of instalments payable under the plan and the intervals at which and period for which those instalments are payable; and
- acknowledge that they will have to pay the instalments due under the Green Deal Plan and that they will be bound by certain terms in the Green Deal Plan whilst they are the bill payer at the property.<sup>22</sup>

This requirement must be met before the Green Deal Plan is entered into.<sup>23</sup>

The Framework Regulations require Green Deal Providers to ensure that any confirmations that are obtained (or copies of them) are attached to the Green Deal Plan when it is entered into.<sup>24</sup>

Both of the above requirements must be met for the Green Deal Plan to be a Green Deal Plan.<sup>25</sup> The Code of Practice requires Green Deal Providers to store confirmations obtained by the Improver for the duration of the Green Deal Plan<sup>26</sup>. It is up to Green Deal Providers to decide on the form of documents they are willing to accept (e.g. hard copy, original, photocopy, electronic).

### **Guidance to the Improver**

Whilst it is the responsibility of the Improver to identify who should be approached to give their consent to the improvements and to provide a confirmation, the Green Deal Provider is required, through the Code of Practice, to take reasonable steps to give the Improver general advice on the need to obtain consents and confirmations and who those consents and confirmations may be needed from.<sup>27</sup> This general advice might include, for example, advising Improvers on:

- possible consents/confirmations that might be needed given the type of property (for example, whether it is rented or held on a long lease);
- the type of documents they may wish to check to find out who may need to give consent/a confirmation, such as:
  - tenancy agreements,
  - property deeds,
  - title deeds and 'real burden' conditions (in Scotland),

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<sup>21</sup> See regulation 26 of the Framework Regulations.

<sup>22</sup> Regulations 36(1), (3), (4), (5) and 37.

<sup>23</sup> Regulation 36(1) of the Framework Regulations.

<sup>24</sup> Regulation 36(2).

<sup>25</sup> Regulation 29.

<sup>26</sup> Paragraph 62 of Annex B to the Code of Practice.

<sup>27</sup> Paragraph 60 of Annex B to the Code of Practice.

- licences and other leasehold documentation,
- mortgage loan documentation,
- Local Authority Planning Guidance<sup>28</sup>,
- local conservation area and listed building guidance;

Green Deal Providers should also consider giving advice on:

- the need to obtain legal advice and/or speak to the relevant Local Authority in more complex cases; and
- the need to seek consent/confirmation at the earliest opportunity to minimise delays.

The requirement on the Green Deal Provider is to offer general guidance and advice. However, some may wish to offer a more in-depth or bespoke service, including offering legal advice.

The Code of Practice also requires Green Deal Providers, at the earliest opportunity, to inform the Improver of the consequences that may follow if they have not obtained all the correct consents (or if those consents have been obtained improperly) or confirmations.<sup>29</sup>

### **Additional confirmations**

The provisions in the Framework Regulations which require confirmations to be obtained before a Green Deal Plan is entered into focus on those people who are most likely to become responsible for paying Green Deal instalments at a property. However, the Green Deal Provider may wish to consider whether, in certain circumstances, there are any other people who should be approached to provide a confirmation in respect of the Green Deal Plan.

Therefore, the Green Deal Provider may wish to make appropriate enquiries with the Improver to determine whether, for example, the property is held on trust or (in Scotland) subject to a liferent, and whether it may be prudent for the Improver to obtain a confirmation from those people. There may be other circumstances where a known third party is likely to become responsible for paying Green Deal instalments. The Green Deal Provider may wish to consider whether a confirmation should be sought from that person.

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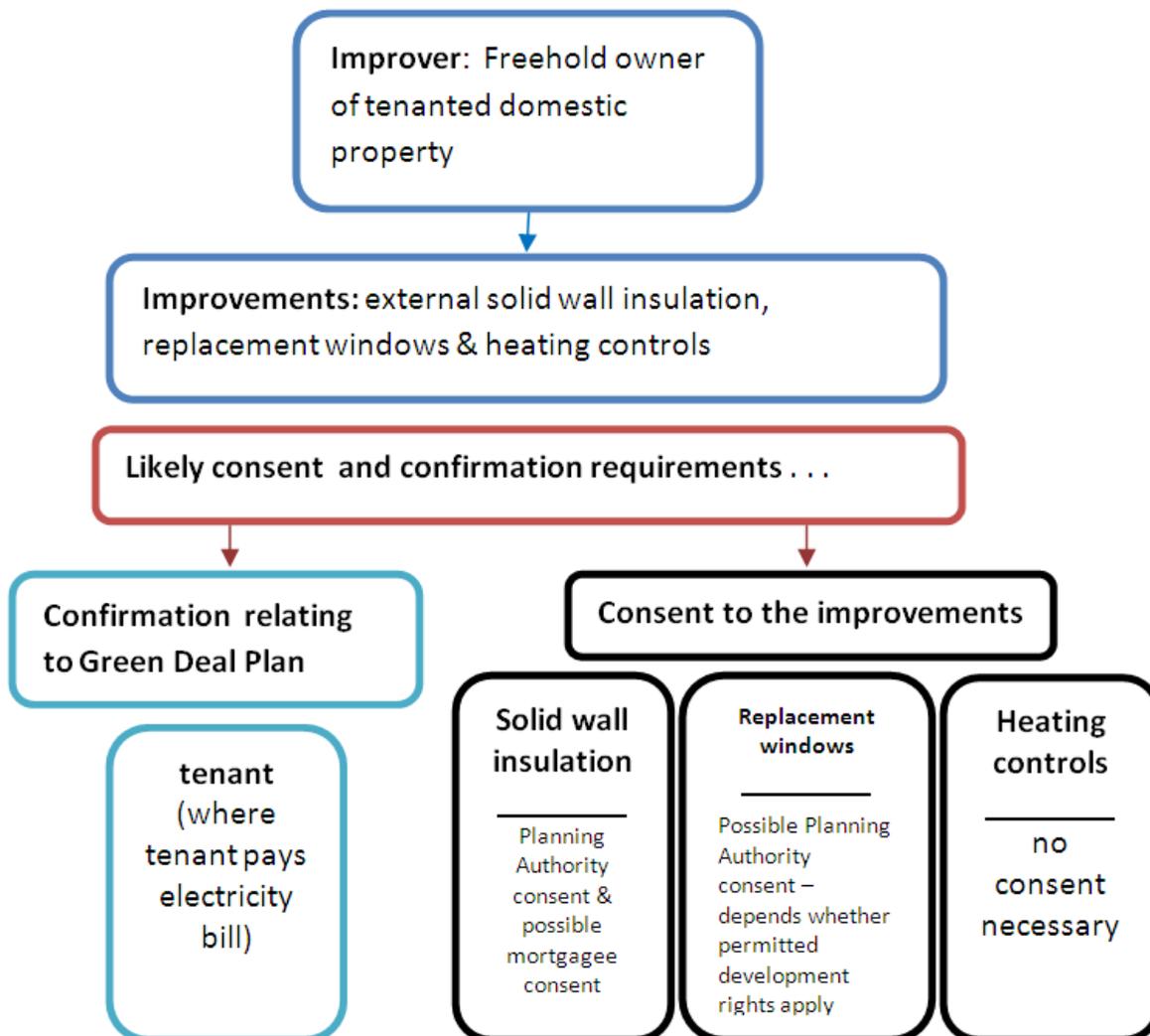
<sup>28</sup> In England and Wales, some improvements, such as external solid wall insulation, are likely to require local authority planning consent. However, other improvements, such as replacement glazing, may be classed as permitted development and may not require planning permission, unless, for example, the building has listed status or is in a conservation area, in which case permission may be needed from the relevant authority. In Scotland, developments that do not enlarge a dwelling, house, or a flat, or protrude more than 1 meter from the outer surface of the walls or roof are normally classed as 'permitted development' and do not require planning permission, except where the building has listed building status or is in a conservation area. If the building is listed, or within a conservation area, consent from the relevant authority may be needed. For further guidance on permitted development rights in Scotland see: [www.scotland.gov.uk/householderdevelopment](http://www.scotland.gov.uk/householderdevelopment).

<sup>29</sup> Paragraph 61 of Annex B of the Code of Practice

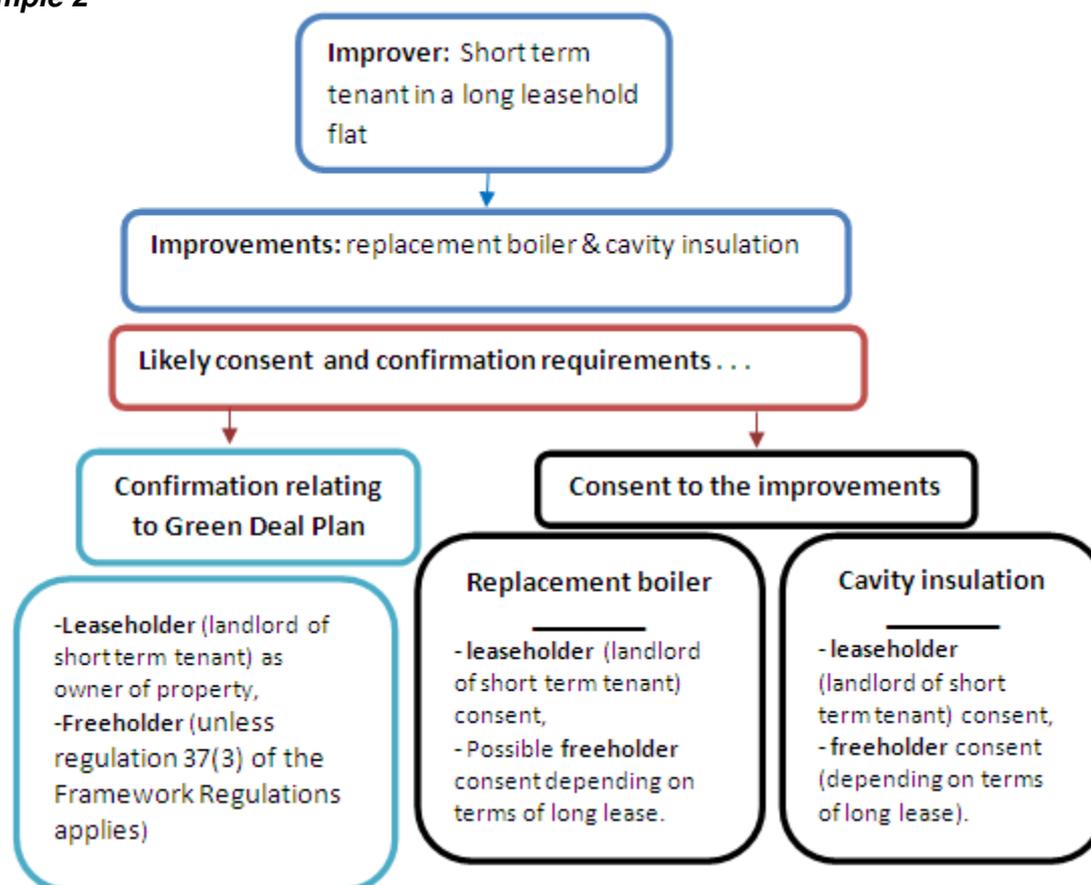
## Consent and confirmation requirements for rented properties – examples

The following diagrams provide some general examples of how the consent and confirmation requirements operate in the context of rented properties:

### Example 1



## Example 2



## Demonstrating consent and confirmation

Consent to the improvements may take a variety of forms, depending on the circumstances. Examples of the types of documentation that the Improver may need to obtain include:

- (i) a consent notice from the freeholder (in England and Wales)/owner/landlord;
- (ii) a consent notice from the mortgagee for structural alterations
- (iii) a valid listed building consent;
- (iv) a valid planning permission; and
- (v) a valid building warrant (in Scotland).

Confirmations in respect of the Green Deal Plan must be given in writing.<sup>30</sup> A confirmation could be given by the relevant person signing part of the Green Deal Plan containing the confirmation or by signing a separate confirmation document<sup>31</sup>.

Green Deal Providers may wish to consider producing a range of proforma documents for Improvers to use when obtaining confirmations and certain consents.

<sup>30</sup> See regulation 36(3) of the Framework Regulations.

<sup>31</sup> Note that the requirement to obtain a confirmation must have been satisfied before the plan is entered into, so a signature on the face of plan would require appropriate co-ordination by the Provider to ensure this requirement is met.

## Storing consent/confirmation documentation

The Code of Practice requires Green Deal Providers to store copies of consents and confirmations obtained by the Improver for the duration of the Green Deal Plan.<sup>32</sup> It will be for Green Deal Providers to determine how to store this information but they may wish to consider storing it in an easily accessible form.

Following a written request from the owner of a property, the current electricity bill payer or a Relevant Ombudsman Service investigating a complaint concerning a breach of the consent or confirmation provisions, Green Deal Providers must provide a free-of-charge copy of the consents and/or confirmations specified in the request.<sup>33</sup>

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<sup>32</sup> Paragraph 62 of Annex B to the Code of Practice.

<sup>33</sup> Paragraph 63 of Annex B to the Code of Practice.

## 2.3 Specification of Works

The Green Deal Provider has responsibility for designing the specification of works to be carried out for the property in question<sup>34</sup>. In practice this means working with the customer to select products and ensuring that they are properly integrated into the overarching design of the package of improvements agreed upon. This is important in development of the quote stage because costing will depend on, amongst other things, the price of the products and any requirements for integration. It is the Green Deal Provider's responsibility to ensure that they take any necessary steps to satisfy themselves and their customers that the specification of works is comprehensive, ensures the proper integration of measures and meets all the necessary requirements.

The Code of Practice dictates that the Green Deal Provider<sup>35</sup> is responsible for ensuring that the improvements in any package are properly integrated with each other, and with any previously installed energy efficiency measures. This is to ensure that the energy performance of the improved building will be as anticipated by the Green Deal Plan. This integration also minimises the risk of damage to:

- (i) the fabric of the building (such as that from thermal bridging or inadequate ventilation or air tightness), and
- (ii) the health and safety of the occupiers.

As an example, where the package of improvements includes a new heating system and insulation, the Green Deal Provider should make sure that they are integrated properly to ensure that the heating system installed is appropriate to the property. Installing insulation will mean that the new heating system could be smaller, operate more efficiently and be less expensive to run.

To take another example, inconsistent or discontinuous insulation (thermal bridging) will mean there are gaps between the materials and the building structure, which will result in heat loss and could lead to condensation or mould growth causing damage to the building fabric. The Green Deal Provider will need to ensure that the specified insulation is properly installed and continuous. For example, it is recommended that the specification covers how connections to new or existing insulation, or other energy efficiency improvements (such as glazing) are designed, and that edges, corners, junctions and openings are treated to ensure that the insulation envelope is as consistent and continuous as possible.

Green Deal Providers will need to ensure that there is a good balance between air tightness levels and ventilation requirements to make sure the indoor air quality is adequate. Making the building more airtight will reduce the amount of energy needed to heat the house, however without adequate ventilation, a number of issues could arise, including moisture and pollutants not being removed from inside the building leading to condensation, poor air quality or mould growth leading to health issues. In the same way, installing a ventilation system without making sure a building is air tight, could increase heat loss and carbon emissions.

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<sup>34</sup> Paragraph 32-38 and 69 of Annex B of the Code of Practice

<sup>35</sup> Paragraph 32 of Annex B of the Code of Practice

The Green Deal Provider will need to assess the situation in question and determine what to do and discuss this with the customer. For example, where improvements which impact on the air tightness of buildings are being installed this might mean ensuring that sufficient trickle ventilators are installed, or whether a more continuous ventilation system might need to be needed

In addition the Green Deal Provider must<sup>36</sup> ensure that materials or systems installed do not increase the risk of moisture build-up or interstitial condensation to a point where fabric decay or risk to the health of occupants might be caused. Surface condensation could lead to mould growth and cause a risk to the health of occupants. Furthermore, moisture issues may result in interstitial condensation that could cause damage to the building fabric or structure. Providers therefore need to make sure that the products installed are appropriate for the building in question<sup>37</sup>.

It is the responsibility of Green Deal Provider to ensure that products installed under a Green Deal Plan fall within the description of improvements that have been recommended by the Green Deal Assessor for the property in question, and that they comply with Annex D of the Green Deal Code of Practice.

The Green Deal Provider will need to seek confirmation from the product manufacturer or supplier that the products or systems that are to be installed are the type which are capable of, or designed to, achieve at least the energy bill savings estimates that have been anticipated by the Green Deal Provider<sup>38</sup>. Green Deal Providers can determine what documentation they require from suppliers to satisfy themselves that the products perform as intended. This could take the form of a company's own test results, through to an independent certificate issued by an accredited certification body.

## **Vulnerable Buildings**

The Green Deal Provider must decide whether the building in question is considered to be vulnerable – as defined in paragraph 36 of Annex B to the Code of Practice. If so, any specified energy improvements must comply with paragraphs 37 and 38 of Annex B to the Code of Practice, and the Green Deal Provider must take particular care when choosing the products and systems, designing the specification of works and during the actual installation. Experts in older, or vulnerable, buildings may need to be consulted.

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<sup>36</sup> Paragraph 33 of Annex B of the Code of Practice

<sup>37</sup> Section 7 of the Energy Act

<sup>38</sup> Paragraph 34 of Annex B of the Code of Practice

## 2.4 Savings Estimate

Before entering into a Green Deal Plan, the Green Deal Provider must estimate the savings which are likely to be made on energy bills for the property if the improvements are carried out<sup>39</sup>. This is referred to in this guidance as the “savings estimate”. The Green Deal Provider must estimate the likely first year savings in respect of each improvement which is to be installed. There are detailed requirements of how this is to be done, which are different for domestic and non-domestic properties<sup>40</sup>. Some further explanation of these requirements, and the reason for them, is set out below – but should be read alongside the Framework Regulations and Code of Practice.

Savings estimates must be calculated as if all the improvements to be installed under the Green Deal Plan will be installed at the same time<sup>41</sup>. This is to ensure that the cumulative estimated savings for a package of improvements is accurate, and takes account of any interaction between the proposed improvements. The Green Deal Plan cannot be signed off or payments collected until all the improvements that are to be installed under the Green Deal Plan have been installed<sup>42</sup>. Green Deal Providers should bear this in mind when creating packages of improvements to be installed under a single Green Deal Plan. Where a package of improvements will take a considerable amount of time to install, the Green Deal Provider must explain this to customers, discussing any impact this could have on their energy savings during the period of installation.

In addition, Green Deal Providers should explain that whilst Green Deal improvements should result in a reduction of overall energy costs, the electricity or gas elements of these overall energy costs could increase or decrease. This is because the Green Deal charge is attached to the electricity bill so this may rise whilst the savings are made on the gas bill. Green Deal Providers should explain this to their customers in relation to the savings outlined on the Occupancy Assessment.

Green Deal Providers should also inform the bill payer, where a reduction in gas consumption is likely and gas bills are paid by direct debit, that they can ask their gas supplier to reduce the amount of direct debit payments accordingly.

### Use of In Use Factors

The Government wishes to ensure that Green Deal Providers’ savings estimates are based on the best available evidence on performance of improvements. Accordingly, the Code of Practice requires Green Deal Providers to use figures from certain specified sources for these estimates.

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<sup>39</sup> Energy Act 2011 section 5(4) and regulation 27 of the Framework Regulations

<sup>40</sup> Paragraph 10-174 of Annex B of the Code of Practice

<sup>41</sup> Regulation 27 of the Framework Regulations

<sup>42</sup> Section 1(5) of the Energy Act and paragraph 73 of Annex B to the Code of Practice

For domestic properties, savings estimates must be obtained from the Occupancy Assessment or Green Deal Adviser Tool<sup>43</sup> depending on the circumstances – and Green Deal Providers will need to refer to paragraphs 11 to 13 of Annex B to the Code of Practice, to determine which should be used in a particular case.

For non-domestic properties, savings estimates must be obtained from section 2 of the Green Deal Advice Report, or direct from a Green Deal Assessor, depending on the circumstances, unless the Improver and bill payer have agreed to use an alternative estimate. Green Deal Providers will need to refer to paragraphs 14 to 17 of Annex B to the Code of Practice to determine which should be used in a particular case.

The savings in the Occupancy Assessment and Green Deal Adviser Tool for domestic properties have been adjusted by an “in use” factor (a percentage reduction in the savings) to reflect our best understanding of the real-world performance of the improvements in actual properties. The Government has decided that these in use factors are necessary because there is longstanding evidence of a “performance gap” between the level of savings an improvement can theoretically achieve and those actually achieved in the property. The reasons for the gap are complex and will differ from property to property. It is not necessarily due to products not performing, or due to installation failures, but could be caused by many factors that make the property “non-standard”. Buildings vary in terms of their construction and their materials. Particularly for existing buildings, it is impossible to collect all necessary information needed to enter into the methodologies to make perfect predictions.

The application of in use factors enables the Government to be more confident that these savings estimates are based on a reasonable understanding of the in situ performance of the improvement. The levels of the in use factors are set out in “How the Green Deal will reflect the in situ performance of energy efficiency measures” and are based on recommendations from academic and industry experts<sup>44</sup>. The Government intends to review these levels at least every year as more in situ monitoring is carried out and innovation occurs.

As indicated above, Green Deal Providers do not need to calculate the in use factors themselves for domestic properties. They need to comply with paragraphs 10 to 13 of Annex B to the Code of Practice when carrying out their savings estimates, and obtain figures from the source prescribed in those paragraphs. The in use factors are already accounted for in these prescribed sources. Green Deal Providers may,

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<sup>43</sup> The Green Deal Advisor Tool is an optional step that enables the Green Deal Provider to calculate savings estimates for some or all of the improvements recommended in the original Occupancy Assessment for the property.

<sup>44</sup> <http://www.decc.gov.uk/assets/decc/11/tackling-climate-change/green-deal/5505-how-the-green-deal-will-reflect-the-insitu-perfor.pdf>

however, need to explain to customers why there is a difference between the savings estimate on their Energy Performance Certificate and the estimate used as the basis for the amount of their instalments.

## Savings Period

The Green Deal Provider must estimate, in respect of each improvement, the period over which the estimated savings are likely to be made (see section 5(5) of the Act). This is referred to in this guidance as the “savings period”.

- The savings period is the period over which the improvement is likely to result in energy bill savings which are equivalent to the estimated savings (after taking into account the effect of likely changes in the price of energy)<sup>45</sup>.
- The savings period must not extend beyond the time when the Green Deal Provider estimates that the cumulated costs of repairs for normal wear and tear will exceed the likely cost of replacing the improvement<sup>46</sup>.

## Limits to Green Deal Finance

The provision of Green Deal finance is predicated on the principle that the instalments payable under a Green Deal Plan should not exceed the expected resulting savings. For regulated Green Deal Plans, creditworthiness checks should be carried out in line with the CCA. Accordingly, the legislation requires Green Deal Providers to ensure that<sup>47</sup>:

- the first year instalments must not exceed the estimated first year savings;
- the payment period for each improvement does not exceed the estimated savings period for that improvement;
- the amount of instalments does not increase during the payment period, except as permitted by regulation 33 of the Framework Regulations (see further explanation in the Payment Plan section of this guidance).

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<sup>45</sup> Framework Regulations, Regulation 28

<sup>46</sup> Framework Regulations, Regulation 28

<sup>47</sup> Framework Regulations, Regulations 30-33

## 2.5. Establishing Payment Plans

### Incentives

Green Deal Providers may offer incentives to customers. However the total amount of cash which may be advanced to the Improver under a Green Deal Plan is limited to either 5% of the estimated total of the instalments due under the Green Deal Plan or £150, whichever is less<sup>48</sup>.

### Domestic Payment Plans

There may be different repayment structures for domestic Green Deals, although there are restrictions on how the amount of Green Deal instalments can vary after the first year of the Green Deal Plan<sup>49</sup>.

### Calculating Green Deal Payments

When calculating payments, Green Deal Providers must always ensure the following two conditions are met throughout the lifetime of a Green Deal Plan:

- payments remain within the limits of Green Deal finance
- the customer must not pay for any measure beyond its savings period

The Green Deal Advice Report will contain first year savings estimates for each recommended measure. The Green Deal Provider will then utilise these savings estimates together with the savings period of each measure to calculate payments for the duration of the Green Deal Plan.

Therefore, within a Green Deal Plan that contains measures with varied lifetimes, payments may reduce when a measure is repaid or a savings period ends. Green Deal Providers may modify the level of payments throughout the Green Deal Plan, as long as the above two conditions are always met.

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<sup>48</sup> Framework regulations, regulation 39

<sup>49</sup> Framework Regulations, Regulations 32-33

## 2% Uplift

The interest rate for a domestic Green Deal Plan must be fixed for the whole of the repayment period - but the overall amount of the instalments payable in respect of each improvement (and hence the amount of capital repaid with each instalment, rather than the rate of interest) can increase by up to 2% a year.

To illustrate the different repayment structures – flat or rising by 2% - an example package is illustrated below:

<b>Annual Bill Savings (maximum GD charge in year 1)</b>	<b>£145</b>
<b>Cost of product and installation<sup>[1]</sup></b>	<b>£800</b>
<b>Rate of interest</b>	<b>7%</b>
<b>Repayment period</b>	<b>10 years</b>

Given the above Green Deal Plan, there are two options for the repayments. Both are fixed repayment plans, but one is flat and the other rises by 2% each year.

These are illustrated below.

Year	1	2	3	4	5	6	7	8	9	10	Total
<b>2% Rising</b>	£105	£107	£109	£111	£113	£116	£118	£120	£123	£125	£1150
<b>Flat</b>	£114	£114	£114	£114	£114	£114	£114	£114	£114	£114	£1140

Utilising a 2% rising uplift means that the bill payer, in this case, may be paying back slightly more overall as they are paying off less capital in the early years and therefore pay more interest over the life of the Green Deal Plan. But, given the rule that first year instalments must not exceed estimated savings, it does mean that more improvements can be wholly paid for under a Green Deal Plan. This is because the 2% rising option will allow the instalments payable in the first year to be lower, and therefore may enable some packages to be financed wholly under a Green Deal Plan where top up finance would otherwise be required. For example, if the savings estimate had been £110 in the example above, the flat charge would not be possible under a Green Deal Plan, whereas the 2% rising structure would.

[1] Clearly actual cost depends on each GDP and how much they pay for parts and labour e.g. whether they can get economies of scale by targeting a whole street at a time, but this figure is an estimate based on our central cost scenario

If a customer chooses a Green Deal Plan with an annual increase of up to 2%, the Green Deal Provider should give the customer a payment profile which sets out the amount of the instalments for the length of the plan and make these clear to the customer. The Green Deal Provider should also endeavour to make sure the customer understands that the amount of instalments will increase and that choosing this kind of Green Deal Plan makes it more likely that, if energy prices fall at a future date, instalments might exceed actual energy savings.

In order not to mislead customers, Green Deal Providers must also fully explain the impact of the 2% uplift when discussing the fixed interest rate with Improvers and bill payers, to ensure they understand the implications the uplift would have on the amount of the instalments over time, and the total amount that will be paid. Failure to do so could constitute a breach of consumer protection legislation.

### **Non-domestic Payment Plans**

A Green Deal Plan for a non-domestic property can have a variable interest rate. However, unless the interest rate is fixed for the duration of the Green Deal Plan, it cannot provide for the amount of instalments to increase during the payment period for any reason other than fluctuations in the interest rate. If, on the other hand, the interest rate is fixed for the period of the Green Deal Plan, the instalments can increase by up to 2% a year, in the same way as domestic Green Deal Plans. Green Deal Providers must consider, at the time an offer of a Green Deal Plan is made, whether it would be more appropriate to offer a fixed rate plan, depending on the type and size of business.

### **Understanding Green Deal charges**

For the first year of a Green Deal plan, the Green Deal Central Charge Database will validate whether the limits of Green Deal Finance have been met by determining if the total energy savings is equal to or less than the total daily Green Deal charges for the first twelve month period. If the limits to Green Deal finance are not met then the database will reject the flow.

It is important to note that if a Green Deal Provider sends the Supplier incorrect billing information - which the Supplier then applies in good faith - the responsibility for resolving the error lies with the Green Deal Provider, for example by refunding any overpayment to the Bill Payer.

Please see the illustrated example in Annex 2 showing how the Green Deal charges for a Green Deal Plan would work.

## Prepayment meters

Providers should explain clearly to new customers how Green Deal payments will be collected from their electricity bill; this is particularly important in the case of prepayment customers. The Provider should explain to prepayment customers the importance of topping-up regularly and using the correct key issued by their supplier.

During the process of setting-up a Plan on the Central Charge Database it may be flagged to the Provider that there is a type of prepayment meter present that cannot handle Green Deal payments. In this case it is important that the Provider arranges for their customer to pay for their electricity using a different method of payment, or requests a different prepayment meter to be installed. If this is not done then Green Deal payments will not be passed to the Provider.

## Fuel Direct

Green Deal Providers need to be aware that the Department of Work and Pensions' Fuel Direct scheme will not be capable of dealing with the Green Deal portion of a customer's electricity bill until 2<sup>nd</sup> April 2013 at the earliest.

Once this capability has been set up, where a customer pays electricity supply charges via Fuel Direct, electricity suppliers will also be able to recover the Green Deal proportion of those charges under the Fuel Direct scheme (subject to the scheme's limits on the amounts that can be paid in this way).

Until this capability has been set up, if a customer pays all their electricity supply charges via Fuel Direct and becomes liable for Green Deal payments prior to 2<sup>nd</sup> April 2013, these Green Deal payments will accrue on the customers' account, but will not be passed to the Green Deal Provider.

It is therefore important that, in order to avoid –

- (i) delay in the collection of Green Deal instalments due to Providers, and
- (ii) customers on Fuel Direct accumulating arrears,

Providers avoid setting up a Green Deal Plan for such customers until Fuel Direct is capable of handling Green Deal payments.

## 2.6 Ensuring the Agreement meets Green Deal Plan Requirements – Compulsory Terms

In order for an arrangement to qualify as a Green Deal Plan, the conditions as to terms of the Green Deal Plan set out in section 5 of the Energy Act 2011 and regulations 30 to 36 of the Framework Regulations must be met.<sup>50</sup>

In addition, a Green Deal Plan must comply with the relevant sections of the CCA and associated secondary legislation, if it is a regulated agreement. This includes requirements regarding the form and content of the Green Deal Plan. The Code of Practice also contains provisions regarding the terms of Green Deal Plans<sup>51</sup>.

Annex B of the Code of Practice sets out in paragraphs 27 to 31 matters that must be covered in discussing the terms of a proposed Green Deal Plan with the Improver and bill payer, and in paragraphs 39 to 51 the information that must be provided to customers before the Green Deal Plan is entered into.

This includes a requirement at paragraph 44 to ensure that the Improver and bill payer understand that some small electricity suppliers may have chosen not to take part in the Green Deal payment collection system, and that these suppliers are not able to deal with customers who have a Green Deal Plan. In complying with this requirement, Green Deal Providers should enquire if the customer has signed up to a future dated contract before the Green Deal Plan is entered into and if so, discuss the implications of this with the customer. Future dated contracts are not uncommon in the non-domestic sector and mean the customer signs up to switch to a certain supplier at a certain date in the future. This means that although a customer might be with an opted-in supplier at the time the Green Deal Plan is taken out, they may be under contract to switch to an opted-out supplier in the future. As the switch will be automatically blocked, the customer is likely to face penalties for breach of contract.

Green Deal Providers should ensure the terms of the plan are clearly articulated and presented in plain English.

### Guarantees

In order for Green Deal Plans to be valid, they must meet the guarantee requirements set out in regulation 35 and Schedule 2 of the Framework Regulations. There are also requirements regarding guarantees in the Code of Practice.

Paragraph 57 of the Code of Practice provides that a Green Deal Plan can include a term under which the bill payer or Improver is required to carry out specified maintenance on an improvement, provided that these are reasonable, and do not

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<sup>50</sup> See regulation 29 of the Framework regulations.

<sup>51</sup> Paragraph 52 and 53 of Annex B of the Code of Practice

require the maintenance to be carried out by the Green Deal Provider or a person nominated by the Green Deal Provider. It also allows Green Deal Plan to stipulate that the availability of a guarantee in respect of an improvement is dependent on such reasonable maintenance requirements for that improvement being complied with. DECC is unlikely to consider that a maintenance requirement is reasonable if it exceeds the savings estimate for each year or is otherwise disproportionate, or if it has not been clearly explained to the Improver and bill payer before the Green Deal Plan is signed.

Green Deal Providers must provide bill payers with all the information they need to maintain the improvements correctly. This information should be provided before the Green Deal Plan is entered into. This includes user manuals<sup>52</sup>.

Green Deal Providers must provide insurance to ensure that customers have recourse to the guarantee provided under regulation 35 of the Framework Regulations if the Green Deal Provider is unable to honour it<sup>53</sup>. The insurance should last the lifetime of the guarantee to prevent risk of Green Deal Providers not being able to renew the insurance policy at a future date, leaving consumers without this important protection.

The insurance must provide cover in the event that the Green Deal Provider is no longer in place or does not honour the guarantee. Accordingly, if in any way the Green Deal Provider does not meet its obligations, the insurance policy can be called upon by the Improver or bill payer. The cover must provide the Improver or bill payer with the benefits they are entitled to under the guarantee.

The Code of Practice provides that customers must have recourse to the insurance<sup>54</sup>. This means that the bill payer and Improver should be able to contact the insurer directly themselves; they should not have to make their claim via the Green Deal Provider.

Green Deal Providers should explain to customers the scope of this insurance cover, and how to make a claim under it.

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<sup>52</sup> Paragraph 41 of Annex B of the Code of Practice

<sup>53</sup> Paragraph 94 of Annex B of the Code of Practice

<sup>54</sup> Paragraph 94 of Annex B of the Code of Practice

## 2.7 Confirming the Plan

Once the improver has agreed to proceed with the installation, the parties will sign the Green Deal Plan and installation can commence. The Green Deal Provider will, as soon as practicable after the Green Deal Plan has been entered into, need to give the improver and the bill payer (where different) a copy of the Plan.<sup>55</sup>

Following a completed installation, the Green Deal Plan must be confirmed in accordance with section 8 of the Energy Act 2011 before a bill payer can be required to pay the instalments due under the Plan.<sup>56</sup> Under the Code of Practice, Green Deal Providers should not confirm a Green Deal Plan until it has received confirmation from the Green Deal Installer and the Improver that the improvements have been installed satisfactorily.<sup>57</sup>

Two conditions must be satisfied for a Plan to be confirmed in accordance with section 8. The first is that the electricity supplier must notify the bill payer that payments for the improvements installed under the Plan will be added to the bill payer's electricity bill from a specified date, as well as the amount of those payments. That date must be calculated in accordance with section 8(3) of the Act and regulation 41 of the Framework Regulations. In practice, once the installation of the improvements has been completed (and the Green Deal Provider has received confirmation of that fact from the Installer and the Improver), the Green Deal Provider will notify the Green Deal Central Charge Database that the Green Deal Plan has been entered into and is ready to be activated and that the instalment payments can be collected. This will trigger the notification from the electricity supplier referred to above.

The second condition is that the Green Deal Provider must secure that a new energy performance certificate ("EPC") (in Scotland, a new EPC and recommendations report) is produced.<sup>58</sup> This will ensure that the EPC/recommendations report include an up to date energy efficiency rating and information about the Green Deal Plan. (The inclusion of information about the Green Deal Plan in the EPC/recommendations report is important for the operation of the disclosure mechanism described in section 6 below.)

The process involved in securing the production of a new Energy Performance Certificate/recommendations report is as follows.

Green Deal Providers will first add information about the Green Deal Plan to the Energy Performance Certificate Register. As authenticated users of the Energy Performance Certificate Registers in England and Wales and in Scotland, Green Deal Providers will add this information using the Green Deal Plan software tool made available by the Register Operator. The Green Deal Central Charge Database will automatically fill in some of these details and ensure the information is consistent

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<sup>55</sup> Paragraph 66 of Annex B to the Code of Practice.

<sup>56</sup> See section 1(5) of the Act.

<sup>57</sup> Paragraph 73 of Annex B of the Code of Practice.

<sup>58</sup> See section 8(4) of the Act and regulation 42 of the Framework Regulations.

across both data sets. When the Green Deal Provider has submitted this information, they will then need to instruct a Green Deal Assessor to update the energy efficiency rating of the Energy Performance Certificate to reflect the improvements installed under the Green Deal Plan.

Within ten days of the Plan being confirmed in accordance with section 8 of the Energy Act 2011, the Code of Practice requires Green Deal Providers to provide the Improver with a the new Energy Performance Certificate (in Scotland, a new Energy Performance Certificate and recommendations report) and to notify those people who gave a confirmation under regulation 36 of the Framework Regulations that the Green Deal Plan has been confirmed.<sup>59</sup>

In light of the requirements of paragraph 92 of the Code of Practice (relating to the provision of information regarding the Plan), it is recommended that Green Deal Providers store a copy of the Green Deal Plan in an easily accessible format.

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<sup>59</sup> Paragraph 76 of Annex B of the Code of Practice

## 2.8: Cooling Off Periods

Where there is a right of withdrawal or cancellation in respect of a Green Deal Plan, the Code of Practice requires Green Deal Providers to provide the person who will be entitled to exercise the right with an explanation of the effect of the exercise of any such right (including any costs which may be payable by that person) and how and when the right(s) may be exercised. This must be done before the Green Deal Plan is entered into.<sup>60</sup>

Where a consumer has different rights of cancellation/withdrawal in respect of the different parts of the Plan, for example one right of cancellation/withdrawal relating to the part of the Plan which provides credit and another for the part of the Plan which provides for the supply and installation of improvements, the explanation required by the Code of Practice should make this clear. It should also explain what effect the exercise of a right of cancellation or withdrawal in respect of one part of the Plan will have on the other part.

For example, in the case of a Green Deal Plan that is regulated by the CCA, the consumer will have 14 days to withdraw from the part of the Green Deal Plan which provides credit<sup>61</sup>. The exercise of this right of withdrawal would not, however, result in cancellation of, or withdrawal from, the part of the Green Deal Plan which provides for the supply and installation of improvements, unless this is provided for under the contract. Whether the consumer has separate cancellation rights for this part of the Green Deal Plan under other legislation<sup>62</sup> will depend upon the nature of the Green Deal Plan, and how it was concluded. The period for exercising such rights may also be more limited. If, for example, the right to cancel the part of the Green Deal Plan which provides for the supply and installation of improvements runs for only 7 days from the date of the Green Deal Plan, or there are no cancellation rights (other than for the credit), this should be made clear.

Green Deal Providers are advised to provide the explanation referred to above to their customers in sufficient time before the Plan is entered into to enable them to fully understand their rights and obligations in the event they change their mind. Consideration should be given to any additional needs of the customer when explaining the impact of exercising a right of withdrawal or cancellation. In practice, this could mean providing the information in a format suitable for that customer, such as in writing, verbally or in Braille.

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<sup>60</sup> Paragraph 67 of Annex B of the Code of Practice.

<sup>61</sup> See section 66A of the Consumer Credit Act 1974.

<sup>62</sup> A consumer may have cancellation rights under, for example, the Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008 or the Consumer Protection (Distance Selling) Regulations 2000."

## 2.9 Dealing with Unexpected Costs

Green Deal Providers should identify the full cost of installing the improvements before the Green Deal Plan is signed and work commences including any up-front payment, and ensure that these are reflected in their quote to customers. However, there may be cases where unexpected costs (costs which were not planned for in the quote) arise after work commences. Paragraph 72 of Annex B to the Code of Practice sets out what is to be done if this happens. It is recommended that Green Deal Providers make customers aware of unexpected costs that could arise and the consequences this could have on their Green Deal Plan and payments at the point of discussing finance, before the Green Deal Plan is signed.

## 2.10 Dealing with Material Changes

It is important that Green Deal Providers manage situations where, following a Green Deal installation, improvements have been removed or a building has been significantly altered in a way which may impact upon the efficiency of the Green Deal improvements and/or the estimated energy savings they are likely to generate.

The Code of Practice therefore requires Green Deal Providers to include a term in the Green Deal Plan which obliges the Improver and bill payer to notify them should they become aware that a “material change” has occurred.<sup>63</sup> The Code of Practice defines a “material change” in the Glossary of Terms.

The circumstances which are likely to trigger a “material change” include (but are not limited to):

- the complete removal of the Green Deal improvements;
- a business (such as a pub) being converted into a house or vice versa;
- an office block being converted into a block of flats or vice versa;
- a house being split into flats, or vice versa.

Some significant alterations may trigger the creation of a new Energy Performance Certificate upon completion of the work.<sup>64</sup> Where this is the case, the Energy Performance Certificate Registers will send an alert direct to the Green Deal Provider. It is recommended that the receipt of such an alert should prompt the Green Deal Provider to examine whether the changes made at the property have resulted in a “material change” as this might trigger the need to comply with paragraph 78 of Annex B to the Code of Practice.

Where a Green Deal Provider becomes aware that a material change has occurred, they must follow the steps outlined in Paragraph 78 of Annex B to the Code of Practice. This will involve the following steps.

a) Writing to the bill payer to either:

- notify them that a material change has taken place at the property, or,
- where it was the bill payer themselves who informed the Green Deal Provider of the change, confirm that the Green Deal Provider is now aware that the material change has taken place.

b) Informing the bill payer what options (if any) are available to them in light of the material change. The options available to the bill payer will vary depending on whether the bill payer has the right to repay the credit early under the CCA 1974 or under the Green Deal Plan, but may include:

- voluntary repayment of all or part of the credit which remains outstanding under the Green Deal Plan;
- continuing to repay the instalments agreed under the Green Deal Plan despite the change.

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<sup>63</sup> Paragraph 53 of Annex B of the Code of Practice.

<sup>64</sup> In line with Part 6 of the Building Regulations 2010.

- c) Informing the bill payer that if they decide to repay only part of the credit which remains outstanding under the plan or choose to continue to repay the instalments agreed under the Green Deal Plan, the Energy Performance Certificate (or in Scotland, the Recommendations Report) for the property will be updated to include a statement which explains that changes have been made to the property since the Green Deal Plan was entered into which may impact upon the efficiency of the measures and/ or the estimated energy savings.

Green Deal Providers may also wish to consider explaining to the bill payer, in general terms, what the impact of the material change might be, for example, that as a result of the change, the bill payer may be less likely to realise the savings estimated in the Green Deal Plan.

### 3 Installation

Once a property has had a Green Deal Assessment and a Green Deal Plan has been agreed, the installation can take place. The Green Deal framework will ensure robust and high quality standards of installation of energy efficiency improvements to households and businesses. Certification of installers is an essential element of this, as work will be undertaken by a range of trades.

The standards and certification framework for installers has been designed to ensure that all work is completed to a high standard and that customers can expect the same level of technical expertise, customer care and protection regardless of the installer.

### 3.1 Green Deal Installer Requirements

Only an authorised Green Deal Installer can install energy efficiency improvements under the Green Deal finance mechanism. Only authorised Green Deal Installers will be able to identify themselves as 'Green Deal Installers' and use the Green Deal Mark.

A Green Deal Installer must be certified by a Green Deal accredited certification body as meeting the PAS 2030 standard for the improvements they wish to install. A Green Deal Installer's certification body must have registered them with the Green Deal Oversight and Registration Body in order for authorisation to have been granted.

Green Deal Installers must comply with the relevant requirements of the Framework Regulations and the Green Deal Code of Practice. Where a product is to be installed under an energy plan which is not a Green Deal Plan the Green Deal Installer must explain to the customer which requirements of the Code of Practice they are not complying with<sup>65</sup>.

It will be the Green Deal Provider's responsibility to ensure that an authorised Green Deal Installer is being used for any installation work undertaken as part of a Green Deal Plan.

#### Installer Standard PAS 2030

The standard that Green Deal Installers must meet is a Publicly Available Specification PAS 2030:2012. PAS 2030 provides a specification for the installation of energy efficiency improvements in existing buildings. PAS 2030 achieves this by focusing on the necessary installation processes for the improvements, the management of the process that guides their installation and the quality of the service provided to the customer before, during and after the installation.

PAS 2030 was developed by BSI and is available at: <http://shop.bsigroup.com/navigate-by/pas/>

Green Deal Installers must meet the required standard for both Green Deal and Energy Company Obligation installations.

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<sup>65</sup> Paragraph 11 of Annex C of the Code of Practice.

## 3.2 Finding and Working with an Accredited Installer

Green Deal Providers can find details of authorised Green Deal Installers - and the improvements they are certified to install - from the Green Deal Participant Register maintained by the Green Deal Oversight and Registration Body. Further information can be found on the website at: [www.greendealorb.co.uk](http://www.greendealorb.co.uk)

It will be up to each Green Deal Provider to decide how they wish to operate and work with Green Deal Installers, and up to both parties to make the appropriate commercial arrangements with each other.

The Green Deal Code of Practice sets out requirements on Green Deal Providers for paying Green Deal Installers. Green Deal Providers should refer to the Code of Practice for full details<sup>66</sup>.

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<sup>66</sup> Paragraph 105 and 106 of Annex B of the Code of Practice.

### 3.3 Information a Green Deal Provider must give to Green Deal Installers

The Green Deal Code of Practice sets out certain requirements on Green Deal Providers to provide information to Green Deal Installers in relation to the installation. For example, Green Deal Providers must provide Green Deal Installers with a clear design and specification for all works to be carried out, including how the various products should be integrated into the overarching design for the package of improvements and with clear instructions regarding the oversight and signing off aspects of the works<sup>67</sup>. Further information on what this entails can be found in section 2.3 of this document.

Green Deal Providers must consider whether the installation or checking of carbon monoxide monitors at the property is necessary, and, if so include this in the specification provided to the Green Deal Installer.<sup>68</sup>

Information provided by the Green Deal Provider to the Green Deal Installer must be in an appropriate format for the installer to work from and comply with all the relevant Building Regulations, planning consents, PAS 2030 requirements and product manufacturers' conditions of use and installation.<sup>69</sup>

The Green Deal Provider will be responsible for the package of work carried out by a Green Deal Installer. It will be essential that the information provided is complete, understandable and not open to misinterpretation.

Green Deal Providers should refer to the Green Deal Code of Practice for full details of their responsibilities. How these responsibilities are discharged are a matter between the Green Deal Provider and Green Deal Installer.

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<sup>67</sup> Paragraph 32 of Annex B of the Code of Practice.

<sup>68</sup> Paragraph 70 of Annex B of the Code of Practice.

<sup>69</sup> Paragraph 71 of Annex B of the Code of Practice

### **3.4 Complaints about the Green Deal Installation**

In the first instance customer complaints about a Green Deal Installation or Green Deal Installer will be handled by Green Deal Providers and they will determine how best to take forward any complaint. For instance, they may instruct the Green Deal Installer to complete corrective actions.

If the complaint is regarding the professional competence of the Green Deal Installer then the Green Deal Provider may take the matter to the relevant Green Deal certification body to investigate. A certification body may ultimately remove certification of a Green Deal Installer which would cause the person to lose their authorisation as Green Deal Installer.

If the complaint is not resolved within an 8 week period then the Green Deal Provider is able to provide a deadlock to the customer which will allow them to complain directly to the Ombudsman.

## 4 Ongoing Obligations

### 4.1 The Energy Performance Certificate Registers

Green Deal Providers have ongoing responsibilities with regard to using the Energy Performance Certificate Registers (“the Registers”) to store and update certain elements of EPC and Occupancy Assessment data.

The Registers are operated by two register operators:

- Landmark Information Group: hosts all Energy Performance Certificates generated in England and Wales. [www.epcregister.com](http://www.epcregister.com)
- EST Scotland: hosts all existing build Energy Performance Certificates generated in Scotland (this does not include new build properties at present). [www.energysavingtrust.org.uk/scotland](http://www.energysavingtrust.org.uk/scotland)

The Energy Performance Certificate Registers will carry out a number of Green Deal functions, not all of which will be relevant to Green Deal Providers. In brief, these include:

- hosting all Energy Performance Certificates generated in England, Scotland and Wales.
- storing Green Deal Advice Reports and Non-Domestic Green Deal Advice Reports, which are generated by Green Deal Assessor
- hosting Green Deal Plan information once a Green Deal Plan is confirmed.
- storage and dissemination of data for the management, administration and evaluation of the Green Deal and Energy Company Obligation.

#### Green Deal Providers’ use of the Registers

Green Deal Providers will need to use the Energy Performance Certificate Registers to:

- commission a Green Deal Assessor to update an Energy Performance Certificate to reflect the measures installed using Green Deal finance and to update the asset rating of the property;
- add Green Deal Plan information to the Energy Performance Certificate for disclosure purposes (see section 6 of this guidance);

Green Deal Providers will need to also use the Energy Performance Certificate Registers to amend Green Deal Plan information on the Energy Performance Certificate when:

- information about the finance changes;
- and Green Deal measures change;
- when the Green Deal is paid off early;
- interest rate changes (non-domestic plans only);
- cost of individual Green Deal Plan measures repaid (this information will have been lodged at the outset, but if changes are made)
- a customer informs Green Deal Provider that measures have been removed
- a customer informs Green Deal Provider that alterations have been made to the building that impact on the performance of the measures
- a customer informs Green Deal Provider of a change of use of the building e.g. from non-domestic to domestic

Green Deal Providers must require an Improver and bill payer to notify the Green Deal Provider as soon as they become aware of any material changes being made to the use of the property or to the installed Green Deal measures. Once notified of a material change Green Deal Providers are required to notify the bill payer and inform them of their options in accordance with paragraph 78 of Annex B of the Code of Practice.

When a Green Deal Plan is repaid, the Green Deal Plan details will automatically be removed from the Energy Performance Certificate and a notification sent from the Registers to the Green Deal Provider.

These updates will be crucial, as they will determine whether or not the disclosure information contained on the Energy Performance Certificate in England and Wales, and the Recommendations Report in Scotland, is accurate and up to date. Where these updates are not carried out by Green Deal Providers, or where their customers fail to inform Green Deal Providers of relevant changes, these potentially threaten the transferral of the Green Deal Plan when the property next changes hands.

As well as their requirements to lodge different types of data on the Registers, relating to the Green Deal Plan confirmed on a property, there are a number of other ways we expect Green Deal Providers to use the Registers. For example.

- all Green Deal Providers will have access to view potential customers' Energy Performance Certificate's (unless customers have exercised their right to opt out of having this information disclosed on the Energy Performance Certificate Registers). This will enable Green Deal Providers to develop and target their marketing offers. In addition, if customers choose to shop around following production of a Green Deal Advice Report, then provided they are prepared to give another Green Deal Provider their unique Report Reference Number, or RRN, then other Green Deal Providers could use this information to offer alternative quotes.
- Green Deal Providers will either use the savings estimated on an existing package of measures, generated by the Occupancy Assessment, or generate a new package in consultation with the customer - based on the recommendations of the Green Deal Assessor - when developing an alternative quote. A new package of measures based on the recommendations of the Green Deal Assessor can be generated using a Green Deal Adviser Tool. If a new package is generated by the Green Deal Provider and the customer goes forwards with the plan, the new package must be stored on the register to allow compliance checking. The Green Adviser Tool will enable this.

### **Accessing the Energy Performance Certificate Registers**

In order to fulfil these functions Green Deal Providers will need to become authorised user of the Energy Performance Certificate Registers in the territories where they intend to operate. In order to become authorised users of the Registers, Green Deal Providers will need to ensure their systems for data transfer can work effectively with the Register systems.

## 4.2 The Green Deal Arrangements Agreement

Electricity supply companies will be responsible for collecting Green Deal payments from Green Deal bill payers as an agent and trustee of the Green Deal Provider, and passing them directly to the Green Deal Provider (or their nominated or assigned finance provider).

The Green Deal Arrangements Agreement is a contract between Green Deal Providers, electricity suppliers, and Finance Parties. It includes,:

- the commercial arrangements surrounding collection and payment of Green Deal charge, including the respective roles and responsibilities of the various parties, use of the central charge database, managing changes of supplier or occupiers and treatment of part payment and arrears;
- general legal provisions, such as the consequences of defaulting from the agreement, liability and dispute resolution;
- the governance and change control procedures for the Green Deal Arrangements Agreement.

A copy of the Green Deal Arrangements Agreement is available on the Green Deal Oversight and Registration Body website (<http://www.greendealorb.co.uk/gdaa>).

### 4.3 Accession to the Green Deal Arrangements Agreement

Green Deal Providers are required to enter into and comply with the Green Deal Arrangements Agreement in order to obtain and maintain authorisation. Acceding to it will enable a Green Deal Provider to recover Green Deal payments via the customer's electricity supplier. To become a Green Deal Arrangements Agreement signatory, prospective Green Deal Providers will need to:

- i. be authorised to act as a Green Deal Provider; and
- ii. have access to the Data Transfer Network. The Data Transfer Network is a regulated data exchange system, and is already used by energy companies to exchange information. The Data Transfer Network is managed by Electralink (see <http://www.electralink.co.uk/Green%20Deal> for further guidance). Providers will need to complete the Data Transfer Services Connection Application Form (an electronic version is available on the Electralink website), and accede to the Data Transfer Services Agreement. Green Deal Providers will be charged a one off fee of £100 to access the network, as well as a quarterly standing charge. In addition, Providers will be subject to Traffic Usage Charges, to be charged monthly in arrears.
- iii. when using the Data Transfer Network, Green Deal Providers are advised to use the D-FlowMaster tool with the 'enhanced validation' switched on (please refer to ElectraLink for further information).
- iv. once Green Deal Providers have received their Authorisation, have acceded to the Data Transfer Services Agreement, and have access to the DTN, they should apply to the Green Deal Oversight and Registration Body to become a Green Deal Arrangements Agreement signatory. Detail of how to do so is available at: <http://www.greendealorb.co.uk/gdaa>.

## 4.4 The Green Deal Central Charge Database

Once a Provider becomes a Green Deal Arrangements Agreement signatory, they will then be able to request access to the Green Deal Central Charge Database from the Master Registration Agreement Service Company (MRASCo) ([GDCC@gemserv.com](mailto:GDCC@gemserv.com)). The Green Deal Central Charge Database is the system used to manage information related to the collection and remittance of Green Deal payments by suppliers and is accessed via the Data Transfer Network. This information will include certain data items such as the amount to be re-paid, the period to which the payment relates, and meter-specific reference numbers. These data items will enable the Green Deal Provider and supplier to ensure that their customer is correctly billed, for the correct period, and to issue accurate statements.

In order for Green Deal Providers to obtain access to the database, they will need to:

- i. Apply to MRASCo to request a market participant ID (MPID – a unique 4-letter identification code), and a Market Role Code (used to identify the holder as either an energy supplier, Green Deal Provider, or Finance Party). Taken together, the MPID and Market Role Codes are used to route data to and from the Green Deal Central Charge via the DTN.

If an organisation is already in possession of a valid MPID in another role (e.g. as an energy supplier), a new market participant ID will be required.

- ii. On receipt of a valid request for an MPID, MRASCo will process the information received and then issue the Provider with a MPID and associated Market Role Code.

The application form is available on the MRASCo website ([www.mrasco.com](http://www.mrasco.com)). Green Deal Providers should expect the process of obtaining an MPID and Role Code to take 6-8 weeks.

- iii. Once a Green Deal Provider has acceded to the Green Deal Arrangements Agreement (including securing Provider Authorisation and DTN access), and have received an MPID and Market Role Code, they are ready to sign the MRASCo Access Agreement for the Green Deal Central Charge database. In order to be granted access. The access agreement process can also be found on the MRASCo website – [www.mrasco.com](http://www.mrasco.com).

Providers will also need to appoint a “remittance processor”, a third party organisation, to act on their behalf to receive information regarding Green Deal payments collected and remitted (or reclaimed) by the supplier. Information on how to set up as a remittance processor is available on the MRASCo website:

[www.mrasco.com/index.php?option=com\\_content&view=article&id=63&Itemid=110](http://www.mrasco.com/index.php?option=com_content&view=article&id=63&Itemid=110). Should a Provider wish to self-remit, a separate Market Role Code will need to be obtained from MRASCo.

## **4.5 Timescales for Access to the Green Deal Arrangements Agreement and Green Deal Central Charge Database**

In total, securing Provider Authorisation, DTN access, accession to the Green Deal Arrangements Agreement, obtaining an MPID and Market Role Code, and signing up to the MRASCo Access Agreement should take 8-12 weeks

## 4.6 Using the Green Deal Central Charge Database

Users should be familiar with MRASCo's Data Transfer Catalogue (DTC which is available at <http://dtc.mrasco.com> ), which defines both the data flows used to communicate to and from the Central Charge Database, and stipulates what data is included within each flow type.

## 5 Consumer Credit Act 1974

### 5.1 The CCA 1974 and when it applies to Green Deal plans

The Green Deal is a new type of unsecured loan. Certain types of Green Deal Plan will be regulated consumer credit agreements under the CCA. Note that section 25 of the Energy Act 2011 extends the exemption in section 16B of the CCA for Green Deal purposes so that most non-domestic Green Deals will not fall within scope of the CCA<sup>70</sup>.

It is for Providers to ensure that they understand when the CCA regime will apply to a Green Deal Plan and what the requirements of the CCA regime are.

### 5.2 CCA Licensing requirements

Any Green Deal Provider offering Green Deal Plans which are regulated consumer credit agreements will need to hold a valid CCA licence<sup>71</sup>. This will need to cover Category A, consumer credit, given that the Green Deal Provider will be the ‘creditor’ for CCA purposes as it will be providing credit under a consumer credit agreement. This is irrespective of whether the Green Deal Provider sources finance from a third party. It will be for individual firms to consider whether they may need additional licence categories such as credit brokerage or canvassing off trade premises. Credit licences are issued by the Office of Fair Trading, further information on credit licensing is available on the Office of Fair Trading website<sup>72</sup>. More information on this can also be found in the Green Deal Provider Authorisation Guidance on DECC’s website.<sup>73</sup>

Green Deal Providers should ensure that their Green Deal partners are appropriately licensed. If, for example, a credit agreement is made following an introduction by an unlicensed credit-broker, the agreement would be unenforceable against the debtor without a validation order from the Office of Fair Trading.<sup>74</sup> Accepting introductions from unlicensed credit-brokers may also call into question the fitness of the Green Deal Provider to hold a consumer credit licence.

The Office of Fair Trading’s Licensing Enquiries team is available on 08457 22 44 99 or email: [enquiries@oft.gsi.gov.uk](mailto:enquiries@oft.gsi.gov.uk). Note, however, that they can only give general guidance on the licensing process, and cannot advise individual traders whether they need a consumer credit licence and which categories this should include.

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<sup>70</sup> The definition of a “debtor” can be found in Section 189 of the CCA.

<sup>71</sup> Unless it is not required to hold a license under section 21 of the Consumer Credit Act

<sup>72</sup> [www.oft.gov.uk/OFTwork/credit-licensing/](http://www.oft.gov.uk/OFTwork/credit-licensing/)

[www.oft.gov.uk/shared\\_oft/business\\_leaflets/credit\\_licences/oft147.pdf](http://www.oft.gov.uk/shared_oft/business_leaflets/credit_licences/oft147.pdf)

<sup>73</sup> <http://www.decc.gov.uk/assets/decc/11/tackling-climate-change/green-deal/6068-green-deal-provider-guidance-authorisation-.pdf>.

<sup>74</sup> As defined in section 148 of the Consumer Credit Act

If you are in any doubt as to:

- the circumstances in which a Green Deal Plan will be a regulated consumer credit agreement, and/or
- whether a CCA licence is required and/or which categories of licence are required,

you should seek independent legal advice.

The CCA licensing regime incorporates a test of fitness, including competence to engage in credit activities.

The Office of Fair Trading issues guidance on the minimum standards that it expects of licensees. This guidance is available on their website at [www.oft.gov.uk](http://www.oft.gov.uk).

Relevant Office of Fair Trading guidance includes the following:

- Consumer Credit Licensing: General guidance for licensees and applicants on fitness and requirements:  
[www.oft.gov.uk/shared\\_oft/business\\_leaflets/credit\\_licences/oft969.pdf](http://www.oft.gov.uk/shared_oft/business_leaflets/credit_licences/oft969.pdf)
- Irresponsible Lending Guidance:  
[www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/irresponsible](http://www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/irresponsible)
- Debt Collection Guidance:  
[www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/debt-collection](http://www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/debt-collection)

Guidance produced in conjunction with the Office of Fair Trading in response to requests by Green Deal Providers for information on the application of certain aspects of the CCA regime can be found at Annex 1.

### 5.3 Determining when to issue a CCA compliant Green Deal Plan

As outlined above, it will be for Green Deal Providers to ensure that they understand the requirements of the CCA and that they comply with it, based on their own independent legal advice if necessary.

It is recommended that preliminary enquiries should be made at an appropriate time, either by or on behalf of the Green Deal Provider, to determine whether the proposed agreement is likely to be regulated by the CCA and hence whether it should be documented accordingly.

These preliminary enquiries may include questions about:

- a. the status of the prospective bill payer, including whether the person is an 'individual' for purposes; and
- b. the current use of the property and whether it is likely to change.

The Code of Practice<sup>75</sup> requires that Green Deal Providers inform the Improver and relevant parties<sup>76</sup> before they enter into the plan, whether the plan will be regulated by the CCA and, if not, whether the Green Deal Provider has chosen to replicate the requirements of the CCA on a contractual basis.<sup>77</sup> This will be important to ensure that customers know what protections they can expect to receive under the Green Deal Plan.

Chapters 3 & 4 of the OFT's Irresponsible Lending Guidance provide information on other steps that must be taken before entering into a regulated consumer credit agreement.

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<sup>75</sup> Paragraph 26 of Annex B of the Code of Practice.

<sup>76</sup> Relevant parties are likely to include those giving a confirmation under Regulation 36 of the Framework Regulations.

<sup>77</sup> Paragraph 26 of Annex B to the Code of Practice.

## 5.4 Managing changes in the CCA status of the Plan

Although the CCA is likely to apply to many Green Deal Plans, in particular domestic Green Deal Plans entered into by the owner occupier of a property, it will not apply to all. This may be the case where, for example, the electricity bill payer is a limited company.

However, it is possible that the use and occupancy of a Green Deal Property may change during the lifetime of a Green Deal Plan. These changes may mean that a Plan which was not regulated when it was entered into should now be regulated by the CCA. This situation might arise where, for example, a Green Deal Plan entered into by a limited company in respect of a domestic property is taken on by a consumer when the property is sold. Green Deal Providers will have no control over these changes but will be required to comply with the CCA at all times.

This section provides guidance on how Green Deal Providers should manage changes in the CCA status of the Plans.

### Identifying a change

Where a Green Deal plan will not be regulated by the CCA, the Code of Practice<sup>78</sup> mandates that Green Deal Providers include in the original plan a requirement for the Improver and bill payer to notify the Green Deal Provider should they become aware that the bill payer has changed from a business to a domestic consumer.<sup>79</sup>

Information from other sources may also indicate to a Green Deal Provider that the status or circumstances of the bill payer may have changed so that the plan ought to be regulated. For example, Green Deal Providers will be informed when the identity of the bill payer has changed via the central charge database. A change from a company name to the name of an individual should signal to a Green Deal Provider that the bill payer's circumstances have changed.

Once a Green Deal Provider has received information to suggest that there has been a change in the status of the bill payer under the Green Deal Plan or the purpose for which the credit provided under the Green Deal Plan is being used, the Green Deal Provider should investigate whether the change would mean that, if the Plan were being entered into afresh, it would be regulated by the CCA. Green Deal Providers may therefore consider it appropriate to make enquiries with the bill payer to understand more about the impact of any changes.

### Preventing the plan from remaining unregulated following a change

Once the Green Deal Provider has confirmed that the Green Deal Plan ought to be regulated by the CCA, the Green Deal Provider must take action to prevent the Green Deal Plan from remaining unregulated<sup>80</sup>.

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<sup>78</sup> Paragraph 52 of Annex B of the Code of Practice

<sup>79</sup> Paragraph 52 of Annex B of the Code of Practice

<sup>80</sup> Paragraph 79 of Annex B of the Code of Practice.

Provisions have been included in the Code of Practice and the Green Deal Framework Regulations to assist Green Deal Providers in managing these situations, should they arise.

Regulation 38 of the Framework Regulations provides for an exception to the general rule that Green Deal Providers cannot include terms in the Plan which allow it to require early repayment<sup>81</sup>. It allows Green Deal Providers to require, through a term in the Green Deal Plan, that the amounts outstanding under the Plan are repaid early where an unregulated agreement has been issued at the outset and the bill payer's circumstances change so that the plan ought to be regulated by the CCA. Regulation 38 governs the circumstances in which a term in a Green Deal Plan can require early repayment and the persons from whom early repayment can be required.

Where the Green Deal Provider intends to issue a Green Deal Plan which will not be regulated by the CCA and will contain an early repayment term pursuant to regulation 38, the Code of Practice<sup>82</sup> requires the Green Deal Provider to inform the relevant parties of the circumstances in which early repayment of the Green Deal may be required and the persons from whom early repayment may be required.<sup>83</sup>

Government expects that early repayment should only be required in a small number of cases and that it will be the option of last resort. The Code of Practice<sup>84</sup> requires that, where a Green Deal Provider has included an early repayment term in a Green Deal Plan in accordance with regulation 38, before enforcing that term, the Green Deal Provider must first consider whether there are any alternative options which might be acceptable to the Green Deal Provider and the relevant parties.<sup>85</sup> One such option might be for example, to modify the unregulated agreement so that it will become regulated under the CCA. The CCA already provides for this under section 82. The use of modifying agreements may be particularly important where an unregulated agreement has been issued to a corporate landlord who intends to let their property to domestic tenants to ensure that early repayment would not be required in such instances.

If it is decided by the Green Deal Provider and the relevant parties that there are no acceptable alternative options and the Green Deal Provider has included an early repayment term pursuant to regulation 38 of the Framework Regulations, the Green Deal Provider may choose to exercise the early repayment term and require that the Green Deal Plan is repaid in full. As mentioned above, regulation 38 specifies from whom early repayment can be required.

It is recommended that if a Green Deal Provider does exercise their ability to require early repayment under a term included in a Plan by virtue of regulation 38, they may wish to consider offering the relevant person the option to repay the outstanding credit in instalments. This may require a new credit agreement to be entered into.

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<sup>81</sup> This rule is set out in Section 5(3)(b) of the Energy Act 2011

<sup>82</sup> Paragraph 49 of Annex B of the Code of Practice

<sup>83</sup> Paragraph 49 of Annex B of the Code of Practice.

<sup>84</sup> Paragraph 81 of Annex B of the Code of Practice

<sup>85</sup> Paragraph 81 of Annex B of the Code of Practice.

## **Plans that no longer need to be regulated by the CCA**

This change is unlikely to require any action by the Green Deal Provider. In circumstances where an agreement changes from being within the scope of the CCA to being outside of scope, the agreement will continue to have regulated status whether it is varied or not. This ought not therefore to pose problems for the Green Deal Provider and is unlikely to require any action.

## 5.5 Information and Statement requirements for CCA regulated plans

Section 5.1 of this Guidance explains that some Green Deal Plans will be regulated consumer credit agreements under the CCA.

The CCA requires that certain information and statements are given to debtors under regulated consumer credit agreements during the term of the agreement either periodically or on request.

(Further details of these requirements can be found in the Office of Fair Trading’s “Post contract information requirements” guidance<sup>86</sup>. It is important to note however, that this guidance reflects the position prior to changes made to the CCA regime in 2010 to implement the Consumer Credit Directive. The Department for Business, Innovation and Skills (BIS) has issued guidance on these changes, which is available on its website.<sup>87</sup>)

In particular, section 77A requires provision of periodic statements (at least annually) and section 77 entitles the consumer to request a copy of the credit agreement at any time, which will trigger a requirement on the part of the creditor to provide the consumer with a statement of account. These provisions have been modified in the case of the Green Deal as set out below. In addition, the consumer can request a statement of account at any time under section 77B.

These requirements apply to all Green Deal Plans which are regulated consumer credit agreements, with just a few minor modifications to ensure the provisions work more smoothly in the case of the Green Deal. The following guidance sets out the CCA’s information and statement requirements that have been specifically developed for Green Deal Plans which are regulated by the CCA. Please refer to the CCA for full requirements.

### Date recorded as the “payment received” date

Green Deal Providers must use the date on which the electricity supplier receives payment from the customer as the date of payment for purposes of the credit account.<sup>88</sup> This will be important to ensure that any time lag that occurs whilst suppliers pass on the payment to Green Deal Providers will not penalise customers or imply that customers have not paid their instalments on time.

### Information to be included in Statements

The CCA requires that Green Deal Providers issue periodic statements of account<sup>89</sup> to all debtors (these are usually issued annually on the anniversary of the credit agreement) and that the Green Deal Provider issues statements of account on request and when a copy of the credit agreement is requested<sup>90</sup>. Government

<sup>86</sup> [www.offt.gov.uk/about-the-offt/legal-powers/legal/cca/](http://www.offt.gov.uk/about-the-offt/legal-powers/legal/cca/)

<sup>87</sup> [www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1053-consumer-credit-directive-guidance.pdf](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1053-consumer-credit-directive-guidance.pdf)

<sup>88</sup> Paragraph 77 of Annex B of the Code of Practice

<sup>89</sup> Section 77A of the Consumer Credit Act.

<sup>90</sup> Sections 77 and 77B of the Consumer Credit Act.

intends to make amendments to the forms of wording that should be included in the periodic statements under s77A to ensure they are relevant to the Green Deal.

Green Deal Providers may wish to consider including similar wording in statements under sections 77 or 77B. This is not, however, a requirement of the CCA or the Code of Practice.

### **Reminder of how the Green Deal is collected**

The Code of Practice<sup>91</sup> requires that the following reminder accompanies any statement under section 77 or 77A of the CCA:

*“This credit agreement is part of a Green Deal Plan. Regular instalments are therefore collected through the electricity bill for this property, marked as ‘Green Deal Charge’ on the bill. To keep this credit agreement up to date, it is important to ensure the electricity bill is paid on time and in full. You remain free to change the payment schedule of your electricity bill in line with your electricity supplier’s policies, without any penalty or extra charges. If you wish to change payment frequency, you are advised to contact your electricity supplier directly; any amendment to your electricity billing schedule will automatically be reflected in the Green Deal billing schedule.”*

The above wording may be included as part of the section 77 or 77A statement or in a separate document. In the case of the former, the wording should be no more prominent than the other information and wording that is required to be included in the statement.

Green Deal Providers may wish to consider including similar wording in or with statements under section 77B, however this is not a requirement of the CCA or the Code of Practice..

### **Change of bill payer**

Where there is a Green Deal at a property, the person who is for the time being liable to pay the electricity bill at the property will have to pay the Green Deal instalment payments<sup>92</sup>. The Energy Act 2011 provides that a Green Deal Plan cannot require a bill payer to make payments for a period when they are not the bill payer at the property<sup>93</sup>. Therefore, it is important that bill payers only receive information relating to the period for which they are liable to make instalment payments under the Green Deal Plan. In particular, bill payers cannot be held responsible for arrears built up before they became the bill-payer at a Green Deal property.

The Code of Practice<sup>94</sup> mandates that once a Green Deal Provider becomes aware that a person is no longer the bill payer at the property, they must provide that person with a statement under section 77A of the CCA. The Code requires that this

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<sup>91</sup> Paragraph 82 of Annex B of the Code of Practice

<sup>92</sup> Section 1(6) of the Energy Act 2011.

<sup>93</sup> Section 5(3) of the Energy Act 2011.

<sup>94</sup> Paragraph 88 of Annex B of the Code of Practice

requirement should be satisfied as soon as reasonable practicable after being informed that the person has ceased to be the bill payer at the property<sup>95</sup>. To align this with the CCA, Green Deal Providers should aim to ensure that these statements are provided within the timescales envisaged by section 77A of the CCA. The Code of Practice<sup>96</sup> also outlines what period this statement should cover and the information that this statement should and should not contain.

The Code of Practice<sup>97</sup> requires that once a Green Deal Provider becomes aware that a new person has become the electricity bill payer at the property, they must provide that person with a “Green Deal Opening Statement” as soon as reasonably practicable after becoming aware. The Code of Practice<sup>98</sup> sets out what information this statement should and should not contain. It is also suggested that the date this statement is sent should be taken as the new anniversary date for the purposes of the next periodic statement issued under section 77A.

### **Arrears notice**

The Energy Act 2011<sup>99</sup> exempts Green Deal Providers from the requirement to issue an arrears notice to customers under section 86B of the CCA .

Under the Green Deal, payments will be collected by electricity suppliers alongside the collection of payments for electricity consumption. The responsibility for issuing an arrears notice to Green Deal customers will therefore fall to the customer’s electricity supplier. This requirement is set out in Electricity Supply Licence Standard Condition 37.9.

If the supplier fails to issue an arrears notice in accordance with Standard Condition 37.9, Clause 11.7 of the Green Deal Arrangements Agreement requires that the Green Deal Provider must directly reimburse the bill payer any interest or other fees that have been collected during the period of non compliance and that the Green Deal Provider may reclaim this money from the Supplier.

### **Additional information**

The Green Deal Code of Practice contains various provisions which require Green Deal Providers to give information to relevant parties. It will be important that Green Deal Providers familiarise themselves with these requirements.

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<sup>95</sup> Paragraph 88 of Annex B of the Code of Practice

<sup>96</sup> Paragraph 88 of Annex B of the Code of Practice

<sup>97</sup> Paragraph 89 of Annex B of the Code of Practice

<sup>98</sup> Paragraph 89 of Annex B of the Code of Practice

<sup>99</sup> Section 28 of the Energy Act 2011

## 5.6 Protections for Green Deals Plans which are not regulated by the CCA

The Code of Practice sets out which mandatory protections Green Deal Providers must provide to customers where a Green Deal Plan is not regulated by the CCA.

The Green Deal Provider must, as a minimum, do the following

- Before entering into a Green Deal plan, inform the Improver and other relevant parties whether or not the terms of the plan will permit the bill payer to make a voluntary early repayment of the whole and/or part of the credit and, where early repayment is permitted, any fees or compensation that may be payable in connection with an early repayment. It will be for the parties to agree when terms and conditions are being negotiated whether the Plan should include a right to repay early<sup>100</sup>.
- Issue the bill payer with a statement of account on request and a statement of account at least once a year. The Code of Practice, outlines what information these statements should contain at a minimum and what time periods they should cover<sup>101</sup>.

In addition to the requirements of the Code of Practice, the Green Deal Provider may wish to consider whether the following protections should be offered to customers whose Plan will not be regulated by the CCA, particularly where the customer is a small business.

### Providing customers with additional information and explanations before entering into a Green Deal Plan.

This could include for example, providing the Improver, bill payer and other relevant parties<sup>102</sup> with additional information and adequate explanations about:

- the key features of the Green Deal Plan
- the total charge for credit - Information about the total costs associated with the Green Deal Plan. Green Deal Providers may wish to consider having regard to the CCA rules regarding the total charge for credit, as this may provide a useful framework.
- Any other important legal aspects such as whether or not the customer will have the right to withdrawal.

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<sup>100</sup> Paragraph 50 of Annex B to the Code of Practice

<sup>101</sup> Paragraph 83-87 of Annex B to the Code of Practice

<sup>102</sup> Such as those giving a confirmation under regulation 36 of the Framework regulations

The Pre-contract Credit Information form as annexed to the Consumer Credit (Disclosure of Information) Regulations 2010, which contains some useful examples of additional information which Green Deal Providers could consider offering to customers whose Green Deal Plans will not be regulated by the CCA.

It is recommended that information issued to customers before a Green Deal Plan is entered into should be in a clear and legible form and should be provided in good time before the Green Deal Plan is signed. This will help the customer to assess whether the agreement is suited to their needs and financial situation.

### **Assessment of Creditworthiness**

Green Deal Providers may wish to consider whether it is necessary to assess the bill payer's creditworthiness before entering into the Green Deal plan and what form such an assessment should take.

### **Right of withdrawal**

Green Deal Providers should consider providing their customers with a cooling-off period during which they will have the right to withdraw from the Green Deal plan should they change their mind.

### **Statements**

- For incoming or outgoing bill payers

Green Deal Providers may wish to consider whether it would be appropriate to extend paragraphs 88 and 89 of Annex B to the Code of Practice to customers whose Green Deal Plans will not be regulated by the CCA.

- Early Repayment Settlement statements

Where the terms of the plan will permit the bill payer to make a voluntary early repayment of credit in whole or in part, and permits the Green Deal Provider to claim compensation where an early repayment is made, the Green Deal Provider may wish to consider issuing a settlement statement to the customer. If issued, this statement could include; an explanation of how much compensation has been claimed and how the compensation has been calculated.

- Green Deal Providers may wish to consider notifying customers when the Green Deal Plan has come to an end.

## **Offering CCA protections to unregulated Green Deal Plans**

In addition to considering the individual protections outlined above, Green Deal Providers may wish to consider whether it would be appropriate to replicate the protections provided by the CCA and to issue a Green Deal Plan that will be treated as if it were a regulated consumer credit agreement. If such a plan is issued to a customer that is not regulated by the CCA, it would operate on a contractual basis.

## 6 Disclosure and Acknowledgment

One of the key premises of the Green Deal is that those benefitting from the installation of Green Deal improvements should be the ones paying the instalments.

When a property owner or other person with an interest in a property sells or rents out a property with a Green Deal Plan, they need to tell potential buyers and tenants about the Green Deal Plan, as those people could, potentially, be the next electricity bill payer. The seller or landlord must also ensure that the buyer or new tenant acknowledges in writing that they are aware that there is a Green Deal Plan at the property and the fact that they will have to make instalment payments<sup>103</sup>. If these obligations are not complied with, the buyer or tenant may be able to challenge their liability to make the instalment payments. A successful challenge could lead to the bill payer's liability to make payments under a Plan being cancelled.

Disclosure and acknowledgment is also required in circumstances other than when a property is sold or rented out, where the bill payer at a property is likely to change. For example, disclosure and acknowledgment is required where ownership of a property with a Green Deal Plan is being transferred, such as when a property is being gifted to, or inherited by, another person, and also where a person is formally agreeing to become the bill payer at a property.<sup>104</sup>

Paragraph 91 of Annex B to the Code of Practice requires Green Deal Providers to support their customers and other relevant parties by ensuring they are aware of the disclosure and acknowledgment obligations and the potential consequences of breaching them.

Given the importance of disclosure and acknowledgment, it is in the interests of Green Deal Providers to take reasonable steps to ensure that their customers (and others who may have a disclosure and acknowledgment obligation) understand how they can meet these obligations. This includes new customers taking on the property. Green Deal Providers will be notified by energy companies when a new bill payer sets up an electricity account for the property and this presents an opportunity for Green Deal Providers to make contact with their new customers and to provide them with relevant information about the disclosure and acknowledgment obligations.

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<sup>103</sup> The disclosure and acknowledgment obligations that apply in cases where a property with a Green Deal is being sold or let out are set out in sections 12 and 14 of the Energy Act 2011, the Green Deal (Disclosure) Regulations 2012, the Green Deal (Acknowledgment) Regulations 2012 and the Green Deal (Acknowledgment) (Scotland) Regulations 2012.

<sup>104</sup> These obligations are set out in regulations 43 – 50 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012.

## 6.1 Disclosure

### Whose responsibility is it to disclose the existence of a Green Deal?

It is the responsibility of the property owner, selling or renting the property (or another person with an interest in the property selling or renting it) to disclose information about the Green Deal. In most cases, this will be the current property owner, whether an owner occupier (freeholder or leaseholder), or a landlord, or a mortgagee in possession. The Act provides that this responsibility may be discharged by an agent and it is envisaged that in most cases where the seller or landlord has instructed an agent, the agent will be asked to fulfil this obligation on the seller's or landlord's behalf. In circumstances other than sales or lettings where a disclosure is required, circumstances will dictate who needs to comply with the disclosure obligations. For example, where ownership of a property is being transferred, such as when a property is being gifted to another person, or when a property is being inherited, it is likely that the person transferring ownership of the property will have to comply with the disclosure obligation.

### How is disclosure achieved?

The Green Deal Framework Regulations require disclosure to be achieved using the Energy Performance Certificate in England and Wales and the Energy Performance Certificate and Recommendations Report in Scotland. The Green Deal Plan information that is required to be disclosed will be on the 5th page of the Energy Performance Certificate in England and Wales and in the Recommendations Report that comes with an Energy Performance Certificate in Scotland.

An Energy Performance Certificate/Recommendations Report for the property will have been produced as part of the Green Deal Assessment and information about the Green Deal Plan at the property will have been added to the Energy Performance Certificate/Recommendations report at the point the Plan was confirmed. The Energy Performance Certificate regime in England and Wales and in Scotland will be modified to require Energy Performance Certificates/Recommendations Reports to include information about the Green Deal Plan. Section 1 of this guidance contains further details about the assessment process and section 2.7 contains further details about the confirmation process.

Provision of the Energy Performance Certificate to potential buyers or tenants is already a regulatory requirement in the home buying and selling process<sup>105</sup>.

In the case of sales and lettings, where the seller or landlord has instructed an agent, they will be able to provide their agent with the Energy Performance Certificate Report Reference Number (RRN) and the agent will then be able to access the up to

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<sup>105</sup> In England and Wales, the Department for Communities and Local Government are amending the Energy Performance of Buildings Regulations to be clearer about when an Energy Performance Certificate is required on marketing a property.

date Energy Performance Certificate/Recommendations Report for the property from the appropriate Energy Performance Certificate Register.

### **Role of the Green Deal Provider in disclosure**

Green Deal Providers play an essential role in disclosure by ensuring up to date and accurate Green Deal Plan information is included in the Energy Performance Certificate/Recommendations Report for the property. They do this by adding information to the Energy Performance Certificate/ Recommendations Report as part of the confirmation process and ensuring they update the Energy Performance Certificate Register when certain key events occur during the lifetime of the Plan. The requirement to update the Energy Performance Certificate Register will be set out in the Framework Regulations.

Green Deal Providers are also required under paragraph 92 of Annex B to the Code of Practice to provide details about the Green Deal Plan (including a copy of the Green deal Plan or a summary of its key terms and conditions) and associated guarantees to the bill payer at the property or to anyone who is required to comply with the disclosure obligations.

### **When should disclosure occur?**

The Green Deal (Disclosure) Regulations 2012 (“Disclosure Regulations”) set out when the Energy Performance Certificate/Recommendations Report must be provided to prospective buyers and tenants. In most cases, the time for disclosure will be when a prospective buyer or tenant views the property. The Disclosure Regulations do, however, impose slightly different requirements in some cases, for example where a prospective buyer or tenant does not view the property or where a property is being sold by auction.

The timing of the disclosure requirements in the case of a sale or rental have been designed to complement the requirements of the Energy Performance Certificate Regulations.

In the other situations where disclosure is required, the timing of disclosure depends on the circumstances. In most cases, however, the disclosure obligation will need to be satisfied no later than seven days before the relevant transaction or arrangement is entered into. Further details can be found in regulations 43 to 50 of the Framework Regulations.

Green Deal Providers may wish to develop their own supporting materials for their customers and others with an obligation to disclose. Green Deal Providers would need to ensure that these materials met the requirements of the Disclosure Regulations and are consistent with the Energy Performance of Buildings Regulations.

## 6.2 Acknowledgment

Where a property is being sold or let out under a written tenancy, the seller or landlord will need to ensure that the sale contract or tenancy agreement contains the prescribed form of acknowledgment<sup>106</sup>. Both sets of regulations contain two forms of acknowledgment – one to be used where the Plan contains an early repayment term pursuant to regulation 38 of the Framework Regulations and one where the plan does not. There are different arrangements for the other circumstances in which an acknowledgment is required. For example, in the case of an oral tenancy, the acknowledgment can be given in a standalone document such as a letter. The prescribed form of acknowledgment must however still be used. In all cases, the person who is required to meet the disclosure obligation will be the person who must also comply with the acknowledgment obligation.

Green Deal Providers may wish to develop their own supporting materials for their customers and others with an obligation to secure an acknowledgment. Green Deal Providers would need to ensure that these materials met the requirements of, as appropriate, the Green Deal (Acknowledgment) Regulations 2012 and the Green Deal (Acknowledgment) (Scotland) Regulations 2012.

DECC intends to produce guidance for those with disclosure and acknowledgment obligations (and the people advising them), before the end of 2012.

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<sup>106</sup> The Green Deal (Acknowledgment) Regulations 2012 prescribe the form of acknowledgment to be used in England and Wales and the Green Deal (Acknowledgment) (Scotland) Regulations 2012 prescribe the form of acknowledgment to be used in Scotland

## 6.3 Transfer of property

The Energy Act 2011 provides that, when the electricity bill payer at a property changes, the liability to make instalment payments due under a Green Deal Plan and the obligation to comply with the terms of that Green Deal Plan pass to the new bill-payer<sup>107</sup>.

The Framework Regulations provide that, in any period where there is no supply of electricity to a property (e.g. if the property is vacant), the owner of the property is to be treated as the bill payer<sup>108</sup>. Green Deal instalments are therefore collected from the property owner by the electricity supplier in any period where there is no supply of electricity to the property.

The Green Deal Arrangements Agreement therefore requires Green Deal Providers, on becoming aware of a change in ownership of a property, to submit details of the new property owner to the Green Deal Central Charge Database<sup>109</sup>. It is recommended that Green Deal Providers do this as soon as they are made aware of the change as this will mean that the details are available to the electricity supplier, and will therefore enable the supplier to carry on collecting Green Deal instalments in periods of vacancy.

The Green Deal Arrangements Agreement also requires Green Deal Providers to send the new owner of the property<sup>110</sup>:-

- a Fair Processing Notice which complies with clause 23.2.1 of the Green Deal Arrangements Agreement;
- the Green Deal Plan ID; and
- details of where the new owner can find impartial advice and information about the Plan.

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<sup>107</sup> Section 1(6) of the Energy Act 2011.

<sup>108</sup> See regulation 6 of the Framework Regulations. The owner is the freeholder, unless the property has been let under a registrable lease.

<sup>109</sup> See clause 16.2.1 of the Green Deal Arrangements Agreement.

<sup>110</sup> See clause 16.2.1 of the Green Deal Arrangements Agreement.

## 7 Disputes and Complaints

### 7.1 General Complaints

All Green Deal Providers must have a complaints handling procedure that complies with the relevant provisions in the Code of Practice. Green Deal Providers are responsible for handling all customer complaints from the point that a Green Deal Plan or energy plan is entered into. Where a complaint concerns a Green Deal Assessment or Green Deal Assessor and arises prior to a Green Deal Plan or energy plan being created the complaint should be directed to and handled by the relevant Green Deal Assessor. The complaints procedures in the Framework Regulations and the Code of Practice apply both in respect of domestic and non-domestic Green Deals.

#### Eligible complaints

To be "eligible complaints"<sup>111</sup> complaints must be made:

- by a person who is eligible to complain;
- in respect of certain specified actions<sup>112</sup>;
- orally or in writing;
- within the timescales set out in the Code of Practice.

Green Deal Providers must accept complaints made orally or in writing. Complaints may be made by phone, email or by any other means of communication. If complaints are made to employees or subcontractors of the Green Deal Provider, the complainants should be directed to the Green Deal Provider's complaints procedure to allow the complaint to be properly handled.

If complaints are unresolved by the Green Deal Provider, then the customer may take their complaint to the relevant Ombudsman. In some circumstances, the Ombudsman may not be able to resolve the complaint to the satisfaction of the customer. The Ombudsman will refer these complaints to the Secretary of State. Situations where referrals may be made include those where the Ombudsman decides that the most appropriate redress decision can only be made by the Secretary of State.

Where the Ombudsman makes a redress decision the Secretary of State will not be able to reconsider the Ombudsman's decision for the customer, except where the customer is not satisfied with the Ombudsman's decision and the Ombudsman, with the agreement of the customer, may refer the complaint to the Secretary of State. The Secretary of State will then be able to consider the complaint.

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<sup>111</sup> See Regulations 55-58 of the Framework Regulations

<sup>112</sup> See Regulations 55-58 of the Framework Regulations

## Who is an eligible complainant?

Green Deal Providers must accept complaints from a person entitled to make a complaint in accordance with the Framework Regulations and the Code of Practice<sup>113</sup>. In most cases, the person eligible to make a complaint will be the improver or the bill payer.

The exception is where a breach of the consent provision is concerned<sup>114</sup>. In that case, any person whose permission or consent was necessary for the installation of the improvement at the property may make a complaint.

This could include:

- the freeholder of the green deal property;
- the landlord (who is not the freeholder).

In the case of a breach of the consent provision, the Framework Regulations provide that the person must be one whose permission or consent would have been required had it been sought at the time the complaint is made.

Complaints from potential customers must be accepted by Green Deal Providers where they are responsible for a breach of relevant requirements relating to conduct with customers that takes place before a Green Deal Plan is entered into<sup>115</sup>.

Green Deal Providers will be expected to accept complaints made by persons on behalf of eligible persons<sup>116</sup>. For example, where there is a reason the person eligible to make the complaint cannot make the complaint, or finds it difficult to do so themselves, the complaint may be made by a person acting on their behalf. Where possible, evidence of a person's authority to make a complaint on behalf of another should be provided. This could include persons in the house such as a spouse if they have evidence of agency. Evidence of agency could be provided orally or in writing.

## Periods in which complaints can be made

Complaints concerning a breach of the relevant requirements can usually be made within six years from the date of the breach. Details of all time provisions in which complaints can be made are set out in paragraphs 4.10-4.14 of the Code of Practice.

## What should a Green Deal Provider do with a complaint?

When a Green Deal Provider receives a complaint, they must acknowledge receipt of it in writing within seven working days of receipt of the complaint. When acknowledging receipt of the complaint, the Green Deal Providers must make the complainant aware of its complaints handling procedure. This complaints handling procedure must comply with the Code of Practice. Green Deal Providers are recommended to provide customers with a copy of this, either electronically or by

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<sup>113</sup> See regulations 55-58 of the Framework Regulations

<sup>114</sup> See regulation 55 of the Framework Regulations

<sup>115</sup> See regulation 57 of the Framework Regulations

<sup>116</sup> See paragraph 4.2.1.13 of the Code of Practice

post. The provider must also make the complainant aware of any additional complaints handling procedures it offers. For example, Green Deal Providers should provide complainants with access to mediation services to assist them with resolving complaints, where they provide such services.

When acknowledging receipt, the Green Deal Provider must also make the complainant aware of the recourse available to the various ombudsman services - more information on these can be found in section 7.6 of this guidance. Green Deal Providers should make the complainant aware of the role of the Green Deal Ombudsman and Investigation Service which would be relevant to their complaint. In addition, they should make them aware of the eight week time period before access to the Green Deal Ombudsman and Investigation Service is granted and that this can be waived if a final notice is issued by the Green Deal Provider to the customer.

A final notice, or deadlock letter should relay the final position of the Green Deal Provider and should be issued when the Green Deal Provider cannot take any further steps to resolve the complaint<sup>117</sup>. It may reject the complaint, accept the complaint and offer redress, or offer redress without accepting the complaint. This notice or letter may be sent before the eight week period has passed. It should make clear that if the final position is not accepted by the complainant, the matter can be referred to the Green Deal Ombudsman and Investigation Service. The letter should tell the complainant how to do this.

Green Deal Providers should make the complainant aware of the role of the Green Deal Ombudsman and Investigation Service and how to complain to them.

When acknowledging the complaint or otherwise communicating with the complainant in connection with the complaint, Green Deal Providers should take into consideration any additional needs or special access requirements which the complainant may have, such as for vulnerable consumers.

### **How should you record your complaint?**

Green Deal Providers must report all their complaints about their Green Deal business (whether or not they are upheld) to the Oversight and Registration Body in line with the Framework Regulations and the Code of Practice. The Oversight and Registration Body will provide the reporting template which sets out in detail the information required.

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<sup>117</sup> See Paragraph 4.21 of the Code of Practice

## 7.2 Disclosure and Acknowledgement Complaints

Where disclosure and/or acknowledgement is disputed, the new bill payer may make a complaint to seek redress by contacting the Green Deal Provider, within 90 days after receiving their first notice from their electricity supplier informing them that the property is a Green Deal property. Electricity suppliers will inform new customers about the Green Deal on the property when they set up new account arrangements on moving in. So in the event that disclosure or acknowledgement has not taken place, the customer should find out about the Green Deal soon after moving in.

If the new bill payer disputes disclosure and/or acknowledgment after this 90-day period, under the Framework Regulations they would have no claim and would continue to be liable to pay the Green Deal charge as part of the electricity bill.

Customers must make a complaint to their Green Deal Provider in order to seek redress when they consider they have not had the Green Deal disclosed to them and/or have not acknowledged the relevant obligations. Customers may contact a number of organisations in the first instance, including the Energy Saving Advice Service, their energy supplier or consumer rights groups. These organisations should direct the customer on to their Green Deal Provider.

If it appears that the disclosure and acknowledgement requirements may not have been complied with, the Green Deal Provider should, following their own basic enquiry, direct the customer to the Green Deal Ombudsman and Investigation Service appointed by the Secretary of State, as Green Deal Providers are not in a position to resolve the dispute. The charge will still be collected while the dispute is under investigation.

The Green Deal Ombudsman and Investigation Service is referred to in the Framework Regulations, as the “Green Deal Ombudsman Scheme”. It has two functions.

**Green Deal Ombudsman** – This function provides the appropriate redress for the customer and resolve the disputes between the Green Deal Provider and the customer.

**Investigation Service** – In some circumstances the redress and sanction powers are only available to the Secretary of State. The investigation service function will investigate complaints about disclosure and acknowledgement and provide those investigation reports to the Secretary of State, to make a decision on the appropriate redress or sanction. In addition to this, the Secretary of State will be able to commission other investigations to enable him to take the appropriate decision.

The Green Deal Ombudsman and Investigation Service will investigate the complaint, report the facts and recommend appropriate sanctions to the Secretary of State, who will then decide whether the requirements of the disclosure and acknowledgement regulations were met by the previous owner or landlord. If the Secretary of State determines through the Green Deal Ombudsman and Investigation Service investigation that the bill payer received the disclosure document or there was no breach of the obligation to secure acknowledgment, then the Green Deal remains in place and the bill payer must continue to pay the instalments through the electricity bill as usual.

If the Secretary of State determines through the Green Deal Ombudsman and Investigation Service that the disclosure document was not received, or that someone did breach their obligation to secure acknowledgment, then the Green Deal Plan could be cancelled. Should this happen, the Secretary of State will also make an order requiring the party in breach to pay compensation to the Green Deal Provider equal to the outstanding amount under the Green Deal at the time of the breach, plus any early repayment charges that may apply.

### **Evidence Required**

The Code of Practice states that a Green Deal Provider may require a complaint concerning a breach of the disclosure and acknowledgement provisions to be supported by “relevant evidence”<sup>118</sup>.

In other cases appropriate evidence ought to be provided. For complaints regarding a breach of the consent provision, this may include evidence from the complainant that they have tried and subsequently failed to gain retrospective consent, since this is a precondition (under the Code) of making such a complaint. This might be done by, for example, providing a copy of a refusal letter from the relevant consent party.

Where retrospective consent cannot be obtained and removal of the measure is required, Green Deal Providers may require evidence for this.

### **What should a Green Deal Provider do with a Disclosure and Acknowledgement Complaint?**

The Green Deal Provider must acknowledge receipt of the complaint within seven days. Green Deal Providers should make customers aware of the role of the Green Deal Ombudsman and Investigation Service and how to complain to them.

A final notice, or deadlock letter should relay the final position of the Green Deal Provider. Although the Green Deal Provider cannot provide redress for Disclosure

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<sup>118</sup> See Paragraph 4.16 of the Code of Practice

and Acknowledgement complaints, the letter can ensure that the Green Deal Provider is aware that a Disclosure and Acknowledgement complaint has been made and when it was made. This may speed up enquiries made by the Green Deal Ombudsman and Investigation Service, before they decide whether the complaint is valid or not. The letter should tell the complainant how to complain to the Green Deal Ombudsman and Investigation Service.

Customers may contact a number of organisations in the first instance, including the Energy Saving Advice Service, their energy supplier or customer rights groups. These organisations should direct the customer on to their Green Deal Provider.

## 7.3 Complaints regarding Consents

### Consents to the improvement

Where it emerges that consent to an improvement was not obtained from one or more of the persons from whom consent is required, the bill payer is required to seek retrospective consent before making the complaint to the Green Deal Provider. Where retrospective consent cannot be obtained and removal of the measure is requested, the bill payer will be expected to inform the Green Deal Provider that:

- retrospective consent cannot be secured, and
- that the measure is to be removed.

Where a complaint is made by a person other than the bill payer, the Green Deal Provider should:

- inform the current bill payer of the complaint, and
- urge them to seek retrospective consent.

Green Deal Providers ought to satisfy themselves that they hold no relevant consent documentation (annexed to the Green Deal Plan) to demonstrate that their customer originally met their obligation to gain consent to the disputed measure<sup>119</sup>.

The above process is separate from the Green Deal Provider's obligation to ensure that the improver has obtained and provided confirmation that the relevant people (typically the bill payer and the owner of the property) have consented to the Green Deal Charge<sup>120</sup>. Where an Improver has failed to obtain and provide the necessary confirmations regarding consent to the charge at the time that a Green Deal Plan is being taken out (most likely where the Improver and bill payer are different people) then a compulsory pre-condition to a Green Deal Plan will not have been satisfied and the plan will not be a Green Deal Plan. This will amount to a breach of the relevant requirements in respect of which an eligible complaint may be made. In these cases liability to make payments will not be binding on future bill payers or on the current bill payer. Under these circumstances the Green Deal Provider will be able to seek compensation from the relevant person from the relevant person" (for further information see chapter 9.13).

### Tracing an Improver/original customer

When the Secretary of State has required the Green Deal Provider to cancel a Green Deal Plan because of a failure to gain consent by the Improver, or due to a breach of the disclosure and acknowledgement provisions by a former Green Deal Plan customer, the Green Deal Provider may trace their former customer and require compensation on the basis of a notice requiring compensation issued by the Secretary of State.

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<sup>119</sup> For example, where a complaint is raised by a landlord, the provider should check the relevant documentation to ensure that they do not hold a copy of a consent confirmation notice previously obtained from the landlord.

<sup>120</sup> See regulations 26(1)(b) and 36(3) of the Framework Regulations

It is the responsibility of the Green Deal Provider, not the energy supplier, nor any other relevant body linked to the Green Deal, to trace the person in breach in order to seek compensation. The Green Deal Provider may choose to sell the compensation debt to collection agencies in the same way as any other form of debt.

Once a Green Deal Provider has traced the person in breach of the consent or disclosure and acknowledgement requirement, they should:

- notify the person in breach, and use the notice from the Secretary of State (as above) as the basis to demand compensation for cancellation of the Green Deal Plan,
- inform the Secretary of State that they have traced the person in breach,
- then notify the current bill payer, energy company and update appropriate databases.

## **7.4 Complaints about Changes to CCA Regulated Plans**

If a Green Deal Plan is not regulated by the CCA when it is entered into and the identity of the bill payer or purpose for which the credit is being used subsequently change in such a way that the plan ought to be regulated, the Green Deal Provider must not allow the Plan to remain unregulated, as per Annex B, Paragraph 79 of the Code of Practice. A failure to comply with this Code of Practice obligation could result in an eligible complaint under Regulation 58 of the Framework Regulations and ultimately the Secretary of State could require that the Green Deal Provider cancel the Plan. These complaints can be made at any point when there is an outstanding balance on the Green Deal Plan.

## 7.5 Complaints regarding Green Deal Assessors or Green Deal Installers

Where a complaint is made about a Green Deal Assessor or a Green Deal Installer, it is the responsibility of the Green Deal Provider to handle this (except in the case of a Green Deal Assessor where no Green Deal Plan or energy plan has been entered into – in such cases the complaint should be directed to the relevant Green Deal Assessor). The Green Deal Provider should obtain all the relevant information from the party concerned and should protect this information as necessary.

The Green Deal Provider must notify the Green Deal Installer or Green Deal Assessor's authorised certification body about the complaint. Best practice would be to do this during the eight week period within which complaints are required to be handled by the Green Deal Provider to allow the complaint to be dealt with in a timely manner by all parties concerned.

At this point, Green Deal Providers must also notify the complainant of the complaints procedures provided by the Green Deal Assessor and Green Deal Installer Certification Bodies. The Green Deal Certification Body Register can be found here:

<http://www.greendealorb.co.uk/certification-bodies/certification-body-search>

## 7.6 Dealing With a Complaint – Ombudsman facilities

If a complaint is dealt with by a Green Deal Provider to the complainant's satisfaction, the complaint is deemed to be resolved for the purposes of reporting complaints to the Secretary of State. Green Deal Providers may assume that the complainant is satisfied with the decision if there is no further contact after four weeks or if the complainant gets in touch with the Green Deal Provider to say they are satisfied with the outcome. If complainants are unsatisfied with the decision the Green Deal Provider has taken, the Green Deal Provider must assist them with taking their complaint to the relevant Ombudsman service. This could be done through an internal referral system.

Disputes relating to disclosure and acknowledgement cannot be resolved by the Green Deal Provider. If the Green Deal Provider agrees that a disclosure and acknowledgement breach has taken place or if disclosure and acknowledgement is disputed, then the Green Deal Ombudsman and Investigation Service will investigate the complaint and refer the matter to the Secretary of State for a decision.

The roles of the relevant Ombudsman Services are as follows.

**Financial Ombudsman Service** – The Financial Ombudsman Service will deal with complaints regarding the provision of the credit. They will not look at complaints about the goods unless the Green Deal was paid for partly with Green Deal finance and partly with a credit card. This is because they will only deal with complaints where there is connected lender liability under s.75 of the CCA.

<http://www.financial-ombudsman.org.uk>

**Energy Ombudsman Service** – The Energy Ombudsman Service will deal with complaints about the billing and payment collection. This would mainly concern complaints where the energy supplier is at fault.

<http://www.ombudsman-services.org/energy.html>

**Green Deal Ombudsman and Investigation Service** – Section 7.2 describes the two separate functions of the service. The Green Deal Ombudsman will deal with all complaints that fall outside the remit of the other Ombudsman services including complaints about consents, warranties and measures.

All Ombudsman services operate a no wrong door policy regarding Green Deal complaints so will direct the complaint to the correct Ombudsman Service if the complaint is incorrectly allocated.

<http://www.ombudsman-services.org/green-deal.html>

The Green Deal Provider must also use reasonable endeavours to ensure that Green Deal Assessors and Green Deal Installers comply with the Ombudsman Service's investigation. This could be done by including provisions in the commercial contracts that exist between the businesses.

Once a complaint has been seen and resolved by the Ombudsman service, the decision is binding if accepted by the complainant. For the purposes of a Green Deal Provider's obligation to report complaints, at this stage, it is seen to be resolved.

## 8 Monitoring of Green Deal Providers

The Oversight Registration Body will monitor Green Deal Providers' compliance with their obligations through three audit and inspection methods:

- Reporting Requirements
- Compliance Check Visits
- Mystery shopping

Monitoring by Oversight and Registration Body will be focussed on the Green Deal Providers who are authorised by the Oversight and Registration Body. Green Deal Certification Bodies will separately be monitoring the actions of those persons they certify as either Green Deal Assessors or Green Deal Installers.

The Oversight and Registration Body will undertake compliance checks to monitor Green Deal Provider compliance with the Framework Regulations and the Code of Practice. This refers to their compliance with all of the Green Deal Provider's obligations under the Green Deal, not only those which have been complained about. In addition the Oversight and Registration Body may initiate a compliance check of the Green Deal Provider where, on the basis of complaints or other information available to it, it believes there is evidence that a requirement is not being met. Matters could be referred to relevant regulators for action.

## 8.1 Reporting Requirements

Reporting will be one of the main mechanisms for monitoring compliance with Green Deal Provider obligations. Reports by the Green Deal Provider should give an overview of performance and in particular of the Green Deal Provider's handling of complaints. These reports will enable the Oversight and Registration Body to implement its ongoing oversight of the scheme and may lead to a more in depth review of Green Deal Provider performance.

Green Deal Providers will be required to prepare reports for the Secretary of State (acting through the Oversight and Registration Body) including information such as the number of Green Deal Plans entered into. The Oversight and Registration Body will assess reports on behalf of the Secretary of State who will consider whether action, including further monitoring or assessment, is necessary. Green Deal Providers must ensure they are meeting current Oversight and Registration Body requirements with regards to reporting requirements.

## 8.2 Compliance Check Visits

The Oversight and Registration Body will:

- establish a schedule of inspection visits;
- maintain a register of visits; and
- maintain information held in connection with the relevant Green Deal Provider

The compliance check visit will be undertaken by a reviewer appointed by and reporting to the Oversight and Registration Body.

The compliance check visit process is set out below.

### Notification and Request for information

Before undertaking a compliance check visit the Oversight and Registration Body will request information and receive information from the Green Deal Provider and agree a visit date with the Green Deal Provider as follows:

- The Oversight and Registration Body will notify the Green Deal provider in writing of the check. In its notification letter it will request the Green Deal provider to submit information and documentation ahead of the visit.
- The Oversight and Registration Body will agree a visit date with the Green Deal Provider, giving at least 20 working days notice, and the visit will be confirmed in writing.
- Green Deal Providers will then submit the information and documentation requested in the form of a compliance dossier. They should reply within 20 working days.

### What should the compliance dossier contain?

The compliance dossier will include information and documents relating to compliance with requirements under the Code of Practice and relevant requirements under the Framework Regulations. Typically this will include marketing materials, training records, templates, insurance documents, examples of actual Green Deal Plans and associated Green Deal Advice Reports, sub-contracting arrangements, complaints log, along with the Green Deal Provider's annual report to Oversight and Registration Body if available, organization chart, business model description, data protection provisions and any relevant policies and procedures.

### Desk Review and requests for further information

After submission by the Green Deal Provider, the reviewer will undertake a desk review of the compliance dossier and any websites related to their Green Deal activity. It will seek clarification or additional information as appropriate, which will be required and reviewed as part of the desk review.

## Key elements of the Compliance Check Visit

The reviewer will undertake a visit to the Green Deal Provider and working to a standardised questionnaire, the associate will:

- interview key staff (semi-structured interview);
- inspect/observe premises and procedures in action;
- review randomly-selected Green Deal quotes, Green Deal Plans, and complaints.

## Assessment and Reporting of Compliance Check Visit Outcomes

Companies will be 'scored' on each item as fully compliant , partially compliant, improvement required or non-compliant, action required.

A draft compliance report will be produced by the reviewer within 10 working days of the visit. The draft will be sent to the Green Deal Provider for comment on the accuracy and detail contained in the report. Green Deal Providers will be given a deadline of 10 working days from receipt of the report. This could be done through a meeting to discuss the outputs of the report.

## Steps for Finalising and Submitting the Compliance Report

- The reviewer will review Green Deal Provider comments for factual accuracy, ensure the evidence obtained supports the conclusions reached and amend the compliance report as necessary .
- The reviewer will send the finalised compliance report to Oversight and Registration Body.
- The compliance report should be submitted to Oversight and Registration Body within 30 working days of the visit.

## Review of the Compliance Report

Following submission of the compliance report the Oversight and Registration Body will review the compliance report:

- Oversight and Registration Body will liaise further with Green Deal Provider and the reviewer if necessary during this stage. The Oversight and Registration Body may also liaise with Green Deal Ombudsman and Regulators on the areas of concern.
- Normally this process should take no more than 10 working days.

Where the Oversight and Registration Body is satisfied the Green Deal Provider is compliant with the Code of Practice and Framework Regulations, this process will be complete at this stage. Where issues of non-compliance remain, a compliance notification letter will be sent. The subsequent process are outlined in the next section.

## 8.3 Issuance of Compliance Notification Letters

The Oversight and Registration Body will then issue a compliance notification letter to the Green Deal Provider, attaching the compliance report. The notification letter will set out findings and any required action. The notification letter should be issued within 15 working days from receipt of finalised compliance report by the Oversight and Registration Body.

### Action pursuant to a Compliance Notification Letter

Green Deal Providers will have 20 working days to address issues for which they have been scored as partially compliant or non-compliant to try and resolve the problems. If the Green Deal Provider has not responded within 20 working days, they will be chased at least once; the chasing communication will require the company to explain why and offer the possibility of an extension. An extension, usually of no more than 10 working days, may be granted at Oversight and Registration Body's discretion.

### Assessment of Actions following a Compliance Notification Letter

There are two possible situations

- Where no response has been received within original or extended deadline, Oversight and Registration Body will report the company to the Secretary of State for consideration of further sanctions.
- Where a response is received, the reviewer will review and assess if IRs and NCs have been adequately addressed. The reviewer will provide a report on his assessment within 10 working days of receipt of response review request from Oversight and Registration Body

The Oversight and Registration Body will assess whether provider is now fully compliant or if further action or procedures are required.

### Compliance Status

The Oversight and Registration Body will then notify the Green Deal Provider of final outcome of the compliance check in a 'compliance status' letter, attaching the report of the reviewer. The recommendation from the Oversight and Registration Body would contain the information on full compliance, partial compliance or continuing non-compliance. This will assist the Secretary of State in the application of sanctions.

### General and Reporting

An annual report summarising compliance activity will be provided by Oversight and Registration Body to Secretary of State.

## 8.4 Mystery Shopping

The Oversight and Registration Body will also undertake random checks on providers in the form of mystery shopping to test whether the provider is complying with requirements.

Mystery shopping is an assessment of Green Deal Provider performance based on the assessment of persons posing as recipient of Green Deal Provider services.

The Oversight and Registration Body will plan mystery shopping activities on the basis of Green Deal Provider Green Deal Plans and other information received in the course of its oversight of Green Deal Providers. It is intended that over time all aspects of the Green Deal 'experience' will be mystery shopped, some in conjunction with the Certification Bodies, some on Oversight and Registration Body's own initiative. The Oversight and Registration hopes to work closely with the certification bodies in their monitoring of the installers and assessors they authorise. The Oversight and Registration Body will follow MRS guidelines on mystery shopping.

<http://www.mrs.org.uk/pdf/2011-10-11%20Mystery%20shopping%20guidelines.pdf>

Mystery shopping may include the following activities :

- a) Undertaking assessor training, focusing particularly on whether the provisions of the Code of Practice are adequately covered
- b) Booking of appointments to have an assessment done.
- c) Placing of a 'no cold-calling' notice and be signed up with the Telephone Preference Service, to test this aspect of the code.
- d) Organising a visit by a Green Deal Provider. In practice, this could mean going through the marketing and sales process and in some cases further along to the quotes stage.

Mystery shopping activities will be recorded, in line with Market Research Society Guidelines and the person being recorded will not be identified and none of his/her personal data will be used.

Shoppers will report in writing to Oversight and Registration Body on the visit process following a checklist to be produced, the content of which will be derived from the code. Shoppers will provide the Oversight and Registration Body with the Green Deal Advice Reports resulting from their visit.

Independent inspectors will be appointed, in conjunction with the Certification Bodies to assess the shoppers' properties against the Green Deal Advice Reports produced and provide opinion to Oversight and Registration Body.

## 9 Enforcement and Sanctions

This chapter outlines the sanctions which may be imposed on Green Deal Providers. The Oversight and Registration Body will assist in the administration of the sanctions process.

Green Deal Providers must comply with:

- Chapter 1 of Part 1 of the Energy Act 2011;
- the Framework Regulations; and
- applicable provisions of the Code of Practice.

### 9.1 How a breach is reported to the Secretary of State

The Secretary of State can impose sanctions in receipt of:

- (i) a referred eligible complaint<sup>121</sup>;
- (ii) information derived from ongoing monitoring activities;
- (iii) information is received from the Ombudsman or Office of Fair Trading<sup>122</sup>; and
- (iv) a complaint directly to the Secretary of State where the relevant Green Deal Provider is no longer authorised<sup>123</sup>.

#### A referred eligible complaint

An eligible complaint may only be referred to the Secretary of State when it has first been referred to the Ombudsman in accordance with the ombudsman's scheme and the complaint has not been resolved to the satisfaction of the complainant.

The exception to this is for complaints in respect of disclosure and acknowledgement provisions. These may only be referred to the Secretary of State by a Green Deal Provider or a recipient to whom the disclosure document should have been provided and from whom acknowledgement should have been obtained<sup>124</sup>.

#### Information received by the Secretary of State

The Secretary of State can act on information from:

- i. the Office of Fair Trading;
- ii. an Ombudsman;
- iii. a Green Deal Participant; and
- iv. a Green Deal Certification Body.

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<sup>121</sup> See regulation 55-58 of the Framework regulations

<sup>122</sup> See Regulation 52 (3) of the Framework regulations

<sup>123</sup> See Regulation 60 (b) of the Framework regulations

<sup>124</sup> See Regulation 51 of the Framework Regulations

## **Complaints direct to the Secretary of State**

Complaints can be made direct to the Secretary of State where Green Deal Provider authorisation is withdrawn at the time the complaint made.

## **9.2 Compensation awarded by the Ombudsman**

The Ombudsman is able to award compensation up to the amount outstanding under a Green Deal Plan, subject to its compensation limits where applicable. However, it will not be able to (i) reduce payments due under a Green Deal Plan or (ii) cancel a Green Deal Plan. The Ombudsman's decision will be binding provided the decision is accepted by the complainant. The Ombudsman will report every breach of compliance to the Oversight and Registration Body, even if they resolve a complaint.

### **9.3 Breaches for which sanctions can be imposed on Green Deal Providers**

The Secretary of State may impose one or more of the available sanctions on a Green Deal Provider if an alleged breach has been reported in one of the ways set out in chapter 9.1 and when he/she is satisfied that there has been:

- a breach of the relevant requirements by the Green Deal Provider (see further explanation in chapter 9.10 of this Guidance); .
- a breach of the relevant requirements by the Green Deal Installer (see further explanation in chapter 9.11 of this Guidance);
- a breach of the disclosure and acknowledgement provisions (see further explanation in chapter 9.12 of this Guidance);
- a breach of the consent provisions (see further explanation in chapter 9.13 of this Guidance);
- a relevant person has failed to take a consumer credit modifying step (see further explanation in chapter 9.14 of this Guidance).

## 9.4 Sanctions that may be imposed by the Secretary of State

Depending on the nature and effect of the breach that has occurred, the Secretary of State may impose one or more of the following sanctions:

- I. cancellation or reduction of a Green Deal Plan;
- II. compensation further to cancellation on an improver or a notifier, as applicable;
- III. suspension on an authorised person other than a green deal provider;
- IV. compliance notice;
- V. financial penalty;
- VI. withdrawal of authorisation.

When a breach of the relevant requirements by a Green Deal Provider or Green Deal Installer has occurred, the Secretary of State may impose an enforcement undertaking in place of sanctions III, IV, V and VI as listed above<sup>125</sup>.

### Enforcement undertaking

An enforcement undertaking is an undertaking given by a Green Deal Provider to the Secretary of State setting out<sup>126</sup>:

- how the breach will be rectified;
- the steps that will be taken to ensure it does not recur;
- steps to restore the position of anyone affected by the breach (e.g. a customer) to the position they would have been in if the breach had not occurred, or, if this is not possible, to compensate them;
- if appropriate, the circumstances in which the undertaking will be considered to be discharged

The Secretary of State will decide on an individual basis whether it is appropriate to accept an enforcement undertaking instead of imposing a sanction. Broadly speaking, enforcement undertakings may be considered for less severe breaches, where the Green Deal Provider has not been in breach previously (unless the breach is severe) and where a Green Deal Provider has already taken steps or shows willingness to address the problem and has admitted wrongdoing.

If a Green Deal Provider has otherwise displayed exemplary behaviour there may be rare circumstances where an enforcement undertaking may be imposed even in the event of a severe breach. Failure to comply with the enforcement undertaking is likely to result in the sanction which it was accepted in place of being imposed. In addition, the Secretary of State can consider withdrawing authorisation in respect of the failure to comply with the undertaking itself.

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<sup>125</sup> See Regulation 54 of the Framework Regulations

<sup>126</sup> See Regulation 82 of the Framework Regulations

## 9.5 Details of Specific Sanctions

### Compliance notice

A compliance notice can be imposed in respect of a breach by the Green Deal Provider or the Green Deal Installer of the relevant requirements<sup>127</sup>.

Compliance notices specify the steps to be taken by the Green Deal Provider to eradicate the breach or the circumstances giving rise to the breach and the consequences of a failure to take these steps<sup>128</sup>.

### Financial Penalties

A financial penalty can be imposed in respect of a breach by the green deal provider or the green deal installer of the relevant requirements<sup>129</sup>.

A financial penalty may be imposed up to £50,000 in respect of each breach<sup>130</sup>.

In determining the amount of the penalty, the Secretary of State must have regard to the annual turnover and number of employees of the green deal provider. The Secretary of State will consider the severity of the breach. The penalty may be recovered as a debt.

In considering whether to impose a financial penalty the Secretary of State will pay particular attention to whether:

- the Green Deal Provider has benefitted or intended to benefit from a breach;
- the breach or breaches have a wider impact and damage on the credibility or reputation of the scheme;
- the breach or breaches lead to significant harm or impact on affected persons;
- or
- the breach or breaches results in, or are intended to result in, financial benefit to the Green Deal Provider.

### Withdrawal of authorisation

The Secretary of State can withdraw a Green Deal Provider's authorisation where:

- (i) there has been a breach of the relevant requirements by a Green Deal Provider or Green Deal Installer<sup>131</sup>; or
- (ii) the Secretary of State is satisfied that a green deal provider is no longer a fit person to be authorised,<sup>132</sup> this may result from a breach of the Green Deal Framework Regulations or the Code of Practice.

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<sup>127</sup> See Regulations 67 and 68 of the Framework Regulations.

<sup>128</sup> See Regulation 74 of the Framework Regulations.

<sup>129</sup> See Regulations 67 and 68 of the Framework Regulations.

<sup>130</sup> See Regulation 75 of the Framework Regulations.

<sup>131</sup> See Regulations 67 (2) and 68 (2) of the Framework Regulations

<sup>132</sup> See regulation 71 of the Framework Regulations

In determining whether withdrawal should be imposed, the Secretary of State may take into consideration, amongst other factors, whether:

- the breach or breaches lead to significant harm or impact on affected persons;
- the breach or breaches are continuing in nature;
- there is a failure to comply with a previous sanction imposed on the Green Deal Provider;
- there has been provision of false information. If the provision of false information is a genuine error or is insignificant, it is likely that DECC would not take it into consideration;
- the Green Deal Provider has sought to benefit from the breach or engaged in criminal or dishonest activity;
- there is evidence of business practice that appears to the SoS to be unfair, improper or deceitful;
- the breach calls into question the competence or trustworthiness of the Green Deal Provider;
- the behaviour of the Green Deal Provider undermines the credibility or reputation of the scheme on a wider basis;
- there has been a significant breach of other relevant legislation such as Consumer Protection Regulations: and

Withdrawal of authorisation would not preclude the imposition of other sanctions where appropriate, prior to withdrawal taking place.

## Cancellation

Cancellation of a Green Deal Plan or an energy plan can be imposed on a Green Deal Provider in respect of –

- a breach of the relevant requirements by the Green Deal Provider or a Green Deal Installer, if the bill payer suffers substantive loss<sup>133</sup>;
- a breach of the disclosure and acknowledgment provisions<sup>134</sup>;
- a breach of the consent provision<sup>135</sup>;
- a failure to take a consumer credit modifying step<sup>136</sup>.

Where cancellation is imposed on the Green Deal Provider, the Provider is required to write off the outstanding amount of the Green Deal Plan. In most cases, the date with effect from which the Green Deal Plan is to be written off is the date of the breach. Accordingly, no further instalments would be collected. and the Green Deal Provider would also be required to refund any instalments paid by the bill payer since the date of the breach.

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<sup>133</sup> See Regulations 67 and 68 of the Framework Regulations.

<sup>134</sup> See Regulation 66 of the Framework Regulations.

<sup>135</sup> See Regulation 65 of the Framework Regulations.

<sup>136</sup> See Regulation 70 of the Framework Regulations.

The Green Deal Provider would also be required to update the Energy Performance Certificate for the property to erase all Green Deal Plan information from the Energy Performance Certificate.

Cancellation would be effected by a letter from the Oversight and Registration Body or the Department of Energy and Climate Change (on behalf of the Secretary of State), to the Green Deal Provider, the Green Deal Central Charge Database and the bill payer, informing them of the Secretary of State's decision to cancel liability.

## Reduction

Reduction of a Green Deal Plan or an energy plan can be imposed on a Green Deal Provider in respect of a breach by the Green Deal Provider or the Green Deal Installer of the relevant requirements<sup>137</sup>.

Where the Secretary of State imposes reduction, the Green Deal Provider (or payee when authorisation has been withdrawn)<sup>138</sup> must reduce the liability of the bill payer and any subsequent bill payer under the Plan by a specified amount. As with cancellation, in most cases, the date with effect from which liability is to be reduced is the date of the breach. The Green Deal Provider must also refund to the bill payer any instalments paid since the date of the breach.

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<sup>137</sup> See Regulations 67 and 68 of the Framework Regulations.

<sup>138</sup> See regulation 51 of the Framework Regulations

## **9.6 Notice and representation of affected persons**

Sanctions will be imposed only following giving notice to persons the Secretary of State considers to be affected, and following consideration of representations from those persons.

## 9.7 Proportionality requirement

The Secretary of State is required under the Framework Regulations to ensure sanctions are proportionate to the breach in respect of which they are imposed. This principle is applied to all sanctions.

The severity of the breach will therefore be considered when deciding which sanction to impose.

In assessing the severity of a breach the Secretary of State may, amongst other factors, consider:

- Whether the breach is a continuing breach;
- Whether the particular breach has occurred repeatedly or whether other breaches have occurred and whether the other breaches are related or recent;
- Whether the case reveals a systemic failure to comply with one or more of the relevant requirements;
- The impact on the Improver, bill payer or subsequent bill payer;
- The extent and significance of the harm caused;
- Whether a sanction has already been imposed in connection with the breach, or similar breaches on that Green Deal Provider either by the Secretary of State or by another person;
- Whether the Green Deal Provider has benefited financially or intended to benefit financially from the breach;
- Whether criminal activity has occurred (where the Secretary of State suspects criminal activity has occurred, he would refer the matter to the relevant authority as soon as possible);
- Whether the Green Deal Provider has accepted responsibility for and taken steps to remedy the breach.

## 9.8 Substantive Loss

In some cases, the Secretary of State will need to consider, before imposing a sanction, whether the bill payer has suffered substantive loss<sup>139</sup>.

The Secretary of State is likely to consider that a customer has suffered substantive loss where the customer has suffered harm, and is likely to take into account both the level of harm suffered by the customer and the impact of that harm on the customer. Harm may be significant (for example financial loss), moderate (for example, the bill payer was inconvenienced in a minor way) or minor (for example the bill payer did not notice the breach). In assessing harm, the Secretary of State will consider any subsequent effects on the customer, for example the ability of a customer to meet other financial obligations. The fact that the complainant did not at first notice the breach does not necessarily mean that the harm suffered was not significant, once discovered.

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<sup>139</sup> See regulations 62, 67 and 68 of the Framework Regulations.

## 9.9 Appeals

On the receipt of a sanction, a Green Deal Provider can lodge an appeal with the First Tier Tribunal. The First Tier Tribunal can suspend a sanction, pending its decision on the appeal, and requests for this to be done should be made by Green Deal Providers to the First Tier Tribunal when lodging an appeal.

## 9.10 Sanctions for a breach of Relevant Requirements by a Green Deal Provider

A breach of relevant requirements occurs when a Green Deal Provider has failed to comply with the relevant requirements set out in regulations 24 to 26 in the Framework Regulations or has failed to provide information to the Secretary of State when requested under regulation 86 of the Framework Regulations.

Sanctions will be imposed when the Secretary of State is satisfied that there has been a breach of the relevant requirements by a Green Deal Provider and the breach is severe or there have been other breaches of the relevant requirements by the Green Deal Provider in respect of the property or other properties.

In these circumstances the Secretary of State may impose one or more of the following sanctions:

- i. a compliance notice;
- ii. a financial penalty;
- iii. withdrawal of authorisation.

Alternatively, the Secretary of State can accept an enforcement undertaking in place of any of the above.

The sanctions regime is a stepped process. Subject to the provisions of the Framework Regulations, we would expect to consider sanctions in the order of: compliance notice, financial penalty and then suspension or withdrawal of authorisation, with the most serious sanctions being reserved for the most severe breaches.

In addition to the above sanctions, cancellation or reduction may be imposed on the relevant person in respect of a breach which has caused the bill payer substantive loss.

## 9.11 Sanctions for a breach of Relevant Requirements by a Green Deal Installer

A breach of relevant requirements occurs when a Green Deal Installer has failed to comply with any provisions of the Code of Practice that apply to Green Deal Installers<sup>140</sup> or has failed to provide information to the Secretary of State when requested under regulation 86 of the Framework Regulations.

Where the Secretary of State is satisfied that there has been a breach of the relevant requirements by a Green Deal Installer and the breach is severe or there have been other breaches of the relevant requirements by the Green Deal Installer in respect of the property or other properties the following sanctions may be imposed<sup>141</sup>:

- i. withdrawal of authorisation on the Green Deal Provider;
- ii. withdrawal of authorisation on the Green Deal Installer; and
- iii. suspension authorisation on the Green Deal Installer.

Withdrawal could be imposed on a Green Deal Provider when the Secretary of State is satisfied that there has been a breach of the relevant requirements by a Green Deal Installer and the Green Deal Provider is wholly or partly culpable for the breach. The breach must be severe or there have been other breaches of the relevant requirements by the Green Deal Provider in respect of the property or other properties.

Where the Secretary of State is satisfied that the bill payer has suffered substantive loss the following sanctions may, in addition, also be imposed:

- i. Cancellation or reduction on the relevant person;
- ii. A compliance notice on the Green Deal Provider;
- iii. A financial penalty on the Green Deal Provider.

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<sup>140</sup> See regulation 23 of the Framework Regulations

<sup>141</sup> See regulation 68 (2) in the Framework Regulations

## 9.12 Sanctions for Disclosure and Acknowledgement

A breach of the disclosure and acknowledgement regulations occurs when the notifier has failed to provide the disclosure document relating to a Green Deal property to the recipient in accordance with Part 7, chapter 2 of the Framework Regulations and Energy Act 2011<sup>142</sup> (for further explanation see chapter 6 of this guidance). A breach also occurs when the disclosure of a Green Deal Plan is deficient in some other respect, the bill payer suffers substantive loss<sup>143</sup> and did not know they would be liable to make payments under the Green Deal Plan and be bound by its terms a reasonable period of time before the date on which they committed to becoming the bill payer for the property.

Where the Secretary of State receives a complaint or information regarding a possible breach of the disclosure and acknowledgement provisions, the Green Deal Ombudsman and Investigation Service will be asked to investigate on the Secretary of State's behalf and will report to the Secretary of State and recommend sanctions. While the case is investigated the Green Deal Plan instalments will continue to be collected.

Complaints in respect of disclosure and acknowledgement by recipients may only be referred to the Secretary of State by the Green Deal Provider or the person to whom the Green Deal Plan was to have been disclosed (the "recipient").

Where the Secretary of State is satisfied that there is a breach of the disclosure and acknowledgment provisions, the Secretary of State:

- (i) must impose cancellation on the relevant person; and
- (ii) may impose compensation on the notifier (this is the person who had the legal obligation to disclose) to be paid to the relevant person.

### Payment of Compensation to the Green Deal Provider

If a Green Deal Provider is required to cancel a Green Deal Plan as a result of a breach of the disclosure and acknowledgement provisions, the Secretary of State can order the notifier to compensate the Green Deal Provider for its loss. Compensation will be limited to the amount of finance outstanding at the time of the breach, plus any early repayment charges and could be reduced by the Secretary of State in cases where someone other than the notifier was wholly or partly responsible for the breach (for example, the Green Deal Provider had failed to keep details of the Green Deal Plan on the Energy Performance Certificate up to date).

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<sup>142</sup> Section 12 of the Energy Act 2011

<sup>143</sup> See regulation 62(3) of the Framework Regulations

## 9.13 Sanctions for Breaches of Consent Provisions

A breach of the consent provision occurs where the improver has failed to obtain a necessary permission or consent to the installation of an improvement at a property under a Green Deal Plan.

Where the Secretary of State is satisfied that there is a breach of the consent provisions, the Secretary of State can:

- (i) impose cancellation on the relevant person; and
- (ii) impose compensation on the Improver to be paid to the relevant person.

Where retrospective consent cannot be gained and the improvement has been removed from the property, the Secretary of State will cancel the Green Deal Plan as otherwise the bill payer would be paying for measures which are no longer in place.

There may be cases where retrospective consent cannot be gained and, for whatever reason, the improvement has not been removed from the property. The Secretary of State has discretion to cancel a Green Deal Plan in these circumstances. We anticipate that this ability to cancel will only be used in unusual circumstances because [it is expected that] the bill payer will still be benefiting from the measures.

### Payment of Compensation to the Green Deal Provider

If a Green Deal Provider is required to cancel a Green Deal Plan as a result of a breach of the consent provision, the Secretary of State can order the improver to compensate the Green Deal Provider for its loss. As with cases where there has been a breach of the disclosure and acknowledgment provisions, compensation will be limited to the amount of finance outstanding at the time of the breach, plus any early repayment charges. There may be cases where it is found that a party other than the Improver was at fault (for example, where consent was provided by a landlord but it is later found they did not have authority to do so). The Secretary of State is therefore able to reduce the amount of compensation payable by the Improver in this eventuality, or even to decide (in exceptional cases) that no compensation should be paid to the Provider. It is expected that the Secretary of State would only reduce compensation, or decide that no compensation was payable, if Improver provided substantial evidence that another person was wholly or partly responsible for the breach.

## 9.14 Cancellation for Failure to Take a Consumer Credit Modifying Step

A consumer credit modifying step is required when a Green Deal Plan was not, at the time it was entered into, a regulated consumer credit agreement but a subsequent trigger event has occurred whereby a new agreement is required that must be a regulated consumer credit agreement<sup>144</sup>. A failure to take a consumer credit modifying step occurs when the Green Deal Provider does not respond to this trigger event by completing one of the following steps.

- i. exercise an early repayment term so that the indebtedness under the Green Deal Plan is discharged;
- ii. modify the Green Deal Plan by a regulated consumer credit agreement made in writing with the bill payer: or
- iii. terminate the Green Deal Plan<sup>145</sup>.

Where the Secretary of State is satisfied there has been a failure to take a consumer credit modifying step, the Secretary of State may impose cancellation of the Green Deal Plan on the relevant person<sup>146</sup>.

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<sup>144</sup> See regulation 63 (3) of the Framework Regulations.

<sup>145</sup> See Regulation 64 (4) of the Framework Regulations

<sup>146</sup> See Regulation 70 of the Framework Regulations.

## 10 Ceasing to be a Green Deal Provider

Green Deal Providers may apply to the Secretary of State for their authorisation to be withdrawn. The Secretary of State is likely to agree to withdraw if satisfied that the Green Deal Provider's ongoing obligations in relation to existing Plans have been discharged or have been taken on by a different party.

This includes being satisfied that that bill payers and Improvers will continue to receive a comparable level of service (for example, in response to queries regarding a Plan) and complaints will continue to be dealt with in the prescribed manner.

Green Deal Providers will also need to provide evidence of the insurance arrangements which back their compulsory guarantee to customers, and evidence to show that these are sufficient to cover the potential liability under the guarantee contained in existing Plans.

Green Deal Providers should contact the Oversight and Registration Body to submit their application to the Secretary of State. The Secretary of State will notify the Green Deal Provider whether the application is to be granted or refused. If the Secretary of State intends to refuse the application, the applicant will be given reasons, and the opportunity to make representations before the decision is made. If the application is successful, the applicant's details will be removed from the register of persons authorised to act as a Green Deal Provider.

## 11 The Role of the Oversight and Registration Body

The Green Deal Oversight and Registration Body should be the first point of contact for Green Deal Providers. They can be reached by phone on +44 (0) 207 090 1031 or by email on [gdproviderapplications@gemserv.com](mailto:gdproviderapplications@gemserv.com).

The Green Deal Oversight and Registration Body, on behalf of the Secretary of State, manages the authorisation scheme for participants in the Green Deal.

The Oversight and Registration Body's role also includes:

- maintaining a register of all authorised Green Deal Providers, Certification Bodies, Assessors and Installers;
- maintaining the Green Deal Code of Practice;
- controlling the use of the Quality Mark;
- monitoring of Green Deal Participants against the Code of Practice;
- producing an annual Green Deal report;
- gathering evidence of noncompliance; and
- referring participants to the Ombudsman or the Secretary of State where appropriate and imposing sanctions when directed.

# Glossary

## Code of Practice

The Green Deal Code of Practice, issued on 27 September 2012 pursuant to regulation 10 of the Framework Regulations. The Green Deal Code of Practice sets out requirements for those persons acting as Green Deal Providers, Assessors, Installers (together termed 'Green Deal Participants') or Certification Bodies.

## ESAS

The energy efficiency helpline for members of the public, contact details for which are available at <http://www.direct.gov.uk/savingenergy>.

## Framework Regulations

The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012. The Framework Regulations create an authorisation regime to regulate the conduct of key players in the assessment, provision and installation of energy efficiency improvements under green deal plans.

## Fuel Direct

Fuel Direct is part of the Department for Work and Pension's Third Party Deductions scheme. This scheme acts as a last-resort protection for vulnerable consumers in debt with essential household items (in the case of Fuel Direct, energy bills) who have failed to reduce the debt through the usual arrears arrangements. Under Fuel Direct, where someone is receiving a qualifying benefit and has run up energy bill arrears, payments can be deducted directly from the claimant's benefits and paid to the energy supplier for a fixed amount to pay off the arrears. In addition, variable amounts can be deducted for ongoing charges for electricity supply.

## Green Deal Advice Report

The report produced by a Green Deal Assessor following a qualifying assessment of a property

## Green Deal Central Charge Database

This database stores details of any property registered for the Green Deal, all Green Deal Plans and calculates fees owed to each supplier of energy efficiency measures.

## **Installer PAS**

The Publicly Available Specification PAS 2030. PAS 2030 provides a specification for the installation of energy efficiency measures (EEM) in existing buildings. PAS 2030 achieves this by focusing particularly on the necessary installation processes for the measures, the management of the process that guides their installation and the quality of the service provided to the customer before, during and after the installation.

## **Occupancy Assessment**

An assessment of the actual use of energy by the occupiers of a domestic property at the time a qualifying assessment is carried out, which forms part of a qualifying assessment for a domestic property and is conducted in accordance with the requirements of the Assessor Services Specification.

## **Recipient**

The person that has incurred the liability to the Green Deal charge

## **Relevant Requirements**

The relevant requirements are listed in regulation 63 of the Framework Regulations. For Green Deal Providers they are the requirements contained in regulations 24 to 26 of the Framework Regulations and the requirement to comply with a sanction imposed under Part 8 of the Framework Regulations.

## **Volumetric Contracts**

Volumetric contracts (also known as 'take-or-pay' contracts) are not uncommon in the non-domestic sector and can last for up to 5 years. The customer commits to consuming a certain amount of energy and if their consumption falls below a pre-set threshold then either penalties apply or they are charged as if they had consumed the threshold amount of energy.

## Annex 1: Green Deal – Affordability and payment collection

This Annex has been produced in conjunction with the Office of Fair Trading in response to requests by Green Deal Providers for guidance on the application of aspects of the CCA regime. It applies solely to Green Deal Plans which will be regulated under the CCA.

### Affordability assessments

In addition to the requirements set out in regulations 30 and 31 of the Green Deal Framework Regulations, Green Deal Providers will have a statutory obligation under the CCA to undertake an assessment of creditworthiness before concluding a Green Deal Plan (where regulated under the CCA) and before increasing significantly the amount of credit advanced.

This derives from section 55B of the CCA which stipulates that the assessment must be based on “sufficient information”, obtained from the borrower where appropriate and from a credit reference agency where necessary.

In addition, Green Deal Providers will be expected to operate in accordance with relevant regulatory guidance, including the Office of Fair Trading’s Irresponsible Lending Guidance (ILG).<sup>147</sup> This sets out minimum standards in terms of responsible lending and fitness to hold a consumer credit licence.

The ILG states that, in addition to assessing creditworthiness, all lenders should undertake a proper assessment of affordability. This involves assessing the individual borrower’s ability to undertake a specific credit commitment in a sustainable manner – that is, without the borrower experiencing (further) financial difficulties and/or adverse consequences.

The ILG makes clear that this is about taking reasonable steps to assess the borrower’s likely ability to meet repayments under the credit agreement in a sustainable manner over the duration of the agreement.

Compliance with the regulations referred to above will be necessary but not sufficient to satisfy creditworthiness and affordability. Account also needs to be taken of the borrower’s individual circumstances and likely future changes.

As set out in paragraphs 4.10-4.12 of the ILG, the extent and scope of an assessment of affordability will depend upon a number of factors. The Office of Fair Trading does not prescribe how an assessment should be made, or what information should be used, as this will depend upon the circumstances. The lender should

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<sup>147</sup> [www.offt.gov.uk/about-the-offt/legal-powers/legal/cca/irresponsible](http://www.offt.gov.uk/about-the-offt/legal-powers/legal/cca/irresponsible)

however be able to justify the procedures used in assessing affordability, for example in the event of a complaint or regulatory inspection.

It may be worth bearing in mind that during the process of setting up a Plan on the Central Charge Database, Green Deal Providers will be made aware whether domestic customers have electricity arrears that exceed £200 or whether non-domestic customers have electricity arrears that exceed £400.

### Transfer of property

The Energy Act 2011 provides that, when a property changes hands, the Green Deal Plan transfers automatically to the new bill-payer.

There will be no new agreement for CCA purposes, so section 55B will not require a fresh assessment of creditworthiness. This will be triggered only if the agreement is 'modified' as set out in section 82(2) of the CCA.

Green Deal Providers will also not be expected to proactively check affordability upon transfer of a Green Deal Plan. However, following notification of a transfer (or proposed transfer), the Green Deal Provider should establish the identity of the new bill-payer. If the Provider (or the supplier on its behalf) becomes aware of anything which may suggest that the loan may no longer be affordable for the individual borrower, they should not ignore this but should consider undertaking a fresh assessment of affordability.

The ILG makes clear that the obligation on lenders to act responsibly and have regard to the borrower's circumstances and ability to repay applies **on an ongoing basis**. Lenders are expected to monitor a borrower's repayment record and to take appropriate action if there are signs of actual **or potential** repayment difficulties (paragraph 6.2 of the ILG).

### Payment collection

Green Deal payments will be collected by electricity suppliers alongside the collection of energy payments. In doing so, the supplier will be acting on behalf of the Green Deal Provider, who will be expected to take appropriate responsibility for their conduct. In particular, Green Deal Providers should ensure that they (and anyone collecting the consumer credit debt on their behalf) operate in accordance with the law and with relevant regulatory guidance.

Because suppliers are regulated by OFGEM under electricity supply licence conditions (SLCs), they have been exempted from the CCA licensing regime, and from the CCA requirements relating to arrears notices. Broadly equivalent protections to those applying under the CCA have been built into the SLCs and

Green Deal Arrangements Agreement . In particular, suppliers will be required under the Green Deal Arrangements Agreement to have regard to the Office of Fair Trading's guidance on Debt Collection.

Accordingly, suppliers will be required to monitor customers' repayments (including in respect of Green Deal) and to take appropriate action where there are signs of financial difficulties, for example negotiating a repayment plan for the customer.

By complying with the SLCs and Green Deal Arrangements Agreement , the supplier is likely to be meeting the obligations placed on the Green Deal Provider under the CCA regime to ensure clear, effective and appropriate policies and procedures for dealing with borrowers in arrears, and to treat borrowers in default or arrears difficulties with understanding and due consideration (chapter 7 of the ILG).

However, Green Deal Providers – as creditors – should take reasonable steps to satisfy themselves that suppliers, acting on their behalf, are acting fairly and in accordance with the principles set out in Office of Fair Trading guidance. In particular, they should be satisfied that there are appropriate governance arrangements in place, and that the supplier's procedures are likely to be effective in identifying and dealing appropriately with payment difficulties. The Green Deal Arrangements Agreement will assist with this governance.

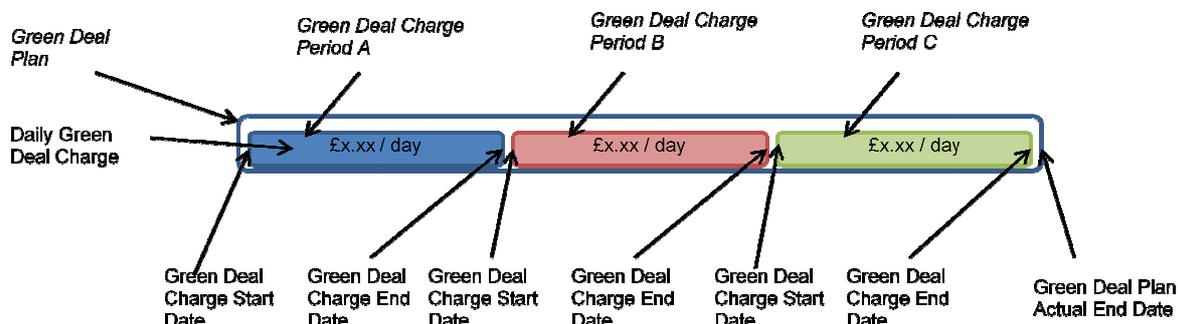
If the Provider becomes aware that a borrower is in financial difficulties, and that the supplier is not responding appropriately, the Provider should not ignore this but should consider intervening to ensure that the Green Deal element of the debt is being dealt with appropriately. Failure to do so may impact on the Provider's fitness to hold a consumer credit licence.

The Office of Fair Trading guidance can be found on their website at <http://www.of.gov.uk/>

## Annex 2: Green Deal – Understanding Green Deal Charges

### Structure of Green Deal charge Information on the Central Charge Database

An example Green Deal Plan ending on 30 September 2014 with three charge periods:



First date that Green Deal Charges accrue: 01/12/2012 (at least 20 working days from the date that the D0322 flow is sent to the Green Deal central charge database – to allow suppliers to update their payment systems).

Green Deal Charge Start Date: 01/12/2012 (first Green Deal Charge Start Date)  
Green Deal Charge End Date: 31/12/2012  
Daily Green Deal Charge: £0.15

Green Deal Charge Start Date: 01/01/2013  
Green Deal Charge End Date: 30/09/2013  
Daily Green Deal Charge: £0.20

Green Deal Charge Start Date: 01/10/2013  
Green Deal Charge End Date: 30/09/2014 (last Green Deal Charge End Date)  
Daily Green Deal Charge: £0.25

Green Deal Plan Actual End Date: 30/09/2014

**Note: the number of Green Deal Charge Periods is unlimited, but they must be contiguous. The terms used here are Data Transfer Catalogue (DTC) defined terms and are contained in the D0322 flow to the Green Deal central charge database.**

The example shows a Green Deal Plan starting on 1 December 2012 and ending on 30 September 2014 consisting of three charge periods (and where the daily Green Deal charge is different in each period). The Green Deal Charge Start Date for the second and third charge periods follows immediately after the Green Deal Charge End Date for the previous charge period.

The number of Green Deal charge periods is unlimited but there must be at least one charge period and they must be contiguous (with no gaps between charge periods). Each charge period needs to have a Green Deal Charge Start Date and a Green Deal Charge End Date. The last Green Deal Charge End Date must be the same as the Green Deal Plan Actual End Date. The terms 'Green Deal Charge Start Date and End Date are used in the Data Transfer Catalogue.

The first Green Deal Charge Start Date must be at least twenty (20) working days from the date of entering charge information onto the central charge database (using the D0322 flow); and it must be after 1 March 2013. The minimum increase to the annual Green Deal payment is £3.65 (an increase of 1p to the daily charge). Smaller increments to the annual payment can be implemented through a change to the daily charge during the course of a year (for example, an increase of 1p in the daily charge for the last 200 days of a particular year would be equivalent to an increase in £2 for the annual Green Deal payment). Please see the illustrated example for further detail.

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