

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT ENERGY EFFICIENCY (PRIVATE RENTED  
PROPERTY) (ENGLAND AND WALES)  
(AMENDMENT) REGULATIONS 2018

*Monday 14 January 2019*

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**Friday 18 January 2019**

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**The Committee consisted of the following Members:**

*Chair:* PHILIP DAVIES

- |  |  |
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| † Bebb, Guto ( <i>Aberconwy</i> ) (Con)                                  | † Phillipson, Bridget ( <i>Houghton and Sunderland South</i> ) (Lab) |
| Campbell, Mr Ronnie ( <i>Blyth Valley</i> ) (Lab)                        | † Slaughter, Andy ( <i>Hammersmith</i> ) (Lab)                       |
| † Crabb, Stephen ( <i>Preseli Pembrokeshire</i> ) (Con)                  | † Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)                         |
| † Freeman, George ( <i>Mid Norfolk</i> ) (Con)                           | † Smith, Royston ( <i>Southampton, Itchen</i> ) (Con)                |
| † Hall, Luke ( <i>Thornbury and Yate</i> ) (Con)                         | † Timms, Stephen ( <i>East Ham</i> ) (Lab)                           |
| † Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) | † Whitehead, Dr Alan ( <i>Southampton, Test</i> ) (Lab)              |
| † Harrison, Trudy ( <i>Copeland</i> ) (Con)                              | † Whitfield, Martin ( <i>East Lothian</i> ) (Lab)                    |
| McGinn, Conor ( <i>St Helens North</i> ) (Lab)                           | Matthew Congreve, <i>Committee Clerk</i>                             |
| † O'Brien, Neil ( <i>Harborough</i> ) (Con)                              |  |
| † Perry, Claire ( <i>Minister for Energy and Clean Growth</i> )          | † <b>attended the Committee</b>                                      |

# First Delegated Legislation Committee

Monday 14 January 2019

[PHILIP DAVIES *in the Chair*]

## Draft Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018

4.30 pm

**The Minister for Energy and Clean Growth (Claire Perry):** I beg to move,

That the Committee has considered the draft Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018.

Good afternoon, Mr Davies. It is a pleasure to serve under your chairmanship. I am very pleased to open this debate. As it says on the tin, these regulations will amend the domestic minimum standards provision in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. If approved by the Committee, they will take effect from April 2019 and will introduce a new landlord funding element to the existing provisions, ensuring that they actually deliver the energy efficiency improvements that we set out in our clean growth strategy.

For hon. Members who are unfamiliar with the private rented sector minimum standards, I will give some background on the sector and the 2015 energy efficiency regulations, before discussing the need for, and the effect of, these regulations. The 2015 regulations established a minimum energy efficiency standard of energy performance certificate band E for privately rented properties in England and Wales. There are about 4.5 million such homes across England and Wales; it is the second-largest form of tenure after owner occupation, comprising about one fifth of domestic housing stock. Many of those private rented properties already have an EPC rating of E or above, which is very welcome, but about 290,000 properties—6% of the total—have an EPC rating of F or G. That means that they are particularly energy inefficient and are costly to heat. On average, it costs about £1,000 more per year to heat an F or G-rated home, compared with one rated band D. Many of those homes are occupied by people living in fuel poverty.

The 2015 regulations were designed to drive energy efficiency improvements to the least efficient privately rented homes. Subject to a limited number of exemptions, landlords of F and G properties are required to use available third party funding to improve their homes to a minimum of EPC band E before they can be let out. The third party funding could have included energy company obligation funding and local authority grants, but it was primarily intended that it would come from the green deal finance scheme. I was very proud to sit on the Committee that considered the legislation—*[Interruption.]* Excuse me while I rummage for a tissue. That scheme was intended to provide a cost-effective, appealing way for owner-occupiers and landlords to borrow to upgrade their homes or the properties they

were letting out. It is a source of great regret that the scheme did not work—I can answer questions about it later. That essentially meant that we were targeting a pool of homes without the scheme with which we were intending to deliver the changes. *[Interruption.]* Thank you to my Parliamentary Private Secretary for the tissue provision—excellent PPSing.

Where a landlord of an EPC F or G-rated home cannot improve the home to band E, either because funding is unavailable or because there are legitimate technical barriers, such as those often associated with listed homes, the regulations permitted them to continue to let the property so long as they registered an exemption on the new minimum standards exemption register.

By targeting the least efficient properties, we hoped to improve the living conditions of tenants, many of whom live in fuel poverty. In fact, about 45% of that cohort are classified as fuel-poor. The regulations were a crucial lever in our work to meet the fuel poverty strategy and the Government's decarbonisation targets. As we know, the green deal mechanism did not work as intended, and that led to many landlords being able to file exemptions on the exemptions register. We have taken a reasonable amount of time to consult carefully on how we should amend the original legislation with new regulations.

These regulations place a requirement on landlords to invest or co-invest in energy efficiency measures where third party funding is insufficient or cannot be secured. We have capped that investment at £3,500 per property to avoid placing an excessive burden on landlords. Consequent to that, we intend to introduce several ancillary amendments, such as the cancellation of existing "no cost" exemptions by April 2020.

Let me turn briefly to the choice of the £3,500 cap. Several numbers were consulted on, and our analysis is that this one strikes the best balance between ensuring that a meaningful number of properties are improved to EPC E and that those improvements are affordable, particularly for small landlords. It is striking that the majority of landlords in this country do not have a large portfolio; they are often families with one or two properties, which are often let out in the hope of generating some additional income for the landlord's retirement. Our analysis shows that, with the cap set at this level, approximately 48%, or almost half, of EPC F and G-rated properties can reach band E, with an average cost of only £1,200, which is well below the cap. The remaining 52% of properties will be able to receive at least one improvement and make some progress towards that target, with an average cost of £2,000.

That is beneficial in two ways. First, improvements made under this cap, whether to get to the E level, or to progress from the worst properties, will save tenants an average of £180 a year on their energy bills—of course, the savings could be very much more substantial. The improvements are also estimated to increase the capital value of a property by £8,500. There is a real sense that it is an absolute win-win situation for both tenants and landlords alike. That is alongside the energy price cap, which has come into effect with cross-party support, saving consumers an estimated £1 billion on their bills annually.

We obviously consulted carefully on these numbers and exemptions. Some 84% of consultation respondents supported the proposal to introduce the landlord funding

component, and they made the point that, alongside the obvious cost-saving benefits to tenants, landlords will benefit from the improved energy efficiency of these properties in the form of reduced maintenance costs and an increase in property capital value. That will make a meaningful contribution towards our overall carbon dioxide reduction targets, support our clean growth and support our agenda of creating more routes to market for energy efficiency technologies.

**Stephen Crabb** (Preseli Pembrokeshire) (Con): My right hon. Friend makes an important point about the potential benefit to landlords, but she will know that those are perhaps not strong enough to incentivise landlords to invest proactively in the kind of improvements to properties that tenants need to see. Will she take a moment to outline the precise mechanisms whereby the obligations on landlords will be activated? We know that far too many tenants live in substandard property from a fear of raising difficult issues with landlords or of their own insecurity. How can she be sure that the regulations will lead to the positive outcomes she hopes for?

**Claire Perry:** My right hon. Friend makes a very important point that gets to the nub of the issue: how will we ensure that these regulations are enforced? Enforcement is a power given to local authorities, which have a range of powers to support effective enforcement. To understand what that requires and what the best levers are to drive enforcement, my Department is funding seven 12-month longitudinal enforcement studies this year, which will work out what is the best enforcement toolkit.

There is now more data across Government on home standards and on which households live in fuel poverty, so there is more data available to target the enforcement work. We will have evidence from right across the UK, although not, I believe, from any constituencies in Wales—I apologise for that. We will have at least a sense of what we need to do to enforce the regulations.

The other point worth touching on is that someone might be renting a property where they could save themselves between £200 and £1,000 a year, but that information is currently not readily available to renters. Generally, agents list properties simply on the basis of aggregate rent per week or month. They might also show broadband speeds or local school quality. I would very much like—we are doing some work on this—estate agents and rental agents to put the whole question of cost to rent and cost to operate into the metrics that they show to tenants. If something looks affordable on paper, is it affordable to occupy? That is a piece of ongoing work. I hope that my right hon. Friend is satisfied with that response.

**George Freeman** (Mid Norfolk) (Con): The Minister, like me, is a great champion of British innovation and UK leadership in innovative technologies. A company in my constituency called Finn Geotherm has led the way in developing packages for social housing that deliver huge benefits for both tenants and providers. Will she reassure me and the Committee that work is being done to ensure that innovative little British companies get a chance to use this great measure to drive forward their leadership in the field?

**Claire Perry:** As always, my hon. Friend hits the nail on the head on the subject of innovation. In defining standards for energy performance certificates, we are guided by SAP, our standard assessment procedure for assessing the energy efficiency of a measure. For too long, in my view, SAP was rather retro-looking; it looked in the rear-view at traditional, albeit effective, measures such as loft insulation and cavity wall insulation, but did not particularly focus on new innovations such as smart thermostats.

One way in which the scheme can be implemented is through landlords availing themselves, where possible, of the ECO funding that is out there. We have amended that funding—sadly, without the Opposition's support—to ensure that a higher percentage is spent on innovation so that we can promote measures such as the one my hon. Friend mentions from the company in his constituency. The intention of all these schemes is not just to alleviate fuel poverty and cut our carbon emissions, but to help us to build a really effective sector that delivers energy-saving measures wherever possible and supports the jobs that relate to the investment.

In some ways, I am rather saddened to introduce the draft regulations to amend the 2015 regulations, because they reflect a failure in the green deal, which we thought would achieve so much. The green deal is still operational, however, and there is some very important modelling and infrastructure at its core, which is why it has been bought. We are working with the Green Deal Finance Company to see how it could be repurposed, potentially to support these investments and others, but we feel it important that we put the cap in place; create an environment in which landlords know what they are expected to do to upgrade their properties; remove any uncertainty; and ensure that domestic minimum standards operate in line with our original intention and deliver meaningful energy efficiency improvements to the least efficient homes in the private rented sector, which are often rented by some of our most vulnerable constituents. I commend the draft regulations to the Committee.

4.43 pm

**Dr Alan Whitehead** (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies. The Minister has given a customarily comprehensive exposition of the draft regulations and of what the Government seek to achieve with them. She also acknowledged the reason for them, which is that the original 2015 regulations were based on the idea that landlords could uprate their properties for energy efficiency purposes through the green deal programme. The manifest failure of the green deal meant that those regulations, which came on the statute book a month or so before the deal went down, were completely inoperable pretty much from the word go.

I cannot let the debate pass without briefly recording the history of the 2015 regulations, which arose from the Energy Act 2011. It took four years for them to come on to the statute book, and the target at the time was that landlords letting out F and G-rated properties would not be able to do so after 2018, unless they had taken up the green deal proposal to upgrade their properties or they had received an exemption because they had spent up to the limit of the proposal and still could not get their properties up to that level.

[Dr Alan Whitehead]

After the 2015 regulations were demonstrated to be inoperable, it has taken another four years for these regulations to come forward. The date by which the energy efficiency of those landlords' properties should be upgraded has also slipped as a result of the long delay in getting the 2015 regulations on to the statute book. We could say that these regulations are the housing and energy equivalent of the controversy about the appearance of Harper Lee's novels: they have taken a great deal of time to emerge, and when they do emerge there is a great deal of time before the one that puts the previous one right emerges to take its place.

**Claire Perry:** Of course, when they do emerge, they are considered to be tours de force and best-sellers. The point I am making, rather facetiously, is that it is much better to do something right and that will have an impact—I refer to the smart export guarantee of last week, which, again, took a little longer than I intended. We have to ensure that these regulations are proportionate and balanced and can be delivered, rather than being just a bit of writing on a piece of paper.

**Dr Whitehead:** I take the Minister's point, but it was widely thought that Harper Lee's second novel was substantially inferior to the original, to which I cast my mind this afternoon. There are two key points on these regulations that hon. Members ought to consider carefully. First, as the Minister has said, following consultations on what to do about the fact that the green deal no longer gave a route for landlords to improve their properties—in theory, at no cost to themselves because of the way the green deal worked—the Government produced consultations on the uprated regulations, which initially suggested that the expenditure limit should be £2,500, after which the landlord should be exempt.

The consultations drew a substantial number of responses. Some 79% of respondents argued that the limit the Government suggested as an alternative to the green deal was far too low. Of those, 60% suggested that the limit should be at least £5,000, which is the figure used in the work that looks at what the uplift to those properties would be. The Minister has said that according to the research, should the limit be set at £3,500—it was the only figure substantively put forward in the consultation—something like 48% of properties could be improved. To put it another way, the majority of properties in F and G would not be covered by this measure and would be exempted forever under the terms of this amendment—they would be lettable without the landlord having to do any more work, because it would not be possible to uprate the property to that level.

On the other hand, the £5,000 figure, according to some of the impact assessments, suggests that some 73% of F and G properties could be successfully uprated to band E. With a little bit more expenditure, the substantial majority of those properties could be uprated to band E. That is important, as the Minister mentioned, in the light of the clean growth strategy's ambition for the private rented sector in general up to 2035. The Minister, who I think wrote substantial parts of the

revised clean growth strategy, will know that it proposes that properties in the private rented sector should be band C by 2030.

The clean growth strategy not only suggests that upward movement by 2030, but suggests that in the meantime, there should be mandatory levels up to band D in the private rented sector by 2025. The regulation effectively takes half the properties that could be uprated to band E by 2020 and, potentially, permanently exempts them, while at the same time, the clean growth strategy's ambition is to revisit the issue in 2025. The landlords exempted from band E by 2020 would presumably be exempted in even greater numbers from 2025 to 2030. In other words, the proposal goes in precisely the opposite direction from the trajectory that the clean growth strategy suggests.

The Opposition think that it would have been more than prudent—rather, absolutely essential—for the Government to accept the overwhelming number of submissions to the consultation on the SI, and make the figure of £5,000 the limit above which exemptions would apply. I would argue that £5,000 would not be an enormous burden on landlords to ensure that they provide their properties in a lettable and saleable way. That is especially true given that, as the Minister has mentioned, a side effect of that work is that those properties increase in value by substantial amounts of money. She mentioned the figure of £8,500—even that is £3,500 more than the £5,000 figure.

We are concerned that after effectively eight years in the making, the regulations would uprate a frankly inadequate number of properties, and a pretty startling number of properties would be permanently exempt from that process. That is the first key point.

The second key point is about the overall definition in the 2011 Act of a private rented property, how that definition was incorporated in the 2015 regulations, and what one might have expected to have been incorporated in the regulations that we are considering. The 2011 Act, in the definition of private rented sector property and the measurements that should be undertaken for the purpose of complying with exemptions, raises the question of the property having an energy performance certificate. That arrangement is based on a European Union directive, so I wonder whether a statutory instrument is about to be introduced to redefine EPCs in the light of a possible early departure from the EU on a no-deal basis—we might see that in the not-too-distant future.

The EPCs, which were already in place and on which the whole of the legislation is based, only apply to properties that have been let as whole properties. Therefore, of the 4.3 million homes in the private rented sector, a substantial minority—houses in multiple occupation, where sections of the properties have been let at different times—are exempt from the requirements. Provided landlords rent out rooms within a building and not the whole building in one go, they are free—they do not have to do anything to their building as far as energy efficiency is concerned.

When the 2011 Act was passed, as I understand it from the Minister at the time—now Lord Barker—he was not aware that that huge exemption had been written into the legislation. Before the 2015 regulations were introduced, there were a number of indications that something ought to be done about that huge lacuna. One of the people indicating that something ought to

be done was me. Indeed, I raised this issue in the House on 25 June 2014—I asked what should be done about the HMO sector and how the legislation might be uprated to get it right—so the Government cannot say that they were not told, that they did not know about it or that there were no ways to put it right. Indeed, as far as the 2011 Act is concerned, it should have been put right in primary legislation very shortly after the passage of that Act.

That is not an insignificant issue. My colleague representing the constituency next door to mine, the hon. Member for Southampton, Itchen, knows that Southampton is not only the private rented sector capital of the south coast, along with Brighton, but the HMO capital: 50% of the properties in the private rented sector in Southampton are houses in multiple occupation—so those HMO properties, many of which are in bad condition, will be completely exempt from the legislation.

When the 2015 regulations were introduced, given that the Government had been told about the problem, it was surprising that the guidance stated that

“there is no obligation to obtain an EPC on a letting of an individual non-self-contained unit within a property, such as a bedsit or a room in a house in multiple occupation”.

The Government actually told landlords at the time how to evade the arrangements. One might have expected, given that there were four years to get it right—tour de force though it may be—that that issue might have been put right in the regulations, but, on scanning them, there is nothing. The situation remains exactly the same as it has been since 2011. Many landlords will drive a coach and horses through the regulations and will not improve their properties simply because they will not let out all parts of their property at the same time.

The regulations are projected to make a substantial contribution to the clean growth strategy. They do not; they are a welcome uprating of landlords’ responsibility to their properties, but they fall far short of the ambition for the Bill when it was discussed in 2011. The Minister and I both served on the Bill Committee, and there has not been a happy outcome. What we thought would take place after the legislation was passed has not happened, and the outcome remains unsatisfactory.

Unless we have a statutory instrument that properly addresses, first, what contribution landlords should make to uprating their properties in line with the ambitions in the clean growth strategy, and, secondly, how many people can escape the obligation through the definition of their property—a particular sub-definition of “private rented” escapes completely—we will have a piece of legislation that just does not work. For that reason, we cannot support the regulations. Ideally, I would like the Minister to say that she will go away and come back with a statutory instrument that addresses those two points. We would all be able to support that because it would have an overall effect on the private rented sector and really would put us on the path to discharging our ambitions in the clean growth strategy.

5.2 pm

**Claire Perry:** I am always grateful to the hon. Gentleman for his thoughtful and extensive contributions to our legislation. I am disappointed that, once again, the Opposition cannot support what most people outside this place feel to be sensible and proportionate changes,

which will help the worst 6% of properties. I take his comments on board, but—as with the clean growth strategy, our ambitions on fuel poverty and the price cap Bill—it is a shame that he feels he is unable to support the changes. Let me try to answer some of his questions and see whether he will potentially review his position.

The hon. Gentleman is absolutely right—I pay tribute to his long-standing recognition of this issue—that houses in multiple occupation are covered by this minimum standard if they are required to have an EPC. Some do, and many do not. We are currently working with colleagues in the Ministry of Housing, Communities and Local Government to review the requirements. Although tenants can request energy efficiency measures, we do not want private rented properties to be reclassified into some sort of HMO bucket so there is another exemption.

We had a big call for evidence on EPCs—I hope the hon. Gentleman contributed to it—and this question came up in it. We will review the responses, and we will publish our response in the summer. This is a concern, but not one that should prevent this valuable contribution to alleviating the number of fuel-poor homes from being put on the statute book.

The hon. Gentleman raised the issue of delays and asked why this has taken so long. He will know that the original regulations set out that landlords needed to improve their properties or register an exemption by April 2020. With the consent of the Committee, we will put these regulations on to the statute book, and that will come into force. The 2018 limit applied only to new tenancies. He will ask me what the churn rate is in the tenancies; the answer is that I do not know, but I believe from the impact assessment that we are still capturing substantially the majority of properties in this sector.

I take the hon. Gentleman’s point about the level of a cap. To clarify slightly, 52% did not support the £5,000 cap. Although the majority of people thought it should be higher than £1,500, the majority did not support a £5,000 cap, for all the reasons that I set out: this cap is considered to be more proportionate. If he looks at the impact assessment he will see that the net present value of delivering at a £3,500 cap is substantially higher.

**Dr Whitehead:** Will the Minister clarify the distinction between the majority not supporting the £5,000 and those people in the consultation who supported the £2,500? If I add together those who supported the £2,500 and the rest of the consultees, I get to the figure of 52% who did not support it. However, the vast majority of people who did not support the £2,500 cap supported the £5,000 cap.

**Claire Perry:** Far be it from me to replay arguments about 48:52 in this lowly Committee—we could be here all day. We are not here to debate the calculations; the majority of people in the consultation did not support the £5,000 cap. They certainly agreed that the number should be higher than £1,500, as we do. The hon. Gentleman will notice that there are other amendments such as including VAT in the cap, removing the backward-looking grandfathering—stopping it in 2017, so that people are forced to continue to invest in those properties.

[Claire Perry]

The hon. Gentleman asked about exemption length, suggesting that landlords will be let off forever. That is not true; all exemptions will expire after five years. Landlords will then be obligated to try again to improve the property, spending up to the level of the cap. Hopefully, with the continuing reduction in the cost of energy efficiency measures, people will be able to do more for less.

I am disappointed that the hon. Gentleman does not support the draft regulations, but they are the right thing to do. This is a proportionate set of measures: it is fair to landlords, most of whom are not large corporates but people who have invested in one or two properties, who want to do the right thing. He makes a good point about multiple occupancy and I would be happy to take that away and, as we often do, work in concert to take it forward, because that is an important additional change we could bring forward.

This statutory instrument is a good step forward; it has received widespread support and it means that the most inefficient homes will be improved, creating savings for tenants and capital value for those who own them. On that basis, I commend the draft regulations to the Committee.

*Question put.*

*The Committee divided: Ayes 9, Noes 6.*

**Division No. 1]**

**AYES**

Bebb, Guto  
Crabb, rh Stephen  
Freeman, George  
Hall, Luke  
Harris, Rebecca

Harrison, Trudy  
O'Brien, Neil  
Perry, rh Claire  
Smith, Royston

**NOES**

Phillipson, Bridget  
Slaughter, Andy  
Smith, Nick

Timms, rh Stephen  
Whitehead, Dr Alan  
Whitfield, Martin

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2018.

5.10 pm

*Committee rose.*