EXPLANATORY MEMORANDUM TO

THE GREEN DEAL FRAMEWORK (DISCLOSURE, ACKNOWLEDGMENT, REDRESS ETC.) (AMENDMENT) REGULATIONS 2012

2012 No. 3021

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. Description

This instrument amends, for certain purposes, the coming into force date of regulation 42 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (S.I. 2012/2079) ("the Framework Regulations"). This will ensure that the Secretary of State is able to exercise powers under section 9, and the Scottish Ministers are able to exercise powers under section 10, of the Energy Act 2011 ("the Act") in advance of launch of the Green Deal energy efficiency scheme on 28 January 2013.

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

None.

4. Legislative background

4.1 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.

4.2 The Framework Regulations are part of a group of statutory instruments made under the Act to implement the Green Deal. This instrument amends regulation 1 of the Framework Regulations to bring forward, for certain purposes, the coming into force date of regulation 42 of those regulations. The reasons for making this change are explained in detail in section 7 below.

4.3 The Framework Regulations, which were subject to the affirmative procedure, were laid before Parliament in draft on 11 June 2012 and made on 6 August 2012 following approval by both Houses of Parliament. The other instruments in the group referred to above include the following.

(a) The Green Deal (Energy Efficiency Improvements) Order 2012 (S.I. 2012/2106). This Order, which was subject to the affirmative procedure, was debated and approved by Parliament in July, and came into force on 7 August.

(b) The Green Deal (Qualifying Energy Improvements) Order 2012 (S.I. 2012/2105). This Order, which was subject to the affirmative procedure, was debated and approved by Parliament in July and will come into force on 28 January 2013.

(c) The Green Deal (Disclosure) Regulations 2012 (S.I. 2012/1660), which were subject to the negative procedure, were made on 26 June 2012 and come into force on 28 January 2013.

(d) The Green Deal (Acknowledgment) Regulations 2012 (S.I. 2012/1661), which were subject to the negative procedure, were made on 26 June 2012 and come into force on 28 January 2013.

(e) The Green Deal (Acknowledgment) (Scotland) Regulations 2012 (S.S.I 2012/214), which were subject to the negative procedure in the Scottish Parliament, come into force on 28 January 2013.

(f) The Green Deal Code of Practice, which was subject to the Parliamentary procedure described in section 39 of the Act, was laid before Parliament at the end of June 2012, and issued by the Secretary of State on 27 September 2012.

4.4 The Secretary of State intends to make a further suite of legislation relating to the Green Deal. It is expected that these instruments will be laid before Parliament in the second half of November and will come into force on or slightly before 28 January 2013. This suite includes an affirmative instrument amending the Framework Regulations; an affirmative instrument to make a small amendment to the Consumer Credit Act 1974 for Green Deal purposes; a negative instrument making provision under section 95B of the Consumer Credit Act 1974 (early repayment of credit in the context of the Green Deal) and a number of consequential amendments to the consumer credit regime for Green Deal purposes; and a negative instrument made under section 2(2) of the European Communities Act 1972 to amend section 11 of the Energy Act 2011 to reflect changes that have been made to the energy performance certificate regime since the 2011 Act received Royal Assent. In addition, the Department intends to make a small amendment to the Enterprise Act 2002 to facilitate authorisation, monitoring and enforcement under the Green Deal. This amendment will be made using a negative instrument and is likely to be made on a similar timetable to the instruments referred to above. The Department has considered whether the amendments now being made to regulation 1 of the Framework Regulations (regarding the coming into force date of regulation 42) could have been made at the same time as the amendments to the Framework Regulations referred to earlier in this paragraph. However, in order to ensure the amendments to regulation 1 come into force at the appropriate time, the Department considers that it would be prudent to bring forward the regulation 1 amendments now. Further information regarding the timing of these amendments is set out in section 7 below.

5. Territorial Extent and Application

This instrument applies to Great Britain. To the extent required by section 40(8)(a) of the Act, the Scottish Ministers have given their consent and, in accordance with section 40(8)(b), they have been consulted on this amendment. The Welsh Ministers have been consulted on the amendment in accordance with section 40(12) of the Act.

6. European Convention on Human Rights

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

In my view, the provisions of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2012 are compatible with the Convention rights.

7. Policy background

7.1 The Act made provision for the development of a Green Deal scheme. Through the consequential secondary legislation referred to in section 4 above, 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 passes to the new bill payer. The disclosure requirements (set out in section 12 of the Act and Chapter 2 of Part 7 of the Framework Regulations) are designed to ensure that the new electricity bill payer is made aware of the green deal plan before they take on the property.

7.2 In England and Wales, information regarding a green deal plan is to be included in the Energy Performance Certificate for the property. In Scotland, that information is to be included in a "recommendations report", which is a document that is required to be attached to an EPC for a property. These documents (which are referred to in the Framework Regulations as the "disclosure document") must be given to prospective electricity bill payers.

7.3 When a green deal plan is confirmed in accordance with section 8 of the Act, the green deal provider is required to produce a new version of the disclosure document containing information about the green deal plan that has been entered into for the property. Regulation 42 of the Framework Regulations requires green deal providers to produce this document at the time of confirmation and also specifies the EPC (and, in Scotland, the EPC and the recommendations report) as the document(s) that must be produced. At present, regulation 42 is not due to come into force until 28 January 2013, which is when customers will be able to enter into green deal plans.

7.4 Section 9 of the Act provides a power for the Secretary of State to amend the EPC regime in England and Wales to require EPCs to include information about Green Deal Plans. Section 10 provides a similar power for the Scottish Ministers to amend their EPC/recommendations report regime for the same purpose. When the Green Deal Provider produces a new disclosure document, the legislative framework governing the contents of that document will need to require that document to contain information about green deal plans.

7.5 To ensure the powers in section 9 and 10 are engaged in sufficient time to enable the Secretary of State and the Scottish Ministers to make the relevant amendments (and for those amendments to come into force) to the EPC/recommendations report regimes in

time for 28 January 2013, it is considered prudent to make a minor technical amendment to regulation 1 of the Framework Regulations, which concerns citation and commencement, to bring forward the coming into force date of regulation 42. Without this amendment, these powers may not be engaged until 28 January 2013, which would leave insufficient time for the relevant amendments to be made before launch of the Green Deal. This amendment provides that, so far as is necessary for the purpose of enabling the Secretary of State to make provision under section 9, and the Scottish Ministers to make provision under section 10, regulation 42 will come into force on the day after this instrument is made. For all remaining purposes, regulation 42 will come into force on 28 January 2013.

8. Consultation outcome

8.1 On 23 November 2011, the Department of Energy and Climate Change ("DECC") launched a consultation on proposals for the Green Deal scheme. 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.

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 DECC's participation in various stakeholder events, hosting of blogs and a webchat, industry workshops, and stakeholder factsheets on DECC's website to help make the content accessible. The consultation closed on 18 January 2012 and received over 600 written responses from a variety of organisations and individuals.

8.3 Feedback from the consultation directed DECC's 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, DECC tightened protections for Green Deal and ECO customers in some areas, giving them confidence and providing improved safeguards for the vulnerable. Meanwhile, DECC 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.

8.5 Given the technical nature of the amendments made by this instrument, no further consultation was considered necessary.

9. Guidance

DECC does not consider that the nature of this instrument is such that it requires specific guidance to be produced. DECC is, however, producing guidance on the Green Deal scheme more generally. DECC's guidance for Green Deal Providers will include guidance on the confirmation process. DECC will also be issuing guidance on the disclosure process.

10. Impact

10.1 The Green Deal is a voluntary scheme. The Framework Regulations (which this instrument amends), together with the other instruments referred to in section 4, 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 this instrument as no specific impact on the private, voluntary or public sectors is foreseen. However, an Impact Assessment relating to the Green Deal scheme has been prepared and is published alongside the Framework Regulations on www.legislation.gov.uk.

11. Regulating small business

This instrument makes a technical amendment to the Framework Regulations and does not make substantive changes to the Green Deal scheme. Therefore, this instrument gives rise to no particular issues for small businesses.

12. Monitoring & review

12.1 This instrument will come into force on the day after the day on which it is made.

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 in respect of the Framework Regulations (which this instrument amends) and publish a report on the findings five years after they come into force.

13. Contact

Stephen Penlington at the Department of Energy and Climate Change Tel: 0300 068 5282 or email: stephen.penlington@decc.gsi.gov.uk can answer any queries regarding the instrument.