EXPLANATORY MEMORANDUM TO

THE REDRESS SCHEMES FOR LETTINGS AGENCY WORK AND PROPERTY MANAGEMENT WORK (APPROVAL AND DESIGNATION OF SCHEMES) (ENGLAND) ORDER 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Enterprise and Regulatory Reform Act 2013 provides that the Secretary of State may require lettings agents and property management agents to belong either to an approved redress scheme or to a government administered redress scheme. A redress scheme is a scheme that provides for complaints against members of the scheme to be investigated and determined by an independent person. This Order makes provision for the procedure relating to applications for approval; for the conditions a scheme must meet before the Secretary of State may approve the scheme or designate it as a government administered redress scheme; and for the procedure relating to the withdrawal of approval or designation from a scheme.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 83(1) Enterprise and Regulatory Reform Act 2013 provides that the Secretary of State may by Order 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. “Lettings agency work” is defined in section 83(7) to (9) of the Act. Section 84(1) provides that the Secretary of State may require persons who engage in “property management work” to belong to a redress scheme. “Property management work”is defined in section 84(6) and (7) of the Act. The Secretary of State must be satisfied that all those who are subject to the duty to belong to a scheme will be eligible to belong to a scheme before making the Order.

4.2 This Order, which is made under section 87 Enterprise and Regulatory Reform Act 2013, makes provision for the conditions that redress schemes must meet before the Secretary of State may approve the scheme or designate it as a government administered redress scheme. A subsequent Order will impose the requirement to belong to a scheme and, under section 85 of the Act, make provision for the investigation of any suspected breach of the duty to belong to a scheme and for sanctions that may be imposed if the duty

has been breached. The second Order will be made as soon as the Secretary of State is satisfied that all those who are subject to the duty to belong to a scheme will be eligible to belong to a one.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Kris Hopkins, Parliamentary Under Secretary of State (Housing) for the Department for Communities and Local Government, has made the following statement regarding Human Rights:

In my view the provisions of the Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) Order 2013 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The size of the private rented sector in England is rapidly increasing - up from 2.4m households in 2005 to 3.8m in 2011. There are around 12,000 lettings agents in England, handling between half and two-thirds of all lettings.

7.2 For the purposes of the Enterprise and Regulatory Reform Act 2013, lettings agency work means things done by an agent in response to instructions from:

- a private rented sector landlord who wants to find a tenant; or
- a tenant who wants to find a property in the private rented sector.

However, it does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector.

7.3 There are around 2 million leasehold flats and 1 million leasehold houses in England. Around 40% of new build property in England is leasehold. We estimate that there are around a maximum of 1,500 leasehold managing agents.

7.4 For the purposes of the Enterprise and Regulatory Reform Act 2013, property management work means things done by an agent in response to instructions from a person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of premises. However, it does not include things done by private registered providers of social housing or local housing authorities that are registered providers of social housing, who are already required to belong to a redress scheme by Schedule 2 to the Housing Act 1996.

7.5 For there to be property management work, the premises must consist of or contain a dwelling-house let under a long lease, an assured tenancy under the Housing Act 1988 or a protected tenancy under the Rent Act 1977. For these purposes, "long lease" includes leases granted for more than 21 years, leases granted under the right to buy, and shared ownership leases. Assured tenancies are granted by private registered providers of social housing and private sector landlords. These landlords may also have protected tenants, if the tenancy was first granted before 15 January 1989.

7.6 Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector. It would also arise where an agent managed a block of flats (often with responsibility for the common areas, corridors, stairwells etc) that contained flats let under a long lease or let to assured or protected tenants.

7.7 Common complaints are around how agents handle the security and holding deposits, missed appointments, aggressive sales tactics, poor customer service, out of date and misleading adverts and opaque and variable fees. Many letting agents also manage the property on behalf of the landlord with common complaints being about repairs, general customer service and notice and conduct of visits from agents.

7.8 The main types of issue raised by leaseholders, identified from statistics collected by the Leasehold Advisory Service (dealing with around 40,000 leasehold enquiries a year) are service charges (20%), application to First-tier Tribunal (property chamber) (9%), lease extension (9%), freehold purchase (8%) and management (6%). Other issues include repairs, statutory consultation, breaches of covenant, interpreting leases and the Right to Manage (where leaseholders of a building containing flats take over the management of the building themselves).

7.9 There are existing Ombudsmen schemes, which approximately 60% to 70% of all lettings and property management agents in England have joined on a voluntary basis. The Government's intention is to ensure that all agents are required to belong to a redress scheme that has been approved by the Secretary of State or is administered by or on behalf of the Secretary of State.

7.10 The intention is that there will only be approved schemes although the Secretary of State may choose to set-up a government administered scheme if the approved schemes are unable to offer a place to every agent who would be subject to the duty to belong to a scheme.

7.11 Article 4 of this Order sets out the conditions that must be met before the Secretary of State may approve a redress scheme. Article 5 sets out the conditions that must be met before a scheme may be designated as a government administered redress scheme. The conditions for approval and the conditions for designation are the same; with the exception that there need not be an independent

scheme administrator in a government administered redress scheme as this will be run by or, on behalf of, the Secretary of State. With approved schemes, the Secretary of State must approve any amendment to the scheme. The Order ensures that all approved and government administered redress schemes include provision for the same minimum conditions.

7.12 This Order requires schemes to make satisfactory provision for:

- how agents can join, leave or be expelled from the scheme;
- the types of complaints that may be made under the scheme (including complaints about the failure to comply with any provision of a code of practice approved under section 87 Leasehold Reform and Urban Development Act 1993 and non-compliance with the provision of a voluntary code of practice or other such document);
- the ombudsman's duties and powers in relation to investigating and determining complaints;
- the redress that an agent may be required to make to a complainant (the scheme must make provision for apologies, explanations, compensation and such other actions in the interest of the complainant as the ombudsman may specify);
- the enforcement of any requirement to provide redress that has been imposed on a member of the scheme (which may include expulsion from the scheme);
- how complaints can be made about the redress scheme itself;
- the provision of information to other redress schemes or to any person who regulates lettings agency work and property management work (for example, so that agents who do not belong to a redress scheme can be identified); and
- the publication of an annual report.

7.13 The Secretary of State has the power under section 87 of the Leasehold Reform Housing and Development Act 1993 to approve a code of management practice concerned with the management of residential property by landlords and managing agents. Currently these are; The RICS "Rent Only Residential Management Code", ISBN 1-84219-070-9; The RICS "Service Charge Residential Management Code, ISBN 978-1-84219-168-2"; and The ARHM "Code of Management Practice for Private Retirement Housing" ISBN: 0-952669-0-2. The codes are admissible as evidence in courts and tribunals and, where relevant, will be taken into account in proceedings.

7.14 To ensure that the schemes are operating as intended, article 7 of this Order requires individuals responsible for running approved schemes (the scheme administrators) to provide such information on the operation of the scheme as the Secretary of State may reasonably require.

7.15 Article 8 makes provision for the Secretary of State to withdraw the approval of a redress scheme. Article 9 provides that the designation of a government

administered redress scheme may be revoked. It is expected that these powers will be invoked if a scheme performance no longer meets the approved criteria, there is evidence of corrupt, fraudulent or illegal behaviour, the scheme is bankrupt or is no longer regarded as operating independently.

7.16 For approved schemes, the Secretary of State must give the scheme administrator a notice stating that there is a proposal to withdraw approval, the reasons for the proposed withdrawal of approval and that representation may be made about the proposed withdrawal of approval. . If the Secretary of State decides to withdraw approval from the scheme, the decision will be publicised and the scheme administrator must be given a notice stating that the approval is to be withdrawn, the reasons why approval is to be withdrawn and the date on which withdrawal of approval is to take effect. The scheme administrator must give a copy of this notice to every member of the scheme.

7.17 The intention is that approval would not be withdrawn without giving scheme members sufficient notice and opportunity to join a new scheme. If approval needed to be withdrawn quickly, for example, where there was evidence of serious wrongdoing, the Secretary of State would need to consider whether it was necessary to revoke the Order that required agents to belong to an approved or government administered scheme.

7.18 When revoking designation of a government administered redress scheme the Secretary of State must give every member of the scheme with a notice which states that the designation is to be revoked, the reasons for that revocation and the date from which the revocation has effect. The date for revocation should provide sufficient time for members to join a new scheme.

7.19 When this Order comes into force, the Secretary of State will invite schemes to come forward for approval. When the Secretary of State is satisfied that all agents who would be subject to the duty to belong to an approved or government administered redress scheme are eligible to join such a scheme (that is, there are sufficient schemes of the required quality and with the necessary capacity), a second Order will be made that will require agents to belong to such a scheme.

- Consolidation

7.20 No consolidation is necessary.

8. Consultation outcome

8.1 A number of roundtable discussions, involving a wide range of landlord bodies, tenant and leaseholder groups and the lettings and management industry were held to develop the policy. General consensus was reached at the round tables on the policy design which has been subsequently incorporated into the policy.

9. Guidance

9.1 Guidance on what is required for approval, including the detailed criteria for approval, will be issued when schemes are invited to come forward for approval.

10. Impact

10.1 There is no impact from this Order on business charities or voluntary bodies.

10.2 There is no impact from this Order on the public sector.

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10.3 An Impact Assessment has not been prepared for this instrument however, one will be prepared for the Order that brings into force the requirement to belong to an approved or government administered redress scheme.

11. Regulating small business

11.1 The legislation will only apply to small business when it becomes mandatory. This will be covered in the impact assessment for the second Order.

12. Monitoring & review

12.1 Success for this Order is that schemes come forward for approval that meet the criteria. Monitoring will occur after the implementation of the second Order when membership of an approved scheme is a legal requirement. A review is planned once approved schemes have been operating for around a year to ensure that they are working as envisaged. This will provide an opportunity for the Secretary of State to request changes to how the schemes are operating, if that is deemed necessary.

13. Contact

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