Draft Order laid before Parliament under section 40(5) of the Energy Act 2011, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014

Made - - - - 2014

Coming into force in accordance with article 1

A draft of this instrument has been laid before Parliament in accordance with section 40(5) of the Energy Act 2011(**1**) and approved by a resolution of each House of Parliament.

The Secretary of State has consulted the Financial Conduct Authority and such other persons as the Secretary of State considers appropriate in accordance with section 30 of the Energy Act 2011(**2**).

The Scottish Ministers and the Welsh Ministers have been consulted in accordance with section 40(8)(b) and (12) of the Energy Act 2011.

Accordingly, the Secretary of State makes the following Order, in exercise of the power conferred by section 30 of the Energy Act 2011.

Citation, commencement, application and extent

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Green Deal) (Amendment) Order 2014.

(2) This Order comes into force on the day after the day on which this Order is made.

(3) This Order does not apply to a green deal plan (within the meaning of section 1 of the Energy Act 2011) made before 28th February 2014.

(4) This Order extends to England and Wales and Scotland only.

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**3**) is amended as follows.

(**1**) 2011 c.16.
(**2**) Section 30 was amended by S.I. 2013/1881, article 28 and paragraph 17 of the Schedule.
(**3**) S.I. 2001/544. S.I. 2001/544 was amended by S.I. 2013/1881 and S.I. 2014/366.

Amendments to article 3

3.—(1) Article 3(1) (interpretation)(**4**) is amended as follows.

(2) In the definition of "borrower"—

(a) in paragraph (a)—

(i) for "or" substitute ",";

(ii) after "given by article 36H)" insert "or an agreement that is a green deal plan"; and

(b) after paragraph (b) insert—

"(c) in relation to a credit agreement that is a green deal plan, has the meaning given by article 60LB;".

(3) For the definition of "credit agreement" substitute—

""credit agreement"—

(a) in relation to an agreement other than a green deal plan, has the meaning given by article 60B;

(b) in relation to a green deal plan, has the meaning given by article 60LB;".

(4) After the definition of "funeral plan contract" insert—

""green deal plan" has the meaning given by section 1 of the Energy Act 2011;".

(5) In the definition of "lender"—

(a) in paragraph (c)—

(i) for "or" substitute ",";

(ii) after "given by article 36H)" insert "or an agreement that is a green deal plan"; and

(b) after paragraph (d) insert—

"(e) in relation to a credit agreement that is a green deal plan, has the meaning given by article 60LB;".

Amendments to article 39I

4. In article 39I(3) (activities carried on by certain energy suppliers)(**5**)—

(a) omit sub-paragraph (a); and

(b) in sub-paragraph (b), for "that Act" substitute "the Energy Act 2011".

Amendment to article 60B

5. In article 60B(3) (regulated credit agreements)(**6**), for the definition of "credit agreement" substitute—

""credit agreement"—

(a) in relation to an agreement other than a green deal plan, means an agreement between an individual or relevant recipient of credit ("A") and any other person ("B") under which B provides A with credit of any amount;

(b) in relation to a green deal plan, has the meaning given by article 60LB;".

(**4**) Article 3(1) was amended by S.I. 2013/1881, articles 2 and 3 and S.I. 2014/366, article 2.
(**5**) Article 39I was inserted by S.I. 2013/1881, articles 2 and 5.
(**6**) Article 60B was inserted by S.I. 2013/1881, articles 2 and 6.

Amendments to article 60C

6. For article 60C(4)(c) (exempt agreements: exemptions relating to the nature of the agreement)(**7**) substitute—

"(c) the agreement is a green deal plan made in relation to a property that is not a domestic property (as defined by article 60LB).".

Amendment to article 60F

7. In article 60F(2)(a) (exempt agreements: exemptions relating to number of repayments to be made)(**8**), after "for fixed-sum credit" insert ", other than a green deal plan".

Amendments to article 60L

8.—(1) Article 60L (interpretation of Chapter 14A etc)(**9**) is amended as follows.

(2) In paragraph (1)—

(a) in the definition of "borrower", after "means" insert "(except in relation to green deal plans: see instead article 60LB)";

(b) for the definition of "credit agreement" substitute—

""credit agreement"—

(a) in relation to an agreement other than a green deal plan, has the meaning given by article 60B;

(b) in relation to a green deal plan, has the meaning given by article 60LB;";

(c) in the definition of "lender", after "means" insert "(except in relation to green deal plans: see instead article 60LB)".

(3) After paragraph (1) insert—

"(1A) For the purposes of this Chapter, a credit agreement that is a green deal plan is to be treated as—

(a) a borrower-lender-supplier agreement falling within paragraph (a) of the definition of "borrower-lender-supplier agreement";

(b) a restricted-use credit agreement falling within paragraph (a) of the definition of "restricted-use credit agreement".".

Amendment to article 60LA

9. In article 60LA(3) (meaning of consumer etc.)(**10**), after "in article 60L" insert "or, where the credit agreement is a green deal plan, article 60LB".

Insertion of new article 60LB

10. After article 60LA (meaning of consumer etc.) insert—

"**Green deal plans**

60LB.—(1) A green deal plan is to be treated as a credit agreement for the purposes of this Order if (and only if)—

(**7**) Article 60C was inserted by S.I. 2013/1881, articles 2 and 6.
(**8**) Article 60F was inserted by S.I. 2013/1881, articles 2 and 6.
(**9**) Article 60L was inserted by S.I. 2013/1881, articles 2 and 6 and amended by S.I. 2014/366, article 2.
(**10**) Article 60LA was inserted by S.I. 2014/366.

(a) the property in relation to the plan is a domestic property at the time when the plan is commenced, or

(b) if sub-paragraph (a) does not apply, the occupier or owner of the property who makes the arrangement for the plan is an individual or relevant recipient of credit.

(2) In the application of this Order to a green deal credit agreement—

(a) the lender is to be treated as being—

(i) the green deal provider (within the meaning of Chapter 1 of Part 1 of the Energy Act 2011) for the plan, or

(ii) a person who exercises or has the right to exercise the rights and duties of the green deal provider under the plan,

(b) credit is to be treated as advanced under the agreement of an amount equal to the amount of the improvement costs, and

(c) the advance of credit is to be treated as made on the completion of the installation of the energy efficiency improvements to the property (but this sub-paragraph is subject to any term of the green deal plan providing that part of the advance is to be treated as made on completion of any part of the installation).

(3) A reference in a provision of this Order listed in the first column of the table in Schedule 4A to the borrower is, in the application of the provision in relation to a green deal credit agreement, to be read as a reference to—

(a) a person who at the relevant time falls (or fell) within the description or descriptions specified in the corresponding entry in the second column of the table, or

(b) if more than one description is specified and at the relevant time different persons fall (or fell) within the descriptions, each of those persons,

and except as provided by this paragraph, a person is not and is not to be treated as the borrower in relation to the agreement.

(4) References in Schedule 4A to the "improver", "first bill payer", "current bill payer" and "previous bill payer" are to be read as follows—

(a) a person is the "improver" if the person—

(i) is the owner or occupier of the property, and

(ii) is the person who makes (or has made or proposes to make) the arrangement for the green deal plan;

(b) a person is the "first bill payer" if the person is liable to pay the energy bills for the property at the time when the green deal plan is commenced;

(c) a person is the "current bill payer" if the person is liable by virtue of section 1(6)(a) of the Energy Act 2011 to pay instalments under the plan as a result of being for the time being liable to pay the energy bills for the property;

(d) a person is a "previous bill payer" if, as a result of previously falling within sub-paragraph (c) for an earlier period, the person has an outstanding payment liability under the plan in respect of that period.

(5) In this article—

"domestic property" means a building or part of a building that is occupied as a dwelling or (if not occupied) is intended to be occupied as a dwelling;

"energy bill" has the same meaning as in section 1 of the Energy Act 2011;