
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Green Deal Framework (Disclosure,
Acknowledgment, Redress etc.) Regulations 2012

PART 8

Enforcement

CHAPTER 1

Interpretation, scope, complaints

Interpretation – Part 8

51. In this Part—

“acknowledgment” means the acknowledgment required—

- (a) to be included in a contract to which section 14(2) applies; or
- (b) to be made in connection with a transaction or arrangement to which chapter 2 of Part 7 of these Regulations applies,

which is in the form specified in the acknowledgment regulations;

“cancellation” means that the Secretary of State requires the relevant person—

- (a) to cancel the liability of the bill payer and any subsequent bill payer to make payments under an energy plan from the effective date; and
- (b) to refund to the bill payer any instalments paid under the plan in respect of a period after that date;

“compensation” means that the Secretary of State requires the improver or the notifier, as applicable, to pay to the relevant person—

- (a) except where paragraph (b) applies, an amount (as a fixed sum or in instalments) representing—
 - (i) the indebtedness of the bill payer and any subsequent bill payer under the green deal plan at the effective date less the rebate on early settlement; and
 - (ii) a compensatory amount being an amount equal to the cost which the relevant person has incurred as a result of the indebtedness under the green deal plan being discharged at the effective date;
- (b) where regulation 65(4) or 66(3) applies, an amount determined in accordance with that regulation;

“compliance notice” means a notice which complies with regulation 74;

“effective date” means—

- (a) except where paragraph (b) or (c) applies, the date of the breach;

- (b) where the person who was the payee on the date the sanction was imposed was not the payee on the date of the breach, the receipt date;
- (c) where the sanction is in respect of a failure to take a consumer credit modifying step, such date as the Secretary of State considers appropriate;

“eligible complaint” means a complaint made, as applicable, in accordance with regulation 55, 56, 57 or 58;

“enforcement undertaking” means a written undertaking from an authorised person accepted by the Secretary of State in accordance with regulation 54;

“intention notice” means a notice which complies with regulation 72;

“notifier” means—

- (a) the person required to provide the disclosure document to the recipient; or
- (b) the person required to secure that the acknowledgment is—
 - (i) included in contracts to which section 14(2) applies; or
 - (ii) given in connection with transactions or arrangements to which chapter 2 of Part 7 applies;

“ombudsman” means—

- (a) the Financial Ombudsman Service; or
- (b) the Green Deal Ombudsman;

“owner” has the meaning given in regulation 37 as if paragraph (3)(b) were omitted;

“payee” means the person who is for the time being entitled under a plan to receive instalments under that plan;

“plan” means a green deal plan or an energy plan;

“rebate on early settlement” means rebate of charges for credit within the meaning of section 95 of the 1974 Act⁽¹⁾;

“receipt date” means the earlier of—

- (a) the date on which a complainant makes—
 - (i) an eligible complaint; or
 - (ii) a complaint in accordance with regulation 60; or
- (b) the date on which the Secretary of State exercises a power conferred by this Part following the receipt of information under regulation 52(1)(c);

“recipient” means the person—

- (a) to whom the disclosure document is required to be provided; and
- (b) from whom an acknowledgment must be obtained,

in accordance with the disclosure and acknowledgment provisions;

“reduction” means that the Secretary of State requires—

- (a) the relevant person to reduce the liability of the bill payer and any subsequent bill payer to make payments under an energy plan from the effective date; and
- (b) the relevant person to refund to the bill payer any instalments paid under that plan in respect of a period after that date;

“relevant member” means any green deal assessor or green deal installer who—

- (a) is included on the membership list of the green deal certification body; and

(1) 1974 c.39; section 95 was amended by SI 2010/1010, regulation 31.

- (b) is not included on the membership list of any other certification body;
- “relevant person” means—
- (a) the green deal provider; or
 - (b) where the authorisation of the provider is withdrawn, the payee;
- “sanctions notice” means a notice which complies with regulation 78;
- “withdrawal” means withdrawal of a person’s authorisation granted under Part 3.

No sanctions without receipt of complaints or information

52.—(1) The Secretary of State must not impose a sanction under this Part unless—

- (a) an eligible complaint is referred to the Secretary of State in accordance with regulation 59;
- (b) a complaint is made to the Secretary of State under regulation 60; or
- (c) information is received by the Secretary of State from—
 - (i) a person specified in paragraph (3); or
 - (ii) an authorised person,

in respect of a matter described in paragraph (2).

(2) A matter referred to in paragraph (1) is any of the following—

- (a) an improver has breached the consent provision;
- (b) a notifier has breached the disclosure and acknowledgment provisions;
- (c) an authorised person has breached the relevant requirements;
- (d) a relevant person has failed to take a consumer credit modifying step.

(3) The persons specified for the purpose of paragraph (1)(c) are—

- (a) the Office of Fair Trading;
- (b) the ombudsman.

Sanctions

53. Subject to chapter 3, the Secretary of State may impose under this Part the sanctions of—

- (a) cancellation or reduction on a relevant person;
- (b) compensation further to cancellation on an improver or a notifier, as applicable;
- (c) a compliance notice on a green deal provider;
- (d) a financial penalty on a green deal provider;
- (e) suspension on an authorised person other than a green deal provider;
- (f) withdrawal on an authorised person.

Enforcement undertakings

54.—(1) Where, in accordance with chapter 3, the Secretary of State would otherwise impose on an authorised person a sanction described in regulation 53(c) to (f) for a breach of the relevant requirements, the Secretary of State may instead accept from that person an enforcement undertaking.

(2) An enforcement undertaking must comply with regulation 82.

Eligible complaints – breach of the consent provision

55.—(1) An eligible complaint in respect of a breach of the consent provision is a complaint—

- (a) by a person (“A”) described in paragraph (2) to the green deal provider; and
- (b) which the provider is required to handle under the code of practice.

(2) A is a person whose permission or consent would have been required for the installation of an improvement at the property under the green deal plan, had the permission or consent been sought at the time the complaint is made to the green deal provider.

Eligible complaints – breach of the disclosure and acknowledgment provisions

56. An eligible complaint in respect of a breach of the disclosure and acknowledgment provisions is a complaint—

- (a) by the recipient to the green deal provider; and
- (b) which the provider is required to handle under the code of practice.

Eligible complaints – breach of the relevant requirements

57. An eligible complaint in respect of a breach of the relevant requirements is a complaint by the improver or the bill payer—

- (a) in relation to a breach by the green deal provider or the green deal installer—
 - (i) to the green deal provider; and
 - (ii) which the provider is required to handle under the code of practice; and
- (b) in relation to a breach by the green deal assessor—
 - (i) to the green deal assessor; and
 - (ii) which the assessor is required to handle under the code of practice.

Eligible complaints – failure to take consumer credit modifying step

58. An eligible complaint in respect of a failure to take a consumer credit modifying step is a complaint—

- (a) by the bill payer to the green deal provider; and
- (b) which the provider is required to handle under the code of practice.

Referral of eligible complaints to the Secretary of State

59.—(1) An eligible complaint (except one to which paragraph (2) [or (3)] applies) may only be referred to the Secretary of State by an ombudsman and where—

- (a) the complaint has been referred to and considered by the ombudsman in accordance with that ombudsman’s scheme; and
- (b) the complaint has not been resolved to the satisfaction of the complainant.

(2) An eligible complaint in respect of the disclosure and acknowledgment provisions may only be referred to the Secretary of State by a green deal provider or a recipient.

Complaints where there is no green deal provider

60.—(1) Paragraph (2) applies where—

- (a) under regulation 55, 56, 57 or 58, a complaint is not an eligible complaint unless it is made to a green deal provider; but
 - (b) the authorisation of that provider is withdrawn at the time the complaint is required to be made under the code of practice.
- (2) Where this regulation applies, a complaint which would otherwise have been made to the green deal provider may be made to the Secretary of State.

CHAPTER 2

Breaches and failure to take modifying steps

Breach of the consent provision

61. A breach of the consent provision occurs where the improver has failed to obtain a necessary permission or consent to the installation of an improvement at a property under a green deal plan.

Breach of the disclosure and acknowledgment provisions

62.—(1) A breach of the disclosure and acknowledgment provisions occurs where paragraph (2) or (3) applies.

(2) This paragraph applies where the notifier has failed to provide the disclosure document relating to a green deal property to the recipient in accordance with, as applicable, section 12 or chapter 2 of Part 7 of these Regulations.

(3) This paragraph applies where—

- (a) the bill payer (“B”) suffers substantive loss which arises because—
 - (i) the disclosure document relating to a green deal property which was received by the recipient did not comply with the requirements of the Energy Performance Regulations;
 - (ii) the disclosure document was received by the recipient after the specified time; or
 - (iii) the recipient did not give an acknowledgment; and
- (b) a reasonable period of time before the commitment date, B did not know that—
 - (i) B would be liable to make payments under the green deal plan; or
 - (ii) B would be bound by the terms of the green deal plan which bind a bill payer.

(4) For the purposes of this regulation,—

“commitment date” means—

- (a) where section 12 applied, the date on which the contract for sale or lease or licence agreement was entered into;
- (b) where regulation 44, 46 or 50 applied, the date on which the transaction or arrangement was entered into;

“required document” means—

- (a) the contract for sale or lease, or the licence agreement referred to in section 14(2), which is required to include the acknowledgment;
- (b) the document which is required to contain the acknowledgment under chapter 2 of Part 7;

“specified time” means—

- (a) where section 12(1) applied, the time specified for providing the energy performance certificate in the Green Deal (Disclosure) Regulations 2012(2);
- (b) where regulation 44, 46 or 50 applied, the time specified in that regulation.

Breach of the relevant requirements

63. A breach of the relevant requirements occurs where—

- (a) a green deal certification body breaches a requirement in regulation 19;
- (b) a green deal assessor breaches a requirement in regulation 22;
- (c) a green deal installer breaches the requirement in regulation 23;
- (d) a green deal provider breaches a requirement in regulations 24 to 26 or fails to comply with a sanction (other than withdrawal) imposed under this Part;
- (e) an authorised person fails to comply with a requirement to provide information to the Secretary of State under regulation 86.

Special circumstances – failure to take a consumer credit modifying step

64.—(1) This regulation applies where a payee is not a green deal provider.

(2) A failure to take a consumer credit modifying step occurs where—

- (a) paragraph (3) applies; and
- (b) the payee or the green deal provider has not taken any of the steps specified in paragraph (4).

(3) This paragraph applies where—

- (a) a green deal plan was not, at the time it was entered into, a regulated consumer credit agreement;
- (b) after the green deal plan was entered into, a trigger event occurred; and
- (c) in consequence of the trigger event occurring—
 - (i) were the green deal provider to enter into a new agreement on the receipt date to provide the remaining credit to the bill payer; and
 - (ii) were that agreement to be on substantially the same terms as the terms of the green deal plan,

the new agreement would be a regulated consumer credit agreement.

(4) The steps referred to in paragraph (2) are to—

- (a) exercise an early repayment term so that the indebtedness under the green deal plan is discharged;
- (b) modify the green deal plan by a regulated consumer credit agreement made in writing with the bill payer; or
- (c) terminate the green deal plan.

(5) In this regulation, “remaining credit” means the sum, less interest, of the green deal instalments which are payable during the period commencing on the receipt date and ending when the payment period comes to an end.

CHAPTER 3

When sanctions may be imposed

Sanctions for breaches of the consent provision

65.—(1) This regulation applies where the Secretary of State is satisfied that there is a breach of the consent provision.

(2) If the Secretary of State is satisfied that the improvement for which the necessary permission or consent should have been obtained—

(a) has been removed from the property, the Secretary of State may impose cancellation;

(b) has not been removed from the property, the Secretary of State must impose cancellation, on the relevant person.

(3) Where cancellation is imposed on the relevant person, the Secretary of State—

(a) except where sub-paragraph (b) applies, must impose compensation;

(b) where a person other than the improver is wholly or partly responsible for the breach, may impose compensation,

on the improver.

(4) Where paragraph (3)(b) applies, imposing compensation means that the Secretary of State requires the improver to pay to the relevant person such amount (as a fixed sum or in instalments) as the Secretary of State may determine, being an amount not exceeding the sum payable under paragraph (a) of the definition of compensation in regulation 51.

Sanctions for breaches of the disclosure and acknowledgment provisions

66.—(1) This regulation applies where the Secretary of State is satisfied that there is a breach of the disclosure and acknowledgment provisions.

(2) The Secretary of State—

(a) must impose cancellation on the relevant person; and

(b) may impose compensation on the notifier.

(3) Where a person other than the notifier is wholly or partly responsible for the breach, imposing compensation means that the Secretary of State requires the notifier to pay to the relevant person such amount (as a fixed sum or in instalments) as the Secretary of State may determine, being an amount not exceeding the sum payable under paragraph (a) of the definition of compensation in regulation 51.

Sanctions for breaches of the relevant requirements by green deal providers

67.—(1) This regulation applies where the Secretary of State is satisfied that there is a breach of the relevant requirements by a green deal provider and—

(a) the breach is severe; or

(b) there have been other breaches of the relevant requirements by the green deal provider in respect of the property or other properties.

(2) The Secretary of State may impose on the green deal provider one or more of—

(a) a compliance notice;

(b) a financial penalty;

(c) withdrawal.

(3) Where the Secretary of State is satisfied that the bill payer has suffered substantive loss, the Secretary of State may, in addition to any sanction imposed under paragraph (2), impose cancellation or reduction on the relevant person.

Sanctions for breaches of the relevant requirements by green deal installers

68.—(1) This regulation applies where the Secretary of State is satisfied that there is a breach of the relevant requirements by a green deal installer and—

- (a) the breach is severe; or
- (b) there have been other breaches of the relevant requirements by the green deal installer in respect of the property or other properties.

(2) The Secretary of State may impose—

- (a) withdrawal on—
 - (i) the green deal provider;
 - (ii) the green deal installer;
- (b) suspension on the green deal installer.

(3) Where the Secretary of State is satisfied that the bill payer has suffered substantive loss, the Secretary of State may, in addition to any sanction imposed under paragraph (2) impose—

- (a) cancellation or reduction on the relevant person;
- (b) on the green deal provider one or both of—
 - (i) a compliance notice;
 - (ii) a financial penalty.

Sanctions for breaches of the relevant requirements by green deal assessors and green deal certification bodies

69. Where the Secretary of State is satisfied that there is a breach of the relevant requirements by a green deal assessor or a green deal certification body the Secretary of State may impose suspension or withdrawal on, as applicable, the assessor or certification body.

Cancellation in special circumstances – failure by relevant person to take a consumer credit modifying step

70. Where the Secretary of State is satisfied there has been a failure to take a consumer credit modifying step, the Secretary of State may impose cancellation on the relevant person.

Withdrawal of authorisation from a green deal provider who is no longer a fit person to be authorised

71. Where—

- (a) the Secretary of State is satisfied that a green deal provider is no longer a fit person to be authorised; and
- (b) withdrawal has not been imposed on that provider under any other provision of this chapter,

the Secretary of State may impose withdrawal on the provider.

CHAPTER 4

Notices, procedure and requirements

Requirement to give an intention notice before imposing a sanction

- 72.**—(1) This regulation applies where under this Part—
- (a) cancellation or compensation must or may be imposed;
 - (b) the following may be imposed—
 - (i) reduction;
 - (ii) a financial penalty;
 - (iii) suspension;
 - (iv) withdrawal.
- (2) Before imposing a sanction, the Secretary of State must give notice (an “intention notice”) to any person other than the relevant energy supplier whom the Secretary of State considers to be an affected person, specifying—
- (a) that the Secretary of State intends to impose the sanction;
 - (b) that affected persons may make written representations and the time limits for such representations;
 - (c) where the Secretary of State intends to suspend or withdraw the authorisation of a green deal certification body, that the relevant members of the certification body may make representations concerning a deferral in accordance with regulation 81; and
 - (d) subject to paragraph (3), those matters which the Secretary of State would be required to include in a sanctions notice, if the sanction is imposed.
- (3) Where the Secretary of State intends to impose a financial penalty, the intention notice need not include—
- (a) how payment may be made; and
 - (b) details of the early payment discounts.
- (4) Where after consideration of any representations the Secretary of State decides to impose the sanction, the Secretary of State must give a sanctions notice in accordance with regulation 78.
- (5) For the purposes of this regulation, “affected person” means any person whose interests will be directly affected by the imposition of the sanction.

Additional requirements in relation to compensation

- 73.**—(1) This regulation applies where the Secretary of State intends to impose compensation on the improver under regulation 65 or the notifier under regulation 66.
- (2) The Secretary of State may, before serving an intention notice, require the relevant person to provide information on the amount of compensation which would be payable if calculated under paragraph (a) of the definition of compensation in regulation 51.
- (3) The intention notice must include any requirements which the Secretary of State intends to impose on the improver or the notifier concerning the manner in which and time by which compensation must be paid.

Compliance notices

- 74.**—(1) This regulation applies where a compliance notice may be imposed.

- (2) A compliance notice must specify—
 - (a) the steps which must be taken to eradicate the breach, or the circumstances giving rise to the breach; and
 - (b) the consequences of failure to take such steps.
- (3) A compliance notice must comply with regulation 78(1) and (2).

Financial penalties

- 75.**—(1) This regulation applies where a financial penalty may be imposed.
- (2) In determining the amount of a financial penalty, the Secretary of State must have regard to the annual turnover and the number of employees of the person on whom the Secretary of State intends to impose the penalty.
- (3) For each breach, the maximum financial penalty is £50,000.

Recovery of compensation and financial penalties

- 76.**—(1) Compensation may be recovered by the relevant person as a debt.
- (2) A financial penalty may be recovered by the Secretary of State as a debt.

Notice of decision not to impose a sanction

77. Where, after giving an intention notice, the Secretary of State decides not to impose a sanction, the Secretary of State must give notice to that effect to any person to whom the intention notice was required to be given.

Sanctions notices

- 78.**—(1) A sanctions notice must be given to—
 - (a) any person to whom the Secretary of State is required to give a notice under regulation 72(2); and
 - (b) where cancellation or reduction is imposed—
 - (i) the relevant energy supplier; and
 - (ii) the complainant, if that person is not the bill payer.
- (2) A sanctions notice must include—
 - (a) the sanction imposed;
 - (b) the person on whom the sanction is imposed;
 - (c) the reason for imposing the sanction; and
 - (d) information on appeals which may be made under regulation 87.
- (3) A sanctions notice containing cancellation, reduction, suspension or withdrawal must include the date on which the sanction has effect.
- (4) A sanctions notice containing reduction must include—
 - (a) the total amount of the reduction;
 - (b) how the reduction has been calculated; and
 - (c) the revised amount due under the energy plan.
- (5) A sanctions notice containing a financial penalty must include—
 - (a) the amount of the penalty;

- (b) the period within which payment must be made;
- (c) how payment may be made;
- (d) details of the early payment discounts; and
- (e) the consequences of non-payment.

(6) A sanctions notice containing suspension must include the date on which the suspension ceases to have effect.

Proportionality requirement

79. Any sanction imposed under this chapter must be proportionate to the breach in relation to which it is imposed.

Updating the register

80. Where the Secretary of State imposes suspension or withdrawal on an authorised person, the Secretary of State must update the relevant registers such that—

- (a) the information in paragraphs 6 and 8 of Schedule 1 is included on the register of the person whose authorisation has been suspended or withdrawn; and
- (b) subject to regulation 81, in the case of a green deal certification body, the information in paragraphs 6 and 8 of Schedule 1 is included in respect of the persons on its membership list.

Deferring updating the register

81.—(1) The Secretary of State may defer updating the register in respect of a relevant member of a green deal certification body whose authorisation is suspended or withdrawn (a “deferral”).

- (2) A deferral may be—
 - (a) for such period as the Secretary of State considers necessary to enable the relevant member to obtain certification from another green deal certification body;
 - (b) on such terms and subject to such conditions as the Secretary of State thinks fit.

(3) The Secretary of State must give the relevant member notice of the deferral and the terms and conditions to which it is subject.

CHAPTER 5

Enforcement undertakings and guidance

Contents of an enforcement undertaking

82.—(1) An enforcement undertaking from an authorised person must—

- (a) specify the action intended to—
 - (i) secure that the breach does not continue or recur;
 - (ii) secure that the position is, so far as possible, restored to what it would have been if the breach had not been committed; and
 - (iii) benefit any person affected by the breach;
 - (b) contain a statement that the undertaking is made in accordance with this regulation.
- (2) An enforcement undertaking may specify—
- (a) the period within which the action must be completed;

- (b) the circumstances in which a person is considered to have discharged the undertaking;
 - (c) where restoration of the harm arising from the breach is not possible, the action that will secure equivalent benefit to improvers and bill payers.
- (3) The undertaking may be varied if the Secretary of State gives notice in writing.
- (4) In this regulation, “equivalent benefit” means benefit which, in the opinion of the Secretary of State, is equivalent to the benefit that would result from restoration of the harm arising from the breach.

Failure to comply with an enforcement undertaking

83. Where a person fails to comply with an enforcement undertaking, the Secretary of State may impose one or both of the following—

- (a) the sanction which may otherwise have been imposed on that person had the enforcement undertaking not been given;
- (b) in respect of the failure to comply with the enforcement undertaking,—
 - (i) withdrawal; or
 - (ii) except where the person is a green deal provider, suspension.

Discharge of a compliance notice or enforcement undertaking

84.—(1) Where the Secretary of State is satisfied that a person—

- (a) has taken the steps specified in a compliance notice; or
- (b) has complied with an enforcement undertaking;

the Secretary of State must issue a certificate to that effect (a “certificate”).

(2) Subject to regulation 85(2), a compliance notice and an enforcement undertaking cease to have effect on receipt of a certificate.

(3) A person who—

- (a) is subject to a compliance notice; or
- (b) has given an enforcement undertaking which has been accepted by the Secretary of State,

may at any time apply for a certificate.

(4) Within 14 days of receipt of an application made under paragraph (3), the Secretary of State must decide whether or not to issue a certificate and as soon as is practicable—

- (a) issue a certificate; or
- (b) give notice to the applicant of—
 - (i) the refusal; and
 - (ii) the reason for the refusal.

Inaccurate, misleading or incomplete information

85.—(1) A person who has given inaccurate, misleading or incomplete information to the Secretary of State in relation to an enforcement undertaking is regarded as having failed to comply with it.

(2) The Secretary of State may by notice revoke a certificate issued under regulation 84 if it was issued on the basis of inaccurate, incomplete or misleading information.

