EXPLANATORY MEMORANDUM TO

THE CONSUMER CREDIT (INFORMATION REQUIREMENTS AND DURATION OF LICENCES AND CHARGES) (AMENDMENT) REGULATIONS 2014

2014 No. 2369

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 ("the 2007 Regulations"), which prescribe information and forms of wording which must be included in statements which creditors must give to debtors under the Consumer Credit Act 1974 ("the 1974 Act").

2.2 These Regulations amend the requirements of the 2007 Regulations for statements given in relation to green deal plans.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2007 Regulations are made, inter alia, under section 77A of the 1974 Act, which provides for regulations to make provision as to the form and content of statements to be given by the creditor under a regulated fixed-sum credit agreement to the debtor.

4.2 The Energy Act 2011 provides for a new type of arrangement for the installation of energy efficiency measures, called a "green deal plan". A green deal plan is an arrangement made by the occupier, or owner, of a property for a person to make energy efficiency improvements to the property, which are to be paid for wholly, or partly, in instalments. The instalments are paid by the person who is for the time being liable to pay the energy bills for the property, and are made to the relevant energy supplier through the energy bills for the property.

4.3 These Regulations amend those requirements of the 2007 Regulations which relate to the form and content of statements to be provided under section 77A in relation to green deal plans. This is necessary to reflect the particular characteristics of the green deal plan.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Energy Act 2011 introduced the Green Deal, which is a scheme to encourage the implementation of energy efficiency improvements to property. Under a Green Deal plan, owners and occupiers can make energy efficiency improvements to a property and the improvements are paid for over time through instalments added to the electricity bill for the property. This is a unique type of unsecured credit agreement, under which instalments are paid by the person who is the bill payer at the time the instalment is due, and are paid not to the creditor, but to a third party electricity supplier.

7.2 Many Green Deal plans, particularly those in the domestic sector, will be regulated consumer credit agreements under the 1974 Act. This gives debtors under such agreements certain rights and protections. The 1974 Act also regulates the manner in which credit agreements are entered into, as well as the conduct of the creditor during the term of the agreement. The 1974 Act requires that certain information and statements are given to debtors under regulated consumer credit agreements, either periodically or on request. In particular, section 77A requires the provision of periodic statements at least annually.

7.3 Green Deal plans are a unique form of a consumer credit agreement, given that payments are made to a third party through electricity bills, and that the liability to make payments transfers to subsequent electricity bill payers for the property. It is therefore necessary to modify the requirements of the 2007 Regulations as they apply to statements issued under section 77A for Green Deal plans. Without the modifications made by these Regulations, it wouldn't be possible for Green Deal Providers (that is, the organisations that offer Green Deal plans and provide the finance package for the installation of the improvements) to consistently issue statements which comply with the legislation and are provided in a form that is clear for the customer.

7.4 This instrument amends the 2007 Regulations to provide that where a subsequent electricity bill payer becomes the debtor under the agreement, any statement given to that person must not show payments made by a previous bill payer, and must be based on the assumption that the previous bill payer paid all instalments as they fell due, to ensure that statements to a new debtor will not include arrears built up by a previous bill payer.

7.5 The instrument also amends the 2007 Regulations to provide that where an electricity bill payer switches electricity suppliers, subsequent statements must be based on the assumption that payments due to the previous electricity supplier were paid in full, so that the account is in effect 're-set'. And it makes special provision for the content of statements where a debtor pays for his electricity supply by way of a prepayment meter.

7.6 This instrument also makes specific provision for plans entered into before 28 February 2014. As a result of section 189B Consumer Credit Act (introduced by the Consumer Credit Act 1974 (Green Deal) (Amendment) Order 2014), for Green Deal plans made on or after 28 February 2014, the word "debtor" in section 77A is to be read as "current bill payer". Prior to 28 February 2014, the word "debtor" remains. This instrument provides that for plans entered into before 28 February 2014, if the debtor is also the current bill payer, they will receive a full s77A statement. It also provides that where the creditor knows, or has reasonable cause to believe that the debtor is not the current bill payer, the debtor should receive a shortened s77A statement, containing a more limited form of information. Separately, the bill payer will be sent a s77A-type statement, which will be required under the Green Deal Code of Practice. This will prevent a situation occurring where a bill payer's private data, such as personal financial details, is given to the debtor (where they are different people).

7.7 This instrument also amends the 2007 Regulations to address the potential difficulties caused by the fact that the creditor is reliant on information received from a third party to produce statements, by providing that a statement which contains errors and omissions as a result of a deficiency in the information provided to the creditor, which the creditor could not reasonably have been expected to know about, will not breach the Regulations; but a subsequent statement must contain the corrected information and include an explanation to this effect.

- Consolidation

7.8 No consolidation is proposed at present.

8. Consultation outcome

8.1 On 14 January 2014, the Department of Energy and Climate Change published a four week consultation to address issues arising from the unique nature of the Green Deal plan as a consumer credit agreement and, in particular, the fact that payments are made to a third party through electricity bills, and the liability to make payments transfers to subsequent electricity bill payers for the property.

8.2 Specifically, the consultation looked to address the issue of the time delay in electricity suppliers providing Green Deal providers with details of payments, and the fact that it is possible that a Provider may not always be aware of a recent payment by a customer, and therefore will be unable to reflect this payment in a section 77A statement, should one need to be issued before the payment is received. This is reflected in these modifications to the Regulations by the provision that a statement will not breach the

Regulations if it contains an error or omission in certain circumstances where the creditor does not know, and could not reasonably have known that it is wrong. This error or omission should be corrected in the subsequent statement.

8.3 The consultation sought to address the issue whereby a person responsible for making repayments under the credit agreement automatically transfers, by operation of law, when a new customer becomes responsible for paying the electricity supply at the property, and that the new customer will not assume any liability for Green Deal payment arrears accrued by previous customers. It sought to address the risk that information relating to other bill payers could be disclosed to the person receiving the statement. This is reflected in these modifications to the Regulations by the provision that where a subsequent electricity bill payer becomes the debtor under the agreement, any statement given to that person must not show payments made by a previous bill payer, and must be based on the assumption that the previous bill payer paid all instalments as they fell due, to ensure that statements to a new debtor will not include arrears built up by a previous bill payer.

8.4 The consultation also proposed to address issues resulting from the use of prepayment meters. In these situations, the customer will top-up their meter as needed and fractions of Green Deal payments will be deducted from the meter balance several times a day. As a result, there is no clear date when a Green Deal payment is made by the customer and a bill with hundreds of fractions of payments would not be useful for the customer. This is reflected in the modifications to the Regulations by a provision that where the bill payer uses a prepayment meter and the provider has not been informed of a payment made into the account, or the date of this payment, and allowing for an assumption that the bill payer has paid the amount accruing, then the dates and amounts of payments, the balance under the agreement at the end of the period to which the statement relates and interest or other charges may be aggregated on a monthly basis.

8.5 For full details, a copy of the January consultation can be found at the following link:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271246/consultation_proposal_amend_info_included_section_77A_statements_relating_green_deal_consumer_credit_agreements.pdf

8.6 Eight responses to the consultation were received. Following the consultation we received additional comments from stakeholders that the amendments did not go far enough in terms of allowing Green Deal Providers to consistently issue compliant section 77A statements. We have decided to proceed with the amendments set out in the consultation, which have been revised to include the proposed changes made through the consultation process, where possible; and further, we have considered some suggestions put forward outside the consultation process by stakeholders on additional amendments, which would be needed to allow Green Deal Providers to consistently issue compliant s77A statements. In response to the first of the additional issues to be raised, we are making separate provision for green deal plans depending on whether they were made prior to 28th February or on or after 28th February 2014. For pre-28th February plans, the

regulations state a list of requirements for inclusion on annual statements provided to improvers where there has been a change of bill payer. This will ensure that providers will be able to comply with their statutory s77A obligation to issue annual statements to the "debtor" whilst also ensuring that no data protection rights would be breached, regardless of how the "debtor" is defined. It will mean that an improver will get a shortened version of the statement and the bill payer will get a full statement. Second, there is no longer to be a requirement to include a description sufficient to identify the bill payer; this is to address concerns that Providers cannot always identify every bill payer on a statement from the information they receive from electricity suppliers, especially if there are several bill payers on the account. Thirdly, we have also decided to remove the requirement for a statement to include the date on which the current bill payer became liable to pay the instalments for the Green Deal; this is to address the fact that it is difficult to accurately define this date and that there are different interpretations of what this might be. Fourth, there is to be provision enabling an account to be 're-set' when there is a change of electricity supplier and/ or there is an addition or removal of a bill payer(s) whilst one or more bill payer(s) remains constant. This is to remove the risk of providing information on one borrower to another. Furthermore, where a creditor becomes aware that the previous statement obtained an error or omission, the subsequent statement is now to contain the corrected information and include an explanation to this effect.

8.7 The Department of Energy and Climate Change has published a response to the consultation. A copy of the Government response can be found at: https://www.gov.uk/government/consultations/proposal-to-amend-the-information-to-be-included-in-section-77a-statements-relating-to-green-deal-consumer-credit-agreements

9. Guidance

9.1 The Department of Energy and Climate Change is looking to update the Green Deal Code of Practice, as soon as practicable, to reflect any changes made by these Regulations. It is also considering whether guidance is required to address to address supplementary issues relating to the form and content of statements.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal. The Green Deal is a voluntary scheme. This instrument and those referred to in section 4 above only apply to business, charities, voluntary bodies and others if they choose to participate in the Green Deal scheme.

10.2 The impact on the public sector is also minimal, for the reasons outlined above.

10.3 An impact assessment has not been prepared for this instrument as no significant impact on the private, voluntary or public sectors are foreseen. However, a full regulatory impact assessment of the effect that the overall Green Deal scheme will have on the costs of business and the voluntary sector is available from the Green Deal Legislation Team, Department of Energy and Climate Change at 3 Whitehall Place, SW1A 2AW and is

published alongside the Green Deal Framework (Disclosure, Acknowledgment, redress etc.) Regulations 2012 (S.I. 2012/2079) on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small businesses that have chosen to participate in the Green Deal. The Green Deal is however, a voluntary scheme and it does not therefore place mandatory regulation on small businesses. Small and medium enterprises (SMEs) can play a vital role in the Green Deal market and the Green Deal has been designed to allow a variety of models to develop which may include for example SME participation:

- as part of the supply chain for a larger firm;
- as partners to Providers or, in some cases, as Providers in their own right.

Some small businesses may be covered by the Consumer Credit Act if they do not enter into a green deal plan wholly for business purposes, in which case they will benefit from the rights and protections that are offered by the Consumer Credit Act. However they will not be treated any differently to any other consumer.

12. Monitoring & review

12.1 These Regulations will come into force on 26th September 2014.

12.2 The Secretary of State is not obliged to carry out a review of this instrument but in accordance with best practice the Secretary of State will carry out a review five years after the amendment comes into force.

13. Contact

13.1 Alastair Jones at the Her Majesty's Treasury, (tel: 020 7270 6093 or email: Alastair.Jones@hmtreasury.gsi.gov.uk) and James Davis at the Department of Energy and Climate Change (tel: 0300 068 523 or email: James.Davis@decc.gsi.gov.uk) can answer queries about this instrument.