



Department
of Energy &
Climate Change

Consultation on the proposal to amend the definition of “debtor” in Section 189 of the Consumer Credit Act (1974) for the purposes of the Green Deal

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1. Introduction

The Energy Act 2011 introduced a new type of credit arrangement called the “Green Deal” which enables owners and occupiers to make energy efficiency improvements to their property at little or no upfront cost. The improvements are paid for over time through instalments added to the electricity bill for the property. Responsibility for making those instalments rests with the person who is, for the time being, responsible for paying the property’s electricity bill. Therefore, when one person moves out of a property and ceases to be the electricity bill payer, they will no longer be responsible for paying the instalments.

The credit arrangement introduced by the Green Deal is termed a ‘Green Deal Plan’ which is a new type of unsecured loan for energy efficiency improvements arranged at the initiative of an owner or occupier of a property (known as the ‘improver’). The repayments for this loan are paid by whoever is the current electricity bill payer for the property. For an owner-occupied property, the improver and the initial electricity bill payer may often be the same person. However, in a tenanted property, it is possible that the Green Deal Plan will be initiated by the landlord (who would then be the improver) and paid for by the tenant (if they are the electricity bill payer).

In cases where a consumer is the electricity bill payer and hence has the responsibility for making the repayments, the Green Deal Plan may be a regulated consumer credit agreement under the Consumer Credit Act 1974 (CCA). The CCA regulates the manner in which credit agreements are entered into as well as the conduct of the creditor during the term of the agreement.

The purpose of this consultation is to propose a very specific amendment to the definition of “debtor” in the Consumer Credit Act 1974, to provide confidence to creditors as to the identity of the “debtor” under a regulated Green Deal Plan. This amendment does not change policy or the way in which the Green Deal works.

2. Issue

For the purposes of the CCA, a consumer credit agreement is an agreement between an “individual”¹ (“the debtor”) and any other person (“the creditor”) by which the creditor provides the debtor with credit of any amount.²

Under the Green Deal, the creditor will be the Green Deal Provider. Section 189 of the CCA defines a debtor as “the individual receiving credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement includes the prospective debtor.”

In establishing the Green Deal, DECC’s understanding was that the “individual receiving credit” – and hence the “debtor” – would be the person who was responsible for paying the property’s electricity bills for the time being. Section 1(6) of the Energy Act 2011 places responsibility for making payments under a Green Deal Plan on the person who is, for the time being, liable to pay the electricity bill at a property. Section 5(3) of the Energy Act ensures a person is only liable to make payments under the Plan in respect of a period in which they are the electricity bill payer at the property³. A person is therefore only liable for instalments which fall due in the period during which they are the bill payer for the property.

However, in the specific instance where:

- the Green Deal Plan is regulated by the CCA,
- the improver and bill payer are not the same person, and
- both fall within the definition of “individual” under section 189 of the CCA,

some stakeholders have queried whether both the improver and bill payer are “debtors” under the single Green Deal Plan and whether the improver could be considered to be the person “receiving credit” in such an instance.

DECC’s understanding remains that the bill payer is the person receiving the credit and is therefore the debtor for CCA purposes. However DECC also recognises that the Green Deal is a novel type of credit agreement and market confidence in the definition of “debtor” in respect of a Green Deal Plan is important.

¹ The term “individual” is defined in section 189 of the Consumer Credit Act 1974 as including (a) a partnership consisting of two or three persons not all of whom are bodies corporate, and (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.

² Section 8(1) of the Consumer Credit Act 1974

³ The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 make provision at regulation 6 as to who the “bill payer” is, for the purpose of Green Deal payments, in a period when no electricity is supplied to the property (for example a period where the electricity is temporarily cut off while the property is vacant).

3. Proposed solution

Section 30 of the Energy Act 2011 provides DECC with the ability to amend the Consumer Credit Act 1974 in consequence of the Green Deal. In light of stakeholders concerns, DECC is therefore considering making an amendment to the definition of debtor in section 189 of the CCA, to put beyond doubt that:

- (a) an improver who is not the bill payer is not a debtor; and
- (b) a bill payer who has a liability under a Green Deal Plan is a debtor.

The amendment would insert a new section 189B into the CCA which sets out the definition of debtor to be applied specifically with regard to Green Deal Plans.

A copy of the proposed draft amendment can be found at Annex 1.

The amendment has been drafted on the basis that it applies to (i) a consumer credit agreement that is a Green Deal Plan, and (ii) a prospective consumer credit agreement which is intended to be a Green Deal Plan.

First, subsection (2) makes provision regarding a Green Deal Plan to which section 1(6) of the Energy Act 2011 applies. This means that all the formal steps in the establishment of the Plan have been completed, including installation of the improvements, confirmation of the Plan (under section 8 of the Energy Act 2011) and the placing of information concerning the Plan on the Energy Performance Certificate for the property. The amendment provides that, in this case, the debtor(s) will be (i) the current bill payer (who is liable to pay Green Deal Plan instalments by virtue of section 1(6) of the Energy Act) and (ii) any previous bill payers who have outstanding Green Deal payment arrears.

It is proposed that where

- a Green Deal Plan has been entered into, but the steps set out in section 1(5) of the Energy Act (which relate to installation of the improvements, confirmation of the Plan with the bill payer, and putting information concerning the Plan on the Energy Performance Certificate for the property) have not yet been taken, or
- a prospective consumer credit agreement is intended to be a Green Deal Plan,

the “debtor” is the individual who will be liable to pay the energy bills for the property from the time when section 1(6) of the Energy Act applies to the Plan. This is the point at which the bill payer’s liability to make payments via the electricity bill is triggered, and the establishment of the Plan is complete. It is therefore, in our view, the appropriate time to look to in determining who is the debtor for the purpose of the CCA. This principle is set out in subsections (3) and (4) of the amendment.

To assist creditors with the application of this test we have set out presumptions for determining who the bill payer will be at the time when section 1(6) first applies in subsections (6) to (8) of the amendment.

The default position, set out in subsection (8), is to assume that the individual who is the bill payer on the date of the agreement is the person who will be the bill payer when section 1(6) first applies, and is therefore the debtor.

However, subsections (6) and (7) provide that the default position does not apply if:

- an agreement has been made to transfer ownership of the property to another individual before section 1(6) of the Energy Act applies to the Plan, or
- an agreement has been made to lease or licence the property to another individual before section 1(6) of the Energy Act applies to the Plan.

In these two cases, the presumption is that the individual to whom the property is to be transferred, leased or licensed, will be the bill payer at the time when section 1(6) of the Energy Act first applies, and is therefore the debtor.

At subsection (9) of the draft amendment we have provided that the creditor can disregard the presumptions set out in subsections (5)-(7) if they are satisfied that a different person will be the bill payer at the time when section 1(6) of the Energy Act first applies.

Consultation Question

1. **What are your views on our proposed amendment?**

Consultation Question

2. **Do you think subsection (9), which enables creditors to disregard the presumptions if they are satisfied that a different person will in fact be the bill payer at the time section 1(6) of the Energy Act first applies, is helpful and makes it more likely that the person who will be the bill payer at that time is treated as the debtor when a Green Deal Plan is being formed?**

Yes/No

Please justify your reasons.

Please submit your responses by Wednesday 5 June 2013 to deccgreendealcomms@decc.gsi.gov.uk

We will summarise all responses and place this summary on our website at

https://www.gov.uk/government/publications?publication_filter_option=consultations

This summary will include a list of names or organisations that responded but not people’s personal names, addresses or other contact details.

Annex 1

FOR CONSULTATION PURPOSES ONLY Draft text for the Consumer Credit Act 1974 (Green Deal) Amendment Order 2013

Citation, commencement and extent

1. This Order—

- (a) may be cited as the Consumer Credit Act 1974 (Green Deal) Amendment Order 2013;
- (b) comes into force on the day after the day on which it is made;
- (c) extends to England and Wales and Scotland only.

Green Deal: amendments to the Consumer Credit Act 1974

2.—(1) The Consumer Credit Act 1974(1) is amended as follows.

(2) In section 189(1), in the definition of “debtor”, after “means” insert “(except in relation to green deal plans: see instead section 189B)”.

(3) After section 189A insert—

“189B Meaning of “debtor” in relation to green deal plans

- (1) References in this Act to a “debtor”, in relation to—
 - (a) a consumer credit agreement that is a green deal plan, or
 - (b) a prospective consumer credit agreement that the parties intend to be such a plan,are to be read in accordance with this section.
- (2) In relation to a consumer credit agreement that is a green deal plan to which section 1(6) of EA 2011 applies, “debtor” means—
 - (a) the individual who is liable to pay instalments under the plan as a result of being liable for the time being to pay the energy bills for the property (see section 1(6)(a) of EA 2011);
 - (b) any other individual with outstanding payment liabilities under the plan as a result of having been liable in a prior period to pay the energy bills for the property.
- (3) In relation to a consumer credit agreement that is a green deal plan to which section 1(6) of EA 2011 does not apply, “debtor” means the individual who will be liable to pay the energy bills for the property from the time when section 1(6) of EA 2011 applies to the plan (“the completion date”).
- (4) In relation to a prospective consumer credit agreement that the parties intend to be a green deal plan, “debtor” means the individual who will be liable to pay the energy bills for the property from the completion date.
- (5) The presumptions set out in subsections (6) to (8) apply in determining for the purposes of subsection (3) or (4) who will be liable to pay the energy bills for the property from the completion date.

(1) 1974 c.39.

- (6) If an agreement has been made under which ownership of the property will be transferred to another individual (“the transferee”) before the completion date, the individual who will be liable to pay the energy bills is the transferee.
- (7) If an agreement has been made under which the property is to be leased or licensed to another individual (“the lessee”) before the completion date, the individual who will be liable to pay the energy bills is the lessee.
- (8) In any other case, the individual who will be liable to pay the energy bills is the individual who is liable to pay those bills on the agreement date.
- (9) But these presumptions do not apply if the creditor is satisfied that a different person will in fact be liable to pay the energy bills from the completion date.
- (10) The determination of the debtor under subsection (4) is to be made in accordance with this section by reference to the facts known immediately before the agreement date.
- (11) For the purposes of this section a person is liable to pay the energy bills for a property if the person would be treated as the bill payer for the property for the purposes of Chapter 1 of Part 1 of EA 2011 (see section 2(3) and (10)).
- (12) In this section—

“agreement date” means the date on which the consumer credit agreement is made (or is expected to be made in relation to a prospective agreement);

“EA 2011” means the Energy Act 2011;

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

“green deal plan” has the meaning given by section 1 of EA 2011;

“property” means the property to which the energy efficiency improvements (as defined by section 2(4) of EA 2011) under the green deal plan are or are intended to be made.”

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