EXPLANATORY MEMORANDUM TO

THE GREEN DEAL (DISCLOSURE) REGULATIONS 2012

2012 No. 1660

AND

THE GREEN DEAL (ACKNOWLEDGMENT) REGULATIONS 2012

2012 No. 1661

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 instruments

2.1 These instruments make provision to implement the Green Deal. The Energy Act 2011 (the "Act") 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 though electricity bills for the property.

The Green Deal (Disclosure) Regulations 2012 (S.I. 2012/1660) (the "Disclosure Regulations")

2.2 The Disclosure Regulations specify the time when information about a green deal plan at a property must be disclosed to prospective buyers, tenants and licensees. The requirement to disclose information when a property is sold or let out is contained in section 12 of the Act. The Disclosure Regulation s also specify circumstances where the obligation in section 12 does not apply.

The Green Deal (Acknowledgment) Regulations 2012 (S.I. 2012/1661) (the "Acknowledgment Regulations)

2.3 Where a green deal property is sold or let out (and also in other cases where there is a transaction or arrangement in respect of the property which could lead to a change in the electricity bill payer), the prospective electricity bill payer will need to give an acknowledgment to demonstrate that they are aware that there is a green deal plan at the property. The Acknowledgment Regulations specify the form that this acknowledgment must take. They also specify circumstances in which an acknowledgment will not be required when a property is sold or let out.

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

Disclosure Regulations

3.1. None.

Acknowledgment Regulations

3.2. None.

4. Legislative Context

4.1 These instruments have been made in exercise of powers in Chapter 1 of Part 1 of the Act, which are being used for the first time. The Disclosure Regulations have been made in exercise of the powers conferred on the Secretary of State by sections 12(2)(b), (5)(c) and (6) and 40(1) of the Energy Act 2011. The Acknowledgment Regulations have been made in exercise of the powers conferred by sections 14(4) and (5), 15(3) and 40(1) of the Energy Act 2011.

4.2 These regulations are part of a group of instruments being made under the Act to implement the Green Deal. The group includes:-

(a) Green Deal Framework (Disclosure, Acknowledgement, Redress Etc.) Regulations 2012, which are subject to the affirmative procedure and were laid before Parliament in draft on 11 June 2012;
(b) Green Deal (Qualifying Energy Improvements) Order 2012, which is subject to the affirmative procedure and was laid before Parliament in draft on 11 June 2012;
(c) Green Deal (Energy Efficiency Improvements) Order 2012, which is subject to the affirmative procedure and was laid before Parliament in draft on 11 June 2012;
(d) the Green Deal (Acknowledgment)(Scotland) Regulations 2012, which the Scottish Ministers intend to make this summer; and
(d) the Green Deal Code of Practice, which will be laid before Parliament this summer, and then issued by the Secretary of State.

5. Territorial Extent and Application

5.1 The Disclosure Regulations apply to Great Britain. To the extent required by section 40(8)(a) of the Act, the Scottish Ministers have given consent and, in accordance with section 40(8)(b), they have been consulted. The Welsh Ministers have been consulted in accordance with section 40(12) of the Act.

5.2 The Acknowledgment Regulations apply to England and Wales. The Welsh Ministers have been consulted in accordance with section 40(12) of the Act. The Scottish Ministers have powers under the Act to make provision for Scotland similar to that contained in the

Acknowledgment Regulations. The Scottish Ministers intend to make similar regulations this summer.

6. European Convention on Human Rights

6.1 The Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Green Deal (Disclosure) Regulations 2012 and the Green Deal (Acknowledgment) Regulations 2012 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Greenhouse gas emissions from buildings (domestic and non-domestic) in 2009 were 43% of total UK Greenhouse gas emissions. Improving energy efficiency in properties in Great Britain will help the Government achieve the following objectives: (i) contribute towards reducing the UK's harmful greenhouse gas emissions; (ii) help improve energy security by reducing overall demand for energy; (iii) help tackle fuel poverty by helping to reduce the cost of heating a home to a reasonable level; (iv) increase productivity (with the potential to boost growth and business competitiveness) and (v) reduce the costs of meeting the UK's renewable energy target through more efficient energy use.

7.2 At present there are market failures along with some barriers which are reducing the take up of cost effective energy efficiency measures. To address these issues several options were considered (detailed in the Impact Assessment) and the preferred option was enabling a more market-focussed approach to delivering energy efficiency measures, where competition amongst Green Deal providers is likely to drive take-up.

7.3 The Green Deal aims to overcome difficulties accessing capital for energy efficiency improvement measures, mismatched incentive problems, such as individuals only investing in energy efficiency measures for the length of their own expected tenure in a property and provide a trustworthy framework of advice, assurance and accreditation for the energy efficiency supply chain.

7.4 The Act made provision for the development of a Green Deal. Through the consequential secondary legislation, a novel scheme has been developed which provides that the instalments under a green deal plan are paid via the electricity bill for the property, by the person who is the bill payer at the time the instalment is due. Accordingly, when the electricity bill payer for a property changes, the obligation to pay Green Deal instalments remains with the property and is passed to the new bill payer. The disclosure and acknowledgment requirements that will be in place are designed to ensure that the new energy bill payer is made aware of the Green Deal plan.

7.5 In England and Wales, information regarding a green deal plan is to be included on the Energy Performance Certificate for the property. In Scotland, that information is to be

included in a "recommendations report", which is a document which will have to be attached to an EPC for a property. Government decided to use the EPC Framework for disclosure purposes because it provides an existing method of conveying information about the energy performance of a property and it is an established part of many property transactions in Great Britain. The existence of a green deal plan must be disclosed by providing, free of charge, the EPC (and, in Scotland, the recommendations report) to the potential bill payer. Where information about the green deal has not yet been added to the EPC or recommendations report for the property, the plan must be disclosed by giving, free of charge, the potential bill payer another document with information about the green deal in it.

7.6 The EPC (and, in Scotland, the recommendations report) needs to be provided to potential bill payers at a time when they are most likely to address their minds to the terms of the Green Deal. This will facilitate potential bill payers in making informed and considered decisions when buying or renting a property. The time that the potential bill payer views the property is considered to be the most appropriate time for disclosure in most cases. This trigger dovetails with the existing requirements to make an EPC available under the EPC Framework when selling or renting a property. Government considers that this trigger will cover the majority of cases, however special provision has had to be made to deal with less common cases where a person does not view a property.

7.7 Once potential bill payers have confirmed that they will buy or rent the property, they will also give a written acknowledgment, to show that they are aware of the green deal plan and the bill payer's obligations under the plan. This will generally be included in the contract for sale or rent, but can be a standalone document where no suitable contract is created. The acknowledgment clause will need to be contained within a signed document and given a title. This form of acknowledgment supports the disclosure system and ensures that those giving the acknowledgment address their minds to the Green Deal obligations.

8. Consultation outcome

8.1 On 23 November 2011 the Department of Energy and Climate Change launched a consultation on proposals for the Green Deal. The consultation also covered the Energy Company Obligation (ECO) which is being implemented through separate legislation. The consultation proposals were published on the DECC website alongside a number of supporting documents, including a draft impact assessment and draft statutory instruments (SIs).

8.2 The consultation sought views across England, Wales and Scotland on all aspects of the proposals, including the policy reflected in the Disclosure Regulations and Acknowledgment Regulations. The Department participated in stakeholder events across Great Britain and hosted workshops and a web chat to further explain and take comments on the details of the proposals. The consultation was complemented by our participation in various stakeholder events, our hosting of blogs and a webchat, industry workshops, and stakeholder factsheets on our website to help make the content accessible. The

consultation closed on 18 January and received over 600 written responses from a variety of organisations and individuals.

8.3 Feedback from the consultation directed our revisions towards strengthening consumer protection, reducing industry burdens and improving behind-the-scenes operations. Crucial to the success of the Green Deal is a robust customer protection regime that will inspire confidence and provide a secure platform on which all Green Deal and ECO participants can operate. Nonetheless, it is important that Green Deal and ECO policies achieve the right balance between customer protection and costs for commercial participants. Excessive costs will either act as a barrier to entry, preventing a diverse and competitive market, or will be transferred to customers. In order to achieve this balance, we have tightened protections for Green Deal and ECO customers in some areas, giving them confidence and providing improved safeguards for the vulnerable. Meanwhile, we have removed some of the burdens on Green Deal Providers, to prevent unnecessary costs.

8.4 Further details of respondents' views, together with Government's response, Impact Assessment and associated publications are available on the Department's website at http://www.decc.gov.uk/en/content/cms/consultations/green_deal/green_deal.aspx.

9 Guidance

Advisory documents relating to the disclosure and acknowledgment obligations and how those obligations should be met will be made available on the DECC website.

10. Impact

10.1 The Green Deal is a voluntary scheme. The Disclosure and Acknowledgment Regulations only apply to business, charities, voluntary bodies and others if they choose to participate in the Green Deal scheme.

10.2 An Impact Assessment has not been produced for these instruments as no specific impact on the private, voluntary or public sectors is foreseen. However, an Impact Assessment relating to the Green Deal scheme is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to broadly mirror the existing installer certification requirements of the CERT and CESP schemes. The only additional requirement on businesses will be to read the relevant sections of the Code of Practice and to subscribe to Publically Available Specification (PAS) 2030.

11.2 In total, it is estimated that the new requirements could lead to a modest one-off cost to microbusinesses. These estimated costs are small in comparison to the size of risks they mitigate and the overall importance of the accreditation framework to Green Deal.

Consumer confidence in the Green Deal will be vital if it is to encourage significant take-up of energy-efficiency retrofitting. A strong accreditation framework will help ensure that consumers can have confidence in the products and services they receive without worrying about the risks of rogue businesses.

12. Monitoring & review

12.1 These regulations will come into force on 28th January 2013.

12.2 The Secretary of State is not obliged to carry out a review of the Disclosure and Acknowledgment Regulations, but in accordance with best practice the Secretary of State will carry out a review and publish a report on the findings five years after they come into force.

13. Contact

Claire Denniss at the Department of Energy and Climate Change Tel: 0300 068 6951 or email: Claire.denniss@decc.gsi.gov.uk can answer any queries regarding the instrument.