



Department
of Energy &
Climate Change

Guidance on Green Deal Sanctions and Appeals

WITHDRAWN

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Table of Contents

1. Introduction	4
1.1 Sanctions that may be imposed by the Secretary of State	5
1.2 How a breach is reported to the Secretary of State	5
2. Sanctions the Secretary of State can impose for specific types of breach.....	7
2.1 A breach of the relevant requirements by a Green Deal Provider	7
2.2 A breach of the relevant requirements by a Green Deal Installer	8
2.3 A breach of the relevant requirements by a Green Deal Assessor	8
2.4 A breach of the relevant requirements by a Green Deal Certification Body	9
2.5 A breach of disclosure and acknowledgement provisions	9
2.6 A breach of consent provision	10
2.7 A failure to take a consumer credit modifying step	10
2.8 Substantive loss	11
3. Enforcement Undertaking.....	13
3.1 The nature of an enforcement undertaking	13
4. Details of Specific Sanctions.....	15
4.1 Compliance notice	15
4.2 Financial penalties	15
4.3 Withdrawal of authorisation of a Green Deal Provider	16
4.4 Suspension and withdrawal of authorisation of Green Deal Installers, Green Deal Assessors and Green Deal Certification Bodies.....	17
4.5 Circumstances where the Secretary of State may impose a suspension.....	19
4.6 Circumstances where the Secretary of State may impose withdrawal of authorisation.	19

4.7	Cancellation and compensation	20
4.8	Cancellation and Compensation in different circumstances	22
4.9	Reduction	24
5.	Sanctions Process.....	26
6.	Appealing sanctions.....	28
6.1	The First tier Tribunal	28
6.2	Fast track appeals on sanction notices	29

WITHDRAWN

1. Introduction

This guidance is aimed at Green Deal Providers, Green Deal Assessors, Green Deal Installers, Green Deal Certification Bodies, and other people directly affected by a sanction imposed by the DECC Secretary of State in relation to the Green Deal.

The purpose of the guidance is to set out the circumstances under which sanctions would be imposed under the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012¹ (the “Framework Regulations”). It also sets out the process by which sanctions are imposed, and what a person affected by a sanction can do if they want to appeal a sanction decision.

This guidance outlines the considerations for the imposition of sanctions for a breach of:

- the relevant requirements by a Green Deal Provider²;
- the relevant requirements by a Green Deal Installer³;
- the relevant requirements by a Green Deal Assessor⁴;
- the relevant requirements by a Green Deal Certification Body⁵;
- disclosure and acknowledgement provisions⁶;
- consent provisions⁷;
- failure to take a consumer credit modifying step⁸; and
- withdrawal of authorisation from a Green Deal Provider in a case where the Secretary of State considers that the Provider is no longer a fit person to be authorised⁹.

The relevant requirements for Green Deal participants and Green Deal Certification Bodies are set out in the Framework Regulations and include a requirement to comply with the Green Deal Code of Practice¹⁰.

¹ SI 2012/2079

² Regulations 24-26 and 86 of the Framework Regulations

³ Regulation 23 and 86 of the Framework Regulations

⁴ Regulation 22 and 86 of the Framework Regulations

⁵ Regulation 19 and 86 of the Framework Regulations

⁶ The disclosure and acknowledgment provisions are sections 12 and 14 of the Energy Act 2011, regulations 43 to 50 of the Framework Regulations, the Green Deal (Disclosure) Regulations 2012 (SI 2012/1660) and, as applicable, the Green Deal (Acknowledgment) Regulations 2012 (SI 2012/1661) or the Green Deal Acknowledgment (Scotland) Regulations 2012 (SSI 2012/214). Regulation 62 of the Framework Regulations sets out the circumstances in which there is a breach of these provisions.

⁷ Regulation 61 of the Framework Regulations

⁸ Regulation 64 of the Framework Regulations.

⁹ Regulation 71 of the Framework Regulations.

1.1 Sanctions that may be imposed by the Secretary of State

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

- I. cancellation or reduction of a Green Deal Plan or Energy Plan* on a Green Deal Provider (or, if the Provider is no longer authorised, on the person who is entitled to the payments due under the plan) (the “relevant person”);
- II. compensation further to cancellation on an improver or a notifier, as applicable;
- III. suspension of authorisation on an authorised person other than a Green Deal Provider;
- IV. compliance notice on a Green Deal Provider;
- V. financial penalty on a Green Deal Provider; and
- VI. withdrawal of authorisation on an authorised person.

When a breach of the relevant requirements by a Green Deal Provider, Installer, Assessor or Certification Body has occurred, the Secretary of State may accept an enforcement undertaking in place of sanctions III, IV, V and VI as listed above.

* Where the Green Deal Provider has failed to ensure that the statutory conditions for the establishment of a Green Deal Plan have been satisfied, the Green Deal Provider is in breach of regulation 26 of the Framework Regulations, which is a relevant requirement, and the Secretary of State is able to cancel the plan. The plan is, technically, an Energy Plan – because the conditions required to establish a Green Deal Plan were not met.

1.2 How a breach is reported to the Secretary of State

The Secretary of State can impose sanctions in receipt of:

- a referred eligible complaint¹¹;
- information derived from ongoing monitoring activities;
- information is received from the Ombudsman or Office of Fair Trading, Green Deal Accreditation Body, Green Deal Certification Bodies, or Green Deal participants¹²; and

¹⁰

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69090/Green_Deal_Code_of_Practice_version_2.pdf

¹¹ Regulation 55-58 of the Framework Regulations

¹² Regulation 52 (3) of the Framework Regulations

- a complaint directly to the Secretary of State where the relevant Green Deal Provider is no longer authorised¹³.

A referred eligible complaint to the Secretary of State¹⁴

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

An eligible complaint in respect of a breach of the relevant requirements by a Green Deal Assessor may only be referred to the Secretary of State by the complainant, when the complaint has been referred to and considered by the relevant Green Deal Certification Body on whose membership list the assessor is included, and has not been resolved to the satisfaction of the complainant.

The exception to this is for complaints in respect of disclosure and acknowledgement provisions. These may only be referred to the Secretary of State by a Green Deal Provider or a recipient to whom the disclosure document should have been provided and from whom acknowledgement should have been obtained¹⁵.

Complaints direct to the Secretary of State

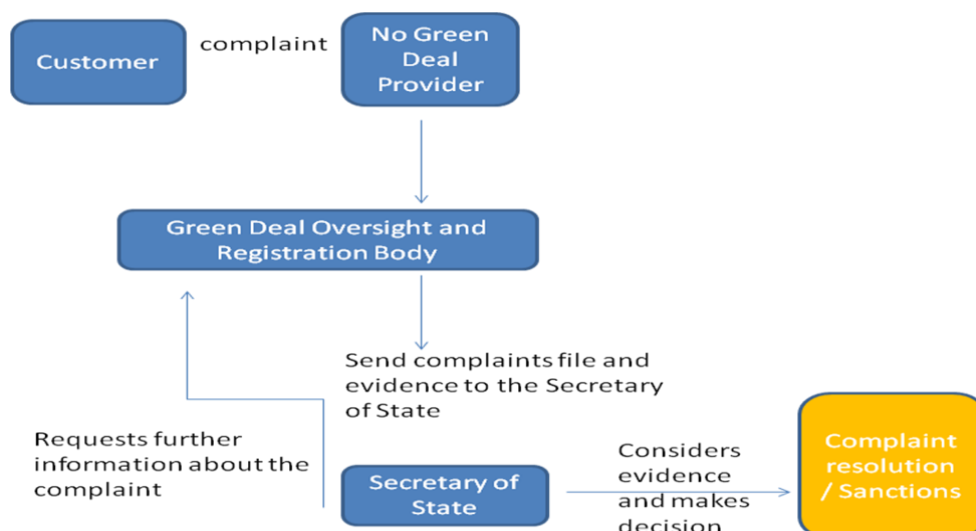
Complaints can be made to the Secretary of State via the Oversight and Registration Body where the Green Deal Provider authorisation is withdrawn at the time the complaint is made.

Diagram 1. This illustration shows the route of a complaint to the Secretary of State where there is no Green Deal Provider.

¹³ Regulation 60 (b) of the Framework Regulations

¹⁴ Regulation 59 of the Framework Regulations

¹⁵ Regulation 51 of the Framework Regulations



2. Sanctions the Secretary of State can impose for specific types of breach

2.1 A breach of the relevant requirements by a Green Deal Provider¹⁶

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

If satisfied that a Green Deal Provider has breached the relevant requirements and the breach is severe or there have been other breaches of the relevant requirements by the Green Deal Provider, the Secretary of State can impose one or more of:

- i. a compliance notice on the Green Deal Provider;
- ii. a financial penalty on the Green Deal Provider; and
- iii. withdrawal of authorisation on the Green Deal Provider.

Alternatively, instead of imposing sanctions i to iii, the Secretary of State can decide to accept an enforcement undertaking from the Green Deal Provider.

¹⁶ Regulation 67 of the Framework Regulations

In addition, if the Secretary of State is satisfied that the bill payer has suffered substantive loss, cancellation or reduction can be imposed on the relevant person.

2.2 A breach of the relevant requirements by a Green Deal Installer¹⁷

A breach of relevant requirements occurs when a Green Deal Installer has failed to comply with any provisions of the Code of Practice that apply to Green Deal Installers¹⁸ or has failed to provide information to the Secretary of State when requested under regulation 86 of the Framework Regulations.

Where the Secretary of State is satisfied that there has been a breach of the relevant requirements by a Green Deal Installer and the breach is severe or there have been other breaches of the relevant requirements by the Green Deal Installer, the Secretary of State can impose:-

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

Withdrawal could be imposed on a Green Deal Provider when the Secretary of State is satisfied that there has been a breach of the relevant requirements by a Green Deal Installer and the Green Deal Provider is wholly or partly liable for the breach.

The Secretary of State can decide to accept an enforcement undertaking in place of i. from the Green Deal Provider or in place of ii or iii from the Green Deal Installer.

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

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

2.3 A breach of the relevant requirements by a Green Deal Assessor¹⁹

A breach of the relevant requirements occurs when a Green Deal Assessor has failed to comply with the relevant requirements set out in regulation 22 in the

¹⁷ Regulation 68 of the Framework Regulations

¹⁸ Regulation 23 of the Framework Regulations

¹⁹ Regulation 69 of the Framework Regulations

Framework Regulations or has failed to provide information to the Secretary of State when requested under regulation 86 of the Framework Regulations.

Where the Secretary of State is satisfied that there has been a breach of the relevant requirements by a Green Deal Assessor, the Secretary of State can impose:-

- i. withdrawal of authorisation on the Green Deal Assessor;
- ii. suspension of authorisation on the Green Deal Assessor.

Alternatively, the Secretary of State can decide to accept an enforcement undertaking from the Green Deal Assessor.

2.4 A breach of the relevant requirements by a Green Deal Certification Body²⁰

A breach of the relevant requirements occurs when a Green Deal Certification Body has failed to comply with the relevant requirements set out in regulation 19 in the Framework Regulations or has failed to provide information to the Secretary of State when requested under regulation 86 of the Framework Regulations.

Where the Secretary of State is satisfied that there has been a breach of the relevant requirements by a Green Deal Certification Body, the Secretary of State can impose:-

- i. withdrawal of authorisation on the Green Deal Certification Body; and
- ii. suspension of authorisation on the Green Deal Certification Body

Alternatively the Secretary of State can decide to accept an enforcement undertaking from the Green Deal Certification Body.

2.5 A breach of disclosure and acknowledgement provisions²¹

A breach of the disclosure and acknowledgement provisions occurs when:-

- (i) the notifier has failed to disclose the Green Deal Plan, or in accordance with the Energy Act 2011²² or Part 7, chapter 2 of the Framework Regulations (as applicable); or
- (ii) the recipient does not give an acknowledgment, in accordance with the Energy Act 2011²³ or Part 7, chapter 2 of the Framework Regulations (as applicable).

²⁰ Regulation 69 of the Framework Regulations

²¹ Regulation 66 of the Framework Regulations

²² Section 12 of the Energy Act 2011

²³ Section 12 of the Energy Act 2011

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

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

2.6 A breach of consent provision²⁴

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

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

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

2.7 A failure to take a consumer credit modifying step²⁵

A consumer credit modifying step is required when a Green Deal Plan was not, at the time it was entered into, a regulated consumer credit agreement but a subsequent trigger event has occurred whereby a new agreement is required that must be a regulated consumer credit agreement²⁶. A failure to take a consumer credit modifying step occurs when the person entitled to the instalments under a plan (the “payee”) is not a Green Deal Provider, and the payee or the Green Deal Provider does not respond to this trigger event by completing one of the following steps:

- i. exercise an early repayment term so that the indebtedness under the Green Deal Plan is discharged;
- ii. modify the Green Deal Plan by a regulated consumer credit agreement made in writing with the bill payer; or
- iii. terminate the Green Deal Plan²⁷.

²⁴ Regulation 65 of the Framework Regulations

²⁵ Regulation 70 of the Framework Regulations.

²⁶ Regulation 63 (3) of the Framework Regulations.

²⁷ Regulation 64 (4) of the Framework Regulations

Where the Secretary of State is satisfied there has been a failure to take a consumer credit modifying step, the Secretary of State may impose cancellation on the relevant person.

2.8 Substantive Loss

In some cases, the Secretary of State will need to consider, before imposing a sanction, whether the bill payer has suffered substantive loss²⁸. The Secretary of State is likely to consider that a customer has suffered substantive loss where the customer has suffered harm, and is likely to take into account both:

- i. the level of harm suffered by the customer; and
- ii. the impact of that harm on the customer.

Harm may be:

- significant (for example financial loss);
- moderate (for example, the bill payer was inconvenienced in a minor way); or
- minor (for example the bill payer did not notice the breach).

In assessing the impact of the harm, the Secretary of State will consider any subsequent effects on the customer, for example the ability of a customer to meet other financial obligations. The fact that the complainant did not at first notice the breach does not necessarily mean that the harm suffered was not significant, once discovered.

Diagram 2. This illustration shows the route of a complaint (excluding disclosure and acknowledgement), which may lead to a sanction decision by the Secretary of State.

²⁸ Regulations 62, 67 and 68 of the Framework Regulations.

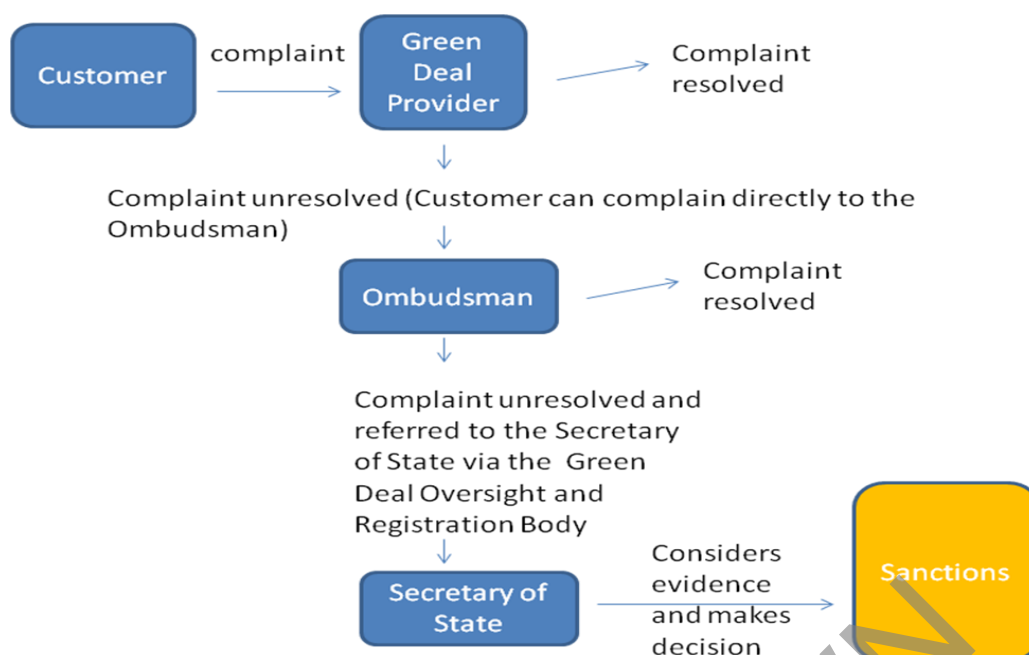


Diagram 3. This illustration shows the route of a complaint about disclosure and acknowledgement, which may lead to a sanction decision by the Secretary of State.



3. Enforcement Undertaking

When a breach of the relevant requirements by a Green Deal Provider, Installer, Assessor or Certification Body has occurred, the Secretary of State may accept an enforcement undertaking in place of a compliance notice, financial penalty, suspension or withdrawal of authorisation. The Secretary of State will decide on a case by case basis whether it is appropriate to accept an enforcement undertaking instead of imposing a sanction.

Broadly speaking, enforcement undertakings are likely to be considered for less severe breaches, where the authorised person has not been in breach previously (unless the breach is severe) and has already taken steps or shows willingness to address the problem and has admitted wrongdoing.

If an authorised person has otherwise displayed exemplary behaviour there may be rare circumstances where an enforcement undertaking may be accepted even in the event of a severe breach.

Failure to comply with the enforcement undertaking is likely to result in the sanction, which the enforcement undertaking was accepted in place of the sanction being imposed. In addition, the Secretary of State can consider withdrawing or suspending authorisation in respect of the failure to comply with the undertaking itself.²⁹

3.1 The nature of an enforcement undertaking

An enforcement undertaking is an undertaking (i.e. a promise) given by an authorised person to the Secretary of State setting out³⁰:

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

²⁹ Regulation 83 of the Framework Regulations

³⁰ Regulation 82 of the Framework Regulations

Once the Secretary of State is satisfied that the enforcement undertaking has been complied with, he will issue a certificate of discharge from the undertaking. An authorised person who is subject to an enforcement undertaking can apply to the Secretary of State for a certificate of discharge, under regulation 84 of the Framework Regulations.

WITHDRAWN

4. Details of Specific Sanctions

Under regulation 79 of the Framework Regulations, the Secretary of State is required to ensure that any sanction is proportionate to the breach in respect of which it is imposed. Accordingly, where there is a choice of sanctions for a particular breach, the Secretary of State will take a “stepped” approach, imposing a less severe sanction for a less serious breach, and a more severe sanction for a more serious breach, or a case where there have been repeated breaches.

4.1 Compliance notice

A compliance notice can be imposed on a Green Deal Provider in respect of a breach by the Green Deal Provider or the Green Deal Installer of the relevant requirements which is severe or repeated and, in the case of a breach by an Installer, where the bill payer has suffered substantive loss³¹. In the stepped nature of sanction imposition, compliance notices are considered to be less severe than a financial penalty or withdrawal of authorisation.

Compliance notices specify the steps to be taken by the Green Deal Provider to eradicate the breach or the circumstances giving rise to the breach and the consequences of a failure to take these steps³². Once the Secretary of State is satisfied that the Green Deal Provider has taken the required steps, he will issue a certificate of discharge³³. A Green Deal Provider which is subject to a compliance notice can apply for a certificate of discharge.

4.2 Financial Penalties

A financial penalty can be imposed on a Green Deal Provider in respect of a breach by the Green Deal Provider or the Green Deal Installer of the relevant requirements which is severe or repeated and, in the case of a breach by an Installer, where the bill payer has suffered substantive loss³⁴.

The maximum amount that can be imposed is £50,000 in respect of each breach³⁵. However, in determining the amount of the penalty, the Secretary of State must have regard to the annual turnover and number of employees of the Green Deal Provider and must also ensure that the sanction is proportionate to the breach.

³¹ Regulations 67 and 68 of the Framework Regulations.

³² Regulation 74 of the Framework Regulations.

³³ Regulation 84 of the Framework Regulations.

³⁴ Regulations 67 and 68 of the Framework Regulations.

³⁵ Regulation 75 of the Framework Regulations.

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

- the Green Deal Provider has benefitted or intended to benefit from a breach, financially or otherwise;
- the behaviour of the Green Deal Provider undermines the credibility or reputation of the Green Deal scheme; and
- the breach or breaches lead to significant harm or impact on affected persons.

4.3 Withdrawal of authorisation of a Green Deal Provider

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

- there has been a breach of the relevant requirements by a Green Deal Provider or Green Deal Installer³⁶ which is severe or repeated; or
- the Secretary of State is satisfied that a Green Deal Provider is no longer fit to be authorised³⁷.

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

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

- the breach or breaches lead to significant harm or impact on affected persons;
- the breach or breaches are continuing in nature;
- there is a failure to comply with a previous sanction imposed on the Green Deal Provider;
- there has been provision of false information, either in relation to the breach or information provided for the investigation of the breach or consideration of it;
- the Green Deal Provider has sought to benefit from the breach or engaged in criminal or dishonest activity;
- there is evidence of business practice that appears to the Secretary of State to be unfair, improper or deceitful;
- the breach calls into question the competence or trustworthiness of the Green Deal Provider;

³⁶ Regulations 67 (2) and 68 (2) of the Framework Regulations

³⁷ Regulation 71 of the Framework Regulations

- the behaviour of the Green Deal Provider undermines the credibility or reputation of the Green Deal scheme; and
- there has been a significant breach of other relevant legislation.

4.4 Suspension and withdrawal of authorisation of Green Deal Installers, Green Deal Assessors and Green Deal Certification Bodies.

Where the Secretary of State is satisfied that there has been a breach of a relevant requirement by a Green Deal Installer, a Green Deal Assessor or a Green Deal Certification Body the Secretary of State ultimately has the power to suspend or withdraw that person's authorisation.

Green Deal Assessors and Green Deal Installers

Green Deal Certification Bodies can suspend or withdraw the certification of Green Deal Installers and Green Deal Assessors they have certified if the relevant certification requirements are breached. In such cases, the Certification Body will notify the Oversight and Registration Body, and the Oversight and Registration Body will update the register to remove the relevant Green Deal Installer or Assessor from the register on the grounds that a requirement of their authorisation – to be certified by an Green Deal Certification Body – would no longer be satisfied. In these circumstances Green Deal authorisation would be suspended/withdrawn without any decision or investigation by the Oversight and Registration Body or the DECC Secretary of State.

Green Deal Assessors

Green Deal Assessors are required to operate in accordance with the Assessor Services Specification³⁸ and it requires them to have in place their own complaints handling procedures. Complaints about Green Deal Assessors should be made to the Green Deal Provider (where there is an Energy Plan or Green Deal Plan in place) or directly to the Green Deal Assessor (where no Energy Plan or Green Deal Plan is in place).

Where there is a Green Deal Plan in place and the complaint is made to the Green Deal Providers, the complaint can be escalated to the Green Deal Ombudsman and Investigation Service if the Green Deal Provider cannot resolve the complaint.

³⁸ The specification for organisations providing the green deal advice service (version 002/2012). Copies are available at: http://www.decc.gov.uk/en/content/cms/tackling/green_deal/gd_industry/advisors/advisors.aspx

Where the complaint is made directly to the Green Deal Assessor it may be escalated to the Green Deal Assessor's Certification Body, who have their own complaints handling procedures. The Green Deal Assessor Certification Body will notify the Oversight and Registration Body, of outcomes of the complaint.

The Oversight and Registration Body will be able to provide a recommendation to the Secretary of State in order to assist with the decision as to whether a suspension or withdrawal of the assessor's authorisation is appropriate in the circumstances.

Green Deal Installers

Installers are required to operate under the publicly available Specification PAS 2030³⁹. PAS 2030 provides a specification for the installation of energy efficiency improvements in existing buildings. Green Deal Installers must meet the required standard for both Green Deal and Energy Company Obligation installations. The Green Deal Installer Certification Body will be able to monitor compliance against these standards and take appropriate enforcement action with regards to an installer that does not comply with the requirements of the standard.

Any complaint about the Green Deal Installer should be made to the relevant Green Deal Provider who will handle and seek to resolve it. Where the Green Deal Provider is not able to resolve a complaint it may refer it to the Green Deal Ombudsman and Investigation Service who in turn may refer it to Secretary of State where the complaint cannot be resolved to the satisfaction of the complainant.

The sanctions applicable to the Green Deal Installer for breaches of the relevant requirements is in section 2.2 of this guidance.

Green Deal Certification Bodies

Certification Bodies need to be accredited by the Green Deal Accreditation Body (the United Kingdom Accreditation Service('UKAS')) to act as Green Deal Certification Bodies.

Green Deal Certification Bodies accreditation can be removed by UKAS, and if this happens, their authorisation as a Green Deal Certification Body will be removed by the Oversight and Registration Body, without any decision or investigation by the Oversight and Registration Body or the DECC Secretary of State on the grounds that a requirement of their authorisation – to be certified by the Green Deal Accreditation Body – would no longer be satisfied .

³⁹ PAS 2030 was developed by BSI and is available at: <http://shop.bsigroup.com/navigate-by/pas/>

All technical complaints about Green Deal Certification Bodies in relation to the relevant accreditation standards are reported to UKAS. UKAS can remove accreditation according to the accreditation framework and the requirements of BS EB 45011. UKAS will inform the Green Deal Oversight and Registration Body if they come across any breaches that should be notified to them.

Breaches of the Code of Practice by the Green Deal Certification Bodies are monitored by the Oversight and Registration Body. The Oversight and Registration Body can make recommendations of suspension or withdrawal of authorisation to the Secretary of State based on the Oversight and Registration Body investigations and relevant feedback from UKAS.

4.5 Circumstances where the Secretary of State may impose a suspension.

For Green Deal Installers, Green Deal Assessors and Green Deal Certification Bodies, a non-exhaustive list of factors that may be considered before imposing suspension, could include:

- is the breach a continuing breach?
- has a particular breach occurred repeatedly?
- have other breaches, related or unrelated, have occurred recently?
- would a continuation of authorisation cause serious reputational damage to the Green Deal? and
- is continuation of authorisation in the public interest?

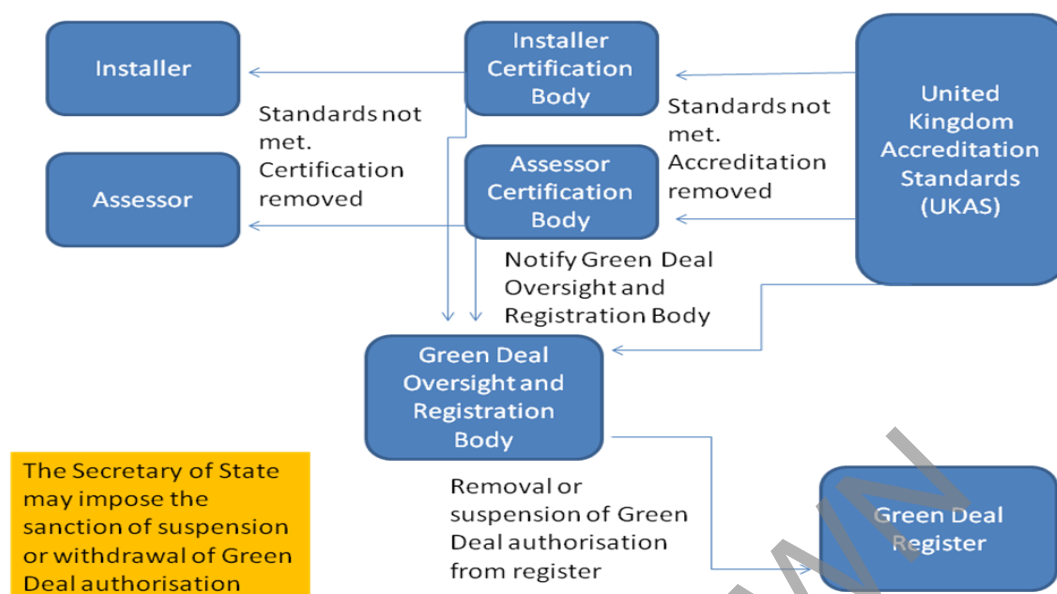
4.6 Circumstances where the Secretary of State may impose withdrawal of authorisation.

For the Green Deal Installer, Assessor, or Certification Body, withdrawal may be appropriate where:

- there is evidence of business practice that appears to the Secretary of State to be unfair, improper or deceitful;
- there has been provision of false information;
- criminal offences are alleged, particularly those which involve fraud or dishonesty, whether or not they lead to prosecution or conviction; and
- there has been a significant breach of other legislation.

Diagram 3. This diagram illustrates the decision routes made by UKAS and Green Deal Certification Bodies on accreditation and certification, before Green Deal

authorisation is removed from the register. The Secretary of State also has the power to withdraw or suspend Green Deal authorisation.



4.7 Cancellation and compensation

Cancellation

In certain situations, the Secretary of State may impose cancellation⁴⁰. Cancellation means that the liability of the electricity bill payer and any subsequent bill payer to pay instalments will be cancelled. In addition, if the bill payer has paid any instalments after the cancellation date, the bill payer will be entitled to a refund.

Circumstances where the Secretary of State may impose cancellation

Cancellation can be imposed on a Green Deal Provider or, in a case where the Green Deal Provider is no longer authorised, on the person who is entitled to the instalments under the plan. The person upon whom cancellation can be imposed is referred to as the “relevant person”.

The Secretary of State is able to impose cancellation in respect of:

- a breach of the consent provision⁴¹;
- a breach of the disclosure and acknowledgment provisions⁴²;

⁴⁰ Regulation 51 of the Framework Regulations

⁴¹ Regulation 65 of the Framework Regulations.

⁴² Regulation 66 of the Framework Regulations.

- a breach of the relevant requirements by a Green Deal Provider or a Green Deal Installer which is severe or repeated, if the bill payer suffers substantive loss⁴³; and
- a failure to take a consumer credit modifying step⁴⁴.

Where cancellation is imposed, the relevant person is required to cancel the liability of the bill payer and subsequent bill payers to make payments under the Green Deal Plan – i.e. to write off the outstanding amount of the Green Deal Plan. In most cases the date with effect from which the Green Deal Plan is to be cancelled is the date of the breach, although the Secretary of State has discretion to determine the date of cancellation where there has been a failure to take a consumer credit modifying step.

Following cancellation, no further instalments would be collected and the relevant person would be required to refund any instalments paid by the bill payer since the date of cancellation.

The relevant person would also be required to remove the Green Deal Plan information from the Energy Performance Certificate (or, in Scotland, the Recommendations Report). As with all sanctions, cancellation would be imposed by the Secretary of State issuing a sanctions notice (see section 5, “process for imposing sanctions” of this document) to all affected persons, including the Green Deal Central Charge Database.

If a cancellation is imposed, the Secretary of State would send a notice of intention, before the sanctions notice is sent to the Green Deal Provider. This is also sent to the individual that caused the breach because the Green Deal Provider is likely to seek compensation from them. In the event of non payment by the notifier, regulation 76 of the Framework Regulations allows the relevant person to recover the sum owed as a debt (i.e. to sue the notifier).

Bill payers will still need to continue with payments in circumstances where a complaint has been made. If the Secretary of State decides that the Green Deal Plan should be cancelled following investigation, then cancellation will involve the refund of payments made after the date of cancellation.

⁴³ Regulations 67 and 68 of the Framework Regulations.

⁴⁴ Regulation 70 of the Framework Regulations.

Compensation

Where a plan is cancelled following a breach of the consent provision or the disclosure and acknowledgment provisions, the Secretary of State may require the improver or the notifier, as applicable, to pay the relevant person compensation⁴⁵.

In most cases it will be an amount (as a fixed sum or in instalments) which represents :

1. the indebtedness of the bill payer under the Green Deal Plan on the date on which the plan is cancelled with effect from, less the "rebate on early settlement" and
2. an amount equal to the costs which the relevant person has incurred as a result of the indebtedness under the plan being discharged at the effective date.

In situations where someone else is wholly or partly responsible for a breach of the consent or disclosure and acknowledgement provisions, then the Secretary of State has discretion to decide on the level of compensation, up to the amount referred to in 1 and 2 above - effectively, he can reduce the level of compensation where someone else is wholly or partly at fault.

Where the Secretary of State intends to impose compensation in connection with a breach of the consent or disclosure and acknowledgement provisions, he may, before issuing an intention notice, ask the relevant person to provide information on the amount of compensation that would be payable if calculated under paragraph (a) of the definition of "compensation" in regulation 51⁴⁶.

When the Secretary of State asks for information from a Green Deal Provider under regulation 73, the Providers may wish to consider using the same methods of calculation as used to calculate early repayment that already exists in Section 95A the Consumer Credit Act 1974, but for repayments associated with Green Deal Plans that are longer than fifteen years in length, they may wish to consider using the rules associated with Section 95B of the Consumer Credit Act.

4.8 Cancellation and Compensation in different circumstances

The imposition of cancellation and compensation varies depending on the type of breach that has occurred.

⁴⁵ Regulation 51 of the Framework Regulations.

⁴⁶ Regulation 73 (2) of the Framework Regulations.

For a breach of the relevant requirements by a Green Deal Provider or Installer

The Secretary of State may impose cancellation if the breach is severe or if there have been other breaches of the relevant requirements by the Green Deal Provider or Installer in respect of the property or other properties, or if the bill payer has suffered substantive loss. Cancellation may be imposed in addition to any other appropriate sanctions⁴⁷.

For a breach of the disclosure and acknowledgement provisions

A breach of the disclosure and acknowledgment provisions occurs, in essence, where a Green Deal Plan is not disclosed to or acknowledged by an incoming bill payer in the manner required in legislation. If the Secretary of State is satisfied that there is a breach of the disclosure and acknowledgement provisions, he may impose cancellation⁴⁸ and he may impose compensation. When deciding whether to cancel the liability on the bill payer, the Secretary of State must consider whether the recipient had knowledge of the Green Deal information and, where he had such knowledge, whether the recipient has suffered or will suffer substantive loss.

If the Secretary of State imposes cancellation, and if the breach was caused by the notifier, the Secretary of State is likely to order the notifier (the person who was required to disclose the existence of the plan to the incoming bill payer) to pay compensation to the Green Deal Provider.

For a breach of the consent provisions

A breach of the consent provision occurs where the improver has failed to obtain a necessary permission or consent to the installation of an improvement at a property under a Green Deal Plan⁴⁹.

A Green Deal Plan will be cancelled where the Secretary of State is satisfied that one or more necessary consents have not been obtained and improvements have been removed from a property⁵⁰.

The Secretary of State will consider on a case by case basis whether to cancel a Green Deal Plan if one or more consents have not been obtained but the improvements remain in the property. This is because the bill payer will still be benefitting from the improvements⁵¹.

⁴⁷ Regulation 67 and 78

⁴⁸ Regulation 62 of the Framework Regulations

⁴⁹ Regulation 61 of the Framework Regulations

⁵⁰ Regulation 65 (2) (b)

⁵¹ Regulation 65 (2) (a)

If a Green Deal Plan is cancelled because of a breach of the consent provision, the Secretary of State can require compensation to be paid by the improver to the relevant person.

For a failure to take a consumer credit modifying step- special circumstances

Where a payee is not a Green Deal Provider (i.e. there is no Green Deal Provider on the scene) a consumer credit modifying step is required when a Green Deal Plan was not, at the time it was entered into, a regulated consumer credit agreement but a subsequent trigger event has occurred which means that it should be a regulated consumer credit agreement⁵².

Failure to take a consumer credit modifying step occurs when the payee or the Green Deal Provider has not taken one of the following steps when a trigger event has occurred:

- i. exercise an early repayment term so that the indebtedness under the Green Deal Plan is discharged;
- ii. modify the Green Deal Plan by a regulated consumer credit agreement made in writing with the bill payer; or
- iii. terminate the Green Deal Plan⁵³.

These requirements are set out in regulation 64 of the Framework Regulations.

Where the Secretary of State is satisfied there has been a failure to take a consumer credit modifying step, which needs to be carried out once a Green Deal Provider becomes aware that regulation 64 of the Framework Regulations applies, the Secretary of State may impose cancellation on the relevant person⁵⁴.

Where a payee is a Green Deal Provider, the provisions are set out in the Code of Practice⁵⁵. A breach of those provisions will be a breach of the relevant requirements by the Green Deal Provider and could lead to cancellation, and/or other sanctions that can be imposed for a breach of the relevant requirements⁵⁶.

4.9 Reduction

Reduction of a Green Deal Plan or an Energy Plan can be imposed on the relevant

⁵² Regulation 64 (3) of the Framework Regulations.

⁵³ Regulation 64 (4) of the Framework Regulations

⁵⁴ Regulation 70 of the Framework Regulations and paragraph 92 of Annex B to the Code of Practice

⁵⁵ Paragraph 91 and 92 of the Code of Practice

⁵⁶ See Regulation 67 of the Framework Regulations

person in respect of a breach by the Green Deal Provider or the Green Deal Installer of the relevant requirements which is severe or repeated, if the bill payer has suffered substantive loss⁵⁷.

Where the Secretary of State imposes reduction, the relevant person must reduce the liability of the bill payer and any subsequent bill payer under the Plan by a specified amount. As with cancellation, in most cases, the date with effect from which liability is to be reduced is the date of the breach. The relevant person must also refund to the bill payer any instalments paid since the date of the breach.

WITHDRAWN

⁵⁷ Regulations 67 and 68 of the Framework Regulations.

5. Sanctions Process

Under regulation 72 of the Framework Regulations, the Secretary of State has to give an “intention notice” before a sanction is imposed.

The intention notice is sent to any person whom the Secretary of State considers will be directly affected by a proposed sanction, whether that is cancellation, compensation, reduction, a financial penalty, suspension or withdrawal of authorisation. It will inform the affected person⁵⁸ that the Secretary of State intends to impose a sanction:

- that the affected persons may make written representations and the time limits for such representations;
- in the case of suspension or withdrawal of authorisation of a Green Deal Certification Body, the relevant members of the Certification Body may make representations concerning a deferral in accordance with regulation 81 of the Framework Regulations; and
- matters which the Secretary of State would be required to include in a sanction notice, if the sanction was imposed.

An affected person can then make written representations to the Secretary of State within the specified period. After the Secretary of State has considered any representations received, he will decide whether to proceed to impose the sanction. If he decides to impose the sanction, a sanction notice will be served.

The sanction notice must be given to anyone to whom the intention notice was sent. In the case of cancellation or reduction, the relevant energy supplier and the complainant, if that person is not the bill payer, must also be given the sanctions notice.

The sanctions notice must include:

- the sanction imposed;
- the person on whom the sanction is imposed;
- the reason for imposing the sanction; and
- information on appeals which may be made under regulation 87 of the Framework Regulations.

⁵⁸ Regulation 72 (5) of the Framework Regulations

Where the sanction is cancellation, reduction, suspension or withdrawal, the sanction notice must include the date from which the sanction has effect. If the sanction is suspension it must also include the date from which the suspension ceases to have effect.

A sanction notice containing reduction must include:

- the total amount of the reduction;
- how the reduction has been calculated; and
- the revised amount due under the energy plan.

A sanction notice containing a financial penalty must include:

- the amount of the penalty;
- the period within which payment must be made;
- how payment may be made;
- details of the early payment discounts; and
- the consequences of non payment⁵⁹

If the Secretary of State decides not to impose a sanction, he will issue a notice of that decision to everyone to whom the intention notice was required to be given⁶⁰.

⁵⁹ Regulation 78 of the Framework Regulations

⁶⁰ Regulation 77 of the Framework Regulations

6. Appealing sanctions

A person who is directly affected by a decision of the Secretary of State (i) to impose a sanction or (ii) not to impose a sanction, can appeal against that decision⁶¹.

The appeal needs to be made to the General Regulatory Chamber of the First-tier Tribunal. The process for lodging and responding to appeals to the First-tier Tribunal is available under the Tribunals section of the Ministry of Justice website.

www.justice.gov.uk/tribunals/environment

6.1 The First tier Tribunal

An appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal within 28 days of the date on which notice of the Secretary of State's decision was sent to the appellant. The tribunals procedure is set out in "The Tribunal Procedure (First tier Tribunal) General Regulatory Chamber rules 2009."⁶²

The notice of appeal must include:

- the name and address of the appellant;
- the name and address of the appellant's representative (if any);
- an address where documents for the appellant may be sent or delivered;
- the name and address of any respondent;
- details of the decision which is being appealed;
- the result the appellant is seeking;
- the grounds on which the appellant relies; and
- any further information or documents required by a practice direction.

A form to make the appeal is available from the Tribunal's website.

If the request is made outside the 28 day period, the Appellant can ask the Tribunal to extend the time limit (the Notice of Appeal form provides for this), giving reasons for the delay. The Tribunal will then decide whether to extend the time limit. If an extension is granted the Tribunal will go on to consider the appeal.

⁶¹ Regulation 87 of the Framework Regulations.

⁶² http://www.legislation.gov.uk/ukSI/2009/1976/pdfs/ukSI_20091976_en.pdf

Any appeals to the First tier Tribunal can only be made when the Secretary of State has taken the decision to impose or not impose the sanction, which is likely to be when the notice of this decision has been served.

There is no automatic suspension of a sanction while the appeal is being considered. Appellants will have to apply for suspension to the First tier Tribunal within 28 days of the sanction notice being served. The Tribunal may suspend any sanction until the case is determined.

Appellants can make it clear when lodging an appeal that they are seeking suspension of a sanction as well as a review of the sanction decision itself .

The First tier Tribunal will send the notice of the appeal to the respondents within a few days of receiving the notice of appeal. The respondents will be required to send a response to the notice of appeal within 28 days after the date on which the respondent received the notice of appeal⁶³.

If an appeals hearing takes place, it is the practise of the Tribunal to hold its oral hearings in a location relatively close to the place where the appellant is located and to the area of the local authority involved.

6.2 Fast track appeals on sanction notices

Appeals can be fast tracked if there is a valid reason e.g. harm to business sustainability or loss of revenue to the person on whom the sanction notice was served. If the Tribunal agrees to the fast track appeal, responses to the appeals notice is likely to be made within 7 days after the date on which the respondent received the notice of appeal. Further information about the fast track appeals is available under the Justice website.⁶⁴

⁶⁴ http://www.justice.gov.uk/downloads/tribunals/environment/stop-notices/grc_resActandStopNoticePracticeDirect.pdf

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