EXPLANATORY MEMORANDUM TO

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

2016 No. 660

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the coming into force date of Part 3 of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ("the PR Regulations"). Part 3 was to come into force on 1st October 2016. As amended, it will now come into force on 1st April 2017 in relation to non-domestic private rented properties, and on 1st October 2017 in relation to domestic private rented properties.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England and Wales.

3.3 The instrument applies only to England and Wales because it is made using vires in the Energy Act 2011 which are so limited. The instrument does not have minor or consequential effects outside England and Wales.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to housing and buildings, which are within the devolved legislative competence of the Scottish Parliament (housing and buildings are not within Schedule 5 to the Scotland Act 1998 and are not otherwise outside the legislative competence of the Scottish Parliament – see section 29 of that Act).

4. Legislative Context

4.1 The PR Regulations were made under the Energy Act 2011 and introduced measures to improve the energy efficiency of private rented property in England and Wales.

4.2 Part 2 of the PR Regulations (*tenants' energy efficiency improvements*) came into force on 1st April 2016, and applies to domestic private rented property (that is, property let on an assured tenancy for the purposes of the Housing Act 1988, property let on a regulated tenancy for the purposes of the Rent Act 1977, or property let on a tenancy prescribed by the Energy Efficiency (Domestic Private Rented Property)

Order 2015). It enables the tenant of such a property to request their landlord's consent to the tenant making energy efficiency improvements to the property, and places a duty on the landlord and any superior landlord (subject to prescribed exemptions), not to unreasonably refuse consent to the improvements being made.

4.3 Part 3 of the PR Regulations (*minimum level of energy efficiency*) applies to domestic private rented property, and to non-domestic private rented property (that is property which is let under a tenancy and is not a dwelling). It prescribes a minimum level of energy efficiency for private rented properties - an energy performance indicator (evidenced on the energy performance certificate for the property) of band E. Private rented properties falling below that minimum level are described as "sub-standard". Part 3 provides that, subject to prescribed exemptions, a landlord of a sub-standard domestic private rented property is prohibited from granting a new tenancy of the property after 1st April 2018, and prohibited from continuing to let the property after 1st April 2020; and that the landlord of a sub-standard non-domestic private rented property is prohibited from granting a new tenancy of the property after 1st April 2018, and prohibited from continuing to let the property after 1st April 2023.

4.4 Part 3 of the PR Regulations was to come into force on 1st October 2016, to enable landlords seeking to rely on a prescribed exemption when letting a sub-standard property, to register such exemption on an Exemptions Register maintained by the Secretary of State from that date. This instrument amends the coming into force date of Part 3 to: 1st April 2017 in relation to non-domestic PR properties, and 1st October 2017 in relation to domestic PR properties. The effect of these changes is to change the dates from which landlords may register an exemption on the Exemptions Register.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales only.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Secretary of State at the Department of Energy and Climate Change has made the following statement regarding Human Rights:

"In my view the provisions of the Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2016 are compatible with Convention rights."

7. Policy background

What is being done and why

7.1 As set out above, these amendments provide for a six month postponement of implementing the Private Rented Sector Exemptions Register for non-domestic PR property to 1 April 2017, and a twelve month postponement of the register to 1 October 2017 for domestic PR property. At these dates the Register will open to the respective sectors and will enable landlords of substandard PR property in England and Wales to register prescribed exemptions prior to the prohibition on renting substandard property coming into force on 1 April 2018.

7.2 Following the closure of the Green Deal Finance Company to new business in 2015, policy concerns have emerged that a majority of domestic landlords of substandard properties may be eligible for an exemption from meeting the minimum standard in the absence of a Green Deal or Pay As You Save (PAYS) finance offer. This is because, under the Part 3 of the PR Regulations, domestic landlords will be entitled to claim an exemption from the prohibition on letting substandard domestic property where they are unable to meet the standard without incurring an upfront or net cost. To enable landlords to avoid upfront or net costs the Regulations only require landlords to make improvement which: (i) can paid for using a green deal plan, (ii) are provided free of charge pursuant to an obligation placed on an energy company, or (iii) are paid for using third party finance (such as a grant) at no cost to the landlord. While a proportion of domestic landlords may be able to take advantage of funding options ii and iii, the Department's assessment is that a significant proportion of landlords will not, and will therefore be eligible for a prescribed exemption.

7.3 In order to address this, the Department is considering whether changes to Part 3 of the PR Regulations may be required to ensure that the minimum standard operates as effectively as possible in relation to domestic PR properties. We are therefore postponing the coming into force of Part 3, to enable us to consult and make any amendments to Part 3, if necessary, before the date on which domestic landlords can start to register exemptions.

7.4 Separately, the postponement of access to the Exemptions Register for non-domestic landlords is intended to allow the Department additional time to procure a third-party to design, user test, and implement the Register, ensuring an optimal customer experience.

Consolidation

7.5 As this instrument only makes a minor amendment to the PR Regulations, consolidation is not considered appropriate at this stage.

8. Consultation outcome

8.1 As this instrument only makes a minor amendment to the PR Regulations, formal consultation was not considered appropriate or proportionate.

8.2 Informal consultation with stakeholders, including landlord groups, tenant representative groups, and environmental groups, has shown that interested parties are satisfied that the postponement of the register is sensible under the circumstances.

9. Guidance

9.1 As this instrument only makes a minor amendment to the PR Regulations, formal guidance on its effect is not necessary. The Department will ensure that relevant stakeholders are made aware of the amended dates for the opening of the Exemptions Register before this instrument takes effect.

10. Impact

10.1 There are no new impacts on business, charities or voluntary bodies, besides postponing the date at which any bodies which are private landlords can register an exemption from meeting the minimum standard. The postponement will have no impact on costs, including any hidden costs, associated with complying with the PR Regulations.

10.2 Likewise, there will be no impact on the public sector in cases where a landlord is a public sector body, other than postponing the date at which an exemption may be registered.

10.3 Local authorities and local weights and measures authorities will enforce Part 3 of the PR Regulations (the minimum level of energy efficiency provisions) from April 2018. This commencement date will not be effected by the postponement of the Exemptions Register and therefore represents no new impacts.

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses, but only impacts on the dates from which exemptions from the prohibition on letting may be registered. The amendment therefore does not represent a new or substantially altered burden on small businesses, and introduces no new costs. Laying the amendments as soon as possible will provide clarity and certainty to those small businesses who are effected, and the Department will ensure that the revised dates are widely publicised.

12. Monitoring & review

12.1 The Department will monitor the operation and impact of the PR Regulations. The PR Regulations impose a duty on the Secretary of State to carry out a review of the operation and effect of the Regulations, and to publish the conclusions, at least every five years.

13. Contact

13.1 Stephen Ryman at the Department of Energy and Climate Change (telephone: 0300 068 6191 or email: Stephen.Ryman@decc.gsi.gov.uk) can answer any queries regarding the instrument.