



Department
of Energy &
Climate Change

The Green Deal: Guidance for the Property Industry in Great Britain

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CONTENTS

1. Introduction

2. Role of the property industry in Green Deal improved properties

- 2.1 Estate Agents and Letting Agents
- 2.2 Landlords
- 2.3 Solicitors and Conveyancers

3. Other Stakeholder interests in the Green Deal

- 3.1 Mortgage Lenders
- 3.2 Insurers
- 3.3 Executors/ Administrators
- 3.4 Architects and Surveyors

4. The Green Deal Charge

- 4.1 The nature of the Green Deal Charge
- 4.2 De-energising / Disconnecting a property
- 4.3 Responsibility for paying the Green Deal Charge under different circumstances
- 4.4 Rental properties – payment of the Green Deal Charges during void periods, between tenancies
- 4.5 Early repayment of a Green Deal Plan
- 4.6 Payment arrears
- 4.7 Green Deal Charge on the electricity bill
- 4.8 Green Deal Charge on prepayment meters

5. Affordability of the Green Deal Charge

- 5.1 Consumer Credit Act affordability assessment
- 5.2 Mortgage affordability calculations

6. Consents and Confirmations

- 6.1 What are consents and confirmations?
- 6.2 Why are consents and confirmations necessary?
- 6.3 Who needs to provide consents and confirmations?
- 6.4 Obtaining third party consents to the improvements
- 6.5 Who is required to give a confirmation?
- 6.6 What are the confirmation requirements
- 6.7 Evidence of consents and confirmation
- 6.8 Consents and confirmations requirements in different situations

7. Disclosure and Acknowledgment

- 7.1 Why is disclosure and acknowledgment necessary?
- 7.2 The disclosure and acknowledgment requirements
- 7.3 EPC validity, retrieval and compliance
- 7.4 Disclosure – sale and letting
- 7.5 Acknowledgment – sale and letting, excluding oral tenancies and unwritten licences
- 7.6 Disclosure and acknowledgment – other circumstances
- 7.7 When the bill payer of a Green Deal property dies with or without a will

8. Green Deal and the Energy Performance Certificate (EPC)

9. Consents and Disclosure and Acknowledgment complaints

- 9.1 Complaints about the Green Deal
- 9.2 Complaints about consents
- 9.3 Complaints about disclosure and acknowledgment

10 The long- term treatment of Green Deal improved properties

- 10.1 The value of Green Deal improved properties
- 10.2 Changes to a property with a Green Deal

Glossary

Annex 1. How customers are supported under the Green Deal

Annex 2. Mock up of the disclosure page of the EPC

Annex 3. Property transaction scenarios

1. Introduction

What is the Green Deal?

The Green Deal is designed to help householders and businesses increase the energy efficiency of properties and therefore reduce greenhouse gas emissions across Great Britain.

The Green Deal will be offered by the private sector to enable owners and occupiers in the domestic and non-domestic sectors to implement energy efficiency improvements to their property. The scheme lets customers pay for some or all of the improvements over time through their electricity bills. The Green Deal Plan will be a new type of unsecured loan, and interest will be charged on the loan. Repayments under a Plan will be added to the electricity bill for the property and the person with responsibility for paying the electricity bill will be liable to make the repayments whilst they are the electricity bill payer at that property. It is likely that savings will mainly be made on heating bills (e.g. gas, oil or electricity).

What this guidance covers

This guidance covers those aspects of the Green Deal that will be of interest to the property industry, and it applies to both domestic and non-domestic properties. It is accompanied with some illustrations on how the Green Deal interacts with various property transactions. The guidance covers:

- i. **Green Deal Charge** – what the Green Deal Charge is and who has responsibility for paying it in different situations that may arise.
- ii. **Consent and confirmation provisions** – what these require and how they help to ensure that those making improvements to a property under a Green Deal Plan, are aware of the need to obtain consents for the Green Deal improvements, and confirmation in respect of the Green Deal Plan itself.
- iii. **Disclosure and acknowledgment provisions** – what these require and how they help to ensure that those who could become the electricity bill payer at a property are informed about the Green Deal Plan and their obligations under it before they become the owner or occupier of the property.
- iv. **The role of the Energy Performance Certificate (EPC) in England and Wales and the EPC and Recommendations Report (RR) in Scotland** –

The EPC in England and Wales and the EPC and Recommendations Report in Scotland is the primary source of information to establish whether a property has been improved with a Green Deal Plan, paid through the electricity bill. The EPC can be accessed at

- www.epcregister.com/searchReport.html, at no charge by using the Report Reference Number. (England and Wales)
- www.scottishepcregister.org.uk¹ (Scotland)

The first page of the EPC should be examined to check if a Green Deal exists on a property. If it does, there will be a banner across the bottom of the first page, which says:

England and Wales:

“A Green Deal has paid to install energy efficiency improvements at this property. A daily Green Deal Charge is payable via the electricity bill. Important details about the Green Deal on this property, including the amount of the charge, can be found in the “information about the Green Deal” section at the end of this EPC.”

Scotland:

“A Green Deal has funded energy efficiency improvements at this property and a daily charge is payable via the electricity bill. Please refer to the attached Recommendations Report for details.”

The Report Reference Number is the twenty two digit number which appears in the top right hand corner of the first page of the EPC.

It will be possible to calculate the remaining Green Deal Finance on a Plan, by multiplying the daily charge by the number of days outstanding in the Plan. The annual amount of the charge is also provided, together with the Plan end date, to enable a quicker, more approximate calculation. Potential buyers or tenants are advised to obtain a copy of the Green Deal Plan from the seller or landlord and to familiarise themselves with the contents.

An example of the disclosure page (England and Wales) with the Green Deal information is available at Annex 2. The same information will appear in the Recommendations Report in Scotland.

- v. **Affordability of the Green Deal Charge** – there are two separate aspects to the consideration of affordability of the Green Deal, these are:

¹ Public portal go-live from 15 April 2013

- Where the Green Deal Providers are required to assess creditworthiness of the bill payer and to undertake a proper assessment on affordability of the credit, before a Green Deal Plan that will be regulated by the Consumer Credit Act 1974 is entered into.
 - Where the Green Deal Charge affordability may be taken into account by mortgage lenders for mortgage lending purposes.
- vi. **Long- term treatment of Green Deal improved properties** – the valuation of Green Deal improved properties and issues that may be relevant if changes are made to a property with a Green Deal.

The processes and regulatory requirements explained in this guidance are designed to protect customers, investors, and property owners. In developing the policy and the detailed regulatory requirements, the Government has sought to build on existing regulations and processes wherever possible, balancing the need to protect property owners and customers against any further regulatory or process burdens.

All of these policies were consulted on formally as part of the Green Deal & Energy Company Obligation (ECO) Consultation in late 2011/early 2012.

Who the guidance is aimed at

This document provides guidance on certain aspects of the Green Deal scheme and is not intended to provide a comprehensive description of the law in the areas it covers. Property owners, occupiers and others should seek independent advice if they are in any doubt as to their obligations under the Green Deal legal framework.

This guidance will be of interest to people selling, letting (social or private rented sector) or transferring a property other than through sale or letting, as well as those advising them. This guidance also contains some information which may be relevant to those wishing to make alterations to a Green Deal improved domestic or non-domestic property. It is therefore aimed at:

- property owners;
- landlords;
- estate agents and lettings agents;
- solicitors and conveyancers;
- surveyors and architects supporting their clients to make alterations to their buildings;
- valuers acting for mortgage lenders or private clients;
- surveyors acting for buyers; and
- mortgage lenders.

Those working in the property industry will need to be aware of the requirements of the Green Deal legislative framework and how it applies to their clients. The explanation of the requirements contained in this guidance will help to provide the information the property sector needs to work with the Green Deal.

The guidance does not aim to cover every type of property transaction that could occur in the property industry. Different property stakeholder bodies may wish to develop their own guidance and specific good practice to reflect these new requirements in the interest of their clients.

Who needs to comply with the consent and confirmation requirements, and the disclosure and acknowledgment obligations, under the Green Deal?

Consents and confirmations

The improver of the property, whether they are the owner or the occupier, is required to indicate in the Green Deal Plan that the necessary permissions or consents have been obtained in respect of the improvements to be installed. The onus will, therefore, be on the improver to ensure that these permissions and consents are in place before the Plan is entered into. The improver must also obtain confirmations relating to the Plan itself from certain people before a Green Deal Plan is entered into (See Chapter 6, Consents and Confirmations).

Disclosure and acknowledgment

The most common scenarios in which the obligations to disclose information about the Green Deal Plan and secure an acknowledgment from a person taking on the responsibility for payment of the Green Deal Charge are likely to apply, are where a property is being sold or let out. However, there are other situations in which a disclosure obligation will apply. Examples of these situations include where a property is transferred to another person pursuant to a will and where a property is gifted to another person (see Chapter 7, Disclosure and Acknowledgment).

Although the consent, confirmation and disclosure and acknowledgment requirements referred to in this guidance are likely to be placed on the property owner, bill payer or the person improving the property, in many cases those people will instruct property professionals to support them.

Breaches of the consent and disclosure and acknowledgment requirements may be actionable under the sanctions regime in the Green Deal legislative framework. Government has published separate guidance on the sanctions regime under the Green Deal.² Those in breach could be required to compensate a Green Deal Provider, in the event that a Plan is cancelled as a result of the breach.

² www.gov.uk/government/publications/guidance-on-green-deal-sanctions-and-appeals

Further information about the Green Deal

For general information about the Green Deal, including the Green Deal Quick Guides for householders, owners, tenants and landlords, please visit: www.gov.uk/getting-a-green-deal-information-for-householders-and-landlords

For technical information about the Green Deal and the various requirements of Green Deal authorised participants, please visit www.greendealorb.co.uk

This guidance includes a glossary with relevant web links to Green Deal legislation, Green Deal Code of Practice, and the Green Deal Provider guidance.

Organisations consulted during the development of this guidance

Council of Mortgage Lenders
Society of Licensed Conveyancers
Royal Institution of Chartered Surveyors
National Federation of Property Professionals

National Housing Federation
British Insurers Association
Dept for Business Innovation & Skills
Dept for Communities & Local Government

National Landlords Association
British Property Federation
Residential Landlords Association
Financial Services Authority
The Property and Energy Professionals Association

The Law Society
Financing and Leasing Association
Buildings Societies Association
Scottish Government

2. Role of the property industry in Green Deal improved properties

Various sectors in the property industry may need to take account of the Green Deal if their clients instruct them to carry out work relating to a Green Deal improved property. Some, like valuers, estate agents, and conveyancers may have very specific roles, and depending on the circumstances, their clients such as landlords, for example, may have existing obligations under the Green Deal, or they could gain new obligations under the Green Deal.

Others, like mortgage lenders, will have a more general interest in how the Green Deal is taken into account by buyers and sellers, and this will also rely on other professionals in the property sector becoming familiar with the new requirements. This section summarises how the different sectors in the property industry may need to take account of Green Deal in their work supporting those with an interest in a Green Deal property.

2.1 Estate agents and letting agents

Estate and letting agents may be instructed by the person letting out or selling the property to carry out the disclosure obligations under the Green Deal legislative framework. Therefore estate and letting agents will be particularly interested in (see Chapter 7, Disclosure and Acknowledgment).

It is important to note that the Green Deal legislative framework does not impose liability on agents in the event that they do not meet the requirements of the disclosure obligations as responsibility for compliance rests ultimately with the seller or the landlord.

Whether or not a seller or landlord has recourse to their agent in circumstances where the agent has agreed to discharge their disclosure obligations on their behalf but has failed to do so, will be determined by the contractual arrangements between the parties.

Estate agents may also wish to consider the existing Office of Fair Trading guidance on property sales, which explains how they can comply with Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Business Protection from Misleading Marketing Regulations 2008 (BPRs)³.

³ www.offt.gov.uk/news-and-updates/press/2012/81-12

2.2 Landlords

Landlords will need to ensure they meet their disclosure and acknowledgment obligations when letting a property with a Green Deal Plan (See Chapter 4, Green Deal Charge, and Chapter 7, Disclosure and Acknowledgment). In addition, landlords will need to be aware of their responsibility for paying the Green Deal Charge, if they become the bill payer.

Landlords responsibility for the Green Deal Charge

In many cases the tenant is likely to be the electricity bill payer, but in some cases the landlord will be the electricity bill payer. In situations where the landlord has responsibility for paying the electricity bill, any arrangements for recouping the electricity and Green Deal Charges would need to be agreed between the parties (See Chapter 4, Green Deal Charge).

Landlords during void periods (unregulated plan, with intention to transfer the Plan to a domestic tenant)

In circumstances where a Landlord is considering entering into a Green Deal Plan during a void period, the Plan entered into by the landlord may not be regulated by the Consumer Credit Act, in the first instance. However, if the landlord intends to let the property to a consumer tenant, when that person becomes responsible for paying the electricity bill, they ought to be protected by the Consumer Credit Act.

The Green Deal Provider Guidance sets out how Providers should manage changes in a Plan's status under the Consumer Credit Act. In addition to this, DECC will be producing guidance for Green Deal Providers and landlords entering into Green Deal Plans during void periods with the intention that the Plan will be transferred to a consumer tenant. This guidance explains what steps landlords and Providers may want to consider in these circumstances to ensure that the consumer tenant is protected.

Landlords and disclosure and acknowledgment

Landlords are required to disclose the Green Deal to prospective new tenants. They are also required to obtain an acknowledgment from the new tenant at the time the tenancy is entered into, if they will be the electricity bill payer.

2.3 Solicitors and Conveyancers

There is no liability for solicitors and conveyancers under the Green Deal legal framework in connection with the consent, confirmation, disclosure and acknowledgment requirements.

Solicitors and conveyancers advise their clients, as both buyers and sellers, or as tenants, or landlords. They also support the transfer of properties in a range of other circumstances, such as when properties are inherited or given as gifts. When advising their clients, solicitors and conveyancers will already collate a number of details about the property, from a range of sources as part of their due diligence.

Solicitors and conveyancers may have a role in ensuring that the acknowledgment obligations are complied with by their client buying or taking a lease of a property, as well as under other circumstances. Wording is prescribed in regulations and needs to be included in the written tenancy agreement or contract for sale, for example. (See Chapter 7, disclosure and acknowledgment). Failure to secure an acknowledgment may trigger the sanctions under the Green Deal Framework Regulations.

In England and Wales the EPC (In Scotland, the EPC and Recommendations Report) will be the vehicle for disclosing improvements payable through Green Deal finance (see iv, in the introduction section for information on the EPC and how it can be accessed). Solicitors and conveyancers may wish to ensure an EPC is present in any property transaction they advise on. They can obtain the up to date EPC using the Report Reference Number (RRN), which will be available from the seller, landlord or their agent.

How the Green Deal will be visible through a local land charges search

In addition, in England and Wales⁴, it may be possible to obtain information about some of these Green Deal financed works from the Local Authority, when a 'local search' (Local Land Charges search and Con29) is made after 1 October 2013. Such works are likely to be those which are notifiable under Building Regulations or have been carried out by an installer registered with a building regulations competent person self-certification scheme and registered in the appropriate Building Control register. The Law Society is in the course of amending the Con 29 form to include a question about works that are subject to Green Deal finance. If the Green Deal improvements do not require Building Control Approval, then there will be no Green Deal flag on the Local Land Charges Register.

⁴ Subject to the timing of the Welsh amendments to the Energy Performance of Buildings (EPB) regulations

In Scotland information recorded on building warrant forms does not record the reason for making a building improvement or how it is funded. There would, therefore, be no information on the existence of a Green Deal Plan⁵.

Reminding the Green Deal Provider to update the Central Charge Database

As part of the property sale process, it is important that the Green Deal provider updates, as soon as possible, the central charge database with the identity of the new property owner or registrable leaseholder. This person is termed the 'default bill payer' in the Green Deal Arrangement Agreement (GDAA) and, as explained in section 4.3, later in this guidance, that person has the responsibility to pay the Green Deal charge when no electricity is supplied to the property. Solicitors and conveyancers may wish to remind the out-going and in-coming owners of the property of the need to inform their Green Deal provider so that the provider can update the database. There is also a requirement, in the GDAA, for Green Deal providers to send a new default bill payer a Fair Processing Notice in order to meet data protection requirements.

The electricity supplier will use the default bill payer details in the central charge database when they have reason to believe that this person is responsible for paying the Green Deal charge. If the supplier believes that the default bill payer details are out of date – for example, the details are the same as the person who has informed the supplier that they are moving out of the property – then they will bill 'The Occupier' for the Green Deal charge. The Green Deal provider will be informed of this by the supplier, via the central charge database, and this will serve as a prompt for the provider to update the details – for example, by finding out who the new property owner or registrable leaseholder is – as soon as possible so that the provider is compliant with the requirement in the Code of Practice to send the new bill payer an opening statement⁶.

⁵ www.scotland.gov.uk/Resource/Doc/217736/0116220.pdf

⁶ Paragraph 95, of Annex B to the Code of Practice

3. Other stakeholder interests in the Green Deal

Mortgage lenders, executors or administrators (where there is no will), insurers, architects and surveyors will need to know about the Green Deal. Their reasons will vary, and these are set out below.

3.1 Mortgage lenders

Mortgage lenders will need to know about the Green Deal for various reasons as follows:

Mortgage lenders obligations under disclosure and acknowledgment

Mortgage lenders will need to comply with the disclosure and acknowledgment obligations in the same way as any other property seller/landlord, when they sell or let out a repossessed property (See Chapter 7, Disclosure and Acknowledgment).

Mortgage lending

In principle the Green Deal should not give rise to additional affordability concerns when lenders are considering making mortgage offers to potential customers (See Chapter 5, Affordability of the Green Deal Charge).

Mortgage condition

Dependent on the terms and conditions of their existing mortgages, lenders may be asked by their customers to provide consent to make certain alterations to a property before a Green Deal Plan is entered into. The mortgage terms may, for example, require the mortgagee to seek consent from the lender before making structural alterations to a property (see Chapter 6, Consents and Confirmation).

It is anticipated that lenders will develop their own individual policies towards the Green Deal, dependent on how the market develops as the Green Deal is taken up by customers, and as Green Deal improved properties turn over in the property market. It is also anticipated that lender representative bodies will develop their own specific guidance and practice materials to support their members.

3.2 Insurers

It is important that customers continue to be covered by their buildings insurance following the installation of improvements funded by the Green Deal. Therefore, the Green Deal Provider is required to advise the improver of the property that they may need to notify their buildings insurers⁷ before a Green Deal Plan is entered into. The purpose of notification is to enable the customer to ensure they have adequate insurance cover following the Green Deal installation.

3.3 Executors / Administrators

Executors of a will or administrators of an estate will be required to disclose and obtain acknowledgment of the Green Deal, when the property is being transferred to the relevant person. (See Chapter 7, Disclosure and Acknowledgment).

3.4 Architects and Surveyors

Architects and surveyors may wish to use this guidance to advise the property owner if any proposed structural changes could affect the energy efficiency of a Green Deal property.

⁷ Paragraph 49 of Annex B to the Code of Practice

4. The Green Deal Charge

4.1 The nature of the Green Deal Charge

A common misconception is that the Green Deal creates a legal charge over a property. It does not. The Energy Act 2011 prevents a Green Deal Provider from taking a charge over a person's property by way of security for payments due under the Plan⁸.

4.2 De-energising / Disconnecting a property

Disconnection is the permanent removal of the electricity supply point and associated meter. This differs from de-energisation where the electricity supply is temporarily disconnected, usually by the removal of the main fuse.

A property with a live Green Deal plan cannot have its electricity supply permanent disconnected. If disconnection is required, for example as a precursor to demolition, the property owner will need to liaise with the bill payer and the Green Deal Provider to agree settlement of the outstanding Green Deal loan.

However, a property with a live Green Deal plan can be de-energised and this will not affect repayment. For the period of de-energisation, the electricity supplier will collect the Green Deal Charge from the person referred to in regulation 6 of the Green Deal Framework Regulations – (see section 4.3 below).

4.3 Responsibility for paying the Green Deal Charge under different circumstances

The key principle underpinning the Green Deal is that the Green Deal Charge should be paid by the person paying the electricity bill for the property. The Green Deal Charge is included in the electricity bill for the property.

Any payment arrears will be the responsibility of the person that was the electricity bill payer at the time the payment was due, and not any new bill payer. The new bill payer will become responsible for paying the Green Deal Charge going forward only, and will be bound by the terms and conditions in the Green Deal Plan. For example, if the bill payer in arrears was the previous tenant, then that tenant would be liable for the arrears, and not the landlord. In a possession situation, (when a mortgage payer defaults on mortgage payments), if a mortgage payer was in arrears on their

⁸ See section 5(2) of the Energy Act 2011.

electricity bill, then the Green Deal Charge arrears would be that mortgage payers responsibility, and not the mortgage lender in possession.

Payment when there is no supply of electricity

Where there is no supply of electricity to the property, the Green Deal legislative framework deems certain people to be the bill payer⁹. That person would then be responsible for paying the Green Deal Charge.

In England and Wales, the person who is entitled to dispose of the freehold interest in the property will be deemed to be the bill payer. However, where the whole of the property has been let under a registrable lease¹⁰, the tenant of the property under that lease (rather than the person entitled to dispose of the freehold interest) will be deemed to be the bill payer. If the tenant has sub-let the property under a registrable lease, it will be the tenant under the sub-lease who will be deemed to be the bill payer.

The Green Deal Framework Regulations define “energy bill” to mean a demand issued by the relevant energy supplier for payment for the supply of electricity to a property. Where the property has been de-energised i.e. no electricity is supplied, an “energy bill” means a demand issued by the relevant energy supplier for the payment of Green Deal instalments¹¹. In case of the latter, the bill from the relevant energy supplier will include zero charges for the supply of electricity, but will include the Green Deal Charge. The electricity bill payer at the property will be liable to pay the Green Deal Charge.

A similar approach applies in Scotland. However, it will be the person who is entitled to dispose of the property who will be deemed to be the bill payer in the first instance. As in England and Wales, if the property has been let under a registrable lease¹², it will be the tenant under that lease or any registrable sub-lease who will be deemed to be the bill payer.

Repossession by a mortgage lender

On a repossessed property, the Green Deal Charges will still need to be paid as part of the electricity bill. The payments will need to be made in accordance with the energy supplier’s billing arrangements. Where no electricity is supplied to the property, mortgage lenders may wish to discuss variation in payment timings with the energy supplier.

⁹ Regulation 6 of the Green Deal Framework Regulations.

¹⁰ This term is defined in regulation 2(1) of the Green Deal Framework Regulations.

¹¹ Regulation 4 of the Green Deal Framework Regulations.

¹² This term is defined in regulation 2(1) of the Green Deal Framework Regulations.

Where a property is repossessed by a mortgage lender, it is likely that the mortgage lender will be responsible for paying the electricity bill (and therefore the Green Deal Charge) for the property.

Although there is no obligation on the outgoing property owner or electricity bill payer whose property is being repossessed, to disclose to the repossessing lender or obtain an acknowledgment, the disclosure and acknowledgment obligation will apply to the lender at the point at which they sell the property or rent it out.

Mortgage lenders may wish to make enquiries as to whether there is a Green Deal Plan on a property when the mortgage payer defaults on mortgage payments and repossession is being considered (see iv, in the introduction section on how information about the disclosure information in the EPC can be accessed). The Mortgage lender can make enquiries by accessing the EPC for a Green Deal property if they have the RRN for the EPC. Alternatively, their professional advisers may be able to access the EPC on their behalf. Lenders will need to instruct solicitors as to their exact requirements in relation to Green Deal Charges in repossession cases.

As the Green Deal Charge is part of the electricity bill, the mortgage lenders, in the ordinary course of repossession will, ultimately find out whether a property has a Green Deal when they make contact with the electricity supplier for that property.

Payment of the Green Deal charge where a domestic or non domestic property is let under a short term lease

This section may be relevant to shared houses where tenants share bills, including student lettings, and some bed sit accommodation.

Under the Energy Act 2011, the Green Deal Charges are to be paid by the person who is liable to pay the electricity bills for the property¹³. Who has responsibility for paying the electricity bill will depend on the circumstances but, in the case of a property that is let under a short-term lease, this could be either the landlord or the tenant.

Landlords should consider the potential for them to become the bill payer in the event that they forfeit a lease as they may, at that point, become the bill payer at the property with responsibility for paying the Green Deal Charge.

Where the landlord is the bill payer and electricity costs are passed through to tenants, landlords may wish to consider whether the arrangements they have with

¹³ Energy Act Section 1 (6) (a)

their tenants enable them to pass on the Green Deal Charge to their tenants. A separate agreement may need to be reached to allow for this to occur.

Payment when the electricity bill payer dies

As with any liability the deceased may have had before they died, the electricity bill (including the Green Deal Charge) will need to be taken into account by the executors when organising the deceased's affairs and settling any outstanding bills. The Green Deal Charge will continue to be paid through the electricity bill, until the electricity bill payer changes.

4.4 Rental properties: Payment of the Green Deal Charge during void periods between tenancies

If there is a void period in a property with a Green Deal, the landlord is likely to be the default bill payer before a new tenancy agreement is entered into, even if the void period is only very short. For example, a tenant might move out on a Friday, with a new tenant moving in on Monday, with the landlord taking over responsibility for paying the electricity bill during the intervening period (2 days).

Where the Plan is regulated by the Consumer Credit Act and the landlord takes on the responsibility for paying the electricity bill (and therefore the Green Deal Charge) for a short period in between tenancies, an opening and closing statement will be issued to that landlord by the Green Deal Provider even though the landlord will only be the bill payer for a few days. An opening statement will then be issued by the Green Deal Provider to the incoming tenant.

In circumstances where there is no supply of electricity to a property during a void period, the principles described in section 4.3 above will be used to determine who will be responsible for paying the Green Deal Charge.

4.5 Early repayment of a Green Deal Plan

If the electricity bill payer decides to voluntarily repay all or part of the Green Deal Charges before the Plan term ends, then they may be able to do so. The electricity bill payer has the right to repay the Green Deal Charges early if the Plan is regulated under the Consumer Credit Act. If the Plan is not a regulated credit agreement, then the early repayment terms will depend on the agreed terms of the Plan.

Plans regulated by the Consumer Credit Act

Where a bill payer exercises their right to repay the Green Deal early under the CCA, Green Deal Providers may be able to charge a limited amount of compensation, provided certain conditions are met. The provisions relating to early repayment

compensation are set out in sections 95A and B of the CCA and the Consumer Credit (Green Deal) Regulations 2012.

Early repayment during a tenancy

If a Green Deal plan is regulated by the CCA, the person who is currently responsible for paying the electricity bill at that property will, as the debtor under the Green Deal Plan, have the right to repay the Green Deal early either in full or in part if they wish.¹⁴ Therefore if a property is occupied by a domestic tenant and the tenant is responsible for paying the property's electricity bills, the tenant bill payer will have the right to repay the Green Deal Charge early. If the landlord is the bill payer, then the landlord will have the right to repay the Green Deal Charge early.

In some circumstances, the Green Deal Plan may, depending on the terms of the Plan, entitle a landlord to repay the Green Deal early on behalf of the tenant bill payer. If the terms of the Plan do not allow for this, and a landlord wishes to repay the Green Deal early, during a period in which the tenant is liable to pay the electricity bills at the property, then the landlord should discuss this directly with the current bill payer. They may then be able to speak to the Green Deal Provider to confirm whether or not they can make a payment on the tenant's behalf.

Plans which are not regulated by the Consumer Credit Act

If a Green Deal Plan is not regulated by the CCA, it will be up to individual Green Deal Providers to decide whether or not the terms of the Plan will permit the bill payer to make a voluntary early repayment of the whole or part of the outstanding credit and whether any charges will apply. Before entering into a Green Deal Plan, Providers will be required to inform the improver and other relevant parties whether or not the terms of the Green Deal Plan will permit the bill payer to make a voluntary early repayment of outstanding credit during the term of the Plan and, where early repayment is permitted, any fees or compensation that may be payable¹⁵. It will therefore be for the relevant parties to agree whether the Plan should include a right to repay early when the terms and conditions of the plan are being negotiated. Guidance on early repayment will be included as part of the Green Deal Provider guidance update, which will be published shortly.

4.6 Payment arrears

Electricity supplier licences contain certain rules regarding payment and the rules will apply equally to Green Deal payments.

¹⁴ See section 94 of the CCA.

¹⁵ Paragraph 58 & 59 of Annex B to the Code of Practice.

In general electricity suppliers will pursue a bill payer's arrears on behalf of the Green Deal Provider and alongside any electricity supply arrears. However, there may be cases where the supplier decides to stop pursuing a particular bill payer's arrears. If this happens, the Green Deal Provider will be able to step in and pursue the Green Deal portion of the arrears themselves.

No charge over property or retention title clause

A Green Deal Plan cannot provide for any charge over property by way of security for payment¹⁶, and the Code of Practice prohibits Green Deal Providers from including a retention of title clause in a Green Deal Plan¹⁷.

4.7 Green Deal Charge on the electricity bill

The Green Deal Charge will be shown separately in electricity bills. The charge is calculated on a daily basis and collected by the energy supplier as part of the electricity bill, typically monthly or quarterly, although payment arrangements will vary from customer to customer.

Statements provided to bill payers

The Green Deal Charge is part of the electricity bill and is treated in exactly the same way as charges for electricity consumption for payment and arrears purposes.

However there are some differences in order to properly inform and protect the interests of both customers and property owners.

All Green Deal Plans, whether or not regulated by the CCA

Where the Green Deal Plan is not regulated by the CCA, the Green Deal Provider will send the bill payer a statement of account at least once a year.

The bill payer will be able to request a statement of account from the Green Deal Provider, at any other time¹⁸.

Green Deal Plans regulated by the CCA

The Green Deal Provider will send a statement to the current electricity bill payer on a regular basis, usually annually. These statements will show the bill payer, the payments made and the payments outstanding, including any

¹⁶ section 5 (2)(c) of the Energy Act 2011

¹⁷ Paragraph 46 of Annex B to the Code of Practice.

¹⁸ Paragraphs 105 and 106 of Annex B to the Code of Practice

arrears owed by the bill payer. This statement is personal to the bill payer at the time, and it will only be sent to the bill payer.

In addition to these periodic statements, when the bill payer at a property changes, the Green Deal Provider must provide a further statement under section 77A of the CCA to the outgoing bill payer (at a forwarding address if necessary)¹⁹.

This statement must:

- cover the period from the date of the previous section 77A statement to the date the person ceased to be the bill payer at the property; and
- highlight any arrears that are owed to the Green Deal Provider by that person.

The Green Deal Provider must also provide a “Green Deal Opening Statement” to the new bill payer²⁰.

Bill payers can write to the Green Deal Provider to obtain a copy of the current Green Deal Plan or a summary of the key rights and obligations under the Plan²¹.

Liability to pay the Green Deal Charge if the electricity supplier is not aware of who the new electricity bill payer is.

Green Deal Charges are calculated on a daily basis, so when someone notifies the energy supplier that they are the bill payer, the energy supplier will be able to calculate accurately that person’s liability under the Green Deal Plan. It is important that those moving into and out of a property inform the electricity supplier that they have moved out/in as soon as possible. This is necessary to ensure that the responsibility for payment of the electricity bill and therefore Green Deal Charge can be determined appropriately. If this is not done it may be difficult for the electricity supplier to determine liability and it may be necessary for contractual documentation to be provided to prove when responsibility for paying the electricity bill should start and finish, in line with current industry practice. Where landlords are letting-out Green Deal improved properties, it will be even more important for them to be clear with their tenants about when tenancies start and finish and how this relates to their tenant’s actual occupancy and their responsibility for payment of the electricity bill.

¹⁹ Paragraph 97 of Annex B to the Code of Practice

²⁰ Paragraph 95 of Annex b to the Code of Practice

²¹ Paragraph 109 of Annex B to the Code of Practice

4.8 The Green Deal Charge on prepayment meters

Prepayment meters allow customers to pay for their gas and electricity upfront and are often found in rented properties or a supplier might install one if a customer has had difficulty paying their energy bills. Not all properties with a prepayment meter can take out a Green Deal, as this depends on the model of the electricity prepayment meter installed. For properties with a prepayment meter, the Green Deal Charge will be collected as a daily charge, from the credit on the prepayment meter. Where the Plan is regulated by the Consumer Credit Act, bill payers will receive a Green Deal Opening Statement in accordance with paragraph 95 of Annex B to the Code of Practice when they become the bill payer and, in accordance with paragraph 97 of Annex B to the Code of Practice, a statement under section 77A of the Consumer Credit Act when they cease to be the bill payer at the property.

5. Affordability of the Green Deal Charge

This section explains the Green Deal Provider's role in taking into consideration the affordability of the Green Deal Charge before a Green Deal Plan is agreed. In addition, it explains how mortgage lenders may account for the Green Deal Charge when they consider mortgage lending (See Annex 1 of the Green Deal Provider guidance about affordability and payment collection²²).

5.1 Consumer Credit affordability assessment

Green Deal finance is predicated on the principle that the instalments payable under a Green Deal Plan should not exceed the expected energy bill savings resulting from the improvements²³.

Green Deal Providers will have a statutory obligation under the CCA to undertake an assessment of creditworthiness before concluding a Green Deal Plan (where the Plan will be regulated by the CCA) and before increasing significantly the amount of credit advanced. 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. In this context, the “borrower” is the person who will be the electricity bill payer with responsibility for paying the Green Deal Charge, and the CCA assessment does not apply to subsequent bill payers.

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).²⁴ This sets out minimum standards in terms of responsible lending and fitness to hold a consumer credit licence across England, Scotland and Wales.

²² www.greendealorb.co.uk/admin/documents/6975-green-deal-provider-guidance.pdf

²³ Regulation 30 of the Green Deal Framework Regulations

²⁴ www.offt.gov.uk/about-the-offt/legal-powers/legal/CCA/irresponsible

The ILG states that, in addition to assessing creditworthiness, all lenders should undertake a proper assessment of affordability.

Information on the Green Deal Provider's duties in relation to lending under regulated Green Deal Plans is available in the Green Deal Provider guidance.

5.2 Mortgage affordability Calculations

As mentioned in the previous section, 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 savings resulting from the improvements.

While the expected savings are not guaranteed and will depend on a number of factors, this premise may give lenders some degree of confidence that the presence of a Green Deal is unlikely to increase a household's total energy bill (cost of energy, plus Green Deal Charge).

Current FSA rules²⁵ are not prescriptive about how lenders should take expenditure into account when assessing affordability, giving lenders flexibility in how they consider Green Deal finance.

In April 2014 new rules²⁶ will come into force that will apply more detailed affordability requirements for lenders. Under the new rules, lenders will need to consider how they will take Green Deal finance into account, for example as basic essential expenditure or as committed expenditure. Their approach may vary, according to whether the Green Deal finance is cost neutral. The new rules allow positive changes to expenditure (i.e. reduced outgoings) to be considered in the affordability assessment. Such positive changes could include energy efficiency work, to significantly reduce energy bills on the mortgaged property. Therefore in most cases, it will be possible for lenders to see the Green Deal as a charge against a saving, which is likely to result in no net cost.

Where the Green Deal Charge does represent a net additional charge (i.e. is not cost neutral), lenders will want to know the extent of the charge and take account of its impact on mortgage affordability. Where lenders are concerned about whether the savings would cover the charge, the EPC may be referred to for more detail on the margin between the estimated savings and the charge.

It is intended that the Green Deal Charge should be a minor outgoing in a household's budget relative to their other property costs (mortgage, council tax,

²⁵ www.fsahandbook.info/FSA/html/handbook/MCOB/11/3

²⁶ www.fsa.gov.uk/static/pubs/policy/ps12-16.pdf

water, other utilities like phone or broadband). It should represent only a part of the total energy spend of the household.

Lenders are able to treat the Green Deal Charge as part of “basic essential expenditure” as in many cases it should be cost neutral and not represent a material impact on energy bills.

If, however, lenders have good reason to believe that the Green Deal Charge might be a material outgoing in relation to a borrower’s total expenditure, then lenders might wish to treat the Green Deal Charge as “*other committed expenditure*” for affordability purposes.

Lenders may wish to do this if a borrower is a low energy user and unlikely to realise the bill savings estimated by the Green Deal Plan. They may also consider this if the measures installed or proposed are particularly costly, as might be the case with active rather than passive improvements, such as micro-generation equipment, for example, as opposed to loft insulation.

Mortgage lenders are able to provide, if they wish to, information on the existence of Green Deal by displaying the Green Deal Quick Guide or a similar factual overview in their branches or on their websites and/or by signposting to general information about Green Deal on the Govt/DECC website. The guides are available in high resolution format, which may be used by lenders for printing purposes.

6 Consents and confirmations

6.1 What are consents and confirmations?

Under the Green Deal Framework Regulations, the consent and confirmation provisions provide protection for future bill payers and property owners. Consents are about obtaining agreement from, for example the property owner, landlord, mortgage lender or third party consents from the Local Authority to make improvements to the property. Confirmations are given by the electricity bill payer and, where relevant, those who are classed as an “owner” of the property and relate to the requirement to make payments and the terms of the Green Deal Plan.

6.2 Why are consents and confirmations necessary?

The consents and confirmation requirements are crucial to making the Green Deal work, both for customers and for Green Deal Providers. They help to ensure that others with an interest in the property to be improved are protected. Those entering into Green Deal Plans can expect to receive support from the Green Deal Providers in connection with the consent and confirmation requirements. Green Deal Provider’s responsibilities are set out in the Code of Practice²⁷.

The Energy Act 2011 requires a Green Deal Plan to include a term in which the improver (meaning the owner or occupier of a property who arranges with a Green Deal Provider for energy efficiency improvements to be installed at a property) confirms that any necessary third party consents to install energy efficiency improvements have been obtained²⁸.

In addition, the Green Deal Framework Regulations require the improver to obtain a “confirmation” in respect of the Green Deal Plan where there are others who have an interest in the property, who are, or may become, bill payers for the property.

This section provides guidance on the consent and confirmation requirements, and the sanctions for breaches of these requirements. This section may be relevant when advising clients entering into a Green Deal, or providing advice to clients in a transaction of a Green Deal property.

²⁷ Paragraph 69, Annex B of the Code of Practice

²⁸ Section 5(2)(b).

6.3 Who needs to provide consents and confirmations?

Depending on the circumstances, the improver may 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 Authority (for planning permission and building control approval);
 - a mortgage lender, where certain types of structural works are proposed (subject to mortgage lender conditions) and
- obtain a confirmation in respect of the Green Deal Plan and the requirement to make payments from, for example:
 - the electricity bill payer (if not the improver); and
 - the owner of the property (if different from the bill payer and the improver).

6.4 Obtaining third party consents to the improvements

Depending on the circumstances and the energy efficiency improvements being installed, the improver may need to obtain consent from third parties such as the Local Planning Authority for installation of the improvements. The Green Deal does not alter existing requirements for obtaining consents from the local planning authority.

Some energy efficiency improvements installed under a Green Deal Plan may require Building Control approval under the Building Regulations.

In England and Wales some Green Deal Installers will be members of the relevant Competent Persons Scheme (CPS) for the purposes of the Building Regulations. These Installers will be able to self-certify their work as complying with the relevant building standards. Examples include Gas Safe (for boilers and heating systems) and FENSA (for glazing installations).

In Scotland, advice should be sought by the building owner to determine if a building warrant for proposed improvements must be obtained before commencing work.

6.5 Who is required to give a confirmation?

The improver of the property could be one of a number of people, which may include the property owner or a tenant.

Before a Plan is entered into, the improver must obtain confirmation from:

- (1) either the “relevant first bill payer” or the “relevant subsequent bill payer; and
- (2) any person who is an “owner” of the property²⁹.

The relevant first bill payer and the relevant subsequent bill payer

The “relevant first bill payer” in respect of a property, is a person who:

- (a) at the time an energy plan is to be entered into:
 - (i) will be the bill payer; but
 - (ii) will not be the improver;

and

- (b) will continue to be the bill payer from the time when responsibility to make payments under the Plan starts.

The concept of “relevant subsequent bill payer” will be relevant where it is expected that the person who is the bill payer at the time the Plan is entered will no longer be responsible for paying the electricity bill when the Green Deal Charge starts to be paid.

This is most likely to apply where, for example, a landlord agrees a tenancy under which a person is to move into a property later in the year and, after entering into the tenancy agreement but before the new tenant moves in, the landlord decides to improve the property using a Green Deal Plan. If the new tenant will be responsible for paying the electricity bill, the tenant will be a “relevant subsequent bill payer” and the landlord will need to obtain a confirmation from that person.

There may be other situations where a future occupier could be a relevant subsequent bill payer. This may be the case where, for example, a person has a right to occupy a property under a trust arrangement and the improver expects that person will enter into occupation after the Plan has been entered into and will be the bill payer when responsibility to make payments under the Plan starts. In that situation, the future occupier is likely to be a “relevant subsequent bill payer”. Where this is the case the improver will be required to obtain their confirmation.

²⁹ Regulation 36, of the Green Deal Framework Regulations.

Owner

“Owner” includes a “relevant title holder”, a landlord under a lease of the property; or a licensor under a licence of the property. A person is not an owner if that person is:

- a mortgage lender not in possession of the property;
- a landlord under certain types of long lease (referred to as a “relevant lease”) of the property; or
- a person who has only a beneficial interest in the property³⁰.

Confirmation requirements under tenancy situations

The confirmation requirements do not extend to subsequent tenants, except in one specific circumstance. This is when the person who is the bill payer at the time the plan is entered into will not be the bill payer when payments start to be made, but the improver knows who the bill payer will be, because that person has already entered into a tenancy agreement in respect of the property. This situation is addressed through the concepts of “relevant first bill payer” and “relevant subsequent bill payer” mentioned above.

The Green Deal Provider guidance sets out the role of the Green Deal Provider for consents and their role when a complaint is made regarding consents.

6.6 What are the confirmation requirements?

The Green Deal Framework Regulations require the improver to obtain written confirmation from the relevant people (described in section 6.3) that they:

- agree the level of instalments payable under the plan, the payment intervals and period for which those instalments are payable; and
- acknowledge that if they become the bill payer 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 which bind bill payers³¹.

This requirement must be met before the Green Deal Plan is entered into³².

The Green Deal Provider is required to ensure that the confirmations obtained (or copies of them) are attached to the Plan at the time it is entered into³³.

³⁰ Regulation 37, of the Green Deal Framework Regulations.

³¹ Regulations 36 (3) of the Green Deal Framework Regulations.

³² Regulation 36(1) of the Green Deal Framework Regulations.

³³ Regulation 36(2) of the Green Deal Framework Regulations.

Both the requirement to obtain a confirmation and the requirement to attach the confirmation or a copy of it to the Plan must be met for the Plan to be a Green Deal Plan³⁴.

Confirmation in other circumstances

In particular circumstances Green Deal Providers may wish to go beyond the requirements of the Green Deal Framework Regulations and require improvers to obtain a confirmation from other people, for example someone who has a beneficial interest under a trust, who might otherwise not have to give a confirmation. Green Deal Providers will need to determine whether or not this will be necessary, based on the circumstances of each case.

6.7 Evidence of consents and confirmations

The Code of Practice requires Green Deal Providers to collect consent and confirmation documentation from the improver before the Green Deal Plan is entered into and store that documentation for the duration of the Plan³⁵. This could be stored in either paper or electronic form.

Those advising buyers or tenants in particular may wish to enquire whether the appropriate consents to the improvements and confirmations were in place when the Plan was taken out in order to protect the interests of their clients.

6.8 Consent and confirmations requirements in different situations

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 Practice³⁶, 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.

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 on a short term basis or held on a long lease); and
- the type of documents they may wish to check in order to find out who may need to give consent / confirmation, such as

³⁴ Regulation 29 of the Green Deal Framework Regulations.

³⁵ Paragraph 71 of Annex B to the Code of Practice

³⁶ Paragraph 69 of Annex B to the Code of Practice

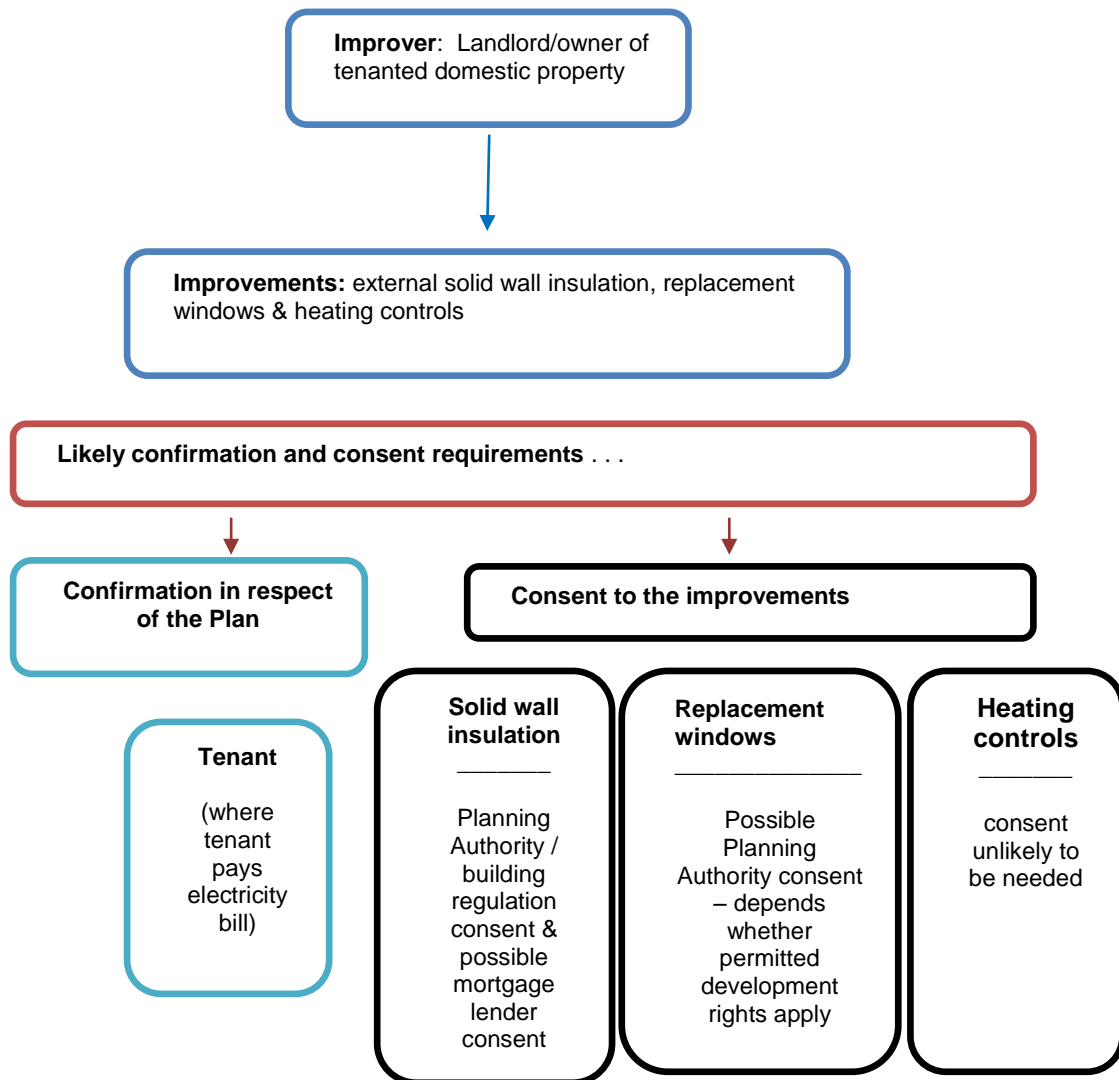
- tenancy agreements,
- property deeds,
- title deeds and 'real burden' conditions (in Scotland),
- licences and other leasehold documentation,
- mortgage loan documentation,
- Local Authority Planning Guidance,
- local conservation area and listed building guidance;

If a tenant decides to take out a Green Deal Plan on a property they are renting, then a landlord may wish to request to see a draft plan and any other information they think is important before making the decision to consent/provide a confirmation. In order to make an informed decision, it is likely that the landlord would want to know about all the measures being recommended, the length and terms of the finance package being offered, and the monthly or quarterly charges.

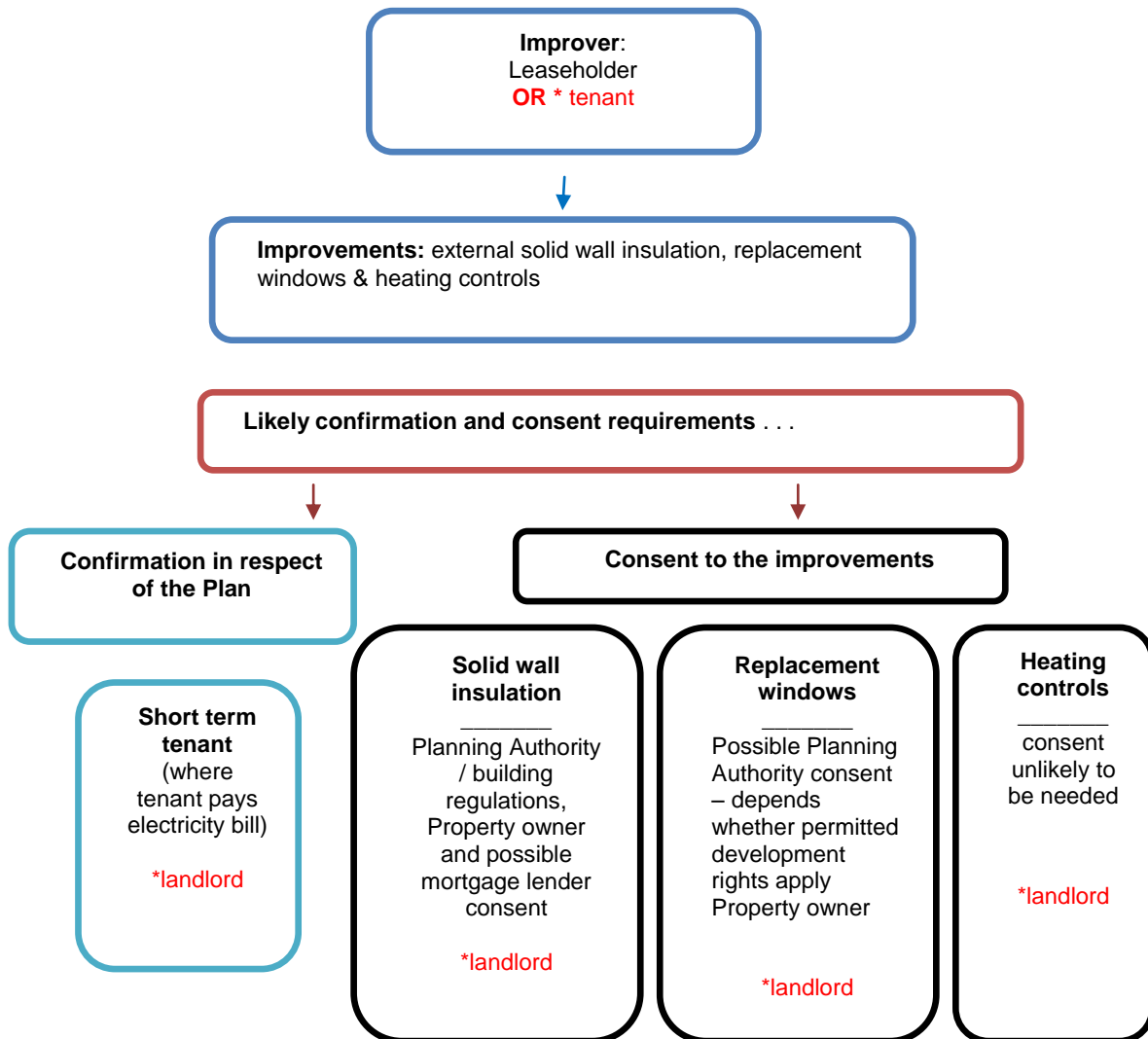
Consent and confirmation for rented properties – Examples

The following diagrams provide some general examples of how the consent and confirmation requirements operate in the context of rented properties. Whether consent to the installation of the improvements is needed will depend on the terms of the individual leases.

Example 1: Tenanted domestic property let under a short term tenancy



Example 2: Leasehold flat with short term tenant (England and Wales)



Green Deal: Private Rented Sector (PRS) Regulations in the Sector

The Energy Act 2011 enables the UK and Scottish Governments to require cost effective energy efficiency improvements in the Private Rented Sector.

From April 2016, domestic private landlords in England and Wales should not be able to unreasonably refuse their consent to requests from their tenants to install energy efficiency improvements, where financial support is available, such as the Green Deal and/or the ECO.

It also contains provisions for a minimum standard for private rented housing and commercial rented property in England and Wales from 2018.

Powers to set minimum standards for the private rented sector in Scotland, and to ensure that private landlords cannot unreasonably refuse consent in Scotland, may not be used before 1 April 2015. Scottish Ministers also have existing powers under the Climate Change (Scotland) Act 2009 to set minimum standards for all private sector housing, and will work with stakeholders to further consider how and when standards might apply.

The UK Government has committed to working with the property sector in advance of any regulations in England and Wales to encourage uptake of energy efficiency measures through the Green Deal and confirms that any use of these regulation-making powers is conditional on there being no upfront or overall costs to landlords.

There are a number of considerations for these Regulations that will need to be explored further and DECC intends to consult on these during 2013.

Confirmations where improvements are made to common parts (England and Wales)

The Green Deal could be used to install improvements to the common parts or the external fabric of a multiple occupancy building, where the freeholder, rather than the individual leaseholders or tenants, has the right to make such improvements.

If the landlord intends to pay for the measures using a Green Deal Plan, to be paid for via the electricity bill for the common parts, then he may not need to obtain a confirmation from the leaseholders as they would not be paying the electricity bill for the property.

The landlord may be able to use the Green Deal to make improvements to the fabric of a multi-occupancy building, with a proportion of the cost being divided between Green Deal Plans for each unit. Whether or not this is possible will depend on whether each unit is supplied with electricity by a “relevant energy supplier” and whether the owner of each unit agrees. Landlords who are considering this option are advised to discuss the matter with their Green Deal Provider in the first instance.

Tenement Management Scheme (Scotland)

In Scotland, the Tenement Management Scheme (TMS) contained in Schedule 1 to the Tenements (Scotland) Act 2004 may be used to take decisions on maintenance³⁷ of common parts of the building if the title deeds are unclear or say nothing on how decisions should be taken. Under the TMS scheme owners can take decisions on

³⁷ The definition of “maintenance” which applies in relation to the TMS was amended by section 69 of the Climate Change (Scotland) Act 2009 to include insulation. “Maintenance” now includes repairs and replacement, the installation of insulation, cleaning, painting and other routine works, gardening, the day-to-day running of a tenement and the reinstatement of a part (but not most) of the tenement building, but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance.

maintenance by majority. Decisions on improvements, however, have to be taken unanimously, unless the title deeds provide for other arrangements to be in place.

In some cases, burdens in title deeds in Scotland might impose restrictions in relation to alterations to properties. In these cases, applications may be made to the Lands Tribunal for Scotland to vary or remove the relevant burden.

Mortgage lender's interest in a Green Deal improved property

Energy efficiency improvements that do not change the structure of a property, such as cavity wall and loft insulation, boiler replacement etc do not usually require mortgage lender consent and this is unlikely to change where these improvements are made using Green Deal finance.

However, under their existing contractual arrangements with their customers, it is common for lenders to require customers to seek lender consent for any structural changes to the property. Where these requirements exist, they will continue to apply to any improvements funded under the Green Deal that make structural changes to the property. Improvers/borrowers should check their mortgage terms and, where necessary, speak to their lender before entering into a Green Deal Plan to ensure relevant terms and conditions of the mortgage are met.

The Green Deal Code of Practice³⁸ requires Green Deal Providers to take reasonable steps to provide the improver with general advice on the need to obtain consent for the improvements and obtain confirmation. Consents may need to be obtained in relation to the improvements, which amongst others, include the mortgage lender for structural alterations.

Solid wall insulation will be guaranteed for 25 years under the Green Deal, which should offer mortgage lenders confidence that this particular improvement will not have any detrimental impact on asset values.

³⁸ Paragraph 69, of Annex B, to the Code of Practice

7 Disclosure and Acknowledgment

7.1 Why is disclosure and acknowledgment necessary?

It is important that those who take on a property and who will or may be responsible for paying the electricity bill are made aware of key information about the Green Deal at the property. As a property changes hands over time, so will responsibility for paying the Green Deal Charge.

The disclosure and acknowledgment requirements help to ensure that the new bill payer is made aware of the Green Deal Plan and its key requirements before they decide to take on a property.

The EPC in England and Wales (and EPC and Recommendations Report in Scotland) is used to disclose the Green Deal.

A new bill payer may be able to successfully challenge their liability to make payments under a Green Deal Plan if the disclosure and acknowledgment obligations are not complied with.

This chapter provides guidance under the disclosure and acknowledgment requirements and it is intended to help those who need to comply with the disclosure and acknowledgment obligations and their professional advisers.

7.2 The disclosure and acknowledgment requirements

The Green Deal legislative framework requires, in certain circumstances, information about the Green Deal to be disclosed to prospective bill payers and for those prospective bill payers to acknowledge that they are aware of the Green Deal.

The disclosure obligation that applies when a property is being sold or let out is set out in section 12 of the Energy Act 2011. The time when disclosure must occur in this context is set out in the Green Deal (Disclosure) Regulations 2012. The disclosure obligations that apply in other circumstances (including the time when disclosure must occur) are set out in regulations 43 to 46 and 49 to 50 of the Green Deal Framework Regulations.

The acknowledgment obligations are set out in section 14 of the Energy Act 2011 (sales and lettings, but excluding oral tenancies and unwritten licence agreements) and regulations 43 to 50 of the Green Deal Framework Regulations (other circumstances, including oral tenancies and unwritten licence agreements).

The Green Deal (Acknowledgment) Regulations 2012 specify the form of acknowledgment to be used in England and Wales in all circumstances. There are similar provisions for Scotland in The Green Deal (Acknowledgment)(Scotland) Regulations 2012.

How is disclosure achieved?

The Green Deal Framework Regulations require disclosure to be achieved using the EPC in England and Wales and the EPC and Recommendations Report (RR) in Scotland. Those documents are required to include certain information about the Green Deal Plan.

Existing requirements relating to the EPC

Provision of the EPC (or in Scotland the EPC and RR) to potential buyers or tenants is already a regulatory requirement when properties are being sold and rented out.

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 EPC Report Reference Number (RRN) and the agent will then be able to access the up to date EPC/RR for the property from the appropriate EPC Register.

In England and Wales, the Energy Performance of Buildings (England and Wales) Regulations 2012 (the EPB (E&W) Regulations) define the timings of when the EPC should be made available for a property on sale or rent.

For properties with a Green Deal, complying with the obligation in the EPB (E&W) Regulations to make an EPC available on sale or rent may assist the relevant person to comply with the Green Deal disclosure obligation. Those with a Green Deal disclosure obligation and an obligation under the EPB Regulations will need to satisfy themselves that this is the case.

The EPB (E&W) Regulations require that the relevant person shall make available free of charge a valid EPC to any prospective buyer or tenant:

- (a) at the earliest opportunity; and
- (b) in any event no later than whichever is the earlier of:
 - (i) in the case of a person who requests information about the building, the time at which the relevant person first makes available any information in writing about the building to the person; or

- (ii) in the case of a person who makes a request to view the building, the time at which the person views the building.³⁹

In Scotland, regulation 5 of the Energy Performance of Buildings (Scotland) Regulations 2008 (EPB (Scotland) Regulations) set out the requirement to make available and provide an EPC and RR when a property is being sold or let out. Regulation 5A contains provisions relating to the provision of certain information when a property is advertised for sale or letting.

7.3 EPC validity, retrieval and compliance

Validity period of an EPC

For the purpose of meeting the Energy Performance of Buildings Directive, an EPC (and, in Scotland, an RR) is valid for a maximum of 10 years⁴⁰, but there are bespoke validity provisions relating to the EPC (and, in Scotland, the RR) when it is being used for the purpose of complying with the Green Deal disclosure obligations.

In broad terms, the EPC/RR must either have been:

- (1) issued by an energy assessor within the 12 months prior to it being used for disclosure purposes or;
- (2) obtained from the EPC register within the 12 months prior to it being used for disclosure purposes⁴¹.

These provisions ensure the Green Deal information disclosed is no more than 12 months old at the time of disclosure.

EPC retrieval service and EPC compliance

All EPCs must contain a valid Report Reference Number (RRN)⁴². This number can only be generated once the EPC has been lodged on the EPC Register. The EPC is only valid once it has been lodged and the RRN has been created. Provided that a person has an RRN, a copy of the EPC/RR (including information about the Green Deal) can be retrieved by anyone free of charge from the EPC Register in England and Wales⁴³ and in Scotland⁴⁴ (and either printed or saved electronically).

³⁹ Regulation 6 of the EPB (E&W) Regulations.

⁴⁰ Regulation 9(2A) of the EPB (E&W) Regulations and regulation 6(2) of the EPB (Scotland) Regulations.

⁴¹ Regulation 9(2A) of the EPB (E&W) Regulations and regulation 6(2) of the EPB (Scotland) Regulations.

⁴² Note that, in Scotland, EPCs for non-domestic, buildings produced before 18 February 2013 do not require to have an RRN to be valid, nor do they require to be lodged to the central register.

⁴³ www.epcregister.com/searchReport.html

⁴⁴ www.scottishepcregister.org.uk/

7.4 Disclosure – sale and letting

The Energy Act requires that the EPC (and, in Scotland, the RR) should be provided free of charge to any prospective buyer, tenant or licensee at the specified time.⁴⁵ The general principle is that the EPC/RR should be provided to the prospective buyer, tenant or licensee at or before the time when the viewing of the relevant property takes place⁴⁶.

In England and Wales, property agents will be able to retrieve the EPC from the EPC register if they enter the RRN. They would then be able to attach that document to online written particulars. Although this is no longer a requirement under the EPB (E&W) Regulations, attaching the EPC to the written property particulars and providing it to the person interested in the property may help to ensure compliance with the Green Deal disclosure obligations.

The RRN may be obtained from the property owner or landlord in possession of the EPC. If the property owner has instructed an agent on their behalf, and passed the RRN to them, the agent will also then have the RRN.

There may be some situations where, because of the circumstances, disclosure will be required at a different time. This is most likely to be the case where the prospective buyer, tenant or licensee does not view the property before making an offer. Where that is the case, the Green Deal (Disclosure) Regulations 2012 provide for different disclosure arrangements.

An example of such a situation is where a person asks for information about the property in connection with a proposed purchase, and then makes an offer, either orally or in writing, without viewing the property.

In this type of situation, in England and Wales, disclosure would need to occur at or before the time the prospective buyer is informed that their offer has been accepted subject to a contract to purchase the property being concluded⁴⁷. In Scotland, the timing of disclosure in this type of situation would depend on whether or not the prospective buyer had made a note of interest before making their offer. If they had, the time for disclosure would be as soon as practicable after the prospective buyer's note of interest is received, but no later than the time that the seller invites offers to be submitted. If a note of interest had not been made, the time for disclosure would be as soon as practicable after the prospective buyer's offer is received but before the offer is accepted⁴⁸.

⁴⁵ Section 12 (2) (b) of the Energy Act

⁴⁶ Regulations 3(2) and 4(2) of the Green Deal (Disclosure) Regulations 2012.

⁴⁷ Regulation 4(3) and (4) of the Green Deal (Disclosure) Regulations 2012

⁴⁸ Regulation 4(3), (4) and (6) of the Green Deal (Disclosure) Regulations 2012

Another example of a situation where different disclosure arrangements are likely to apply is where a tenant is occupying a Green Deal property under a tenancy where the landlord has assumed responsibility for paying the electricity bill for the property but under the new tenancy the tenant will be responsible for paying the electricity bill. In this situation, the tenant will not view the property because they will already be in occupation. In these circumstances, disclosure would be required as soon as practicable after the tenant requested information in connection with the new lease but before the contract to let the property is made⁴⁹.

Those who are required to comply with the disclosure obligations (or who have agreed to fulfil those requirements on behalf of their clients) should familiarise themselves with the timing requirements in the Green Deal (Disclosure) Regulations 2012. The requirements relating to more unusual situations where a prospective buyer, tenant or licensee does not view the property are more complicated.

Different arrangements apply where a property is being sold by auction. The general principle is that disclosure should occur at whichever is the earlier of (a) the time the prospective buyer views the Green Deal property; or (b) where the property is to be sold via:

- (i) a written bids auction, the time by which the bids are required to be submitted; or
- (ii) an oral and written bids auction, the time when the process of making oral bids at the auction commences⁵⁰.

The general principle will not apply in all circumstances, especially where a person bids for a property at an auction without viewing the property beforehand. The Green Deal (Disclosure) Regulations 2012 set out the arrangements that will apply in these more unusual situations⁵¹.

Circumstances where disclosure is not required on sale or letting out⁵²

The requirement to comply with section 12(2) of the Energy Act does not apply in certain circumstances:

- where at the time the Green Deal Plan at the property was entered into, confirmation (under Regulation 36 of the Green Deal Framework Regulations) was obtained from the person who would otherwise be required to be disclosed to;

⁴⁹ Regulation 3(7) and (8) of the Green Deal (Disclosure) Regulations 2012

⁵⁰ Regulation 5 of the Green Deal (Disclosure) Regulations 2012

⁵¹ Regulation 5 (3) and (4) of the Green Deal Framework Regulations

⁵² Regulation 6 of the Green Deal (Disclosure) Regulations 2012

- where the person to be disclosed to is an existing tenant, and that person was disclosed to (in accordance with the requirements of section 12 of the Energy Act 2011) before they entered into occupation of the property.

7.5 Acknowledgment – sale and letting, excluding oral tenancies and unwritten licences

The person with the disclosure obligation will also have the acknowledgment obligation. The purpose of the acknowledgment is to ensure that the new electricity bill payer understands that they will need to pay the Green Deal Plan instalments as part of the electricity bill and also that they will be bound by the terms of the Plan.

The Green Deal (Acknowledgment) Regulations 2012 prescribes the full written forms of acknowledgment that should be used in England and Wales. There are two separate prescribed forms of acknowledgment. One is a form of acknowledgment where the Green Deal Plan contains an early repayment term pursuant to regulation 38 of the Green Deal Framework Regulations, and the other is where the Green Deal Plan does not contain such a term. The acknowledgment for the early repayment term can be used when a Plan is not regulated by the CCA. The Green Deal (Acknowledgment) (Scotland) Regulations 2012 makes equivalent provision regarding the form of the acknowledgment for Scotland.

The seller or the prospective landlord or licensor must secure the contract for sale or tenancy or licence agreement includes the acknowledgment referred to above.

7.6 Disclosure and acknowledgment – other circumstances

The most common scenarios in which the obligations to disclose information about the Green Deal Plan and secure an acknowledgment form a person taking on the property are likely to apply are where a property is being sold or let out.

However, there are other situations in which a disclosure and acknowledgment obligation will apply. Examples of these situations include where a property is transferred to another person pursuant to a will and where a property is gifted to another person.

Intended occupation

Regulations 43 and 44 require disclosure and acknowledgment in circumstances where a person (“A”) intends that a transaction or arrangement is to be entered into under which another person (“B”) is to have a right to occupy a property with a Green Deal Plan and that person will be the electricity bill payer. These provisions are most likely to apply where, for example, a person is establishing a trust under which a person is to have a right to occupy a property and, in Scotland, where a person is

establishing a life interest arrangement. Where such arrangements are to be made in writing and the other conditions in regulation 43 are met, person A will be required to disclose to and secure a written acknowledgment from person B.

Regulations 43 and 44 do not apply to a transaction or arrangement which falls within section 12(1) of the Energy Act 2011 (the requirement to disclose and acknowledge on sale and letting out) or which include a transfer of ownership from person A to person B. (The latter situation is covered by regulations 45 and 46 – see below.) Therefore these regulations are unlikely to apply in circumstances where, for example, a declaration of trust is made during the course of a property purchase. In addition, they do not apply where person B provided a confirmation under regulation 36 of the Green Deal Framework Regulations at the time the Plan was entered into.

The disclosure requirement must be satisfied no later than seven days before the transaction or arrangement is entered into⁵³. Where compliance with this timetable is not practicable, the disclosure requirement must be satisfied as soon as practicable before the transaction or arrangement is entered into. The acknowledgment requirement must be satisfied as soon as practicable before the transaction or arrangement is entered into. The acknowledgment can be given in a stand-alone document but the prescribed form of words referred to in the acknowledgment regulations must be used (the glossary contains links to the prescribed words in the acknowledgment regulations).

Intended transfers of ownership

Regulations 45 and 46 require disclosure and acknowledgment where a person (“A”) intends that a transaction or arrangement is to be entered into under which ownership of the property with a Green Deal Plan or a lease of such a property is to be transferred to another person (“B”). These provisions are most likely to apply where a property is gifted from one person to another or where a property is being transferred by executors or an administrator to a beneficiary pursuant to the provisions of a will.

Regulations 45 and 46 do not apply to a transaction or arrangement which falls within section 12(1) of the Energy Act 2011 (the requirement to disclose and acknowledge on sale and letting out). In addition, they do not apply where person B provided a confirmation under regulation 36 of the Green Deal Framework Regulations at the time the Plan was entered into.

The disclosure requirement must be satisfied no later than seven days before the transaction or arrangement is entered into. Where compliance with this timetable is not practicable, the requirement must be satisfied as soon as practicable before the

⁵³ Regulation 44 (2) (a) of the Green Deal Framework Regulations

transaction or arrangement is entered into. There is no timing requirement in respect of the acknowledgment because the acknowledgment is expected to be included as part of the document effecting the transfer. The prescribed form of words referred in the acknowledgment regulations must be used (the glossary contains links to the prescribed words in the acknowledgment regulations).

Oral tenancies and unwritten licence agreements

Regulations 47 and 48 require acknowledgment where a person (“A”) intends that there is going to be a tenancy or licence agreement that will not be in writing under which another person (“B”) is to have a right to occupy a property with a Green Deal Plan and that person will be the bill payer whilst in occupation of the property. (This situation is not covered by section 14 of the Energy Act 2011.)

Where the conditions in regulation 47 are met, person A must secure that person B provides an acknowledgment before person B starts to occupy the property. The acknowledgment can be given in a stand-alone document but the prescribed form of words referred in the acknowledgment regulations must be used (the glossary contains links to the prescribed words in the acknowledgment regulations).

Regulations 47 and 48 do not apply where person B provided a confirmation under regulation 36 of the Green Deal Framework Regulations at the time the Plan was entered into.

Transactions or arrangements to change bill payers

Regulations 49 and 50 require disclosure and acknowledgment where a person (“A”) intends that there will be a transaction or arrangement where person A agrees with another person (“B”) that person B is to become the electricity bill payer at the property. These provisions are most likely to apply where there is an agreement between two parties that one person is to take on formal responsibility for paying the electricity bill in circumstances not covered by the other disclosure and acknowledgment obligations, such as where a tenant agrees, midway through a tenancy agreement, to take on responsibility for paying the electricity bill from their landlord.

Regulations 49 and 50 do not apply to a transaction or arrangement which falls within section 12(1) of the Energy Act 2011 (the requirement to disclose and acknowledge on sale and letting out) or regulations 43 to 48 (referred to above). In addition, they do not apply where person B provided a confirmation under regulation 36 of the Green Deal Framework Regulations at the time the Plan was entered into.

The disclosure obligation must be satisfied no later than seven days before the transaction or arrangement is entered into. Where compliance with this timetable is not practicable, the requirement must be satisfied as soon as practicable before the

transaction or arrangement is entered into. The acknowledgment obligation must be satisfied as soon as practicable before the transaction or arrangement is entered into. The acknowledgment can be given in a stand-alone document but the prescribed form of words referred in the acknowledgment regulations must be used (the glossary contains links to the prescribed words in the acknowledgment regulations).

7.7 When the bill payer of a Green Deal property dies with or without a will

The executor (or, where there is no will, the administrator) for the deceased is expected to deal with the deceased's assets in accordance with the terms of the will or the law of intestacy in England and Wales. The executor may, depending on the circumstances, be required to comply with the disclosure and acknowledgment obligations when they sell the property or transfer ownership of it to another person.

In Scotland, the executor nominate (or, where there is no will, the executor dative) for the deceased is expected to deal with their assets under the terms of the will or in accordance with the law of intestate succession.

As with any liability the deceased may have had before they died, the electricity bill (including the Green Deal Charge) will need to be taken into account when organising their affairs and settling their accounts. The Green Deal Charge will continue to be paid through the electricity bill, until the electricity bill payer changes. For example, the property of the deceased could be sold or rented, or gifted to a named beneficiary under a will.

8 Green Deal and the EPC

Information about the Green Deal in the EPC pre and post Green Deal improvements

Where a Green Deal has been used to improve a property, the EPC (or Recommendations Report in Scotland) will contain key information about the Plan and the amount of the Green Deal Charge.

Following the Green Deal improvements made to the property, the Green Deal Provider would then instruct a Green Deal assessor to prepare and lodge a new EPC which will update the information and rating on the EPC to reflect the Green Deal improvements that have been made. No further assessment, or an associated visit is required by a Green Deal assessor following installation of Green Deal measures, as long as suitable evidence is available from the Provider that the work has been done.

The first page of the EPC (both in England and Wales and in Scotland), will indicate that the property has a Green Deal and further details of the Green Deal Plan will be set out later in the EPC (England and Wales) or RR (Scotland). The details will include the start and end date of the Plan, the improvements installed under the Plan, the Plan number and contact details of the Green Deal Provider.

Updating the EPC when Green Deal details change

Over time, the information about the Green Deal Plan may change. The Green Deal Provider is required to keep the disclosure information up to date, which they will be able to do via the Green Deal Plan Tool. Updates could include changes in interest rates (for non-domestic Green Deal Plans), full or partial early repayment, or any changes to the property that they are made aware of that could impact on the improvements installed under the Plan. The Green Deal Plan Tool enables Providers to meet their requirements to enter and update disclosure information on the EPC Register. This information is then included in the EPC or RR for the Green Deal property.

When changes occur, the Green Deal Plan information on the EPC / Recommendations Report will be updated by the Green Deal Provider to ensure the EPC holds the most up-to-date information. Changes to the EPC may be required if:

- I. The interest rate under a Green Deal Plan changes;
- II. The Green Deal instalments change;
- III. The liability to make payments under a Green Deal Plan is discharged early in part or in full;
- IV. The liability of the bill payer and the liability of a subsequent bill payer to make payments under a Green Deal Plan is reduced or cancelled;

- V. The Green Deal Provider knows or has reasonable cause to believe that:
- i. an improvement has been removed from a Green Deal property before the end of the improvement specific payment period applicable to that improvement ; or
 - ii. an alteration has been made to a Green Deal property, which had it existed when the estimated first year savings were calculated, would have materially affected that calculation;
- VI. The Green Deal Plan becomes a regulated consumer credit agreement;
- VII. The Green Deal Provider changes;
- VIII. The contact details of the Green Deal Provider change⁵⁴.

Vandalism or removal of Green Deal improvements

Green Deal Providers are required to include a term in the Green Deal Plan requiring the improver and bill payer to notify the Green Deal Provider if they become aware of any material changes being made to the property⁵⁵. This could occur where, for example, an improvement has been removed or perhaps where a property has been vandalised and the improvements are not functioning. In this situation the Green Deal Charge will continue to be payable.

Although the Green Deal Provider cannot require the Green Deal Plan to be repaid early in these circumstances, the bill payer may choose to make an early repayment. If they choose not to pay the Green Deal Plan early, then the Green Deal Charge will continue to be paid up to the end of the term, even when the measure is no longer in place. The property owner may, however, be able to pursue the person who damaged the property or removed the measures through other legal channels, but this will depend on the circumstances.

When the Green Deal is repaid, the Green Deal Plan details will be removed automatically from the EPC register. The Central charge database will be automatically updated to reflect the repayment of the Green Deal Plan. Where the Green Deal Plan is repaid early (either in part or entirely):

- the Supplier, shall inform the relevant Green Deal Bill payer that the sum to be paid should be paid directly to the relevant Green Deal Provider; or
- the Green Deal Provider, shall update the Central charge database within three (3) working days of receiving payment from the Green Deal Bill payer (in

⁵⁴ Regulation 42 A to C of the Green Deal Framework Regulations.

⁵⁵ Paragraph 62 of the Code of Practice

accordance with the Green Deal Arrangement Agreement). The latest position will appear on the EPC shortly after the Central charge database is updated.

Other changes to the property, such as re-wiring, plastering, internal structural alterations to the property not impacting on the energy efficiency of the property or the Green Deal measures are unlikely to require the Green Deal Plan information to be updated.

Further information on the obligations placed on the Green Deal Provider to update the Green Deal Plan information can be found in the Green Deal Provider Guidance.

Multiple Green Deals on a property

Before a Green Deal Plan can be entered into, a valid assessment must be carried out on the property by a qualified and authorised Green Deal Assessor. The assessment includes the creation of an EPC (if no existing valid EPC is in place) and an Occupancy Assessment, which is an assessment of the actual use of energy by the occupiers of a domestic property which forms part of the Green Deal assessment.

While a property could benefit from more than one Green Deal Plan over time, a separate assessment will be required for each one. This is because each Plan would need to be based on an up to date EPC, and there can only be one valid EPC at any given point in time for that property. Each Green Deal Plan would therefore be based upon the post-installation EPC of the previous Plan. Disclosure information is added each time a new Plan is entered into, resulting in a separate disclosure section on a single EPC for each live Green Deal Plan.

9 Consents and Disclosure and Acknowledgment complaints

9.1 Complaints about the Green Deal

Property owners, and/or bill payers may, depending on the circumstances, be able to complain to the Green Deal Provider if certain requirements relating to the Green Deal Plan have not been met. Dependent on the complaint, if it is not resolved to the satisfaction of the customer, then the customer will be able to take their complaint to a relevant Ombudsman for a resolution.

The main exception to this is for complaints in respect of the disclosure and acknowledgment provisions. These complaints are considered in more detail below.

These complaints are referred to the Green Deal Ombudsman and Investigation Service, and are investigated on behalf of the Secretary of State.

The Code of Practice sets out the complaint handling process requirements by Green Deal Providers⁵⁶.

The Secretary of State has power to resolve complaints by imposing sanctions. Government has published guidance on the sanctions that the Secretary of State can impose⁵⁷.

9.2 Complaints about consents⁵⁸

Where it emerges that a consent to make the improvements installed under a Green Deal Plan was not obtained, for example a planning consent from the local planning authority or consent from a freeholder (England and Wales) under the terms of a lease, the condition included in the Green Deal Plan by virtue of section 5(2) (b) of the Energy Act 2011 (“the consent provision”) is likely to have been breached. This condition requires the improver to confirm that any necessary permissions or consents have been obtained in respect of the improvements.

Complaints about consents can be made at any time during the Green Deal Plan term, as long as the time the complaint is made, there is an outstanding balance under the Green Deal Plan⁵⁹.

⁵⁶ Section 4, of the Code of Practice

⁵⁷ www.gov.uk/government/publications/guidance-on-green-deal-sanctions-and-appeals

⁵⁸ Regulation 55 of the Green Deal Framework Regulations

Where the Secretary of State is satisfied that there is a breach of the consent provision, the Secretary of State may be able to cancel the Green Deal Plan and require the improver to pay compensation to the Green Deal Provider.

9.3 Complaints about disclosure and acknowledgment⁶⁰

For the Green Deal sanctions regime to be effective, disputes relating to disclosure and acknowledgment can only be resolved by an investigation by the Green Deal Ombudsman and Investigation Service, followed by a decision by the Secretary of State.

If the Green Deal Provider or the person who was required to be disclosed to or from whom an acknowledgment was required, consider that there has been a breach of the disclosure and acknowledgment provisions, either may refer the matter to the Secretary of State. The Green Deal Ombudsman and Investigation Service will investigate the complaint on the Secretary of State's behalf to assist the Secretary of State's decision-making process. In practice, customers will raise their complaint with the relevant Green Deal Provider in the first instance before the complaint is then sent on to the Ombudsman for investigation.

A breach of the disclosure and acknowledgment provisions occurs when:

- (i) the "notifier" (the person who had the obligation to disclose) has failed to provide the EPC/RR⁶¹;
- (ii) the recipient (the person who had to be disclosed to and from whom an acknowledgment was required) does not give an acknowledgment.

Where the Secretary of State is satisfied that there is a breach of the disclosure and acknowledgment provisions, the Secretary of State may be able to cancel the Plan and require the notifier to pay compensation to the Green Deal Provider.

The disclosure and acknowledgment provisions have been designed to incorporate business as usual practices across the relevant professionals and to minimise the possibility of breaches. However, if disclosure and/or acknowledgment does not happen, then in most cases a bill payer will contact the energy supplier soon after they move into the property, and the supplier will then send out a welcome pack, which will explain that the property has a Green Deal.

⁵⁹ Paragraph 4.10, of the Code of Practice

⁶⁰ Regulation 56 of the Green Deal Framework Regulations

⁶¹ in accordance with section 12 of the Energy Act 2011⁶¹ or Part 7, chapter 2 of the Green Deal Framework Regulations (as applicable)

Upon receiving the first communication the new bill payer will have 90 days⁶² in which to challenge their liability to pay on the grounds of non-disclosure. After this period expires, the new bill payer has no recourse and is liable for the Green Deal Charge. As long as the challenge is raised within that time, the clock is deemed to have stopped and the subsequent investigation and resolution can progress within the timelines established separately for those processes.

The number of new bill payers who enter the property unaware of the Green Deal Charge is likely to be extremely low, but occasionally the first point of disclosure is going to be the first bill/statement/welcome pack from the energy supplier.

The 90 day period is likely to start on the day the customer receives the welcome pack informing them that the property has a Green Deal. This gives the new bill payer the opportunity to raise a complaint immediately if the disclosure and acknowledgment obligations have not been met. Raising the dispute early will be key in helping to trace the former bill payer and ensuring that the dispute can be resolved as quickly and easily as possible.

Withdrawal following late disclosure

The sanctions provisions in the Green Deal Framework Regulations do not apply where a potential bill payer is disclosed to, too late, in breach of the disclosure obligations, and that person then withdraws from the relevant property transaction as a result.

⁶² Paragraph 4.11.2 of the Code of Practice

10 The long-term treatment of Green Deal improved properties

10.1 The value of Green Deal improved properties

The market will determine the value of properties with Green Deal funded improvements. This will depend on a multiplicity of factors in both the domestic and non-domestic sectors. The Green Deal will only be one further factor in price negotiations, dependent on the individual property and the situation of both buyers and sellers.

Dependent on these negotiations and the specific circumstances of buyers and sellers, some sellers may choose to repay their Green Deal Plans before they sell their properties.

However, government considers that a Green Deal may add the following features to a property:

- Dependent on the nature of the improvements, they may have greater ‘kerbside appeal’ because of aesthetic improvements, as well as the energy performance benefits;
- Improved properties may be more comfortable to occupy;
- Green Deal customers are likely to consume less energy relative to unimproved properties (although this will depend on the behaviour of individual occupiers);
- The Green Deal is designed to ensure that the cost of the improvements does not exceed the estimated energy bill savings that a typical occupier of the property is likely to see;
- There will be an on-going relationship between the Green Deal Provider and the customer and certain guarantees will apply to the Green Deal improvements;
- Their EPC rating is likely to be higher.

Customers will only pay for the measures while they benefit from them and are released from the obligation to pay for the improvements on an ongoing basis when they cease to be responsible for paying the electricity bill. They will, however, retain responsibility to pay for any arrears they accrued whilst they were responsible for paying the electricity bill.

10.2 Changes to a property with a Green Deal

Material changes

Where an owner or occupier wishes to make structural changes to the property or if they become aware that a material change has occurred, they are expected to advise the Green Deal Provider of those changes. This requirement will be imposed by the term included in the Plan⁶³. The terms of the Plan will require the improver and the bill payer (as appropriate in the circumstances) to inform the Provider if they become aware that a material change has occurred. This may be because they are making a change or because someone else has.

Managing changes in the CCA status of the Green Deal 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. Regulation 38 allows a term to be included in an unregulated plan in case there is a change at the property that means that the plan ought to be regulated. 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. The Green Deal Provider guidance explains how changes to the CCA status of the Plan should be managed by the Green Deal Provider.

⁶³ Paragraph 62 of Annex B to the Code of Practice

Glossary

The Green Deal Framework Regulations

The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012. These Regulations, which apply to Great Britain, establish elements of the framework for the Green Deal energy efficiency scheme which was created by Chapter 1 of Part 1 of the Energy Act 2011 (c.16) (“the Act”).

The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012.

www.legislation.gov.uk/uksi/2012/2079/contents/made

The Energy Act

www.legislation.gov.uk/ukpga/2011/16/contents/enacted

The Disclosure Regulations

The Green Deal (Disclosure) Regulations 2012. These Regulations, which apply to Great Britain, specify the time when the obligation to disclose information about a Green Deal Plan must be complied with when a Green Deal property is being sold or let out. They also specify a number of circumstances in which the obligation in section 12 of the Energy Act 2011 to disclose on sale and letting does not apply.

www.legislation.gov.uk/uksi/2012/1660/contents/made

The Acknowledgment Regulations

The Green Deal (Acknowledgment) Regulations 2012 and the Green Deal (Acknowledgment) (Scotland) Regulations 2012. These Regulations specify the form of acknowledgment that must be used when an acknowledgment is required under section 14 of the Energy Act 2011 or regulations 43 to 50 of the Green Deal Framework Regulations. They also specify a number of circumstances in which the obligation in section 14 of the Energy Act 2011 to secure an acknowledgment on sale and letting does not apply.

England and Wales: www.legislation.gov.uk/uksi/2012/1661/contents/made

Scotland: www.legislation.gov.uk/ssi/2012/214/contents/made

Code of Practice – version 2

The Green Deal Code of Practice sets out requirements for those persons acting as Green Deal Providers, Assessors, Installers and Certification Bodies.

www.gov.uk/government/uploads/system/uploads/attachment_data/file/69090/Green_Deal_Code_of_Practice__version_2.pdf

Green Deal Provider Guidance

The Green Deal Provider 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.

www.greendealorb.co.uk/admin/documents/6975-green-deal-provider-guidance.pdf

Bill payer

The person who is liable to pay the electricity bill at a property from time to time.

Green Deal Central Charge database (GDCC)

The Green Deal Central charge database is the system used to manage information related to the collection and remittance of Green Deal Charges/payments by electricity 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.

CCA

The Consumer Credit Act provides a framework to protect consumers when dealing with those engaged in consumer credit and/or ancillary credit businesses, and requires such traders to hold an appropriate consumer credit licence issued by the Office of Fair Trading.

Green Deal Arrangements Agreement

The Green Deal Arrangements Agreement (GDAA) is a contract which establishes the legal framework for the collection of Green Deal Charges/payments by electricity suppliers and remittance thereof to Green Deal providers or finance parties. The agreement covers;

- the governance and change control procedures for the GDAA;
- the commercial arrangements surrounding the collection and payment of Green Deal Charges; and
- other general legal provisions.

Green Deal property

A property that has been improved with energy efficiency measures eligible under the Green Deal.

Registrable lease

In England and Wales

- an unregistered leasehold estate, the transfer, grant or creation of which is required to be registered under section 4 of the Land Registration Act 2002;
- a term of years absolute, the transfer of grant of which is required to be completed by registration under section 27 of the Land Registration Act 2002

In Scotland, a lease that has been

- registered in the Land Register of Scotland; or
- recorded in the Register of Sasines

Regulated plan

A Green Deal Plan that is regulated by the CCA.

Unregulated plan

A Green Deal Plan that is not regulated by the CCA.

Domestic property

A domestic property is a building or part of a building occupied as a dwelling, or, if not occupied, intended to be occupied as a dwelling.

Non-domestic property

A non-domestic property is a building or part of a building that is occupied other than as a dwelling, or, if not occupied, is not intended to be occupied as a dwelling.

Annex

1. **How customers are supported under the Green Deal**
2. **Mock up of the EPC disclosure page**
3. **Property transaction scenarios (separate document)**

Annex 1. How customers are supported under the Green Deal?

There are clear complaints handling processes in place. Unresolved complaints can be taken to the relevant Ombudsman. The roles of the relevant Ombudsman Services are as follows:

The Green Deal Ombudsman and Investigation Service has two functions:

- i. *Green Deal Ombudsman* - to resolve disputes between the Green Deal Provider and their customer.
- ii. *Investigation Service* - the investigation service function will investigate complaints about disclosure and acknowledgment and other breaches as required by the DECC Secretary of State, and provide those investigation reports to the Secretary of State, to make a decision on the appropriate resolution or sanction.

www.ombudsman-services.org/green-deal.html

Financial Ombudsman Service – The Financial Ombudsman Service will deal with complaints regarding the provision of the credit. They will not look at complaints relating to the improvements 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 section 75 of the CCA.

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.

www.ombudsman-services.org/energy.html

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.

Once a complaint has been considered and resolved by the Ombudsman service, the decision is binding if accepted by the complainant.

Annex 2 – Mock up of the disclosure page

Information about the Green Deal Plan relating to this property

Energy Performance Certificate RRN: 0000-0000-0000-0000-0000

A Green Deal has paid to install energy efficiency improvements at this property. If you become responsible for paying the electricity bill, you will be required to pay the Green Deal charge set out below. Also, you must comply with the terms and conditions in the Green Deal Plan. You should ask for a copy of the up to date Green Deal Plan from the owner of the property or the landlord and familiarise yourself with the contents.

The Green Deal can be paid off early, although charges may apply. The Green Deal is an unsecured loan, which is regulated by the Consumer Credit Act 1974. It is designed to save you at least as much money as you will have to repay. However, the actual level of your savings will depend on how much energy you use (e.g. to heat your property) and the future cost of energy.

Current charge amount: £1.50 per day (£540 p.a.)
Charges start: 17/06/2013
Charges end: 17/01/2030
Interest rate payable: fixed at 5.7% APR

Plan charges:

- are payable as part of the electricity bill
- increase by x% [max 2] each year on [June 17th]
- reduce as each improvement is paid-off

GD Plan number: GB0000010007
Green Deal Provider: British Gas

Tel: 0845 757 757

Email: xxxxxx@british.gas.co.uk

This Green Deal information was generated on [DATE]. It was last updated by the Green Deal Provider on [DATE]. You can check for updates using the EPC Report Reference Number (RRN above) at www.epcregister.com

Improvements installed	Paid-off in
Loft insulation	September 2013
Energy efficient lighting	February 2018
Energy efficient boiler: Potterton Suprema 500xl	June 2022
Double glazing	August 2023
External Wall insulation	January 2030

Estimates of how these improvements could reduce annual energy bills for a typical user

Total: £630 p.a. Gas: £490 p.a. Electricity: £140 p.a.
 Most improvements reduce the energy used for heating. These estimates are based on:

- the original Green Deal assessment;
- the improvements installed by this Plan (opposite);
- typical energy use for this type of property, using current energy prices.

If you are a low user of energy you may not achieve these estimated savings.

Other important information

This Green Deal is regulated by the Consumer Credit Act 1974. This provides certain protections to those paying the Plan instalments through their electricity bill.

The improvements listed above were installed under this Green Deal Plan and are due to be paid-off at the times specified. If an improvement listed above has not been paid off, you should check that:

- it is still in place;
- no alterations have been made to this property that would reduce its effectiveness;
- it has been maintained in line with guidance from the Green Deal Provider.

If, after taking-on this property, you are considering or carrying out renovations that may impact on the improvements installed under this plan, or you notice that such changes have already been made, you must contact your Green Deal Provider.

Mandatory product guarantees are supplied for at least five years. These may be subject to maintenance or servicing requirements and you should check these have been met.

Charges may apply if you decide to repay this Green Deal Plan early and these details are set out in the Plan.

If you take on this property, you may have to repay this Plan early if you want to demolish this property or permanently disconnect the electricity supply – contact your Green Deal Provider for further details.

New bill payers are advised to contact their energy supplier when they take on a Green Deal property, particularly if the property has a pre-payment meter.

Further information can be found on the Green Deal Plan, a copy of which can be obtained from the owner of the property, or from the Green Deal Provider with the owner's consent.

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Department of Energy & Climate Change
3 Whitehall Place
London SW1A 2AW
www.decc.gov.uk

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