

# ENERGY ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Energy Efficiency**

#### *Chapter 1: Green Deal*

#### **Introductory**

#### *Section 1: Green Deal plans*

13. This section sets out what constitutes an ‘energy plan’ and a ‘green deal plan’. An energy plan is an arrangement made by the occupier or owner of a property for making energy efficiency improvements to that property. A green deal plan is an energy plan where the energy efficiency improvements are to be paid for wholly or partly by instalments and the requirements of subsection (4) are met at the time the plan is made.
14. *Subsection (4)* sets out the requirements that a green deal plan must meet. These include that: the property is eligible; the energy efficiency improvements are ‘qualifying energy improvements’; the conditions relating to assessment of the property have been met; the conditions relating to the terms of the plan are met; and a relevant energy supplier supplies the property.
15. Energy efficiency improvements will only be ‘qualifying energy improvements’ if they have been specified as such in an order made by the Secretary of State.
16. *Subsection (6)* explains that payments under a green deal plan are to be made by the person who is for the time being liable to pay the energy bills for the property. This person is referred to as the ‘bill payer’ (section 2(3)). *Subsection (6)* also says that payments should be made to the relevant energy supplier through the energy bills for the property, are recoverable as a debt from the bill payer and are recovered and held by the relevant energy supplier as agent and trustee for the person who made the improvements (unless the relevant energy supplier is also that person). *Subsection (7)* confirms that the requirement to make payments applies to the bill payer irrespective of whether he was the person who entered into the green deal plan. *Subsection (5)* confirms that the arrangements in subsection (6) will only apply if: the improvements have been installed in accordance with section 7; the green deal plan has been confirmed in accordance with section 8; and the requirements imposed by virtue of sections 9 and 10 are met.
17. *Subsection (8)* says that subsection (6) is subject to the provision made in section 34 (power of the Secretary of State to deal with special circumstances) and any suspension or cancellation of liability by virtue of provision made in regulations under sections 3(3)(h) or (i), 6(4) or 16 (sanctions and redress) or section 35 (appeals).
18. Under *subsection (9)*, a property will be an eligible property unless it falls within a description specified in an order made by the Secretary of State.

## ***Section 2: Green deal plans: supplementary***

19. *Subsection (2)* defines ‘improver’ and ‘green deal provider’. *Subsection (3)* defines ‘bill payer’ by reference to section 1(6)(a).
20. *Subsections (4) to (6)* define the range of measures that fall within the meaning of ‘energy efficiency improvements’ and may, therefore, be eligible as ‘qualifying energy improvements’. *Subsection (4)* includes measures for improving efficiency in the use of electricity or gas conveyed through pipes or any other source of energy specified in an order made by the Secretary of State, together with any measures falling within subsections (5) or (6).
21. *Subsection (5)* defines other measures for increasing the amount of electricity generated or heat produced by microgeneration or by using low-emissions sources or technologies and also measures for reducing the consumption of the types of energy mentioned in subsection (4). *Subsection (6)* provides for the inclusion of measures in green deal plans which are installed for the purpose of supplying to the property: electricity generated to produce heat or a cooling effect; heat produced in association with electricity; steam produced from heat; or gas or liquid subjected to a cooling effect produced in association with electricity.
22. The measures referred to in subsections (5) and (6) will only be eligible if they are specified as such in an order made by the Secretary of State.
23. *Subsection (9)* confirms that the meaning of ‘energy’, ‘energy bill’, ‘occupier’, ‘owner’ and ‘relevant energy supplier’ will be defined in regulations made by Secretary of State.
24. *Subsection (10)* enables the Secretary of State, when making regulations under subsection (9), to make provision in those regulations in respect of circumstances where someone who is not a bill payer for the purposes of Chapter 1 may be treated as such.

## ***Section 3: Framework regulations***

25. This section requires the Secretary of State to establish, in regulations, a scheme for authorising persons to act as green deal assessors, green deal providers and green deal installers and regulating the conduct of these ‘green deal participants’.
26. *Subsection (3)* contains a non-exhaustive list of the provision that may be made by the scheme. In particular, this includes provision for: requiring the payment of a fee in connection with authorisation under the scheme; the issuing of a code of practice; requiring green deal participants to enter into a multi party agreement; requiring the Secretary of State to approve that agreement; requiring green deal participants to comply with the code of practice; securing compliance with the scheme, code or agreement; and provision as to the consequences of non-compliance. It also includes provision for the establishment and maintenance of a register of green deal participants and those whose authorisation under the scheme has been withdrawn, and for requiring green deal participants to provide information.
27. *Subsection (4)* details what the code of practice may provide for, for example: the qualification and training of green deal participants; the handling of queries or complaints; green deal assessors acting with impartiality; insurance; charging; and marketing.
28. *Subsection (5)* allows the code to include provision for regulating a body specified or authorised for the purposes of subsection (1)(a) and *subsection (6)* allows the scheme and code to make different provision for different circumstances or cases.
29. *Subsection (8)* provides examples of the provision which the Secretary of State may make for securing compliance with the scheme code or agreement mentioned in subsection (3). For example, the Secretary of State may: require a green deal provider to cancel or suspend a bill payer’s liability to make payments under a green deal

plan; require a green deal participant to rectify a qualifying energy improvement or its installation; or require a green deal participant to pay compensation or a financial penalty. The Secretary of State may also make provision enabling the Secretary of State to withdraw a green deal participant's or body's authorisation.

30. *Subsection (9)* states that a qualifying assessment is an energy efficiency assessment which meets the requirements of the framework regulations and deals with such other matters as specified in those regulations.

## **Green Deal plan**

### ***Section 4: Assessment of the property etc***

31. This section sets out the conditions that must be met in order for a green deal plan to be taken out at a property. The conditions include those listed in subsections (2) to (9) and such other conditions as the Secretary of State may specify in the framework regulations.
32. *Subsection (2)* makes it a condition that a qualifying assessment has been carried out by a person authorised to act as a green deal assessor. *Subsection (3)* makes it a condition that a green deal assessor has recommended the energy efficiency improvements. *Subsection (4)* makes it a condition that the green deal provider has given an estimate of the energy bill savings that are likely to be made if the improvements are carried out. *Subsection (5)* requires the green deal provider to give an estimate of the period over which the improvements are likely to generate the savings mentioned in subsection (4).
33. *Subsection (6)* makes it a condition that the green deal provider is authorised to act as a green deal provider. *Subsection (7)* requires the green deal provider to have offered to carry out the improvements on the basis that the cost will be paid for in instalments.
34. *Subsections (8) and (9)* set conditions as to the relationship between the estimated total amount of the proposed instalments to be paid and the estimated energy bill savings that the improvements will generate, as well as the relationship between the period for which instalments will be paid and the estimated time period over which the energy bill savings will be delivered. The nature of these relationships will be specified in the framework regulations.

### ***Section 5: Terms of plan etc***

35. This section sets out the requirements relating to the terms of green deal plans. *Subsections (2) to (4)* impose three conditions in respect of the terms of green deal plans. The first condition is that the green deal plan must include the terms listed in subsection (2). For example, the plan must include a condition in which the improver agrees to the amount of the instalment payments and the frequency with which those payments must be made. The plan must also include a term in which the improver confirms that any necessary permissions or consents have been obtained in respect of the improvements.
36. There must also be a term which states that the green deal provider may not take a charge over a property by way of security for the payments and a term which makes it clear that the green deal plan does not prevent the bill payer from changing the intervals at which energy bills are paid.
37. The second condition is that green deal plans must not include any of the terms mentioned in subsection (3). For example, the plan must not include a term making a bill payer liable to make payments under a green deal plan otherwise than in respect of the period for which a person is a bill payer in respect of that property. Also, the plan must not include a term requiring the bill payer to repay early either the whole or part of the amount outstanding under the plan, except to the extent allowed for by the framework regulations or regulations under section 34.

38. The third condition is contained in *subsection (4)*. The effect of this condition is to provide a ‘cooling off period’ of 14 days within which the consents and permissions envisaged by *subsection (2)* can be withdrawn.
39. *Subsection (1)(b)* enables the Secretary of State to specify other conditions in the framework regulations. *Subsection (5)* provides examples of the provision which may be made under *subsection (1)(b)* and includes: a term which enables bill payers to make early repayments of outstanding amounts under the green deal plan; a term which provides a guarantee in respect of the improvements; and a term which addresses how problems relating to the installed measures are to be resolved.
40. *Subsection (5)(d)* says that the framework regulations may make provision for the agreements mentioned in *subsection (2)(a)* to be in a specified form.

### ***Section 6: Consents and redress etc***

41. *Subsections (1) and (2)* state that the framework regulations may make provision for dealing with situations where, at the time the green deal plan is entered into, the energy bill payer and the improver are different persons, for example where a property owner is the improver and the occupier is the bill payer. In particular, the regulations may provide for it to be a term of the plan that the bill payer has consented to the green deal plan. The regulations may also make provision for circumstances where the bill payer at the time the green deal plan was entered into and the bill payer at any other time (known as the ‘subsequent bill payer’) are different. *Subsection (1)* is subject to *section 1(6)*.
42. *Subsection (4)* enables the Secretary of State to provide for redress in cases where a permission or consent mentioned in *section 5(2)(b)* was not obtained or was obtained improperly. A non-exhaustive list of the types of redress which the Secretary of State may make provision for is set out in *subsection (5)*.

### ***Section 7: Installation of improvements***

43. This section sets out the conditions that need to be met for the installation of improvements. This includes requirements that: the person carrying out the improvements must be authorised as a green deal installer; the type of improvement being installed must meet the standard specified in the code of practice or be listed in a document issued by the Secretary of State and the carrying out of the installation of the improvements must meet the standard specified in the code of practice.

### ***Section 8: Confirmation of plan***

44. This section sets out the conditions that need to be met in order for a green deal plan to be confirmed in accordance with *section 1(5)(b)*. *Subsections (2) and (3)* contain the first condition, which requires an energy supplier to notify the bill payer, within a time period set by the framework regulations, that payments for energy efficiency improvements are to be included in the energy bills for the property from a specified date, as well as the amount of those payments and time period to which those repayments relate.
45. *Subsection (4)* contains the second condition, which is that as soon as is practicable after the improvements have been installed, the green deal provider must ensure either that certain information about the green deal plan is included in a new type of document to be used by green deal providers specifically for this purpose or that such information is added to an existing document. The Secretary of State will specify which one or more of these actions are required in the framework regulations.

### ***Section 9: Confirmation of plan: supplementary provision for England and Wales***

46. This section makes further provision, relating to England and Wales, in respect of the second condition in *section 8*.

47. The provisions of this section apply if the Secretary of State specifies a document of a description which is required to be produced under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 ('the 2007 Regulations') or the Building Regulations 2010 ('the 2010 Regulations') for the purposes of subsection (4)(b) or (c) of section 8. If such a document is specified, *subsection (2)* enables the Secretary of State to make regulations amending the 2007 Regulations or the 2010 Regulations or both in connection with the document required to be produced or updated by virtue of subsection (4)(b) or (c) of section 8.
48. *Subsection (3)* allows the amendments to be made to the 2007 Regulations and/or the 2010 Regulations under subsection (2) to include amendments for the purpose of requiring a document to contain additional or updated information in connection with the plan or the improvements installed under the plan.

### ***Section 10: Confirmation of plan: supplementary provision for Scotland***

49. This section makes provision in relation to Scotland that is equivalent to that made by section 9 in respect of England and Wales. The provisions of this section apply if the Secretary of State specifies a document of a description which is required to be produced under the Energy Performance of Buildings (Scotland) Regulations 2008 ('the 2008 Regulations') for the purposes of subsection (4)(b) or (c) of section 8. *Subsection (2)* enables Scottish Ministers to amend the 2008 Regulations in connection with the document required to be produced or updated by virtue of subsection (4)(b) or (c) of section 8.
50. *Subsection (3)* allows the amendments to be made to the 2008 Regulations to include amendments for the purpose of requiring a document to contain additional or updated information in connection with the plan or the improvements installed under the plan.

### ***Section 11: Updating information produced under section 8***

51. *Subsection (1)* allows the framework regulations to make provision as to the circumstances in which a document produced under section 8(4)(a) is required to be updated.
52. *Subsection (2)* states that subsection (6) applies if one or more of the first, second or third conditions set out in subsection (3), (4) or (5) is met. The first condition is that, pursuant to section 8(4)(b) or (c), the framework regulations specify a document of a description which is required to be produced under the 2007 Regulations or the 2010 Regulations and provision has been made in either or both of those regulations under section 9(3) to require a document of that description to contain additional or updated information. The second condition is that, pursuant to section 8(4)(b) or (c), the framework regulations specify a document of a description which is required to be produced under the 2008 Regulations and provision has been made in the 2008 Regulations under section 10(3) to require a document of that description to contain additional or updated information. The third condition is that, pursuant to section 8(4)(b) or (c), the framework regulations specify a document of a description other than one falling within subsection (3) or (4).
53. *Subsection (6)* enables the framework regulations to make provision as to the circumstances in which a document of a description falling within subsection (3), (4) or (5) is required to be updated or further updated in accordance with provision made by the Secretary of State in the regulations.

### **Disclosure of green deal plan etc**

#### ***Section 12: Disclosure of Green Deal plan etc in connection with sale or letting out***

54. **Section 12** seeks to ensure that those who intend to buy a green deal property or let a green deal property under a tenancy or licence agreement are made aware of important information about the green deal plan.



55. *Subsections (1) and (2)* place a duty on those selling and letting out a green deal property to disclose the document required to be produced or updated under section 8(4), or each such document, to prospective buyers, tenants and licensees. The duty applies to sellers of green deal properties and those letting out such properties under a tenancy or licence agreement where the prospective tenant or licensee will be liable for paying the energy bill at the property. Subsection (2) requires that person to obtain the relevant document and then provide the document free of charge to the prospective buyer, tenant or licensee at the specified time.
56. *Subsection (3)* enables an obligation under subsection (2) to be discharged by an agent.
57. *Subsection (4)* defines a prospective buyer, tenant or licensee as someone who: requests any information about the property from the seller, prospective landlord or licensor or their agent for the purpose of deciding whether to buy or let the property; makes a request to view the property for that purpose; or makes an oral or written offer to buy or let the property.
58. *Subsection (5)* defines an ‘agent’ as someone acting on behalf of a seller, prospective landlord or licensor and a ‘green deal property’ as a property with a green deal plan for which green deal payments are still to be made. It also defines the term ‘specified’ in relation to time meaning as specified in the regulations.
59. *Subsection (6)* enables the Secretary of State to specify the circumstances in which the duty in subsection (2) does not apply.

***Section 13: Disclosure of Green Deal plan in connection with other transactions etc***

60. **Section 13** enables the Secretary of State to make regulations specifying transactions or other arrangements not falling within section 12(1) in which information about the green deal plan must be disclosed in the manner provided for in section 13(2).

***Section 14: Acknowledgement of Green Deal plan on sale or letting out***

61. *Subsections (1) and (2)* place a duty on the seller, prospective landlord or prospective licensor of a green deal property to secure that the relevant written contract or licence or tenancy agreement includes an acknowledgement by the prospective buyer, tenant or licensee that the green deal plan is binding on the bill payer at the property. The duty applies to sellers of green deal properties and those letting out such properties under a tenancy or licence agreement where the prospective tenant or licensee will be liable for paying the energy bill at the property.
62. *Subsection (4)* requires that acknowledgment to be in a form specified by the Secretary of State in regulations in respect of properties situated in England or Wales. *Subsection (7)* provides an equivalent power for the Scottish Ministers in respect of properties in Scotland.
63. *Subsection (5)* states that the Secretary of State may, in regulations, specify cases or circumstances under which an acknowledgement is not required. *Subsection (8)* provides an equivalent power for the Scottish Ministers.

***Section 15: Acknowledgement of Green Deal plan in connection with other transactions etc***

64. **Section 15** enables the Secretary of State to make regulations specifying transactions or other arrangements not falling within section 14(1) in which an acknowledgment that the bill payer at the property is liable to make payments under the green deal plan and that certain terms are binding on the bill payer must be made.

***Section 16: Sanctions for non-compliance with obligations under sections 12 to 15***

65. This section allows the Secretary of State to make regulations to ensure that sellers, prospective landlords, prospective licensees and also those obligated under regulations made pursuant to sections 13 and 15 meet their disclosure and acknowledgement obligations. *Subsection (2)* contains a non-exhaustive list of the types of provision which the Secretary of State may make, including provision allowing for the imposition of civil penalties and provision to require a green deal provider to suspend or cancel the bill payer's liability to make payments under a green deal plan.

**Modifying energy licences etc**

***Section 17: Power to modify energy licences in connection with green deal payments***

66. *Subsection (1)* provides the Secretary of State with a power to modify gas transporter, shipper and supply licences and electricity distribution and supply licences, including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents.
67. *Subsection (2)* limits the power in subsection (1) so that it may only be exercised for the purposes of: preventing the holder of the licence from permanently disconnecting the supply of gas or electricity to a green deal property (insofar as the power relates to licences under section 7 of the Gas Act 1986 and section 6(1)(c) of the Electricity Act 1989); and requiring or enabling licence holders to take, or not to take, specified action in connection with green deal payments.
68. *Subsection (3)* provides that the provision which may be made in connection with green deal payments may include: allowing a specified licence holder to opt-in or opt-out of the following requirements; requiring a licence holder to collect green deal payments through energy bills and pass them to a green deal provider; making provision for cases where a licence holder is required to make payment to a green deal provider but green deal payments which are due have not been made by the bill payer; provision in connection with the cancellation and suspension of green deal payments; and requiring or enabling payments to be made by or to a licence holder with respect to their obligation in connection with green deal payments.
72. *Subsection (4)* provides that licence modifications can include provision that where a bill payer has failed to pay a sum under an energy bill, the holder of the licence will be required to remit a proportion of any payment received to a green deal provider.
73. *Subsection (7)* defines payments as green deal payments if they are made under a green deal plan. It also defines a green deal property as a property where there is a green deal plan and payments are still to be made under that plan. References to the green deal provider in this section include references to someone acting on the green deal provider's behalf or nominated by a green deal provider.

***Section 18: Power to modify energy supply licences to make provision as to default in green deal payments***

74. *Subsection (1)* provides the Secretary of State with a power to modify gas and electricity supply licences (including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents). *Subsection (2)* limits the power in subsection (1) so that it may only be used for the purpose of making provision for: the steps that must be taken by the holder of the licence following a bill payer's failure to make green deal payments; the circumstances in which a licence holder may disconnect the supply to a green deal property; and enabling, in certain circumstances, a licence

holder to use a security deposit paid by the bill payer to pay green deal payments to the green deal provider.

75. *Subsection (3)* defines ‘green deal payments’ and a ‘green deal property’ by reference to section 17(7).

***Section 19: Power to modify energy supply licences to require provision of information***

76. *Subsection (1)* provides the Secretary of State with a power to modify gas and electricity supply licences (including standard conditions incorporated in licences, documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents).
77. *Subsection (2)* provides that the power in subsection (1) can be used for two purposes.
78. The first purpose, provided for in *subsection (3)*, is to require licence holders, at specified times, to provide bill payers with specified information in connection with their green deal plans.
79. The second purpose, provided for in *subsections (4) to (6)*, is to require licence holders to disclose specified information regarding the past payment of energy bills by the person who is or will be the bill payer on a property with a green deal plan.
80. *Subsection (6)* provides that the licence holder may only be required to disclose the requested information where (i) the request is made in connection with a green deal plan or proposed green deal plan; (ii) the green deal provider gives evidence that the bill payer has consented to disclosure of the information for these purposes; (iii) the information relates to a time within the 5 years immediately preceding the request; and (iv) the licence holder has the information.
81. *Subsection (7)* provides that licence modifications can require information to be provided in a specified manner or form, or subject to specified requirements or restrictions.

***Section 20: Power to modify energy supply licences to make provision as to consumer protection***

82. *Subsection (1)* provides the Secretary of State with powers to modify conditions incorporated in gas and electricity supply licences (including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents). *Subsections (2) and (4)* allow the modifications to make provision corresponding to that of the disapplied consumer protection legislation if it is made for the same purpose for which the disapplied consumer protection legislation was made. *Subsection (5)* stipulates that references to the ‘disapplied consumer protection legislation’ are to the provisions of the Consumer Credit Act 1974 which would have applied if the amendments made by section 26 had not been made.

***Section 21: Powers under sections 17 to 20: consultation***

83. This section stipulates that the Secretary of State, before making modifications under sections 17 to 20 must consult with the holder of any licence being modified, the Gas and Electricity Markets Authority (GEMA), and such other persons as the Secretary of State considers appropriate.

***Section 22: Powers under section 17 to 20: supplementary***

84. This section makes provision about the exercise of the powers to make licence modifications contained in sections 17 to 20. *Subsection (2)* allows the Secretary of State to exercise the power to introduce a modification either generally, in relation



solely to specified cases or subject to exceptions, and allows the powers to make incidental, consequential or transitional modifications. The Secretary of State can also exercise this power differently in different cases or circumstances. *Subsection (3)* provides that the provisions included in licences by virtue of these powers need not relate to the activities authorised by the licence and may make different provision for different cases. *Subsection (4)* stipulates that the Secretary of State must publish details of modifications made under sections 17 to 20 as soon as is reasonably practicable after the modifications are made.

85. *Subsection (5)* says that a modification of a standard condition of a licence does not prevent any other part of that condition continuing to be regarded as a standard condition. *Subsection (6)* states that where a standard condition is modified, the condition, as modified, must be incorporated in licences granted after the time of the modification.

## **Gas and electricity codes**

### ***Section 23: Recovering green deal payments: gas suppliers***

86. This section amends Schedule 2B to the Gas Act 1986 (the gas code) to give gas suppliers the right to take action in the event that a bill payer defaults on relevant payments, where relevant payments include payments for the supply of gas and for a green deal plan, and to allow sums owed under a green deal plan to be collected from gas prepayment meters.
87. *Subsections (2) to (5)* contain the substitutions to be made in Schedule 2B to the Gas Act 1986.

### ***Section 24: Recovering Green Deal payments: electricity suppliers***

88. This section amends Schedules 6 and 7 to the Electricity Act 1989 (the electricity code) to give electricity suppliers the right to take action in the event that a bill payer defaults on relevant payments, where relevant payments include payments for the supply of electricity and for a green deal plan, and to allow sums owed under a green deal plan to be collected from electricity prepayment meters.
89. *Subsections (2) to (6)* contain the insertions and substitutions to be made in Schedules 6 and 7 to the Electricity Act 1989.

## **Modifying consumer credit legislation**

### ***Section 25: Exemption from Consumer Credit Act 1974 in relation to credit to business debtors***

90. This section amends section 16B of the Consumer Credit Act 1974 to provide that the Act does not regulate consumer credit agreements in the form of green deal plans where the agreement is exclusively for business purposes and the credit does not exceed a sum of £25,000.
91. *Subsections (2) to (4)* contain the insertions to the Act.

### ***Section 26: Energy suppliers not to be treated as carrying on ancillary credit business***

92. This section amends the Consumer Credit Act 1974 so as to exempt energy suppliers from the need to obtain an Office of Fair Trading licence in carrying out the functions required of them under the Green Deal.
93. *Subsection (4)* of section 21 of that Act exempts energy suppliers from the need for a licence where they are carrying out functions comprising or relating to debt-adjusting,

debt-counselling, debt-collecting or debt administration, in relation to payments due under a green deal plan associated with the supplier.

94. Subsection (5) of that section specifies that a green deal plan is associated with a supplier where a supplier is collecting payments under that plan.
95. Subsection (6) of that section defines the terms ‘green deal plan’ and ‘relevant energy supplier’ by reference to sections 1 and 2 of this Act.

***Section 27: Duties to give debtors information and statements.***

96. This section amends sections 77, 77A and 77B of the Consumer Credit Act 1974 so that, in respect of green deal plans, the obligations placed on creditors to provide debtors with statements periodically and on request can be met by a third party acting on behalf of the creditor.
97. *Subsections (2) to (4)* contain the insertions to be made.

***Section 28: Exemption from requirement to give notice of sums in arrears***

98. This section amends section 86B of the Consumer Credit Act 1974 so that, in the context of green deal plans, creditors are exempt from the requirement to give debtors notice of sums in arrears. This section provides for subsection (12) of section 86B of the Consumer Credit Act 1974 to be replaced by new subsections (12) to (12B).

***Section 29: Early repayment of Green Deal finance***

99. The Consumer Credit Act 1974 already allows creditors to receive limited compensation in the event of a customer choosing to repay a credit agreement early. This section amends the Consumer Credit Act 1974 so that Green Deal Providers are able to receive compensation up to what is allowed under the Consumer Credit Directive. *Subsection (1)* of the new section 95B of that Act sets out the circumstances in which enhanced compensation is available. The rate of interest under the credit agreement must be fixed; the agreement must be a green deal plan which lasts for a specified duration; and the debtor must be discharging all or part of his indebtedness during the fixed rate period. *Subsection (2)* states that this compensation can only be claimed if the early repayment amount is not paid from the proceeds of a contract of payment protection insurance, and if the agreement satisfies other conditions that may be set out in regulations. *Subsection (3)* states that the amount claimed as compensation must be fair, objectively justified, and calculated in accordance with provision made in regulations. The amount claimed must also not exceed what the debtor would have paid in interest had the agreement not been repaid early. *Subsection (4)* allows the creditor to choose whether they wish to claim compensation from a customer under the existing Consumer Credit Act provisions in section 95A or under this new section 95B in circumstances where both provisions apply.
100. *Subsections (3) and (4)* of section 29 make consequential amendments to the Consumer Credit Act 1974.

***Section 30: Power to amend Consumer Credit Act 1974***

101. This section enables the Secretary of State, following consultation with the Office of Fair Trading and such other persons as the Secretary of State considers appropriate, to amend the Consumer Credit Act 1974 in consequence of the provision made by or under Chapter 1.

## **Delegation of functions**

### ***Section 31: Delegation and conferring of functions***

102. *Subsection (1)* provides for the Secretary of State to delegate, by order, the exercise of certain functions to a public body specified in an order. If the function of issuing the code of practice is transferred to a public body, *subsection (2)* provides that the Secretary of State must approve the code before it is laid before Parliament. *Subsection (3)* provides that the Secretary of State must consent to the revocation of the code of practice. *Subsections (4) and (5)* enable the Secretary of State to make provision by order for functions in connection with administration of any provision in licences under sections 7 or 7A of the Gas Act 1986 or section 6(1)(c) or (d) to be conferred on the Secretary of State or a public body.
103. *Subsection (6)* provides that the order may specify different functions to be exercisable by different bodies and that the same functions may be exercised by different public bodies in relation to different areas. *Subsection (7)* enables the Secretary of State to make payments to any public body specified in an order made under subsection (1) of this section.

### ***Section 32: Exercise of scheme functions on behalf of the Secretary of State or a public body***

104. This section relates to functions connected with the scheme established by the framework regulations, pursuant to section 3.
105. *Subsection (2)* provides that the Secretary of State can arrange for such functions to be exercised by a body or person on the Secretary of State's behalf.
106. *Subsection (3)* enables a public body, to which such functions have been delegated under section 31, may also arrange for any person to exercise those functions on its behalf.
107. *Subsection (4)* makes it clear that any arrangements under this section do not affect responsibility for the exercise of the function, and may include provision for payments to the body or person exercising the function.

### ***Section 33: Duty to report***

108. This section provides the Secretary of State with an additional power where the function described is delegated to a public body. Where this is the case, the Secretary of State may make regulations which require the public body to collect information on specified matters and provide the Secretary of State with a report on those matters at a specified time.

## **General**

### ***Section 34: Power of Secretary of State to deal with special circumstances***

109. *Subsection (1)* allows the Secretary of State to make regulations setting out: the circumstances in which a bill payer's liability to make green deal payments is suspended or cancelled; the circumstances in which the suspension of any liability ends; the consequences of any suspension or cancellation; and the circumstances in which the green deal provider may require the early repayment of the whole or part of the total of the payments outstanding under a green deal plan.
110. *Subsection (2)* states that the regulations may provide for: the procedure to be followed in order to secure a cancellation or suspension which may include the payment of an administration fee; how payments are to be paid which are due during and following a suspension period; and as to the calculation of the amount payable on early repayment.

111. *Subsection (3)* defines the ‘bill payer’ to include the person who would be bill payer if the supply were not temporarily disconnected or the liability to make green deal payments was not suspended and ‘payments’ as green deal payments if they are made under a green deal plan.

***Section 35: Appeals***

112. This section requires the Secretary of State to provide a right of appeal against any sanction imposed or other action taken by the Secretary of State (or a specified public body) under section 3(3)(h) or (i) (non-compliance with conditions or other requirements of the scheme, code or agreement), section 6(4) (redress where the permission or consent mentioned in section 5(2)(b) was not obtained or was improperly obtained) or section 16 (non-compliance with sections 12 to 15).
113. The right of appeal which the Secretary of State must provide for is a right of appeal to a court or tribunal (*subsection (2)*). *Subsections (3) and (4)* set out the provision which the Secretary of State may make in respect of the right of appeal including, in particular, provision as to the court’s or tribunal’s powers in respect of an appeal application. *Subsections (5) and (6)* enable the Secretary of State and Scottish Ministers respectively to revoke or amend any subordinate legislation for the purpose of or in consequence of any provision falling within subsection (3)(a), (d), (f) or (g) (jurisdiction and powers of the court or tribunal, appeal procedure, and recovery of sums determined to be payable). The Scottish Ministers’ power in subsection (6) is limited to making provision to revoke or amend subordinate legislation where making that provision would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

***Section 36: Funding for energy efficiency advice***

114. This section enables the Secretary of State to incur expenditure in providing advice or information about green deal plans or energy efficiency generally to individuals and organisations or in making payments to persons providing such advice or information.

***Section 37: Preparatory expenditure: framework regulations***

115. This section enables the Secretary of State to incur expenditure in preparing for a scheme provided for in section 3 before the framework regulations are made.

***Section 38: Green deal installation apprenticeships***

116. This section requires the Secretary of State to report to Parliament, before the first framework regulations are made, on any steps he has taken to encourage apprenticeships for installers of energy efficiency improvements.

***Section 39: Parliamentary procedure in relation to code of practice***

117. *Section 39* provides for the Parliamentary procedure in relation to code of practice under the framework regulations (i.e. under section 3(3)(d)).

***Section 40: Regulations and orders***

118. This section enables the Secretary of State, when making orders or regulations under Chapter 1, to make different provision for different cases or circumstances or for different purposes. It provides for orders and regulations, other than those made by Scottish Ministers, to be made by statutory instrument. Statutory instruments made by the Secretary of State are subject to the negative procedure, except in the case of statutory instruments containing the framework regulations, regulations under sections 2, 13, 15(1), 16, 34 or 35(2) or an order under sections 1, 2 or 30. These require the affirmative procedure. Regulations made by the Scottish Ministers under sections 10(2),

*These notes refer to the Energy Act 2011 (c.16)  
which received Royal Assent on 18 October 2011*

14(7) and (8) and 15(4) are subject to the negative procedure and regulations under section 35(6) are subject to the affirmative procedure.

119. *Subsection (8)* provides that the Secretary of State must consult Scottish Ministers in respect of any regulations or orders extending to Scotland, and that if the regulations or order contain anything within the legislative competence of the Scottish Parliament, Scottish Ministers' consent is required.
120. *Subsection (9)* provides that Welsh Ministers' consent is required to provision under section 35 which amends or revokes instruments made under a Measure or Act of the National Assembly for Wales, or any other subordinate legislation made by the Welsh Ministers. *Subsection (10)* provides that Welsh Ministers' consent is required before amending under section 9 a provision of the Building Regulations 2010 if and so far as the function under which the provision is made is exercisable by the Welsh Ministers. *Subsection (12)* provides that Welsh Ministers must be consulted on regulations or orders which apply to Wales.

***Section 41: Crown application: Chapter 1***

121. This section provides that Chapter 1 binds the Crown.