

2013 No. 12

ENERGY

BUILDING AND BUILDINGS

**The Energy Performance of Buildings (Scotland) Amendment
Regulations 2013**

<i>Made</i> - - - -	<i>22nd January 2013</i>
<i>Laid before the Scottish Parliament</i>	<i>23rd January 2013</i>
<i>Coming into force</i> - -	<i>27th January 2013</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and sections 10 and 75 of the Energy Act 2011(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Energy Performance of Buildings (Scotland) Amendment Regulations 2013 and come into force on 27th January 2013.

Amendment of the Energy Performance of Buildings (Scotland) Regulations 2008

2. The Energy Performance of Buildings (Scotland) Regulations 2008(c) are amended in accordance with regulations 3 to 11.

Interpretation

3.—(1) In regulation 2 (interpretation)—

- (a) in the definition of “energy performance data” after “report” insert “and for the purposes of regulations 11 to 14 includes the report reference number relating to that energy performance certificate”;
- (b) after the definition of “Framework Regulations” insert—
 ““green deal information” means the information relating to a green deal plan specified in Schedule 2;”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 2011 c.16.

(c) S.S.I. 2008/309 as amended by S.S.I. 2008/389, 2012/190, 2012/208 and 2012/315.

- (c) after the definition of “green deal plan” insert—
 - ““green deal property” means a property in respect of which there is a green deal plan and payments are still to be made under that green deal plan;
 - “green deal provider” means a person who is authorised by the Secretary of State in accordance with Part 2 of the Framework Regulations to act as a green deal provider;”;
- (d) for the definition of “green deal relevant person” substitute—
 - ““green deal relevant person” means—
 - (a) a green deal provider; or
 - (b) a person who is authorised as a green deal assessor certification body in accordance with Part 2 of the Framework Regulations;”;
- (e) after the definition of “owner” insert—
 - ““payment period” has the meaning given in regulation 2(1) of the Framework Regulations;”.

Energy performance certificates

- 4. In regulation 6 (energy performance certificates)—
 - (a) in paragraph (1)(e) after “unit” insert “or produced from data entered on a register following a request for disclosure of that certificate made by virtue of regulation 12”;
 - (b) after paragraph (1) insert—
 - “(1A) Where the building or building unit to which the energy performance certificate relates is a green deal property the energy performance certificate must (in addition to the information specified in paragraph (1)(a) to (d)) contain a statement that green deal information relating to that building or building unit is contained in the recommendations report.”;
 - (c) for paragraph (2) substitute—
 - “(2) An energy performance certificate and the related recommendations report cease to be valid—
 - (a) for the purposes of complying with the green deal disclosure obligations, on expiry of the period of one year from the date on which the document was issued or from the date on which it was produced from a register by virtue of regulation 12, as the case may be;
 - (b) for all other purposes, on the expiry of a period of 10 years from the date on which the document was issued.”;
 - (d) after paragraph (6) insert—
 - “(7) In this regulation, “green deal disclosure obligations” means the obligations to provide an energy performance certificate and recommendations report by virtue of section 12 of the Energy Act 2011 and Part 7 of the Framework Regulations.”.

Recommendations report

- 5. In regulation 6A (recommendations report)—
 - (a) in paragraph (1)—
 - (i) omit “and” following sub-paragraph (a); and
 - (ii) at the end of sub-paragraph (b) insert—
 - “; and
 - (c) where the building or building unit to which the recommendation report relates is a green deal property, green deal information for every green deal plan in respect of that building or building unit”;

(b) in paragraph (2) after “unit” insert “or green deal information”; and

(c) after paragraph (2) insert—

“(3) A recommendations report must not contain any information relating to a green deal plan for which the payment period has finished.”.

Registration of green deal information

6. In regulation 10 (registration of energy performance data)—

(a) in paragraph (5)(b) before “must” insert “subject to paragraph (5A),”; and

(b) after paragraph (5) insert—

“(5A) Green deal information entered on the register may be altered where that information is updated or further updated by the green deal provider in accordance with the Framework Regulations.”.

Disclosures generally

7. In regulation 11 (disclosures generally) for “regulation 12 or 13” substitute “or required to do so by regulations 12 to 14A”.

Disclosure of data relating to a particular green deal property

8. After regulation 12A(2)(b) (disclosure of data relating to a particular building or building unit) insert—

“(ba) the data does not include any—

(i) green deal information; or

(ii) information revealing the report reference number relating to an energy performance certificate for a green deal property;”.

Disclosures of bulk access data

9. After regulation 13(2)(c) (disclosure of bulk access data) insert—

“(ca) the data does not include any—

(i) green deal information; or

(ii) information revealing the report reference number relating to an energy performance certificate for a green deal property;”.

Disclosure of green deal information

10. After regulation 14 (disclosure of data) insert—

“Disclosure of green deal information

14A.—(1) The keeper of a register must when requested to do so disclose green deal information—

(a) to an enforcement authority for the purposes of their duty to enforce these Regulations; or

(b) to the Secretary of State, a person acting on behalf of the Secretary of State or the Green Deal Ombudsman for the purpose of enabling that person to carry out any function under or in connection with Part 8 of the Framework Regulations.

(2) In this regulation, “Green Deal Ombudsman” has the meaning given in regulation 2(1) of the Framework Regulations.”.

Information relating to green deal properties

11. After Schedule 1 (disclosure of data) insert Schedule 2 as set out in the Schedule to these Regulations.

St Andrew's House,
Edinburgh
22nd January 2013

DEREK MACKAY
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 11

“SCHEDULE 2

Regulation 2

PART 1

Green deal information

1. The green deal information in respect of a green deal plan is the information specified in paragraphs 2 to 23.
2. A statement—
 - (a) indicating that improvements have been installed at the green deal property under a green deal plan;
 - (b) indicating that the person responsible for paying the electricity bill at the green deal property (“the electricity bill payer”) is required to—
 - (i) make the payments in instalments agreed in the green deal plan; and
 - (ii) comply with the terms and conditions of the green deal plan; and
 - (c) advising the person receiving the recommendations report to—
 - (i) obtain a copy of the green deal plan; and
 - (ii) become familiar with its contents.
3. A statement indicating—
 - (a) that a green deal plan is a type of unsecured loan; and
 - (b) whether or not the green deal plan is a regulated consumer credit agreement.
4. Where the green deal plan is a regulated consumer credit agreement, a statement indicating that—
 - (a) the Consumer Credit Act 1974(a) provides certain protections to the person who is required to make the payments in instalments agreed in the green deal plan;
 - (b) voluntary early repayment of outstanding credit is permitted but that charges may apply; and
 - (c) details of the matters referred to in sub-paragraph (b) can be found in the green deal plan.
5. Where the green deal plan is not a regulated consumer credit agreement, a statement indicating that—
 - (a) voluntary early repayment of outstanding credit may be permitted by the terms and conditions of the green deal plan;
 - (b) where voluntary early repayment of outstanding credit is permitted, charges may apply to such a repayment; and
 - (c) details of the matters referred to in sub-paragraphs (a) and (b) can be found in the green deal plan.

(a) 1974 c.39.

- 6.** A statement indicating that—
 - (a) the outstanding credit under the green deal plan may have to be repaid early before—
 - (i) the electricity supply to the green deal property can be permanently disconnected; or
 - (ii) the green deal property can be demolished; and
 - (b) details of the matters referred to in sub-paragraph (a) can be obtained from the green deal provider.
- 7.** Where a term has been included in a green deal plan pursuant to regulation 38 of the Framework Regulations, a statement indicating that the green deal provider may be entitled to require early repayment of outstanding credit from a person who is (or has been) required to make the payments in instalments agreed in the green deal plan.
- 8.** The unique reference number assigned to the green deal plan.
- 9.** The name of the person who is the green deal provider and that person's electronic mail address and telephone number.
- 10.** The date on which the payment period starts and the date on which it finishes.
- 11.** The amount payable under the green deal plan—
 - (a) per day; and
 - (b) per annum.
- 12.** The rate of interest charged under the green deal plan.
- 13.** A statement indicating whether the interest rate charged under the green deal plan will be fixed for the payment period or will vary.
- 14.** Where, in accordance with regulation 33(b) of the Framework Regulations, the green deal plan provides for the improvement-specific instalments to increase during the payment period, a statement indicating by how much and when the instalments will increase.
- 15.** The estimated first year savings.
- 16.** Where the green deal property is a domestic property, a statement indicating that—
 - (a) the estimated first year savings are based on—
 - (i) the assessment of the property that was carried out by the green deal assessor at the time the green deal plan was entered into;
 - (ii) the improvements installed under the green deal plan;
 - (iii) typical energy use for the green deal property; and
 - (iv) current energy prices; and
 - (b) a low user of energy may not achieve the estimated first year savings.
- 17.** Where the green deal property is a non-domestic property, a statement indicating that—
 - (a) the estimated first year savings are based on—
 - (i) a standard assessment methodology; and
 - (ii) the use of the green deal property at the time the green deal assessment was carried out; and
 - (b) the estimated first year savings may not be achieved if—
 - (i) the green deal property is used in a manner which is different to the use of the property at the time the green deal assessment was carried out; and

- (ii) the recommendations in the green deal assessment regarding energy use at the green deal property are not implemented.

18. In respect of each improvement installed at the green deal property under the green deal plan—

- (a) a description that is sufficient to identify the improvement; and
- (b) the month and year in which the improvement-specific payment period finishes.

19. A statement advising the person receiving the recommendations report—

- (a) to check whether the improvements installed at the green deal property under the green deal plan—
 - (i) remain installed;
 - (ii) might have been affected by alterations made to the green deal property; and
 - (iii) have been maintained in accordance with advice provided by the green deal provider;
- (b) if they become the electricity bill payer, to contact the person who supplies electricity to the green deal property; and
- (c) if they become the electricity bill payer, to contact the green deal provider if they—
 - (i) intend to alter the green deal property in a manner which might affect the operation of the improvements; or
 - (ii) become aware that such alterations have been made.

20. A statement indicating that—

- (a) the improvements installed under the green deal plan are, under that plan, guaranteed for at least 5 years; and
- (b) the guarantee provided under the green deal plan may be subject to maintenance and servicing requirements.

21. A statement indicating that further information is contained in the green deal plan or can be obtained from the green deal provider.

22. Where the green deal provider knows or has reasonable cause to believe that an improvement installed at the green deal property under a green deal plan has been removed from the property before the end of the improvement-specific payment period, the following statement—

“Improvements installed under the green deal plan may have been removed from the property. You may not realise the estimated savings shown in this report. You are advised to check the position with the owner.”.

23. Where the green deal provider knows or has reasonable cause to believe that an alteration has been made to the green deal property which, had it existed when the estimated first year savings were calculated, would have affected that calculation materially, the following statement—

“The property may have been altered in a way which affects the operation of the improvements installed under the green deal plan. You may not realise the estimated savings shown in this report. You are advised to check the position with the owner.”.

PART 2

Interpretation

In this Schedule—

“domestic property” has the meaning given in regulation 2(1) of the Framework Regulations;

“estimated first year savings” has the meaning given in regulation 27(1) of the Framework Regulations;

“green deal assessment” means, in respect of a green deal property, the assessment carried out by a green deal assessor in accordance with the requirements of regulation 7 of the Framework Regulations before the green deal plan was entered into;

“green deal assessor” means a person who is authorised by the Secretary of State in accordance with Part 2 of the Framework Regulations to act as a green deal assessor;

“green deal provider” in relation to a green deal plan means the green provider under that green deal plan;

“improvement” has the meaning given in regulation 2(1) of the Framework Regulations;

“improvement-specific instalments” has the meaning given in regulation 30(3)(c) of the Framework Regulations;

“improvement-specific payment period” has the meaning given in regulation 30(3)(d) of the Framework Regulations;

“non-domestic property” has the meaning given in regulation 2(1) of the Framework Regulations; and

“regulated consumer credit agreement” has the meaning given in section 8 of the Consumer Credit Act 1974(a).”

(a) 1974 c.39 as amended by section 2(1) of the Consumer Credit Act 2006 (c.14).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Energy Performance of Buildings (Scotland) Regulations 2008 (“the 2008 Regulations”).

Part 1 of the Energy Act 2011 contains provisions relating to the green deal which will enable arrangements to be made by the occupier or owner of a property to make energy efficiency improvements to the property by way of a green deal plan. In terms of sections 8 and 12 of the Energy Act 2011 and the Green Deal Framework (Disclosure, Acknowledgement, Redress etc.) Regulations 2012 (SI 2012/2079) the documents to be produced by a green deal provider after improvements have been installed and to be provided to a prospective purchaser or tenant of a property on the sale of lease of the property are the energy performance certificate and recommendations report for the property produced under the 2008 Regulations. These Regulations amend the 2008 Regulations to require information relating to a green deal plan to be included in the energy performance certificate and recommendations report and make provisions as to the disclosure of that information.

Regulation 3 amends existing definitions and inserts a number of new definitions into regulation 2 of the 2008 Regulations.

Regulation 4 amends regulation 6 of the 2008 Regulations as it applies to a property where there is a green deal plan (“a green deal property”). The amendments made require an energy performance certificate produced under the 2008 Regulations for a green deal property to include a statement that information relating to a green deal plan (“green deal information”) is contained in the related recommendations report. Regulation 4 also amends regulation 6 of the 2008 Regulations to make provision relating to the validity of energy performance certificates and recommendation reports relating to a green deal property. Regulation 5 amends regulation 6A of the 2008 Regulations to require green deal information to be included in the recommendations report. Regulation 11 inserts a new Schedule 2 into the 2008 Regulations which specifies the green deal information to be included.

Regulation 6 amends regulation 10 of the 2008 Regulations to allow for the inclusion of the green deal information on a register maintained under the 2008 Regulations and to enable that green deal information to be updated.

Regulations 7 to 10 amend regulations 11, 12A and 13 of the 2008 Regulations and insert a new regulation 14A to ensure that information about green deal plans is only disclosed by the keeper of a register in appropriate circumstances.