

# CONSUMERS, ESTATE AGENTS AND REDRESS ACT 2007

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT AND TERRITORIAL APPLICATION

#### *Northern Ireland*

#### **Part 2: Complaints Handling and Redress Schemes**

##### **Overview of Part 2**

114. Sections 42 to 52 set out the arrangements being introduced for the handling of complaints made by consumers to service providers in the electricity, gas, postal services and water sectors. In particular, this part will require the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations to prescribe complaint handling standards that will be binding on persons who are “regulated providers” (as defined in section 42) in the electricity, gas and postal services sectors (see section 43). This Part also enables the Secretary of State to make orders to require “regulated providers” in the electricity, gas, postal services and water sectors to belong to an approved redress scheme (see section 47).

##### **Section 42: Interpretation of Part 2**

115. Section 42 defines the key terms used in Part 2. In particular, this section defines the service providers and consumers in relation to whom the powers under Part 2 may be exercised (“regulated provider” and “relevant consumer”). This section also specifies the regulators who may exercise the powers under this Part (“relevant regulator”).

##### **Section 43: Standards for handling complaints**

116. Section 43 places a duty on the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations prescribing complaint handling standards that are binding on service providers. Such regulations will prescribe standards in relation to the way in which service providers handle complaints received from consumers (e.g. they might prescribe maximum response times). Regulations made under this section are not subject to any Parliamentary procedure; however, they may be made only with the consent of the Secretary of State (*subsection (4)*).
117. Under subsection (6) and (7), this section provides for the Secretary of State to make an order prescribing a date on which this duty on regulators to prescribe complaint handling standards will change to a power to prescribe such standards. Before making the order the Secretary of State must consult the regulator, the new Council and other persons as appropriate (*subsection 8*).
118. The power to prescribe complaint handling standards does not apply to the water sector (*subsection 9*). This is because the Secretary of State already has power to impose complaint handling standards in relation to water undertakers and sewerage undertakers

under the [Water Industry Act 1991 \(c.56\)](#) in relation to the water sector in England and Wales.

#### ***Section 44: Requirements for making regulations under section 43***

119. *Section 44* sets out the procedure that the Gas and Electricity Markets Authority and the Postal Services Commission must follow before making regulations to prescribe complaint handling standards. In particular, the regulator must publish a notice of its proposals, consult people likely to be affected and consider any representations made. Actions taken prior to the commencement of the provisions of this section may count as complying with requirements on the regulator under this section.

#### ***Section 45: Information with respect to compliance with complaints handling standards***

120. *Section 45* requires the Council to publish statistical information in relation to regulated providers' levels of performance in complying with any complaint handling standards prescribed under section 43 by the Gas and Electricity Markets Authority and the Postal Services Commission.
121. *Subsection (4)* gives effect to *Schedule 5* which amends the [Electricity Act 1989 \(c.29\)](#), [Gas Act 1986 \(c.44\)](#) and [Postal Services Act 2000 \(c.26\)](#) to require the Gas and Electricity Markets Authority and the Postal Services Commission to collect information from licence holders in respect of levels of compliance with any complaint handling standards prescribed by these regulators under section 43 of the Act. The above regulators are given the power to direct licensees to provide them with the information

#### ***Section 46: Supply of information to consumers***

122. *Section 46* enables the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations to require regulated providers to provide consumers with information about any complaint handling standards prescribed by the regulator and about the regulated provider's levels of compliance with those standards
123. *Subsection (2)* provides for the regulator to specify the form and manner of this information, and the frequency with which, it is to be given.

#### ***Section 47: Membership of redress scheme***

124. *Section 47* enables the Secretary of State to make orders to require regulated providers to belong to a redress scheme (as defined in section 48(1)). The redress scheme must be one approved by the relevant regulator, or a scheme administered by the Secretary of State or by a person appointed by him and designated by him as an appropriate redress scheme (in which case the Secretary of State must be satisfied that it meets the criteria for approval by the relevant regulator – see section 47(8)).
125. “Redress scheme” is defined in section 48(1) as “a scheme under which consumer complaints may be made to, and investigated and determined by, an independent person (“the independent person”)”. For this purpose, the “independent person” must be independent of the provider against whom the complaint is made and independent of the relevant regulator in respect of that provider (section 48(2)).
126. The Secretary of State may limit the requirement to belong to a redress scheme to schemes which deal with certain types of complaint. Hence, it would be possible to exclude complaints in relation to certain matters from the requirement to belong to a redress scheme (subsections (2) to (3)). Before making an order to require regulated providers to belong to a redress scheme, the Secretary of State must consult the relevant regulator and persons who appear to be representative of persons who have an interest in the matter (subsection (4)). A consultation conducted prior to the commencement of the

provisions of this section will count as complying with requirements on the Secretary of State under this section.

127. *Subsection (6)* requires the Secretary of State to seek the consent of Welsh Ministers before making an order which relates to a water undertaker or sewerage undertaker for an area which is wholly or mainly in Wales.
128. *Subsection (7)* provides that the Secretary of State may not make an order under this section unless he is satisfied that there is (or will be when the order comes into force) at least one redress scheme which each regulated provider to whom the order applies is able to join and which will satisfy the requirement imposed by the order. This is to ensure that the Secretary of State may not make an order requiring providers to belong to a redress scheme in circumstances where the providers subject to the order are unable to join a scheme since none exists.
129. *Subsection (9)* enables the Secretary of State to establish or administer a redress scheme. In practice, it is expected that suppliers or a trade association will establish their own redress scheme in respect of which approval will be sought for the purposes of any order under this section. However, in the event that business does not establish a scheme itself, the Secretary of State has the power to establish one.

#### ***Section 48: Membership of redress schemes: supplementary***

130. *Section 48* defines the key terms in relation to redress schemes.
131. *Subsection (3)* provides that an approved redress scheme may admit persons who are not required to belong to such a scheme and that it may investigate matters other than those to which the duty to belong to a redress scheme applies.
132. *Subsection (4)* provides that, for the purposes of the law of defamation, proceedings before a redress scheme will be treated in the same way as court proceedings. The effect of this is to allow the redress scheme to conduct investigations and determinations freely without the threat of defamation proceedings. Similar provision exists for most other statutory redress schemes.

#### ***Section 49: Approval of redress schemes***

133. *Section 49* sets out the matters to be taken into account by the regulator in giving approval for a redress scheme.
134. *Subsection (1)* specifies various matters that the relevant regulator must have regard to when deciding whether to approve a scheme. These include any criteria that, in the opinion of the regulator, constitute generally accepted principles of best practice in relation to redress provision which could reasonably apply to the scheme. An example of such principles would be the guidelines provided by the British and Irish Ombudsman Association ([www.bioa.org.uk](http://www.bioa.org.uk)).
135. *Subsection (2)* requires the regulator to have regard to the number of other redress schemes in relation to regulated suppliers when the regulator decides whether to approve a scheme. This is intended to avoid a proliferation of redress schemes as this could be confusing for consumers.
136. *Subsections (3), (6) and (7)* set out various conditions that a redress scheme must satisfy in order to be approved by a relevant regulator.

#### ***Section 50: Approval of redress schemes: supplementary***

137. *Section 50* provides that the regulator may determine the manner and form etc of an application for approval of a redress scheme. Changes to an approved scheme must be notified to the regulator within 14 days of any change. The regulator has power to withdraw approval of a redress scheme generally or in relation to consumer complaints

of a specified description including in relation to complaints made on or after a specified date.

***Section 51: Procedure for refusing or withdrawing approval***

138. *Section 51* sets out the procedure that the relevant regulator must follow when refusing approval for, or withdrawing approval from, an approved redress scheme.
139. *Subsection (1)* requires the relevant regulator to give the scheme administrator notice of the fact that it proposes to refuse or withdraw approval. The notice must give the reasons why the regulator proposes to refuse or withdraw approval and specify a time during which the scheme administrator may make representations to the regulator.
140. *Subsection (2)* provides that the regulator must notify the scheme administrator of its decision and the reasons for its decision.
141. *Subsection (3)* provides that the regulator must also notify the Secretary of State of its decision to withdraw approval from a redress scheme.
142. *Subsection (4)* provides that the regulator must also notify each member of the scheme of its decision to withdraw or refuse approval of the scheme.
143. *Subsection (5)* provides that withdrawal of approval of a redress scheme takes effect from the date specified in the notice withdrawing the approval (under subsection (2)).
144. *Subsection (6)* provides that the Secretary of State must follow the procedures set out in this section (other than those in subsection (3)) if he has appointed a person to administer a scheme under section 47(1)(b) and decides to revoke that appointment.

***Section 52: Enforcement of requirements imposed under Part 2***

145. *Section 52* makes provision in relation to the enforcement of complaint handling standards prescribed by a regulator under Part 2 of the Act and in relation to any requirement to belong to a redress scheme which has been imposed by the Secretary of State by order under Part 2. These requirements will be enforced under the regulatory regimes in the electricity, gas, postal services and water sectors (where appropriate).
146. *Subsections (1) to (4)* make amendments to the relevant legislation to provide for this. The effect of the enforcement provisions is that the relevant regulator may impose an order to secure compliance with the above requirements. The service provider is obliged to comply with such an order and breach of the order can be enforced in the civil courts. Breach of such an order may also render the service provider liable to pay damages to any person who has suffered loss as the result of that breach. In addition to the above, sectoral legislation permits the regulator to impose a financial penalty for breach of the above requirements.