

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT ENERGY EFFICIENCY (PRIVATE RENTED
PROPERTY) (ENGLAND AND WALES)
(AMENDMENT) REGULATIONS 2016

Wednesday 8 June 2016

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The Committee consisted of the following Members:

Chair: MIKE GAPES

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| † Aldous, Peter (<i>Waveney</i>) (Con) | † Lynch, Holly (<i>Halifax</i>) (Lab) |
| † Benyon, Richard (<i>Newbury</i>) (Con) | † Murray, Mrs Sheryll (<i>South East Cornwall</i>) (Con) |
| Cooper, Yvette (<i>Normanton, Pontefract and
Castleford</i>) (Lab) | Reed, Mr Jamie (<i>Copeland</i>) (Lab) |
| † Frazer, Lucy (<i>South East Cambridgeshire</i>) (Con) | † Sandbach, Antoinette (<i>Eddisbury</i>) (Con) |
| † Gardiner, Barry (<i>Brent North</i>) (Lab) | † Sheerman, Mr Barry (<i>Huddersfield</i>) (Lab/Co-op) |
| † Grant, Mrs Helen (<i>Maidstone and The Weald</i>)
(Con) | Smith, Mr Andrew (<i>Oxford East</i>) (Lab) |
| † Leadsom, Andrea (<i>Minister of State, Department of
Energy and Climate Change</i>) | † Smith, Julian (<i>Skipton and Ripon</i>) (Con) |
| † Lefroy, Jeremy (<i>Stafford</i>) (Con) | † Smith, Royston (<i>Southampton, Itchen</i>) (Con) |
| | Katy Stout, <i>Committee Clerk</i> |
| | † attended the Committee |

Fourth Delegated Legislation Committee

Wednesday 8 June 2016

[MIKE GAPES *in the Chair*]

Draft Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2016

2.30 pm

The Minister of State, Department of Energy and Climate Change (Andrea Leadsom): I beg to move,

That the Committee has considered the draft Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2016.

These regulations make a minor amendment to the Energy Efficiency (Private Rented Property) Regulations 2015. They will postpone the date by which the Secretary of State must establish the private rented sector minimum standards exemptions register. For hon. Members who are unfamiliar with the private rented sector minimum standards, I will quickly give some background on the sector and the 2015 regulations before discussing the specific effect of this amendment.

There are about 1.2 million non-domestic rental properties in England and Wales, which make up approximately two thirds of the non-domestic property market. About one in five of those properties fall within the lowest two energy efficiency bands—F and G. In the domestic rental sector, there are about 4.6 million properties in England and Wales, making it the second largest tenure after owner occupation, at around one fifth of the total domestic housing stock. Up to 10% of those properties have an F or G energy performance certificate rating.

The 2015 regulations will drive improvements in the least energy efficient privately rented properties across the domestic and non-domestic sectors. They will do so by requiring landlords of F and G-rated properties to improve their properties to a minimum energy efficiency rating of E if they wish to re-let them after 1 April 2018. By targeting the worst-performing properties, the minimum standards regulations will improve the living and working conditions of tenants, many of whom are among the most vulnerable, particularly in the domestic sector. By reducing winter peak demand, the regulations—particularly the non-domestic provisions—will also help improve the UK's energy security.

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): The Minister used the word “vulnerable”. I chair the all-party carbon monoxide group, which deals with energy in this kind of property, and we have been campaigning to have carbon monoxide detectors in this sort of property for a very long time. We wanted it in the green deal, and at one stage we thought we had nearly got there under the previous Government. The backdrop to this is the introduction of smart meters. I wonder whether these regulations are co-ordinated with those two problems.

Andrea Leadsom: I am grateful to the hon. Gentleman for raising those issues; I recall that he raised them some time ago, so I recognise that he has a strong interest in them. They are not relevant to these regulations, but I will certainly take them away and look at them again. I suspect that it is not for my Department, but I will certainly get back to him.

The regulations recognise that there will be instances when it will not be cost-effective or technically feasible to improve particular properties, so a number of temporary exemptions are provided to protect landlords. For example, landlords will not be required to improve a property to an E rating where planning consent is required and cannot be obtained. Landlords will also be exempt where there is independent evidence that installation of a recommended measure would damage the fabric of their property or reduce its value by more than 5%. In the non-domestic sector, landlords will be required to install only measures that cost the same as or less than their expected energy savings over a seven-year period, and they will be eligible for an exemption if the improvements do not meet that payback test. Similar cost-effectiveness tests exist for the domestic sector, which I will discuss further in a moment.

In all cases where an exemption applies, the regulations will require the landlord to register that exemption on a centrally held register, known as the PRS exemptions register, which my Department is required to establish for this purpose. Currently, the regulations give 1 October 2016 as the date on which this register must open. That is a full 18 months before the minimum standards come into force.

We are now seeking to amend that date for two reasons. First, the establishment of the register, although not a significant technical undertaking, requires time to finalise the design, and to build and user-test the prototype with landlord groups, local authorities and local weights and measures authorities that will enforce the minimum standards. Given that a majority of landlords are unlikely to seek to register an exemption until just before the minimum standards come into force, we believe that postponing the launch of the register by six months—until 1 April 2017—will provide us with reasonable extra time to build and fully user-test the database, without negatively affecting landlords' plans to register a valid exemption.

Secondly, we also want to postpone domestic landlords' access to the register for a further six months, until October 2017. I noted a moment ago that the minimum standards regulations contain a cost-effectiveness test for domestic landlords. That provides a five-year exemption for landlords where they are unable to undertake improvements without up-front cost—specifically where measures cannot be wholly financed, at no cost to the landlord, using funding from central Government, a local authority or any other source.

Hon. Members will be aware that since mid-2015 the Green Deal Finance Company has not been funding any new green deal plans. Although obligated energy company funding will continue to be available after 2018, and local authority grants may continue to be available in specific areas, the current absence of green deal finance leaves a gap in the operation of the regulations as currently structured. We are clear that that should not be allowed to affect the delivery of the minimum standards adversely, and we are working with the sector

now to determine what amendments we need to make to the regulations to allow the domestic standards to work.

Inevitably that work will take time, both to agree policy and to consult effectively on any proposed amendments. In the meantime, it would not be sensible to allow landlords to register five-year exemptions on the basis of a lack of green deal finance, which would risk significantly reducing the impact of the PRS regulations over that period. By postponing domestic landlord access to the register until October 2017, we are ensuring that we can consult fully and make any necessary amendments before landlords can begin to register exemptions.

In parallel, we will use this period to work with landlords' representatives and others to ensure that landlords are fully aware of the circumstances in which an exemption can apply. Just as importantly, we will also be working closely with tenant representative organisations to ensure that tenants understand their rights under this legislation and the circumstances in which their landlord can and cannot register an exemption from the regulations.

Mr Sheerman: I know that the hon. Lady came back to me and said that it was not in her Department's remit, but surely her Department does cover the environment. We are talking about smart metering. The Government have introduced a programme of smart metering up and down the country. I would have thought that without smart metering one cannot judge how effective any of these regulations will be. The programme is going to be in every household in the country. It seems essential that these regulations take note of what is going on, even if it is within another Department. Surely the people we represent should also be protected, having the right not only to a decent environment, but to a safe environment with carbon monoxide detectors.

Andrea Leadsom: I am sorry, but I have to point out to the hon. Gentleman that this is about a register of exemptions for improving the energy efficiency of buildings; it does not deal with the matters that he is raising.

In conclusion, these amendments seek to postpone the launch of the private rented sector exemptions register by six months, until April 2017, with an additional postponement for domestic landlords until October 2017. The amendments are being made for both technical and policy reasons. Although they are minor in themselves, they will help ensure that the minimum standard operates effectively in line with its original intention to deliver significant improvements to the energy efficiency of the least efficient properties in the private rented sector.

2.40 pm

Barry Gardiner (Brent North) (Lab): It is always a great pleasure to see you in the Chair and take your advice about proceedings, Mr Gapes.

Oh dear—deary, deary dear. What are we doing today? We are stopping landlords from being able to excuse themselves from putting right their properties' energy efficiency problems that through common decency and common sense they should have put right years ago but in many cases were just too mean to do—after all, it was not their money leaking out through the draughty doors, roofs and windows. That has got to be a good

thing, right? Surely Her Majesty's official Opposition cannot have a problem with ensuring that landlords do not manage to find a loophole in the legislation and wriggle out of their obligations to tenants under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, made under powers in the Energy Act 2011.

We would be happy if the reason we were doing that seemingly sensible thing was not because it has taken the Government five years to understand that the green deal was doomed from the start and that the non-availability of green deal finance—sorry, did I say “non-availability”? Of course what I mean is the total, utter and ignominious collapse of the green deal. That has created a loophole for the landlords of 440,000 properties currently below even the shamefully low band E standard that the Government eventually were persuaded might not be too burdensome for those landlords to be required to bring properties up to from the miserable and costly bands F and G that they currently rent out to some of the poorest people in the country, while receiving huge subventions from the rest of us taxpayers in the form of housing benefit: approximately £3 billion of the total £25 billion housing benefit bill.

That in turn would not be nearly as high if the Government had bothered to spend the last six years building the houses that they promised. The lack of which—green deal finance that is, not houses—means that landlords who cannot get the work done through an obligation placed on an energy company or through third-party grant funding, per part 3 of the 2015 regulations, may plead that they are unable to avail themselves of the other provision in the PR regulations that would ensure that they would not have to pay a single penny to improve their own properties, their capital assets, which they use to generate billions of pounds of income from the public purse: namely, the green deal “pay as you save” finance option, as specified in part 3 of the 2015 regulations. They could thereby claim, as of 1 July, an exemption from having to improve the energy efficiency of their properties and leave their tenants in the cold with expensive heating bills in perpetuity.

Do we want to stop landlords from claiming such an exemption? Of course we do, but do the Government really expect the Opposition not to point out that the whole ridiculous situation is a rank mixture of injustice blended with incompetence? Of course they do not. It is not landlords' fault that the 2011 Act made the assumption that landlords would be able to use the green deal as a means of meeting their social obligations under the Act. Nor is it the landlords' fault—though I suspect they lobbied hard—that the Government passed legislation to ensure that they did not have to bear the cost of ensuring that their own commercial asset did not become substandard and unfit for people to rent. Think of the ramifications of such a policy—why should factory owners have to pay for the installation of health and safety equipment? Why should theatre or restaurant owners have to pay for fire doors? The logical answer appears to be because they derive revenue from others out of their premises. Perhaps Ministers might have considered the potential for equity release schemes when more traditional sources of funding are not available.

Will the Minister advise us why she considers that landlords should be unable to secure funds from commercial lenders to make such improvements under an equity

[Barry Gardiner]

release model, given that the legislation quite clearly countenances landlords being prohibited from deriving any rental income from such properties whatever unless the appropriate band E standard of energy efficiency is met? Surely equity release would be a simple way of achieving the Government's objective. However, they have chosen not to make the landlord liable for such costs. The fault therefore lies with the Government.

Many people—me included—tried to tell the Government back in 2011 that the green deal simply would not work. Many of us would have been delighted to be proved wrong, but the mathematics simply did not stand any scrutiny. We wanted it to work because we were keenly aware of the problems, but it simply could not.

Since that failure, I have talked to individuals who were civil servants in the Department at the time. I have asked them why they think the Department carried on with the green deal long after every rational person had pronounced it dead on arrival. They have all given me similar answers. Three words come up over and over again: “political dogma” and “fundamentalism”. One person told me that she believed it had become an article of faith for the Minister involved—not this Minister—such that

“it had to work and anyone who suggested that it might not, was seen somehow as being disloyal”.

However, now that the Department has cancelled the green deal, the Government need to act urgently to replace it with something better. The CEO of the UK Green Building Council described the death of the green deal as a turning point that meant that this

“Government's strategy on dealing with high energy bills through home efficiency is now dead in the water”.

I would love the Minister to stand up today and tell us how, where and precisely why that judgment is wrong. I do not believe that she will, nor do I believe that she can. The Government are certainly not oblivious to the fact that the failure to address energy efficiency in the private rented sector is wasteful of energy and a barrier to the UK's aspirations to meet its climate change obligations. It is also a major contributor to fuel poverty, but the truth is that the Minister has no policy to present us with. The Government have already said that the energy action plan that, by statute, they should have published as soon as reasonably practicable after setting the fourth carbon budget in July 2011 will not actually be published until December this year—more than five years late. All I can say is that if that is “as soon as reasonably practicable”, the Secretary of State's interpretation of the English language is a good deal more elastic than mine.

However, in relation to these regulations, the Government should seek to do something to delay the implementation of these exemptions—and yes, of course it is also right that we acknowledge that in some circumstances there should be exemptions. Nobody wants to see landlords who are unable to obtain planning consent for required energy efficiency measures penalised.

In the Committee's careful consideration of this SI, it must be conscious that it is simply putting a sticking plaster over a sticking plaster. A measure that was first discussed in the Energy Act 2011—passed a full five

years ago—is still subject to delays in implementation. Indeed, it took four years before the proposed regulations that we are discussing today were published. The rapid growth in the private rented sector means that, as a result of the delays, many thousands of extra properties with very poor energy efficiency are now being rented out, often to those on very low incomes. The Government's whole attitude to energy efficiency has been one of lamentable foot-dragging.

We read in the explanatory memorandum the explanation for the delay in introducing the provisions for non-domestic landlords. It states that the delay is required for

“additional time to procure a third-party to design, user test, and implement the Register, ensuring an optimal customer experience”.

Is the Minister really happy with that explanation? The Department has had over a year to prepare for this change, yet it reads as though a designer has not even been procured for the first stage of implementation. The Minister really must tell us whether this work has started. Has a third party been procured to design and user-test this register? If not, why not? No statutory instrument was actually required to allow the Government to get on with the work, so why do the explanatory notes provide that as a reason?

The truth is that this statutory instrument is required precisely because the Government have failed to get on and procure the work in time. They do not know how they are going to fix the problem and they now have to buy more time from Parliament. That is tragically symptomatic of the lack of focus that the Department has shown on the whole issue of energy efficiency and the problem of fuel poverty.

If the Minister finds herself so constrained that she can do nothing else, I ask her today to at least make a public promise, even if this register of exemptions is delayed as she wishes, that there will be absolutely no delay in the dates for implementation of the energy efficiency measures and that the dates for improvements to be made to substandard properties—1 April 2018 for new tenancies and 2023 for existing ones—should be sacrosanct. It would be good to have that assurance on the record. None of us wants to be sitting here in a year's time listening to the Minister asking for yet further postponement.

I believe that the Minister should urgently advise the House about how all these regulations are going to be enforced. The Opposition do not believe that it is acceptable that landlords should be allowed to plead poverty and shrug off their basic social obligations when many of their tenants, who are poor, are being made poorer still by having to shoulder excessive costs imposed on them by their landlords' dilatory attitude to the properties they rent out.

Most landlords want to provide their tenants with a fair service and a decent property. Sadly, a minority—11%—do not, and are prepared to allow their properties to fall into what the Government classified five years ago as a substandard condition. By pandering to that group, the Government gain no kudos for good landlords. The Government are not the champions of lesser regulation in the sector; they will be identified with the worst and most venal end of the sector, from which the good landlords wish to dissociate themselves. They will become the champions of the modern-day Rachmans who are dragging Britain into a housing crisis and thousands of ordinary families into misery, fuel poverty and debt.

Mr Sheerman: I am following my hon. Friend entirely. He, like me, was one of the group of Opposition MPs who had really good dialogue to try to improve the green deal. It was a very good co-operative. There seems to be a degree of amnesia on the part of the Minister, for whom I have a high regard—except on Europe—for her focus on detail. We were there, were we not? We were trying to make the green deal better, and when we talked about landlords we tried to build in protection for tenants to prevent them from dying of carbon monoxide poisoning, as three of my constituents did. We also tried to have a coherent policy, which, as smart metering came in, would monitor how effective the regulations had been. She seems to have forgotten all the work of her predecessor—

The Chair: Order. Thank you, Mr Sheerman.

Barry Gardiner: We were there, Barry. You and I were there. We remember that dialogue. I co-chaired the green deal group with the then Conservative MP Laura Sandys because I wanted it to succeed. I had no faith that it would, but I wanted it to. It was absolutely apparent that it could not, and many of us came to that conclusion very quickly. Unfortunately, the Government refused to bow to the figures and it became an issue of dogma.

My hon. Friend raised the issue of carbon monoxide monitoring. I wholly support him in his championing of that cause, but—here I must side with the Minister—it is outwith the ambit of this statutory instrument. I am sure that he is well aware of that. It is good that he raised the point, because the Minister has now agreed to take it back and speak to her colleagues about it.

I do not wish to detain the Committee any longer. We recognise that this statutory instrument is required to get the Government out of a hole, and we will therefore not oppose it, but it is a hole of the Government's own making, so we will leave to them the digging and the necessary votes to extricate themselves.

2.54 pm

Andrea Leadsom: I am grateful to the hon. Gentleman, because I agree with a lot of what he says, particularly the vital importance of sorting out the lack of efficiency in the homes of some of the most vulnerable people, and some businesses that really struggle. It is, of course, also important in meeting our climate change goals that we address those issues.

I do not agree with the hon. Gentleman that we should force them to do it. As he points out, the 90%-plus of landlords who are good people trying to offer a good service and do the right thing will already do it. These regulations seek to address the fact that a minority does not want to do it to look after tenants and the most vulnerable. We are seeking to ensure that the regulations tackle those people. By giving a suitable

amount of time, suitable notice, we can ensure that those non-domestic and domestic properties are improved.

Barry Gardiner: I do not wish to make this too much of an iterative process. Today we are looking at the exemptions. The hon. Lady and I agree that the vast majority of landlords will do the right thing. They want to do the right thing and provide a good service. We are looking at the exemptions that precisely that 11%—or 440,000 properties-worth of landlords—will seek to take advantage of. I do not see why we should not use wider powers. If we say, “Look, you cannot even rent your property if you do not get it up to standard,” why are we countenancing not using something such as an equity release scheme that says, “You need to be able to go down that track. There is value in the property.”? That can then be pursued.

Andrea Leadsom: Again, we are both on the same side. The whole point about delaying the effective start date of the exemptions register is precisely to look at the issues that the hon. Gentleman raises. We can argue about the green deal; that was before my time and he has made his points.

What we are dealing with today is the position where, if we introduce the exemptions register right now, landlords will be able to say that there are no means by which they can avoid spending money. Unless we delay the exemptions register from taking effect, we are creating an opportunity for landlords to take advantage of a policy interregnum. We are saying that we need to delay it so that we can consult landlords and tenants associations to get the right balance, so as to ensure that lots of people do not end up homeless because their landlord cannot or will not sort out the home, while at the same time we make it as difficult as possible for anybody to avoid bringing the quality and standard up to the right level.

I will make one final point. Since April 2010, Government policies have supported the insulation of 3.8 million lofts and 2.1 million cavity walls. We are absolutely clear that more than 1.2 million households have achieved lower bills due to energy efficiency improvements over the past five years. I do not accept that we have not done a good job. We are absolutely committed to energy efficiency and to resolving some of the terrible issues of fuel poverty.

The 2015 energy efficiency regulations are an important step towards providing domestic and business tenants with more comfortable properties and lower energy costs. Building on the new timeframe established by these amendments, we will work with our stakeholders to deliver the exemptions register and, by so doing, support landlords so that they can meet their obligations efficiently, and support enforcement authorities in their duty to ensure that that happens.

Question put and agreed to.

2.58 pm

Committee rose.

