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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No.

HOUSING, ENGLAND

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Made - - - - ***

Coming into force in accordance with article 1(1)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 83(1), (5), and (9)(b), 84(1) and (7)(b), 85(1)(a), (2)(a), (3) and (4) and 88(1) of the Enterprise and Regulatory Reform Act 2013(**a**).

The Secretary of State is satisfied, in accordance with sections 83(6) and 84(5) of that Act, that all persons who are to be subject to a duty under this Order to belong to a redress scheme are eligible to join such a scheme.

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

PART 1

Introduction

Citation, commencement and application

1.—(1) This Order may be cited as the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) (Order) 2014 and comes into force on the twenty-eighth day after the day on which it is made.

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

Interpretation

2. In this Order—

"the Act" means the Enterprise and Regulatory Reform Act 2013;

(**a**) 2013 c.24

"enforcement authority" means a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, or the Council of Isles of Scilly.

PART 2

Lettings agency work

Requirement to belong to a redress scheme: lettings agency work

3.—(1) A person who engages in lettings agency work must be a member of a redress scheme for dealing with complaints in connection with that work.

(2) The redress scheme must be one that is—

(a) approved by the Secretary of State; or

(b) designated by the Secretary of State as a government administered redress scheme.

(3) For the purposes of this article a "complaint" is a complaint made by a person who is or has been a prospective landlord or a prospective tenant.

Exclusions: lettings agency work

4.—(1) For the purposes of section 83 of the Act, "lettings agency work" does not include the things described in this article.

(2) "Lettings agency work" does not include things done by —

(a) the employer, where the prospective tenant is an employee;

(b) the person for whom the prospective tenant provides work or services, where the prospective tenant is a worker;

(c) the person for whom the prospective tenant provides work or services, where the prospective tenant is —

(i) an employee who provides work or services under the contract of employment to a person who is not the prospective tenant's employer; or

(ii) a worker who provides work or services under the worker's contract to a person who is not a party to that contract;

(d) the hirer, where the prospective tenant is an agency worker;

(e) the person for whom the prospective tenant provides services under a contract for services.

(3) "Lettings agency work" does not include things done by —

(a) an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992(**a**);

(b) an authorised person within the meaning of section 18 of the Legal Services Act 2007(**b**).

(4) In this article the following have the same meaning as the Agency Workers Regulations 2010(**c**) —

"agency worker"

"contract of employment"

"employee"

"employer"

(**a**) 1992 c.14
(**b**) 2007 c.29
(**c**) S.I. 2010/93; amended by SI 2011/1941.

"hirer"

"worker".

PART 3

Property management work

Requirement to belong to a redress scheme: property management work

5.—(1) A person who engages in property management work must be a member of a redress scheme for dealing with complaints in connection with that work.

(2) The redress scheme must be one that is—

(a) approved by the Secretary of State; or

(b) designated by the Secretary of State as a government administered redress scheme.

Exclusions: property management work

6.—(1) For the purposes of section 84 of the Act, "property management work" does not include the things described in this article.

(2) "Property management work" does not include things done in relation to premises which consist of or include more than one dwelling-house where the land is registered as commonhold land (whether or not there is a relevant tenancy in relation to any of the commonhold units).

(3) "Property management work" does not include things done in relation to premises which are used wholly or mainly for the accommodation of students where a condition in paragraphs (4) to (6) is met.

(4) The first condition is that the premises are owned or managed by —

(a) an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992; or

(b) a body established for charitable purposes only.

(5) The second condition is that the premises are a hall of residence.

(6) The third condition is that the students have been nominated to occupy the premises by an institution or body of the kind mentioned in paragraph (4).

(7) "Property management work" does not include things done in relation to a dwelling-house occupied by students who have been nominated to occupy the dwelling-house by an institution or body of the kind mentioned in paragraph (4).

(8) "Property management work" does not include things done in relation to premises where the conditions in paragraphs (9) and (10) are met.

(9) The first condition is that either of the following applies to the premises —

(a) it is not operated on a commercial basis and its costs of operation are provided wholly or in part by a government department or agency, by a local authority or by a parish council;

(b) it is managed by a voluntary organisation or charity.

(10) The second condition is that the premises are used wholly or mainly for providing accommodation to persons who have been subject to any incident, or pattern of incidents, of —

(a) controlling, coercive or threatening behaviour;

(b) physical violence;

(c) abuse of any other description (whether physical or mental in nature); or

(d) threats of any such violence or abuse.

(11) "Property management work" does not include things done by a person ("A") in the course of a business—

(a) where the premises are subject to a mortgage and A is the receiver of the income of it; or

(b) where A is —

(i) an authority to which Part 3 of the Local Government Act 1974(**a**) applies;

(ii) a RTM company exercising the right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002(**b**);

(iii) an authorised person within the meaning of section 18 of the Legal Services Act 2007.

(12) "Property management work" does not include things done by a person ("A") in the course of a business in response to instructions received from —

(a) an authority to which Part 3 of the Local Government Act 1974 applies;

(b) a social landlord for the purposes of Schedule 2 to the Housing Act 1996(**c**).

(13) For the purposes of this article—

"commonhold land" has the same meaning as in section 1 of the Commonhold and Leasehold Reform Act 2002(**d**);

"commonhold unit" has the same meaning as in section 11 of the Commonhold and Leasehold Reform Act 2002;

"government department" includes any body or authority exercising statutory functions on behalf of the Crown;

"RTM company" has the same meaning as in sections 71(1) and 73 of the Commonhold and Leasehold Reform Act 2002(**e**);

"student" has the same meaning as in paragraph 4 of Schedule 1 to the Local Government Finance Act 1992.

"voluntary organisation" means a body, other than a public or local authority, whose activities are not carried on for profit.

PART 4

Enforcement

Enforcement authority

7.—(1) It shall be the duty of every enforcement authority to enforce this Order.

(2) The duty referred to in paragraph (1) applies to the enforcement of the Order within the authority's area.

Penalty for breach of the requirement to belong to a redress scheme

8.—(1) Where an enforcement authority is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme under article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work), the authority may by notice require the person to pay the authority a monetary penalty (a "monetary penalty") of such amount as the authority may determine.

(2) The amount of the monetary penalty must not exceed £5,000.

(3) The Schedule provides for the procedure relating to the imposition of a monetary penalty.

(**a**) 1974 c.7
(**b**) 2002 c.15
(**c**) 1996 c.52
(**d**) Section 1(1)(b) was amended by S.I. 2009/1941 Schedule 1 paragraph 194(1) and (2).
(**e**) Section 73 (2)(b) was amended by S.I. 2009/1941 Schedule 1 paragraph 194(1) and (15).

Appeals

9.—(1) A person who is served with a notice imposing a monetary penalty under paragraph 3 of the Schedule (a "final notice") may appeal to the First-tier Tribunal against that notice.

(2) The grounds for appeal are that—

(a) the decision to impose a monetary penalty was based on an error of fact;

(b) the decision was wrong in law;

(c) the amount of the monetary penalty is unreasonable;

(d) the decision was unreasonable for any other reason.

(3) Where a person has appealed to the First-tier Tribunal under paragraph (1), the final notice is suspended until the appeal is finally determined or withdrawn.

(4) The Tribunal may —

(a) quash the final notice;

(b) confirm the final notice;

(c) vary the final notice.

Recovery of monetary penalty

10.—(1) The enforcement authority may recover the monetary penalty on the order of a court, as if payable under a court order.

(2) In proceedings for the recovery of the amount due, a certificate which is—

(a) signed by the enforcement authority's chief finance officer (within the meaning of section 5 of the Local Government and Housing Act 1989(**a**)); and

(b) states that the amount due has not been received by a date specified in that certificate,

is conclusive evidence of that fact, and a certificate to that effect and purporting to be signed is to be treated as being signed, unless the contrary is proved.

(3) Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

Signatory text

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

SCHEDULE

Article 8

Procedure for the imposition of a monetary penalty

Notice of intent

1.—(1) Where an enforcement authority proposes to impose a monetary penalty on a person, the authority must serve on that person a notice of what is proposed (a "notice of intent").

(2) The notice of intent must be served within 6 months of the date on which the enforcement authority is first satisfied that the person has failed to comply with article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work).

(**a**) 1989 c.42; amendments have been made to section 5 but they are not relevant to this Order.

(3) The notice of intent must include—

(a) the reasons for imposing the monetary penalty;

(b) the amount of the penalty;

(c) information as to the right to make representations and objections within 28 days beginning with the day after the date on which the notice of intent was sent.

Making representations and objections

2. A person on whom a notice of intent is served may within 28 days beginning with the day after the date on which the notice was sent make written representations and objections to the enforcement authority in relation to the proposed imposition of a monetary penalty.

Final notice

3.—(1) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose the monetary penalty, with or without modifications.

(2) Where an enforcement authority decides to impose a monetary penalty on a person, the authority must serve on that person a final notice imposing that penalty.

(3) The final notice must include—

(a) the reasons for imposing the monetary penalty;

(b) information about the amount to be paid;

(c) information about how payment may be paid;

(d) information about the period in which the payment must be made, which must not be less than 28 days;

(e) information about rights of appeal; and

(f) information about the consequences of failing to comply with the notice.

Withdrawing or amending a notice

4. The enforcement authority may at any time by giving notice in writing —

(a) withdraw a notice of intent or final notice;

(b) reduce the amount specified in the notice of intent or final notice.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order requires persons who engage in lettings agency work and persons who engage in property management work to belong to a redress scheme for dealing with complaints in connection with that work. The Order also makes provision for enforcement of that requirement.

Article 3 imposes the requirement to belong to a redress scheme on persons who engage in lettings agency work.

Lettings agency work is defined in section 83(7), (8) and (9)(a) of the Enterprise and Regulatory Reform Act 2013 (2013 c.24). Section 83(9)(b) provides that lettings agency work does not include things of a description or things done by a person of a description specified in an Order. Article 4 prescribes those things that are not lettings agency work for the purposes of section 83.

Article 5 imposes the requirement to belong to a redress scheme on persons who engage in property management work.

Property management work is defined in section 84(6) and (7)(a) of the Enterprise and Regulatory Reform Act 2013. Section 84(7)(b) provides that property management work does not include

things of a description or things done by a person of a description specified in an Order. Article 6 prescribes those things that are not property management work for the purposes of section 84.

Article 7 imposes a duty on enforcement authorities to enforce the Order.

Article 8 provides for the monetary penalty that may be imposed by the enforcement authority where a person has failed to comply with the requirement to belong to a redress scheme. The Schedule provides for the procedure to be followed where the enforcement authority intends to impose a monetary penalty.

Article 9 provides for rights of appeal against a monetary penalty.

Article 10 provides for the enforcement of a monetary penalty.

A regulatory impact assessment will be prepared in relation to the Order. It will be placed in the Library of each House of Parliament and copies may be obtained from the Department for Communities and Local Government, Eland House, Bressenden Place, London. SW1E 5DU or viewed www.gov.uk.

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