EXPLANATORY MEMORANDUM TO

THE GREEN DEAL FRAMEWORK (DISCLOSURE, ACKNOWLEDGEMENT, REDRESS ETC.) (AMENDMENT) REGULATIONS 2013

2013 No. 139

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instruments

2.1 The statutory instrument proposed here makes amendments to the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (the "Framework Regulations").

2.2 The Framework Regulations regulate the conduct of key players in the assessment, provision and installation of energy efficiency improvements under green deal plans. The regulations include (i) conditions that must be met when a green deal plan is established, (ii) requirements to ensure that people moving into or acquiring an interest in a property are made aware of a green deal plan in advance, and (iii) provision for enforcement.

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

3.1 None.

4. Legislative Context

4.1 The Framework Regulations make provisions under The Energy Act 2011 (the "Act") 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.

4.2 This Statutory Instrument is part of a sequence of instruments that are being laid this autumn and up to 28th January 2013. This includes the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) (Amendment) Regulations 2012 (S.I. 2012/3021), which amended the coming into force date of regulation 42 of the Framework Regulations which was approved by both Houses of Parliament on 27th November 2012 and made on 4th December 2012; and the Consumer Credit (Green Deal) Regulations 2012 (S.I. 2012/2798), which were made on 7th November 2012, and laid before Parliament on 9th November 2012. DECC also laid before Parliament on 27th November 2012 a draft of Version 2 of the Green Deal Code of Practice, which is subject to a draft negative procedure.

4.3 This instrument is being made because the Government needs to make provision under section 11 of the Energy Act 2011 requiring Green Deal Providers to update the green deal information held on an Energy Performance Certificate or Recommendation Report for a property in certain circumstances, and it was not possible to do this when the Framework Regulations were first made, for the reasons set out in paragraph 7.1. At the same time, the Government is taking the opportunity to make a number of other minor amendments to the Framework Regulations in this instrument.

4.4 Since the inception of the Green Deal programme, the Department has sought to amend existing regulation where appropriate rather than make new legislation. The primary legislation for the Green Deal was contained in the Energy Act 2011 and laid the legal foundations for the Green Deal. The secondary legislation that has followed established the legal framework which underpins these policies, gives the industry green light to bring the Green Deal energy efficiency market into operation. We want to ensure that the underpinning legislation remains flexible and responsive and as such anticipate amending the framework from time to time, in light of experience and feedback from stakeholders. We will also carry out periodic reviews of statutory instruments to ensure regulations take into account technological advancements in the area of energy efficiency.

4.5 DECC also plans to lay three negative resolution instruments. The first makes amendments to DCLG's Energy Performance of Buildings (EPB) Regulations to require information about Green Deal Plans to be included in the Energy Performance Certificate. This instrument will be made and laid before Parliament in early January 2013 once DCLGs consolidated EPB Regulations come into force. The amendments to the EPB Regulations will come into force before the instrument amending the Framework Regulations is made. (The Scottish Government is making similar changes to the Scottish Energy Performance of Buildings Regulations and those amendments are due to come into force before the instrument amending the Framework Regulations is made.) The second instrument amends 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. This instrument will be made and laid later in December 2012 and will come into force before the instrument amending the Framework Regulations is made (see further paragraph 7.1 of this Memorandum). The third instrument amends the Enterprise Act 2002 to facilitate authorisation, monitoring and enforcement under the Green Deal. We are working to prepare the instrument for making as soon as possible in January 2013.

4.6 The Government will, in the new year, be bringing forward a set of amendments to the Consumer Credit Act 1974 using the power in section 30 of the Energy Act 2011. These amendments will clarify how a number of the provisions in that Act operate in the context of the Green Deal.

4.7 The Department has been committed to introducing the Green Deal through a responsible, phased and controlled approach with full national systems testing. This ensures the market has the opportunity to build over time. We have taken the opportunity to listen to feedback arising from the early phases of implementation and,

as a result, we would like to make a small number of other changes to optimise the legal framework.

5. Territorial Extent and Application

5.1 These instruments apply to Great Britain.

5.2 As required by section 40(8)(a) of the Energy Act 2011 the Scottish Ministers have given consent and in accordance with section 40(8)(b) they have been consulted.

5.3 The Welsh Ministers have been consulted in accordance with section 40(12) of the Energy Act 2011.

6. European Convention on Human Rights

6.1 The Minister of State for Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Green Deal Framework (Disclosure, Acknowledgment, Redress, etc.) (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 Regulations 3 and 7 of this instrument insert a new Chapter 1A into Part 7 of the Framework Regulations, and associated definitions into regulation 2. These provisions will require the Energy Performance Certificate/Recommendation Report to be updated by the Green Deal Provider or the payee in certain circumstances. It has been necessary to make these provisions by way of amendment to the Framework Regulations because the power in section 11 of the Energy Act 2011 to include these provisions could only be exercised once (i) the Framework Regulations had been made, and (ii) the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and the Energy Performance of Buildings (Scotland) Regulations 2008 (together the "EPB Regulations") had been amended to provide for Green Deal information to be included in an EPC. Neither of those things had been done when the Framework Regulations were first laid in Parliament in summer 2012. However, the Framework Regulations have now been made, and we will only make this amending SI once the EPB Regulations for England and Wales, and Scotland, have been amended as required.

7.2 Regulation 14 of this instrument amends regulation 63 of the Framework Regulations to provide that these new requirements in Chapter 1A of Part 7) can be enforced as a "relevant requirement".

7.3 Regulations 4, 5 and 18 of this instrument amend regulations 19, 24 and Schedule 2 of the Framework Regulations, to increase the frequency of reporting requirements for Certification Bodies and Green Deal Providers from annually to monthly. Green Deal

Providers and Certification Bodies will be required to report on certain issues monthly, and others annually. This amendment enables the reports to provide information at the frequency required to carry out effective ongoing monitoring of Green Deal Providers and Certification Bodies. It has been decided that details including: the number and value of Green Deal Plans sold; resolved and unresolved complaints; and financial details of Green Deal payments would be needed on a monthly basis in order to identify breaches of the Framework Regulations.

7.4 Regulation 6 of this instrument amends regulation 30(6) of the Framework Regulations to clarify that "first year instalments" are instalments payable in the first 12 months from the date instalments are to be included in electricity bills for the property. This has been amended for clarity, as there will be a delay between the date a Plan is signed, and the date with effect from which instalments accrue.

7.5 In addition, this instrument makes a number of amendments to Part 8 of the Framework Regulations (Enforcement). These amendments:-

- provide that the Secretary of State can impose sanctions, if appropriate, following receipt of information from the Green Deal Accreditation Body or Trading Standards (regulation 8);
- provide that the Secretary of State can impose a sanction for a failure to provide information under regulation 86 of the Framework Regulations, without having received a complaint or information from another person (regulation 8);
- set out what constitutes an eligible complaint about a Green Deal Assessor, and how such a complaint can be referred to the Secretary of State (regulations 9 to 11);
- enable an Ombudsman to refer an eligible complaint to the Secretary of State if the Ombudsman considers sanctions which can only be imposed by the Secretary of State may be appropriate (regulation 11);
- enable the Secretary of State to act on receipt of a complaint about a Green Deal Certification Body (regulation 12);
- correct a minor error in the drafting of regulation 65(2) of the Framework Regulations (regulation 15);
- simplify the provisions of the Framework Regulations regarding breach of the disclosure and acknowledgment provisions (regulations 13 and 16);
- enable the Secretary of State to take into account, in considering the imposition of sanctions under regulations 66, 67 and 68 of the Framework Regulations, whether a bill payer is likely to suffer substantive loss, as well as whether the bill payer has suffered substantive loss (regulations 16 to 18).

8. Consultation Outcome

8.1 These amendments to the Framework Regulations do not make any material changes to the policy which was set out in the full Green Deal Consultation and Government response to it. On 23rd November 2011 the Department of Energy and Climate Change launched a consultation on proposals for the Green Deal. 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. 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 2012 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.

8.4 Further details of respondents' views, together with Government's response, Impact Assessment and associated publications are available on the Department's website[1]

9. Code of practice and guidance

9.1 Advisory documents outlining how to operate in the Green Deal market within the obligations set out in the Framework Regulations are available on the DECC website and the Oversight and Registration Body website.

9.2 The Green Deal Provider Guidance outlines monitoring and sanctions processes for Green Deal Providers.

10 Impact

10.1 An Impact Assessment has not been produced for these amendments as no specific impact on the private, voluntary or public sectors is foreseen. However, 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-stage-impact-assessment-for-the-green-deal-a.pdf.

11. Regulating small business

[1] http://www.decc.gov.uk/en/content/cms/consultations/green_deal/green_deal.aspx

11.1 This statutory instrument is not expected to have any impact specific to small businesses.

11.2 The impact of the Framework Regulations on small businesses was considered carefully when they were first laid in Parliament in June 2012, and continue to be a priority in policy development.

11.3 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken in the Green Deal framework generallyis 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.

11.4 As indicated when the Framework Regulations were laid in June 2012 it is estimated that the new requirements imposed as a result of the Green Deal framework 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 Parts 1 to 4 of the Framework Regulations (other than regulations 24(1)(d)(i) and (2) and 26) came into force on 1 October. Parts 4 to 7 and regulations 24(1)(d)(i) and (2) and 26 will come into force on 28th January 2013. Part 8 came into force on 1st October 2012 for the purpose of dealing with a breach of the requirements of the authorisation scheme, and for remaining purposes (for example, breach of the disclosure and acknowledgment provisions) on 28th January 2013. Part 9 came into force on 1st October 2012. These Regulations will come into force on the day after the day on which they are made.

12.2 The Secretary of State is not obliged to carry out a review of these instruments, 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 they come into force.

13. Contact

Jas Jandu at the Department of Energy and Climate Change Tel: 0300 068 6623 or email jas.jandu@decc.gsi.gov.uk