

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Miscellaneous and General

Redress schemes for lettings agency work and property management work Summary and Background

564. [Sections 83 to 88](#) introduce powers for the Secretary of State to require persons who engage in lettings agency work and property management work in respect of dwelling-houses in England to belong to an approved redress scheme or government administered redress scheme. The intended effect is that complaints against all (or a specified class of) such persons conducting such activities could be investigated and determined by an independent person.

Section 83: Redress schemes: lettings agency work

565. This section introduces powers for the Secretary of State to require persons who engage in lettings agency work to be members of a redress scheme for dealing with complaints in connection with that work.

566. *Subsection (1)* provides that a redress scheme for these purposes may either be a scheme that is approved by the Secretary of State or a scheme that is administered by or on behalf of the Secretary of State and designated for such purposes. Whilst, the expectation is that third parties would come forward with schemes for approval, the power to create a government administered redress scheme could be invoked if, for example, schemes capable of being approved were not available or in case it were considered necessary to introduce a government administered scheme as a response to existing approved schemes being discontinued.

567. *Subsection (6)* requires the Secretary of State to be satisfied that all persons who are to be subject to the duty will be eligible to join a redress scheme before the duty applies to them. This is to provide a safeguard against letting agents being in breach of a duty that they do not have the ability to satisfy.

568. *Subsection (7)* defines lettings agency work as work undertaken on behalf of prospective landlords or prospective tenants and covers the process both of finding a tenant for the landlord or a property for the tenant and the work done to put the tenancy in place. It applies only to privately rented homes in England (see the commentary on subsection (10) below).

569. *Subsections (8) and (9)* exclude certain organisations from the requirement to belong to a redress scheme. Subsection (8) mirrors the amendment made to the Estate Agents Act 1979 by section 70 by excluding from that requirement those businesses that simply allow landlords and tenants to find and communicate with one another, provided they do not otherwise participate in the transaction.

570. *Subsection (9)* provides that local authorities are not included and thereby ensures that, for example, any local letting agency business established by local authorities is not caught by section 83. The Local Government Ombudsman already provides a mechanism for people to complain against local authorities. However, there is nothing to stop a local authority which undertakes any work that would (in the absence of subsection (9)) fall within section 83 from choosing to join a redress scheme approved under this section (see section 88 (Redress schemes: supplemental) (5)). Subsection (9) also gives powers to the Secretary of State to exclude other activities by order.
571. This section applies only to properties that are to be let under a domestic tenancy. *Subsection (10)* defines a domestic tenancy as an assured tenancy under the Housing Act 1988, other than a long lease or a tenancy granted by a private registered provider of social housing. Assured tenancies are the most common type of tenancy in the private rented sector. Subsection (10)(b) gives the Secretary of State power to add other types of tenancy to the definition of a domestic tenancy; however, *subsection (11)* ensures that such an order cannot include a long lease or any property let by a local authority or private registered provider of social housing.
572. Long leases are excluded under subsection (10), on the basis that agents handling the sale of long leases are already covered by the Estate Agents Act 1979. Private registered providers of social housing are excluded as the intention is that the section should apply to the private rented sector, not to social housing.

Section 84: Redress schemes: property management work

573. This section introduces powers for the Secretary of State to require persons who engage in property management work to be members of a redress scheme for dealing with complaints in connection with that work.
574. *Subsection (6)* defines property management work. The premises managed must be located in England and consist of or include a dwelling-house let under a relevant tenancy (as defined in subsection (8)). *Subsection (7)* excludes property management work undertaken by local authorities and private registered providers of social housing and enables the Secretary of State to exclude other activities from the scope of property management work. Local authorities and private registered providers of social housing are excluded by subsection (6) as Schedule 2 to the Housing Act 1996 already requires those landlords to belong to an approved Scheme. The approved scheme under that Act is the Housing Ombudsman Service.
575. *Subsection (8)* defines a relevant tenancy as an assured tenancy (which is the most common type of tenancy in the private rented sector); a regulated tenancy under the Rent Act 1977 (which applies to tenancies in the private rented sector granted before 15 January 1989); or a long lease of residential property. Subsection (8) also enables the Secretary of State to designate further types of tenancy as a ‘relevant tenancy’; however *subsection (9)* ensures that a business lease cannot be a ‘relevant tenancy’.

Section 85: Orders under section 83 or 84: enforcement

576. *Subsection (1)* enables the Secretary of State to prescribe the sanctions that may apply for the breach of an order made under sections 83 and 84 and to make provision for investigation of suspected breaches. *Subsection (2)* sets out the sanctions which the Secretary of State may impose.
577. *Subsections (3) to (5)* set out further matters relating to enforcement, including the requirement that provision must be made for appeals to a court or tribunal and the ability to confer responsibilities for enforcement on (and pay money to) persons that exercise functions of a public nature.

Section 87: Approval of redress schemes for the purposes of section 83 or 84

578. *Subsection (1)* introduces powers for the Secretary of State to prescribe the procedure for the approval of redress schemes, including such matters as the making of applications, the conditions to be satisfied before approval is given, the conditions which must be complied with by administrators of schemes and the withdrawal of approval.
579. *Subsection (2)* makes provision for the Secretary of State to set out the conditions which must be satisfied in order for a government-administered redress scheme to be designated.

Section 88: Redress schemes: supplemental

580. *Subsections (1) to (4)* make provision in relation to the order making powers of the Secretary of State under sections 83 (Redress schemes: lettings agency work); 84 (redress schemes: property management work) and 87 (Approval of redress schemes for the purposes of section 83 or 84).
581. *Subsection (5)* clarifies that nothing in sections 83 to 87 prevents a redress scheme from: providing for membership by persons who are not subject to the duty to belong to a scheme; investigating and determining complaints not covered by the duty, where members have voluntarily chosen to accept the jurisdiction of the scheme; or excluding complaints from the scheme in specified cases or circumstances.