

Draft Order laid before Parliament under section 88(3) of the Enterprise and Regulatory Reform Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

HOUSING, ENGLAND

**The Redress Schemes for Lettings Agency Work
and Property Management Work (Approval and
Designation of Schemes) (England) Order 2013**

Made - - - - *****

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by section 87(1) and (2) of the Enterprise and Regulatory Reform Act 2013(1);

In accordance with section 88(3) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and application

1.—(1) This Order may be cited as the Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013 and comes into force on the day after the day on which it is made.

(2) This Order applies in relation to England only.

Interpretation

2. In this Order—

“the 2013 Act” means the Enterprise and Regulatory Reform Act 2013;

“approved scheme” means a redress scheme that has been approved by the Secretary of State for the purposes of section 83(1) or section 84(1) of the 2013 Act;

“ombudsman” means the independent person mentioned in section 83(2) of the 2013 Act;

“scheme administrator” means the person who administers an approved scheme.

Applications for approval

- 3.—(1) An application to the Secretary of State for approval of a redress scheme must —
- (a) be made in such a manner as the Secretary of State may determine; and
 - (b) be accompanied by such information as the Secretary of State may require.
- (2) The Secretary of State must not approve a redress scheme unless —
- (a) the provisions of the scheme; and
 - (b) the manner in which it will be operated (so far as it can be judged from the facts known to the Secretary of State)

are satisfactory for the purposes of section 83 (where the scheme applies to lettings agency work) or section 84 (where the scheme applies to property management work) of the 2013 Act.

(3) If an application for approval is refused, the Secretary of State must serve on the applicant a notice stating—

- (a) that the application for approval has been refused; and
- (b) the reasons for that refusal.

(4) An amendment to an approved scheme is not effective unless approved by the Secretary of State.

(5) Paragraph (1) applies in relation to an application for approval of an amendment as it applies to an application for approval of a scheme.

(6) The Secretary of State must not approve the amendment unless the amended scheme meets the conditions in paragraph (2).

Conditions which must be satisfied before approval may be given

4.—(1) Without prejudice to the generality of article 3(2), a scheme must not be approved unless the Secretary of State considers that it makes satisfactory provision for—

- (a) the establishment or appointment of an independent scheme administrator;
- (b) the manner of becoming or ceasing to become a member of the scheme;
- (c) complaints that may be made under the scheme (which may include complaints about non-compliance with the provision of a voluntary code of practice or other document);
- (d) where the redress scheme applies to property management work, complaints about the failure to comply with any provision of a code of practice for the time being approved under section 87 Leasehold Reform and Urban Development Act 1993(2);
- (e) the ombudsman’s duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint);
- (f) the redress which the ombudsman may require members to provide to complainants, which must include the types of redress specified in paragraph (2);
- (g) the enforcement of any requirement to provide redress imposed on a member in accordance with the scheme (which may include power to expel the member from the scheme);

(2) 1993 c.28. At present, there are three approved codes of management practice in England. These are *The Rent Only Management Code*, approved by the Approval of Codes of Management Practice (Residential Property) (England) Order 2004 (S.I. 2004/1802); *The Code of Management Practice for Private Retirement Housing* (with the exception of appendices 4 to 6 which are not within the approval), approved by the Approval of Code of Management Practice (Private Retirement Housing) (England) (Order) 2005 (S.I. 2005/3307); and the *Service Charge Residential Management Code*, approved by the Approval of Code of Management Practice (Residential Management) (England) Order 2009 (S.I. 2009/512).

- (h) the manner in which complaints about the operation of the scheme may be made by members of the scheme and by persons who have asked the scheme to investigate a complaint;
 - (i) the provision of information by the scheme administrator to the persons specified in paragraph (3); and
 - (j) the making and publication of annual reports on the operation of the scheme.
- (2) The types of redress mentioned in paragraph (1)(f) are—
- (a) providing an apology or explanation;
 - (b) paying compensation;
 - (c) taking such other actions in the interests of the complainant as the ombudsman may specify.
- (3) The persons mentioned in paragraph (1)(i) are—
- (a) persons exercising functions under other approved schemes or government administered redress schemes;
 - (b) persons exercising functions under other consumer redress schemes; and
 - (c) any other person exercising regulatory functions in relation to—
 - (i) the activities of persons engaging in lettings agency work, where the scheme applies to lettings agency work;
 - (ii) the activities of persons engaging in property management work, where the scheme applies to property management work.

Conditions which must be satisfied before a scheme may be designated as a government administered redress scheme

5.—(1) A scheme must not be designated as a government administered redress scheme unless the Secretary of State considers that it makes satisfactory provision for—

- (a) the manner of becoming or ceasing to become a member of the scheme;
 - (b) complaints that may be made under the scheme (which may include complaints about non-compliance with the provision of a voluntary code of practice or other document);
 - (c) where the redress scheme applies to property management work, complaints about the failure to comply with any provision of a code of practice for the time being approved under section 87 Leasehold Reform and Urban Development Act 1993;
 - (d) the ombudsman’s duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint);
 - (e) the redress which the ombudsman may require members to provide to complainants, which must include the types of redress specified in paragraph (2);
 - (f) the enforcement of any requirement to provide redress imposed on a member in accordance with the scheme (which may include power to expel the member from the scheme);
 - (g) the manner in which complaints about the operation of the scheme may be made by members of the scheme and by persons who have asked the scheme to investigate a complaint;
 - (h) the provision of information by the ombudsman to the persons specified in paragraph (3); and
 - (i) the making and publication of annual reports on the operation of the scheme.
- (2) The types of redress mentioned in paragraph (1)(e) are—

- (a) providing an apology or explanation;
 - (b) paying compensation;
 - (c) taking such other actions in the interests of the complainant as the ombudsman may specify.
- (3) The persons mentioned in paragraph (1)(h) are—
- (a) persons exercising functions under approved schemes or other government administered redress schemes;
 - (b) persons exercising functions under other consumer redress schemes; and
 - (c) any other person exercising regulatory functions in relation to—
 - (i) the activities of persons engaging in lettings agency work, where the scheme applies to lettings agency work;
 - (ii) the activities of persons engaging in property management work, where the scheme applies to property management work.

Satisfactory provision

6.—(1) In deciding whether a redress scheme, or any conditions mentioned in articles 4 or 5 are satisfactory, the Secretary of State must have regard to—

- (a) the interests of members of the scheme;
- (b) where the scheme applies to lettings agency work, the interests of prospective landlords and prospective tenants;
- (c) where the scheme applies to persons who engage in property management work, the interests of—
 - (i) any person (C) who instructs another person (A) to engage in property management work, and
 - (ii) any person with a relevant tenancy who occupies a dwelling-house in premises in relation to which C has instructed A to engage in property management work; and
- (d) such principles as—
 - (i) in the opinion of the Secretary of State constitute generally accepted principles of best practice in relation to consumer redress schemes; and
 - (ii) it is reasonable to regard as applicable to the scheme.

(2) In considering the interests mentioned in paragraph (1), the Secretary of State may have regard to the number of other redress schemes which are (or are likely to become) approved schemes or government administered redress schemes.

Condition with which scheme administrators must comply

7. The scheme administrator must provide such information as the Secretary of State may reasonably require on the operation of the approved scheme.

Withdrawal of approval

8.—(1) The Secretary of State may withdraw the approval of a redress scheme.

(2) Before withdrawing approval of a scheme, the Secretary of State must give the scheme administrator a notice stating —

- (a) that the Secretary of State proposes to withdraw approval of the scheme;
- (b) the reasons for the proposed withdrawal of approval; and,

- (c) that representations about the proposed withdrawal of approval may be made within such period of not less than 14 days as is specified in the notice.
- (3) If approval is withdrawn, the Secretary of State must serve on the scheme administrator a notice stating—
 - (a) that approval of the scheme is to be withdrawn;
 - (b) the reasons why approval is to be withdrawn; and
 - (c) the date on which withdrawal of approval is to take effect.
- (4) If the Secretary of State withdraws approval of the scheme, the scheme administrator must give a copy of the notice served by the Secretary of State under paragraph (3) to every member of the scheme before the end of the period of 30 days beginning with the day on which the scheme administrator first received the notice.

Revocation of designation

- 9.**—(1) The Secretary of State may revoke the designation of a government administered redress scheme.
- (2) If a government administered redress scheme’s designation is revoked, the Secretary of State must give every member of the scheme a notice stating—
- (a) that the designation is to be revoked;
 - (b) the reasons why the designation is to be revoked; and
 - (c) the date from which the revocation has effect.

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local
Government

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013 No. 3192*

EXPLANATORY NOTE

(This note is not part of the Order)

Section 83 of the Enterprise and Regulatory Reform Act 2013 (“the 2013 Act”) provides that the Secretary of State may require persons who engage in lettings agency work to belong either to a redress scheme that has been approved by the Secretary of State or to a government administered redress scheme. Section 84 of that Act provides that the Secretary of State may require persons who engage in property management work to belong either to an approved or to a government administered redress scheme.

This Order sets out the procedure that applies where an application for approval is made; the conditions that must be satisfied before the Secretary of State may approve a redress scheme; the conditions that must be satisfied before the Secretary of State may designate a scheme as a government administered redress scheme; and the procedure that is to apply where the Secretary of State decides to withdraw the approval of a redress scheme or revoke the designation of a government administered redress scheme.

A full regulatory impact assessment has not been produced for this instrument as an impact on the private or voluntary sector is not foreseen. A regulatory impact assessment will be produced for the Order that brings into force the requirement to belong to an approved or government administered redress scheme.