EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (PART 9 RESTRICTIONS ON DISCLOSURE OF INFORMATION) (SPECIFICATION) ORDER 2013

2013 No. 1808

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 Part 9 of the Enterprise Act 2002 ("the 2002 Act") restricts the disclosure of "specified information" and permits disclosure of that information in particular circumstances. Information is defined as specified information by Part 9.

2.2 This instrument specifies The Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 ("the Framework Regulations") as subordinate legislation for the purposes of section 241(3)(c) of the 2002 Act. The effect of this instrument is that specified information which is otherwise restricted from being disclosed by Part 9 of the 2002 Act may, in accordance with that Part, be disclosed by public authorities to any other person for the purpose of facilitating the exercise by that person of any function conferred on them under or by virtue of the Framework Regulations.

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

3.1 None.

4. Legislative Context

4.1 Part 9 of the 2002 Act brought together a number of statutory regimes for the protection of information obtained by public authorities under specified legislation in their dealings with individuals and businesses. It protects such information from misuse. Part 9 balances that protection with functions and considerations and allows the use of the information for other public purposes.

4.2 Sections 237 and 238 of the 2002 Act restrict the disclosure of specified information which relates to the affairs of an individual or the business of an undertaking. Specified information is information which comes to a public authority in connection with the exercise of any functions it has under or by virtue of Parts 1, 3, 4, 6, 7 or 8 of the 2002 Act, an enactment specified in Schedule 14 or subordinate legislation specified by the Secretary of State by order. Part 9 of the 2002 Act expressly permits disclosure of specified information in certain circumstances, including by a public authority to any other person for the purpose of facilitating the exercise by that person of any function conferred on them under or by virtue of subordinate legislation specified by the Secretary of State by order.

4.3 This instrument, permits public authorities which hold specified information that is subject to the Part 9 restriction on disclosure to disclose that specified information under the Part 9 provisions to any other person for the purpose of facilitating the exercise by that person of any function conferred on them under or by virtue of the Framework Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

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

7.1 Part 9 of the 2002 Act reflects the Government strategy of widening and harmonising the gateways through which information can be disclosed in the UK and overseas and at the same time introduces appropriate safeguards in respect of permitted disclosures of information.

7.2 The Framework Regulations make provisions under Chapter 1 of Part 1 of the Energy Act 2011 which provides for a new type of arrangement for the installation of energy efficiency measures, called a "green deal plan". Under a green deal plan, energy efficiency measures are installed in a property and then paid for wholly or partly in instalments which are collected on electricity bills for the property. A plan is only a green deal plan where, amongst other things, the assessment of the property is completed by a green deal assessor, the person who makes arrangements for the improvements and payment for those improvements is a green deal provider and measures are installed by a green deal installer.

7.3 The Framework Regulations confer functions on (1) the Secretary of State in relation to authorising and regulating the conduct of green deal assessors, green deal providers, green deal installers and certification bodies, enforcement more broadly and the maintenance of registers of certain persons operating pursuant to the Framework Regulations; (2) green deal certification bodies to comply with relevant provisions of the code of practice and fulfil certain information obligations; (3) green deal assessors in relation to qualifying assessments it conducts and compliance with relevant provision of the code of practice; (4) green deal installers to comply with relevant provisions of the code of practice; and (5) green deal providers to carry out certain functions in respect of a green deal plan and ensure green deal plans meet certain requirements, enter into specified agreements and schemes, comply with relevant provisions of the code of practice and meet various reporting and information requirements.

7.4 This instrument will enable public authorities to disclose specified information which it holds to persons on whom functions are conferred under the Framework Regulations. For example, the Office of Fair Trading would be able to disclose specified information obtained by virtue of consumer protection legislation specified in the 2002 Act to the Secretary of State for the purpose of facilitating the exercise by

the Secretary of State of functions of authorising and regulating green deal assessors, green deal providers and green deal installers.

7.5 This instrument will not affect the protection of specified information provided by the 2002 Act, which only permits the disclosure of specified information in accordance with the provisions of Part 9 of the 2002 Act.

7.6 This instrument will in particular facilitate the Secretary of State in verifying information provided to it by those seeking authorisation or those who are authorised under the green deal.

8. Consultation Outcome

8.1 No formal consultation process has been run prior to this order being made. The Office of Fair Trading has been consulted on an informal basis in relation to specified information which it might be asked to disclose by virtue of this instrument.

9 Guidance

9.1 There is no current intention to issue guidance in respect of this instrument as it will operate in the same way as other subordinate legislation specified by the Secretary of State by order for the purposes of section 241(3)(c) of the 2002 Act.

10 Impact

10.1 An Impact Assessment has not been prepared for this instrument as no impact on the private, voluntary or public sectors is foreseen. An Impact Assessment relating to the green deal scheme was published online on 11 June 2011: http://www.decc.gov.uk/assets/decc/11/consultation/green-deal/5533-final-stageimpact-assessment-for-the-green-deal-a.pdf.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This instrument will come into force on 16th August 2013.

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 of the regulatory system established under the Framework Regulations and publish a report on the findings five years after the Framework Regulations came into force.

13 Contact

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