



**Addendum to the 6 August  
Government response to the May  
2013 consultation on the proposal to  
amend the definition of “debtor” in  
section 189 of the Consumer Credit  
Act 1974 for the purposes of the  
Green Deal.**

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# 1. Introduction

In May DECC published a consultation which proposed to amend the Consumer Credit Act 1974 (“CCA”) to clarify which parties ought to be treated as the debtor for the purpose of the Green Deal. This was in response to queries received from stakeholders who sought clarification on the identity of the “debtor”, particularly in relation to Green Deal Plans in the rental sector, where the improver and bill payer may be different.

On 6 August we published our response to that consultation and explained that in response to stakeholder feedback we proposed to:

- Proceed with an amendment to the definition of “debtor” in section 189 of the CCA to ensure that Providers have greater clarity and confidence when issuing Green Deal Plans.
- In the case of a prospective credit agreement, clarify that the person who is to receive the protections afforded to a “debtor” under the CCA will be the person who is the bill payer at the point at which the credit agreement is entered into (not, as had been proposed in our consultation paper, the person who will be the bill payer when payments under the Green Deal Plan commence).
- Clarify that, after the agreement has been entered into, the person who is to receive the protections afforded to a “debtor” under the CCA is –
  - a) the person who is for the time being is liable to pay instalments under the Plan as a result of being liable to pay the energy bills for the property, and
  - b) any other person who has arrears (outstanding payment liabilities) under the Plan as a result of having been liable in a prior period to pay the energy bill for the property.

We also proposed to amend the CCA to clarify that a Green Deal Plan will be both:

- a) restricted-use credit; and
- b) a debtor-creditor-supplier agreement,

irrespective of whether the improver and the debtor are the same person and hence whether the supply contract and credit agreement are “linked” in the usual sense under the CCA.

Since we published the Government response in August, we have received further representations from stakeholders with regards to this amendment. In particular, stakeholders have raised concerns that:

- i) It might be difficult for Providers to determine whether Green Deal Plans are regulated or not, particularly in the domestic rented sector.
- ii) Unregulated Green Deal Plans might be issued on a domestic property to a corporate landlord that could then be passed onto consumer tenants.
- iii) The improver should be entitled to certain rights and protections under the CCA, particularly at the outset, where the improver and the bill payer are different individuals.

## 2. Revised Approach

In response to this feedback we have fine-tuned the approach set out in our Government response.

### **Determining whether or not a Plan will be regulated by the CCA**

To address stakeholder concerns relating to the difficulty in determining the status of the Plan, it is intended that the new section 189B will provide that:

- all domestic Green Deal Plans will be regulated by the CCA regardless of the identity of the improver or bill payer (unless exempt by virtue of sections 16-16C of the CCA, which are to be applied by reference to the improver), and
- non-domestic Green Deal Plans will be regulated only if the improver (i.e. the occupier or owner of the property who makes the arrangement for the plan) is an individual (again, unless exempt by virtue of sections 16-16C of the CCA).

This approach will prevent unregulated Plans from being issued on a domestic property to a corporate landlord.

In consequence of this approach, and in keeping with discussions when the Energy Act 2011 was enacted, we also plan to make a small amendment to the exemption relating to businesses at section 16B(1A) of the CCA to ensure that this will only apply where a consumer credit agreement is a Green Deal Plan made in relation to a non-domestic property.

### **The definition of debtor in a Green Deal Plan**

As outlined above, since the Government response was published on 6 August, we have received further feedback from stakeholders that the improver should be entitled to certain rights and protections under the Consumer Credit Act, particularly where the improver and the bill payer are different individuals.

Following the receipt of responses to the May consultation, we explored the idea that the improver ought to be the debtor for the purposes of the CCA. We explained in our Government response that this proposal would not fit well with Green Deal policy as neither the owner nor the occupier will be liable for the repayments unless they are or become the bill payer. It is important to Government that consumer bill payers receive all relevant CCA protections and defining the debtor solely as the owner or improver would have resulted in bill payers being excluded from the consumer credit regulation.

In light of the subsequent feedback that improvers should be entitled to certain rights and protections under the Consumer Credit Act, we have carefully analysed the CCA to determine which CCA protections would be relevant to them. Following this analysis and discussions with stakeholders, we have decided to proceed with an amendment that treats the bill payer as debtor, but will also treat the improver as debtor for the purposes of certain sections of the CCA. This will ensure that these parties receive specific rights and protections that are relevant to their roles under a Green Deal Plan.

To ensure that Providers have clarity on which sections of the CCA will apply to improvers and bill payers, our amendment will set out in a new Schedule to the CCA, in relation to each relevant provision of the CCA, whether a reference to the “debtor” is to be read as a reference to:

- a) the bill payer at the time the Plan is made (termed the ‘first bill payer’ in the amendment),
- b) the current bill payer,
- c) any previous bill payers who have arrears outstanding, or
- d) the improver.

The bill payer will receive all material and appropriate protections and, for as long as the improver is an owner or occupier of the property, the improver will receive a number of CCA protections, particularly at the outset when the Plan is being entered into.

The amendment will provide for the following in relation to Green Deal plans:

- The improver will be required to sign the Plan at the outset for the purpose of section 61 of the CCA (with the bill payer providing consent under the Energy Act 2011 and the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (“Framework Regulations”).
- Bill payers (including previous bill payers in arrears) will be treated as the debtor for the purpose of specified sections of the CCA to ensure that they continue to receive all material and appropriate rights and protections under the CCA.
- The improver also will be treated as the debtor for the purpose of specific sections of the CCA as long as they remain the owner or occupier of the property. This means that the improver will receive a certain level of consumer protection, particularly at the outset.

As is currently the case, the bill payer will be liable for repayments under the Plan. As set out in the Green Deal Provider Guidance (published in November 2012), when a property changes hands, the liability for instalments under the Green Deal Plan will transfer automatically to the new bill-payer (by virtue of section 1(6) of the Energy Act 2011). This change will not trigger a new agreement for the purposes of the CCA.

Under the Green Deal legislation, any arrears built up by a person whilst they are the bill payer remain their responsibility even after they have moved out of the property. Landlords will only become liable for repayments for a rented property if they become the bill payer for the property<sup>1</sup>, for example during a void period.

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<sup>1</sup> Regulation 6 of the Framework Regulations sets out who is to be treated as the bill payer (and therefore liable for instalments) during a time when no electricity is supplied to the property.

**Examples of CCA protections that will be applied to the different individuals for the purposes of the Green Deal are as follows:**

|                                       | <b>Examples of protections</b>   |
|---------------------------------------|--|
| <b>First bill payer</b>               | <ul style="list-style-type: none"> <li>- Pre-contractual explanations (under section 55A (except for section 55A(1)(b))</li> <li>- Assessment of creditworthiness (under section 55B)</li> <li>- The ability to request a copy of the prospective credit agreement from the green deal Provider (under section 55C)</li> </ul>   |
| <b>Current bill payer</b>             | <ul style="list-style-type: none"> <li>- The ability to request a copy of the executed credit agreement and a statement of account, following payment of £1 to the Green Deal Provider (under section 77)</li> <li>- Annual statements (under section 77A)</li> <li>- Statements of account on request (under section 77B)</li> <li>- The right to repay the Green Deal early either in full or in part (under sections 94-97A)</li> <li>- The unfair relationship provisions under sections 140A-140C will apply</li> </ul>   |
| <b>Previous bill payer in arrears</b> | <ul style="list-style-type: none"> <li>- The ability to request a copy of the executed credit agreement and a statement of account, following payment of £1 to the Green Deal Provider (under section 77)</li> <li>- The unfair relationship provisions under sections 140A-140C will apply</li> </ul>   |
| <b>Improver</b>                       | <ul style="list-style-type: none"> <li>- Pre-contractual information (under section 55)</li> <li>- Pre-contractual explanations (under section 55A)</li> <li>- Assessment of creditworthiness (under section 55B)</li> <li>- Copy of the draft agreement &amp; executed agreement (under section 55C &amp; 61A)</li> <li>- The right to withdraw from the credit agreement (within 14 days after the agreement is made (under section 66A))</li> <li>- A statement of account on request (under section 77B)</li> <li>- The right to repay the Green Deal early either in full or in part (under sections 94-97A)</li> <li>- The unfair relationship provisions under sections 140A-140C will apply</li> </ul> |

Although we have not extended section 66A (the right to withdrawal) to the first bill payer, it is worth noting that section 5 of the Energy Act 2011 provides for the ability for the bill payer (and “relevant subsequent bill payer(s)”<sup>2</sup>, if relevant) to withdraw their consent to the green deal plan within 14 days.

<sup>2</sup> As defined in Regulation 36 of the Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) Regulations 2012 (SI 2012/2079)

## **Green Deal Plans are fixed-sum, restricted-use, debtor-creditor-supplier agreements**

In line with the Government response published in August, the new section 189C(2) (to be inserted by these amendments to the CCA) sets out that where a green deal consumer credit agreement is a regulated agreement within the meaning of the CCA (see section 8(3)), it is to be treated as a restricted-use agreement that falls within section 11(1)(a) of the CCA. This means that a green deal consumer credit agreement will also be a debtor-creditor-supplier agreement under section 12(a) of the CCA.

The new section 189C(1)(a) (also to be inserted by these amendments to the CCA) also makes clear that all green deal plans are fixed-sum credit agreements for the purpose of the CCA.

## 3. Next Steps

We have now laid the draft amendments to the CCA in Parliament and, subject to them being approved by both Houses of Parliament, will proceed to make the amendments as soon as is practicable.

### **Transfer of consumer credit regulation from the Office of Fair Trading to the Financial Conduct Authority**

On 1 April 2014, responsibility for consumer credit regulation will move from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA). The new regulatory regime will be established under a different legislative framework, the Financial Services and Markets Act 2000, although most of the substantive requirements of the CCA will remain in force.

DECC intends to amend the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) and, if necessary the Financial Services and Markets Act 2000, within the next few months to ensure that the definition of “borrower” and other relevant definitions in the Regulated Activities Order are consistent with the amended definitions in the CCA. We will also liaise with the FCA regarding provisions in their Rules, which will replace certain sections of the CCA from 1 April.

### **Further amendments to the Consumer Credit Act 1974 and amendments to the Consumer Credit (Disclosure of Information) Regulations 2010**

In the coming months we intend to consult on proposals to make consequential amendments to the CCA to account for multiple debtor scenarios. These scenarios could occur where the Green Deal has transferred to a new bill payer and a previous Green Deal bill payer is in arrears, resulting in two (or more) different debtors being liable to make payments under a single credit agreement in respect of different periods of time. At the same time we also plan to consult on amendments to section 77B of the CCA to make it easier for creditors to comply with in the case of green deal plans, and changes to the Consumer Credit Act 1974 and amendments to the Consumer Credit (Disclosure of Information) Regulations 2010 which would allow tailored pre-contractual information to be provided to the first bill payer.

### **Amendments to the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007**

We intend to publish a consultation shortly on a few specific amendments to the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 to clarify aspects of the detailed requirements for these statements when provided in relation to Green Deal Plans. These amendments will not change policy or the way in which the Green Deal works. The purpose of the consultation will be to seek stakeholder views on the detail of these proposed amendments.

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