HOUSE OF LORDS

Secondary Legislation Scrutiny Committee
(Sub-Committee A)

10th Report of Session 2017–19

Proposed Negative Statutory Instruments under the European Union (Withdrawal) Act 2018

Includes a Recommendation on the following:

Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2018

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

Correspondence: Building (Amendment) Regulations 2018

Includes 3 Information Paragraphs on 3 Instruments

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Secondary Legislation Scrutiny Committee (Sub-Committee A)

The Committee's terms of reference, as amended on 11 July 2018, are set out on the website but are, broadly:

To report on draft instruments and memoranda laid before Parliament under sections 8, 9 and 23(1) of the European Withdrawal Act 2018.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Baroness Bowles of Berkhamsted
Rt Hon. Lord Chartres
Lord Faulkner of Worcester
Baroness Finn
Lord Haskel
Lord Hogan-Howe
Rt Hon. Lord Lilley
Lord Sharkey
Rt Hon. Lord Trefgarne (Chairman)
Rt Hon. Lord Walker of Gestingthorpe
Lord Wood of Anfield

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Sub-Committee's Reports are published on the internet at http://www.parliament.uk/seclegapublications

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at http://www.legislation.gov.uk/uksi

Committee Staff

The staff of the Committee are Christine Salmon Percival (Clerk), Paul Bristow (Adviser), Nadine McNally (Adviser), Philipp Mende (Adviser), Jane White (Adviser), Louise Andrews (Committee Assistant) and Ben Dunleavy (Committee Assistant).

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Tenth Report

PROPOSED NEGATIVE STATUTORY INSTRUMENTS UNDER THE EUROPEAN UNION (WITHDRAWAL) ACT 2018

Instruments recommended for upgrade to the affirmative procedure

Merchant Shipping (Marine Equipment) (Amendment etc.) (EU Exit) Regulations 2018

Date laid: 10 December 2018

Sifting period ends: 9 January 2019

1. This proposed negative instrument aims to ensure that the UK will continue to apply international standards for marine equipment placed on board UK ships, and the enforcement of those standards after exit. The Regulations establish UK conformity assessment procedures, which test marine equipment to ensure that they meet relevant design, construction and performance requirements, and which replicate the existing EU conformity assessment procedures. At present, EU organisations, known as "EU Notified Bodies", assess and approve the conformity of marine equipment. There are currently 10 EU Notified Bodies based in the UK,[1] which will become "UK Approved Bodies" on exit day.[2] If any of the UK Approved Bodies wish to retain their notified body status in the EU, they would need to seek notification from an EU Member State. The Department for Transport (DfT) has explained that "to do this, they would need to re-locate to the EU" and DfT is "aware of some of the larger notified bodies having started this process already where they are relocating to one of their EU based offices." On exit day, the UK will facilitate continued acceptance of EU approved products but DfT has explained that it is Government policy eventually to time limit this provision "to ensure we do not rely on the EU indefinitely" because "if we did not the EU would have indefinite access to the UK market in a no deal scenario". As a result, some manufacturers of marine equipment are concerned that they will need to pay twice for conformity assessments in the future. Given the impact this may have on industry, the House may expect an opportunity to debate this instrument. **We therefore recommend that this instrument should be subject to the affirmative resolution procedure**.

Proposed Negative Statutory Instruments about which no recommendation to upgrade is made

- Animal Breeding (Amendment) (EU Exit) Regulations 2018
- Animal Health and Welfare (Amendment) (Northern Ireland) (EU Exit) Regulations 2018
- Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2018

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1 ABS Europe Ltd; BSI Group; BTTG Testing and Certification Ltd; BRE Global Ltd; Fleetwood Test House; INSPEC International Ltd; Lloyd's Register Verification Ltd; UL International (UL) Ltd; TUV SUD BABT; and Warrington Certification.

2 The Secretary of State will also be able to designate further approved bodies.

- Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2018
- Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018
- Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

Date laid: 27 November 2018

Parliamentary procedure: affirmative

These draft Regulations propose to require landlords of the least energy efficient domestic private rented properties in England and Wales to invest in energy efficiency improvements and self-fund these improvements subject to an upper spending cap of £3,500. The draft Regulations also propose changes to the recognition of previous investments made by landlords and in relation to a number of exemptions that exist under the current arrangements. We have received a submission from the Residential Landlords Association which raises concerns about the proposals. While we consider that the Department for Business, Energy and Industrial Strategy has addressed these concerns in its response to us, the Committee nevertheless recognises that the draft Regulations present a departure from the Department's previous policy of not imposing costs on landlords. The Committee also notes the Department's expectation that the proposed changes will not lead to rent increases in a sector where a significant proportion of tenants are vulnerable and in fuel poverty.

These draft Regulations are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

2. The Department for Business, Energy and Industrial Strategy (BEIS) has laid these draft Regulations together with an Explanatory Memorandum (EM) and Impact Assessment (IA).

Background

3. At present, the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the "2015 Regulations") prescribe a minimum level of energy efficiency in relation to the Energy Performance Certificate ("EPC") for all domestic (and nondomestic) private rented properties. The EPC provides information about a property's energy use and how energy use could be reduced. It also gives a property an energy efficiency rating on a scale from A (most efficient) to G (least efficient). Subject to specified exemptions, the 2015 Regulations require that a landlord of a domestic property with an EPC rating lower than E may not grant a new tenancy or renew an existing tenancy on a private rented property after 1 April 2018, or continue to let such a domestic private rented property after 1 April 2020. Where energy efficiency improvement works are identified on an EPC, the 2015 Regulations require that improvements be made where they can be funded at no cost to the landlord. The Secondary Legislation Scrutiny Committee drew the 2015 Regulations to the attention of the House on the ground of policy interest.[3]

4. According to BEIS, private rented properties are among the least energy efficient in the domestic housing stock, accounting for a quarter of all homes with an F or G energy efficiency rating (so-called "substandard" homes)

3 Secondary Legislation Scrutiny Committee, 27th Report, Session 2014–15 (HL Paper 120).

while making up only a fifth of the housing stock. There are around 290,000 such substandard private rented homes in England and Wales, representing around 6% of the private rented market. BEIS says that energy costs for tenants of these properties are significantly higher, that approximately 45% of these tenants are in fuel poverty, and that the energy inefficiency of these homes contributes to residential greenhouse emissions, which make up nearly a quarter of all emissions in the UK.

5. The Department explains that the objective of the 2015 Regulations was to require landlords of substandard domestic properties to make energy efficiency improvements but at no cost to themselves. At the time, the assumption was that 'Pay as you save funding' under the Green Deal[4] would fund the majority of the required improvements, with other third-party funding options, such as local authority grants, also being available. Public investment in the Green Deal ended in 2017 and the Department says that while some private finance is now available, there has been limited pick up of 'Pay as you save' schemes and the rate of improvement to properties remains low.

6. Against this background, BEIS says that the purpose of the draft Regulations is to ensure that the original objective of the 2015 Regulations to improve energy efficiency in private rented homes and to reduce tenants' energy bills can still be achieved. Helping to alleviate fuel poverty, improving tenants' health outcomes, contributing to carbon reduction targets, and supporting economic growth and jobs in the green construction industry are also identified as policy objectives in the EM.

What is changing

7. The key change proposed in the draft Regulations is to remove the current provision that requires energy efficiency improvements only where they can be made at no cost to the landlord. Instead, the draft Regulations propose that landlords of "substandard" properties be required to invest in energy efficiency improvements to bring their properties up to EPC E standard and to self-fund these improvements. This is to be subject to an upper spending cap of £3,500, including VAT and any available third-party funding, such as Green Deal finance and local authority grants. The new requirement is to apply before relevant properties are let on a new tenancy, or before a tenancy is renewed or continued according to the timeframe specified in the 2015 Regulations. Where third-party funding is unavailable to fully cover the costs of improving the property to EPC E, and the necessary measures would cost more than £3,500, the landlord would be able to register a 'high cost' exemption. Any landlord wishing to do this would need to provide three separate quotes showing that the costs of the required improvements exceed the spending cap. No spending cap would apply where third-party funding is available to fully cover the costs of the improvements.

8. The draft Regulations also propose that landlords may subtract the cost of any previous investment into energy efficiency improvements from the spending cap to determine the value of any additional improvements that still need to be made. This, however, is to apply only to costs incurred from 1 October 2017 onwards.

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4 Under this scheme, loans are provided to finance energy-efficient home improvements which are then repaid by tenants through their energy bills, with the expectation that repayments will not exceed the savings on energy bills made as a result of the energy efficiency improvements.

9. Furthermore, the draft Regulations propose to remove current exemptions from the requirement to make energy efficiency improvements where Green Deal finance is available, but the tenant has not consented to a Green Deal finance charge being added to their energy bill. Under the new arrangements, landlords would need to consider alternative funding options rather than simply register an exemption.

10. Finally, the draft Regulations propose that exemptions for landlords granted from 1 October 2017 under the 2015 Regulations where no third-party finance was available are to expire on 1 April 2020, instead of running for the full five years period as originally provided.

Impact

11. BEIS states in the IA that while private landlords will have to cover the costs of installing energy efficiency measures, they will benefit from increases in the value of their properties due to their improved energy ratings. In relation to tenants, BEIS identifies lower energy costs (with an average (mean) annual saving of £180) and more comfortable homes, leading to a reduction in the health risks associated with fuel poverty, as the main benefits.

12. The Department also states in the IA that it does not expect rent levels to increase as a result of imposing improvement costs on landlords of properties. The Department's assessment is that the "substandard" properties affected make up only a small section of the private rental market, therefore requiring only a small number of landlords to act. The IA also states that a majority of landlords are already charging the maximum rent that tenants in their local area are willing to pay and that landlords "may struggle to remain competitive if they sought to recover costs by raising rents significantly above the average rate for their local market".

13. **The Committee is of the view that, as a significant proportion of tenants in "substandard" properties are in fuel poverty, the Department may wish to monitor whether the proposals lead to any adverse impact on vulnerable tenants.**

Consultation

14. The EM states that a public consultation on the proposals between December 2017 and March 2018 received 198 responses from a variety of stakeholder organisations and individuals. According to BEIS, a majority of responses (84%) expressed support for the introduction of a capped landlord contribution element where third-party funding is unavailable to the energy efficiency improvement of substandard properties.[5]

Concerns by the Residential Landlords Association

15. The Committee has received a submission from the Residential Landlords Association (RLA) which raises concerns about three specific aspects of

5 See p.10, Department for Business, Energy and Industrial Strategy, *Domestic Rented Sector Minimum Level of Efficiency - Summary of Responses to the consultation to amend The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015* (July 2018): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729753/domestic-rented-sector-minimum-level-energy-eficiency-responses.pdf [accessed 18 December 2018].

the draft Regulations. We have published the RLA's submission and the Department's response on our website.[6]

16. The RLA criticises the proposal to change the duration of exemptions where no third-party finance is available (see paragraph 10), arguing that the current five-year exemption should be honoured and that the proposal, due to its (alleged) retrospective effect, is not suitable for secondary legislation. The Department's view is that there is no retrospective effect as the changes relate to exemptions ending sometime in the future. BEIS also highlights the need to bring forward energy efficiency improvements given the current slow improvement rate, and points to the support for changes to this exemption expressed during public consultation, when 56% of respondents agreed with the proposal.[7]

17. The RLA is concerned that investments carried out by landlords before 1 October 2017 would not be recognised under the new arrangements (see paragraph 7). BEIS explains that under the 2015 Regulations landlords were "only required to make improvements where this was at no cost to themselves" and that "[a]ny investments landlords undertook at their own cost, were therefore undertaken at their own discretion". The Department also says that the key issue is not whether or not investments have been made, but whether there have been improvements to the energy efficiency of properties. BEIS highlights that there is no evidence to show that significant numbers of properties received energy efficiency improvements before October 2017 but remained substandard and therefore require further investment. BEIS also says that while "there may be occasional instances of landlords having to make (and fund) further investment in their properties after having previously made some level of initial investment, we are not persuaded that where their property remains substandard that landlords should be exempt from improving such properties where potential installation measures can be made and available exemptions to which concerned landlords may have been eligible, have not been registered".

18. Finally, the RLA says that the proposal to remove exemptions where tenants have not consented to a Green Deal finance charge being added to their energy bill would penalise landlords (see paragraph 9), as potentially they would have to repeatedly ask the same tenant to consent to improvements that the tenant has already rejected. The Department has clarified that its intention is for the exemption to remain for as long as the tenant who refused the consent remains as a tenant, regardless of whether a new tenancy arrangement is made with that tenant, and that revised guidance will make this clear.

Conclusion

19. We note the RLA's concerns about the proposed changes. While we consider that the Department has addressed these concerns in its response to us, the Committee nevertheless recognises that the draft Regulations present a departure from the Department's previous policy of not imposing costs on landlords. The Committee also notes that while the Department does

6 Secondary Legislation Scrutiny Committee (Sub-Committee A): https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee-sub-committee-a/publications/

7 See p. 26, *Domestic Rented Sector Minimum Level of Efficiency - Summary of Responses to the consultation to amend The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*

not expect the proposals to lead to an increase in rents, the Department may nevertheless wish to monitor the impact of the proposed changes, as a significant proportion of tenants in the sector are vulnerable and in fuel poverty. **We draw the draft Regulations to the special attention of the House, as they give rise to issues of public policy likely to be of interest to the House.**

CORRESPONDENCE

Building (Amendment) Regulations 2018 (SI 2018/1230)

20. The Sub-Committee drew these Regulations, which implement a ban on the use of combustible materials on the external walls of high-rise residential buildings, to the special attention of the House in our 9th Report of this Session.[8] As mentioned in that report, we also wrote to the Minister of State for Housing, at the Ministry of Housing, Communities and Local Government, raising a number of concerns. We are publishing our letter, and the Minister's reply, at Appendix 1.

8 9th Report, Session 2017–19 (HL Paper 251).

INSTRUMENTS OF INTEREST

Draft Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018

21. The purpose of these draft Regulations is to remove reciprocal arrangements that require EU Member States to cooperate in the cross-border investigation of, and enforcement against, infringements of EU consumer laws, where the collective interest of consumers is being harmed. The Department for Business, Energy and Industrial Strategy (BEIS) explains that in a 'no deal' scenario the UK would cease to benefit from the current reciprocal arrangements, and that it would not be appropriate for remaining Member States to benefit from the arrangements unilaterally in the UK. The instrument also seeks to ensure that UK enforcement bodies, such as the Competition and Markets Authority, retain the same powers as now for investigating and addressing infringements of retained EU law on collective consumer interest in the UK after exit. BEIS says that the Government will seek to maintain reciprocal high levels of consumer protection in the negotiations with the EU, including through mutual exchange of information and evidence, and that even in a 'no deal' scenario, UK enforcers and their EU counterparts may still agree to cooperate. The Government's guidance makes clear, however, that if there is no agreement with the EU, there would no longer be reciprocal obligations on the UK or Member States to investigate breaches of consumer laws or take forward enforcement actions.[9] The guidance also explains that UK consumers, when buying goods and services in the remaining Member States, would no longer be able to use the UK courts effectively to seek redress from EU based traders, and if a UK court did make a judgement, the enforcement of that judgement would be more difficult.

Draft European Qualifications (Pharmacists) (Amendment etc.) (EU Exit) Regulations (Northern Ireland) 2018

22. The European Union Directive[10] ("the Directive") on the recognition of professional qualifications sets out a framework of two systems for the reciprocal recognition of professional qualifications: the automatic system and the general system. The automatic system obliges Member States to recognise qualifications listed in an Annex to the Directive. If a European Economic Area (EEA) qualification is not listed in the Annex, it falls within the scope of the general system, which requires the qualification holder to be registered and allowed access to the profession if the UK regulatory bodies assess that the level of qualification is comparable to the relevant UK qualification standards. The automatic system for the recognition of pharmacy qualifications was implemented in Northern Ireland through the Pharmacy Order 1976 ("the 1976 Order"). These Regulations amend the 1976 Order so that, after exit, the Pharmaceutical Society of Northern Ireland (PSNI) will be able to continue accepting relevant qualifications unless they designate them as no longer acceptable.

23. The PSNI does not have a system for the recognition of qualifications under the general system, and these will be considered by the pharmacy profession

9 See Department for Business, Energy and Industrial Strategy, *Consumer rights if there is no Brexit deal* (12 October 2018): https://www.gov.uk/government/publications/consumer-rights-if-theres-no-brexit-deal--2/consumer-rights-if-theres-no-brexit-deal [accessed 18 December 2018].

10 Directive 2005/36/EC on the recognition of professional qualifications [accessed 18 December 2018].

regulator in England, Scotland and Wales, the General Pharmaceutical Council (GPhC). Registration with the GPhC allows a pharmacist to practise in Northern Ireland via an existing Memorandum of Understanding between the two regulatory bodies.

24. The provisions for temporary and occasional service provision are being revoked as they rely on reciprocal arrangements with the EEA and the provisions relating to the European Professional Card, which facilitates recognition procedures for healthcare professionals via an "Internal Market Information" system, are being revoked as the UK will lose access to the system in a 'no deal' exit. The Department for Health and Social Care has advised that it "will shortly lay an SI to put in place similar arrangements for the recognition of all EEA health and care professional qualifications across the UK".

Draft Immigration (Leave to Enter and Remain) (Amendment) Order 2018

25. This Order will extend the use of automated "ePassport" gates to new cohorts of "low risk" passengers. The Home Office states that this is part of a long-term programme to develop a new global border and immigration system that makes better use of data, biometrics, analytics and automation to improve both security and fluidity across the border. The Order will enable nationals from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States to use the ePassport gates as standard when crossing the UK border.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft instruments subject to affirmative approval

Air Services (Competition) (Amendment) (EU Exit) Regulations 2019

Airports Slot Allocation (Amendment) (EU Exit) Regulations 2019

Combined Authorities (Mayoral Elections) (Amendment) Order 2019

Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018

European Qualifications (Pharmacists) (Amendment etc.) (EU Exit) Regulations (Northern Ireland) 2018

Floods and Water (Amendment etc.) (EU Exit) Regulations 2019

Immigration (Leave to Enter and Remain) (Amendment) Order 2018

Local Authorities (Mayoral Elections) (England and Wales) (Amendment) (England) Regulations 2019

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Draft instruments subject to annulment

Dover (Electoral Changes) Order 2019

Reigate and Banstead (Electoral Changes) Order 2019

Runnymede (Electoral Changes) Order 2019

Instruments subject to annulment

SI 2018/1276	Accreditation of Forensic Service Providers Regulations 2018
SI 2018/1288	Securitisation Regulations 2018
SI 2018/1295	Road Vehicles (Registration, Registration Plates and Excise Exemption) (Amendment) (EU Exit) Regulations 2018
SI 2018/1307	Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018
SI 2018/1308	Local Elections (Principal Areas) (England and Wales) (Amendment) (England) Rules 2018
SI 2018/1309	Local Elections (Parishes and Communities) (England and Wales) (Amendment) (England) Rules 2018
SI 2018/1310	European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018
SI 2018/1324	Northamptonshire (Changes to Years of Elections) Order 2018

APPENDIX 1: CORRESPONDENCE ON THE BUILDING (AMENDMENT) REGULATIONS 2018

Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to Kit Malthouse MP, Minister of State for Housing at the Ministry of Housing, Communities and Local Government

Building (Amendment) Regulations 2018 (SI 2018/1230)

The Committee considered these Regulations at its meeting on 10 December and agreed to bring them to the special attention of the House. We are doing so in the report which we shall publish this week.

There were some issues of continuing concern to the Committee on which we agreed that I should write to you. I set these out below. In order that we can consider your response at our next meeting, I would be grateful if you could reply by the end of this week.

The Government response of November 2018 to the consultation exercise carried out over the summer explains that 64% of respondents agreed that the ban on the use of combustible materials should apply to all high-rise, non-residential buildings, such as offices and other buildings, whereas only 26% disagreed. However, the Regulations now before Parliament do not apply the ban to high-rise office buildings.

Your Department has told us that the Government have decided to extend the scope of the ban to buildings where the normal strategy for evacuation tends to be delayed and where the occupants of the building are most vulnerable. We understand that this approach lies behind the decision not to apply the ban to office buildings. However, the Committee was concerned that evacuation of a high-rise office building could prove challenging, and would be made even more difficult if the stairwells used for evacuation were themselves affected by fire:

- Did the Government take this risk into account in deciding on the scope of the ban?
- Will the annual review mentioned in the Explanatory Memorandum include the possibility that the range of buildings covered by the ban could be further extended, for example, to include office buildings?

The Committee noted that the Regulations provide that the ban will apply to any building works unless the works have started on site or an initial notice, building notice or full plans have been deposited and work has started on site within a period of two months:

- If the Government now consider that certain materials pose too great a threat to safety if used in high-rise buildings, why is it acceptable for such materials to be applied to any new buildings of this type?
- If those materials are now incorporated in new buildings, is their use likely to prove acceptable to the prospective users of the buildings, or is there the prospect that the materials will have to be removed again at an early date?

We would welcome clarification from you of these issues and, as mentioned before, it would be helpful to receive such clarification by the end of this week.

11 December 2018

Letter from Kit Malthouse MP to Lord Trefgarne

Dear Lord Trefgarne,

Thank you for your letter of 11 December, on behalf of the Secondary Legislation Committee, regarding the Building (Amendment) Regulations 2018 (SI 2018/1230). The committee has raised two issues that you have asked me to clarify; our thinking on the scope of the ban and the transitional arrangements.

The committee asked if the Government had considered other high-rise buildings, particularly offices, when deciding on the scope of the ban. To explain this, it is important to understand that notwithstanding the amendments made by these regulations, Requirement B4 in schedule 1 of the Building Regulations applies to all buildings (including offices). It imposes a requirement for the walls of a building to adequately resist the spread of fire. The provisions of the Regulatory Reform (Fire Safety) Order 2005 (Sl2005/1541) also impose duties for office buildings that do not apply to blocks of flats. It would be wrong therefore to consider that no measures exist for the protection of people in buildings outside the scope of the ban.

As with other requirements in the Building Regulations, Requirement 84 is an objective based, functional, requirement that is supported by approved guidance. Therefore, the position for office blocks is that this requirement must be met, but under the existing system, which allows for some innovation in meeting the requirements. The new regulation introduces a prescriptive approach which cuts across the more flexible nature of requirement 84.

In deciding on the scope of the ban the government has carefully considered understandable public concern alongside expert advice and concluded that the additional restrictions set out in the amendment regulations should be applied to those buildings where external fire spread presents a greater risk. Meanwhile we are amending the guidance supporting requirement 84 in relation to all buildings. I can confirm that the regular reviews of this provision would consider all aspects of policy including its scope.

The committee asked about the transitional arrangements in the regulations, particularly the effect of excluding work which is already in hand from the new requirements. As noted above, work which is in hand now is already subject to requirement B4 of the regulations and our information is that the industry is already moving to use materials that meet the standard set out in these amendment regulations. This is why the Government has adopted much shorter transitional arrangements than is normally the case for building regulations (where 6 months is allowed for the industry to make the necessary adjustments).

However, we consider that it would not be practicable to have no transitional arrangements in place at all. As set out in the explanatory memorandum, we have adopted transition provisions that align with the statutory time period for full plans approvals under s16(12) of the Building Act 1984. This avoids the situation where the requirements change during the period between the submission of plans and a decision being issued by a local authority.

It is inevitable that older buildings will not always meet the standards imposed on new buildings, as such requirements for occupied buildings take a risk based, case by case, approach to fire safety. There is the potential, therefore, that work being carried out now could be considered inadequate at some point in the future but,

given the voluntary changes that have been made in industry in advance of these regulations coming into effect, we consider that this is highly unlikely.

The independent review of fire safety and building regulations, led by Dame Judith Hackitt, recommended that the Government should develop a policy that would implement a 'safety case' approach to existing buildings. A safety case regime would require those responsible for risks to fully understand them, own them and take measures to manage and mitigate them throughout the lifetime of a building. The Government will be setting out its plans for implementing the recommendations in Dame Judith's Independent Review shortly.

I hope that this letter adequately clarifies the issues raised by the committee.

17 December 2018

APPENDIX 2: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 17 December 2018, Members declared the following interests:

Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2018 (and two related instruments)

Lord Walker of Gestingthorpe

Gestingthorpe Farming Company Limited

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Baroness Bowles of Berkhamsted

Non-executive Director, London Stock Exchange plc (as part of this role, the member is also Chair, Regulatory Advisory Group, London Stock Exchange Group plc)

Securitisation Regulations 2018 (SI 2018/1288)

Baroness Bowles of Berkhamsted

Director, Prime Collateralised Securities (PCS) Europe ASBL (Belgian not-for-profit organisation)

Attendance:

The meeting was attended by Baroness Bowles of Berkhamsted, Lord Chartres, Lord Haskel, Lord Hogan-Howe, Baroness Finn, Lord Lilley, Lord Sharkey, Lord Trefgarne, Lord Walker of Gestingthorpe and Lord Wood of Anfield.