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.

(**1**) 2013 c.24

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—