



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 6

#### MISCELLANEOUS AND GENERAL

#### *Copyright and rights in performances*

#### **74 Exploitation of design derived from artistic work**

- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) Omit section 52 (effect of exploitation of design derived from artistic work).
- (3) In consequence omit the following—
  - (a) section 79(4)(g);
  - (b) in Schedule 1 paragraph 20.

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#### **Commencement Information**

- II** S. 74 in force at 28.7.2016 by S.I. 2016/593, arts. 2(1), 3 (with arts. 4, 5)

#### **75 Penalties under provision amending exceptions: copyright and rights in performances**

Paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 (limitation on criminal penalties) does not apply for the purposes of provision under section 2(2) of that Act amending—

- (a) Chapter 3 of Part 1 of the Copyright, Designs and Patents Act 1988 (acts permitted in relation to copyright works), or
- (b) Schedule 2 to that Act (rights in performances: permitted acts).

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*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, PART 6. (See end of Document for details)*

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## 76 Power to reduce duration of copyright in transitional cases

- (1) Section 170 of the Copyright, Designs and Patents Act 1988 (transitional provisions and savings) is amended as follows.
- (2) At the beginning insert “ (1) ”.
- (3) At the end insert—
  - “(2) The Secretary of State may by regulations amend Schedule 1 to reduce the duration of copyright in existing works which are unpublished, other than photographs or films.
  - (3) The regulations may provide for the copyright to expire—
    - (a) with the end of the term of protection of copyright laid down by Directive 2006/116/EC or at any later time;
    - (b) subject to that, on the commencement of the regulations or at any later time.
  - (4) “Existing works” has the same meaning as in Schedule 1.
  - (5) Regulations under subsection (2) may—
    - (a) make different provision for different purposes;
    - (b) make supplementary or transitional provision;
    - (c) make consequential provision, including provision amending any enactment or subordinate legislation passed or made before that subsection comes into force.
  - (6) The power to make regulations under subsection (2) is exercisable by statutory instrument.
  - (7) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.”

## 77 Licensing of copyright and performers' rights

- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 116 (licensing schemes and licensing bodies) after subsection (4) insert—
  - “(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.”
- (3) After section 116 insert—

*“Orphan works licensing and extended collective licensing*

### **116A Power to provide for licensing of orphan works**

- (1) The Secretary of State may by regulations provide for the grant of licences in respect of works that qualify as orphan works under the regulations.
- (2) The regulations may—
  - (a) specify a person or a description of persons authorised to grant licences, or

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- (b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences
- (3) The regulations must provide that, for a work to qualify as an orphan work, it is a requirement that the owner of copyright in it has not been found after a diligent search made in accordance with the regulations.
- (4) The regulations may provide for the granting of licences to do, or authorise the doing of, any act restricted by copyright that would otherwise require the consent of the missing owner.
- (5) The regulations must provide for any licence—
  - (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (6) The regulations may apply to a work although it is not known whether copyright subsists in it, and references to a missing owner and a right or interest of a missing owner are to be read as including references to a supposed owner and a supposed right or interest.

#### **116B Extended collective licensing**

- (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant copyright licences in respect of works in which copyright is not owned by the body or a person on whose behalf the body acts.
- (2) An authorisation must specify—
  - (a) the types of work to which it applies, and
  - (b) the acts restricted by copyright that the licensing body is authorised to license.
- (3) The regulations must provide for the copyright owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.
- (5) In this section “copyright licences” has the same meaning as in section 116.
- (6) Nothing in this section applies in relation to Crown copyright or Parliamentary copyright.

#### **116C General provision about licensing under sections 116A and 116B**

- (1) This section and section 116D apply to regulations under sections 116A and 116B.
- (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.

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- (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.
- (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—
  - (a) the deduction of administrative costs;
  - (b) the period for which sums must be held;
  - (c) the treatment of sums after that period (as bona vacantia or otherwise).
- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
- (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—
  - (a) for determining the rights and obligations of any person if a work ceases to qualify as an orphan work (or ceases to qualify by reference to any copyright owner), or if a rights owner exercises the right referred to in section 116B(3), while a licence is in force;
  - (b) about maintenance of registers and access to them;
  - (c) permitting the use of a work for incidental purposes including an application or search;
  - (d) for a right conferred by section 77 to be treated as having been asserted in accordance with section 78;
  - (e) for the payment of fees to cover administrative expenses.

#### **116D Regulations under sections 116A and 116B**

- (1) The power to make regulations includes power—
  - (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
  - (b) to make transitional, transitory or saving provision;
  - (c) to make different provision for different purposes.
- (2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
- (3) Regulations may make provision by reference to guidance issued from time to time by any person.
- (4) The power to make regulations is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

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- (4) Schedule 22 (which inserts Schedule A1 to the Copyright, Designs and Patents Act 1988 and makes provision in relation to performers' rights corresponding to provision made by this section in relation to copyright) has effect.

## **78 Penalties under provision implementing Directive on term of protection**

Paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 (limitation on criminal penalties) does not apply for the purposes of provision under section 2(2) of that Act implementing [Directive 2011/77/EU](#) amending [Directive 2006/116/EC](#) on the term of protection of copyright and certain related rights.

### *Payments to directors of quoted companies*

## **79 Members' approval of directors' remuneration policy**

- (1) In section 421 of the Companies Act 2006 (contents of directors' remuneration report) after subsection (2) insert—

“(2A) The regulations must provide that any information required to be included in the report as to the policy of the company with respect to the making of remuneration payments and payments for loss of office (within the meaning of Chapter 4A of Part 10) is to be set out in a separate part of the report.”

- (2) After section 422 of that Act (approval and signing of directors' remuneration report) insert—

### **“422A Revisions to directors' remuneration policy**

- (1) The directors' remuneration policy contained in a company's directors' remuneration report may be revised.
- (2) Any such revision must be approved by the board of directors.
- (3) The policy as so revised must be set out in a document signed on behalf of the board by a director or the secretary of the company.
- (4) Regulations under section 421(1) may make provision as to—
- the information that must be contained in a document setting out a revised directors' remuneration policy, and
  - how information is to be set out in the document.
- (5) Sections 422(2) and (3), 454, 456 and 463 apply in relation to such a document as they apply in relation to a directors' remuneration report.
- (6) In this section, “directors' remuneration policy” means the policy of a company with respect to the matters mentioned in section 421(2A).”
- (3) In section 439 of that Act (quoted companies: members' approval of directors' remuneration report), in subsection (1), at the end insert “other than the part containing the directors' remuneration policy (as to which see section 439A).”
- (4) After that section insert—

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**“439A Quoted companies: members' approval of directors' remuneration policy**

- (1) A quoted company must give notice of the intention to move, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy—
  - (a) at the accounts meeting held in the first financial year which begins on or after the day on which the company becomes a quoted company, and
  - (b) at an accounts or other general meeting held no later than the end of the period of three financial years beginning with the first financial year after the last accounts or other general meeting in relation to which notice is given under this subsection.
- (2) A quoted company must give notice of the intention to move at an accounts meeting, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy if—
  - (a) a resolution required to be put to the vote under section 439 was not passed at the last accounts meeting of the company, and
  - (b) no notice under this section was given in relation to that meeting or any other general meeting held before the next accounts meeting.
- (3) Subsection (2) does not apply in relation to a quoted company before the first meeting in relation to which it gives notice under subsection (1).
- (4) A notice given under subsection (2) is to be treated as given under subsection (1) for the purpose of determining the period within which the next notice under subsection (1) must be given.
- (5) Notice of the intention to move a resolution to which this section applies must be given, prior to the meeting in question, to the members of the company entitled to be sent notice of the meeting.
- (6) Subsections (2) to (4) of section 439 apply for the purposes of a resolution to which this section applies as they apply for the purposes of a resolution to which section 439 applies, with the modification that, for the purposes of a resolution relating to a general meeting other than an accounts meeting, subsection (3) applies as if for “accounts meeting” there were substituted “general meeting”.
- (7) For the purposes of this section, the relevant directors' remuneration policy is—
  - (a) in a case where notice is given in relation to an accounts meeting, the remuneration policy contained in the directors' remuneration report in respect of which a resolution under section 439 is required to be put to the vote at that accounts meeting;
  - (b) in a case where notice is given in relation to a general meeting other than an accounts meeting—
    - (i) the remuneration policy contained in the directors' remuneration report in respect of which such a resolution was required to be put to the vote at the last accounts meeting to be held before that other general meeting, or

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(ii) where that policy has been revised in accordance with section 422A, the policy as so revised.

(8) In this section—

- (a) “accounts meeting” means a general meeting of the company before which the company's annual accounts for a financial year are to be laid;
- (b) “directors' remuneration policy” means the policy of the company with respect to the matters mentioned in section 421(2A).”

#### Commencement Information

- I2** S. 79 partly in force; s. 79 in force for specified purposes at Royal Assent, see s. 103(1)(i)
- I3** S. 79 in force at 1.10.2013 in so far as not already in force by S.I. 2013/2227, art. 2(h)

## 80 Restrictions on payments to directors

After section 226 of the Companies Act 2006 insert—

### “CHAPTER 4A

#### DIRECTORS OF QUOTED COMPANIES: SPECIAL PROVISION

##### *Interpretation*

#### 226A Key definitions

(1) In this Chapter—

“directors' remuneration policy” means the policy of a quoted company with respect to the making of remuneration payments and payments for loss of office;

“quoted company” has the same meaning as in Part 15 of this Act;

“remuneration payment” means any form of payment or other benefit made to or otherwise conferred on a person as consideration for the person—

- (a) holding, agreeing to hold or having held office as director of a company, or
- (b) holding, agreeing to hold or having held, during a period when the person is or was such a director—
  - (i) any other office or employment in connection with the management of the affairs of the company, or
  - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,

other than a payment for loss of office;

“payment for loss of office” has the same meaning as in Chapter 4 of this Part.

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- (2) Subsection (3) applies where, in connection with a relevant transfer, a director of a quoted company is—
- (a) to cease to hold office as director, or
  - (b) to cease to be the holder of—
    - (i) any other office or employment in connection with the management of the affairs of the company, or
    - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (3) If in connection with the transfer—
- (a) the price to be paid to the director for any shares in the company held by the director is in excess of the price which could at the time have been obtained by other holders of like shares, or
  - (b) any valuable consideration is given to the director by a person other than the company,
- the excess or, as the case may be, the money value of the consideration is taken for the purposes of section 226C to have been a payment for loss of office.
- (4) In subsection (2), “relevant transfer” means—
- (a) a transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company;
  - (b) a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid.
- (5) References in this Chapter to the making of a remuneration payment or to the making of a payment for loss of office are to be read in accordance with this section.
- (6) References in this Chapter to a payment by a company include a payment by another person at the direction of, or on behalf of, the company.
- (7) References in this Chapter to a payment to a person (“B”) who is, has been or is to be a director of a company include—
- (a) a payment to a person connected with B, or
  - (b) a payment to a person at the direction of, or for the benefit of, B or a person connected with B.
- (8) Section 252 applies for the purposes of determining whether a person is connected with a person who has been, or is to be, a director of a company as it applies for the purposes of determining whether a person is connected with a director.
- (9) References in this Chapter to a director include a shadow director but references to loss of office as a director do not include loss of a person's status as a shadow director.

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### *Restrictions relating to remuneration or loss of office payments*

#### **226B Remuneration payments**

- (1) A quoted company may not make a remuneration payment to a person who is, or is to be or has been, a director of the company unless—
  - (a) the payment is consistent with the approved directors' remuneration policy, or
  - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

#### **226C Loss of office payments**

- (1) No payment for loss of office may be made by any person to a person who is, or has been, a director of a quoted company unless—
  - (a) the payment is consistent with the approved directors' remuneration policy, or
  - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

#### **226D Sections 226B and 226C: supplementary**

- (1) A resolution approving a payment for the purposes of section 226B(1)(b) or 226C(1)(b) must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available for inspection by the members of the company—
  - (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is to be considered, and
  - (b) at that meeting itself.
- (2) The memorandum must explain the ways in which the payment is inconsistent with the approved directors' remuneration policy (within the meaning of the section in question).
- (3) The company must ensure that the memorandum is made available on the company's website from the first day on which the memorandum is made available for inspection under subsection (1) until its next accounts meeting.
- (4) Failure to comply with subsection (3) does not affect the validity of the meeting at which a resolution is passed approving a payment to which the memorandum relates or the validity of anything done at the meeting.
- (5) Nothing in section 226B or 226C authorises the making of a remuneration payment or (as the case may be) a payment for loss of office in contravention of the articles of the company concerned.

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- (6) Nothing in section 226B or 226C applies in relation to a remuneration payment or (as the case may be) a payment for loss of office made to a person who is, or is to be or has been, a director of a quoted company before the earlier of—
- (a) the end of the first financial year of the company to begin on or after the day on which it becomes a quoted company, and
  - (b) the date from which the company's first directors' remuneration policy to be approved under section 439A takes effect.
- (7) In this section the “company's website” is the website on which the company makes material available under section 430.

### *Supplementary*

#### **226E Payments made without approval: civil consequences**

- (1) An obligation (however arising) to make a payment which would be in contravention of section 226B or 226C has no effect.
- (2) If a payment is made in contravention of section 226B or 226C—
  - (a) it is held by the recipient on trust for the company or other person making the payment, and
  - (b) in the case of a payment by a company, any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.
- (3) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with the transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company—
  - (a) subsection (2) does not apply, and
  - (b) the payment is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.
- (4) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid—
  - (a) subsection (2) does not apply,
  - (b) the payment is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and
  - (c) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by the recipient and not retained out of that sum.
- (5) If in proceedings against a director for the enforcement of a liability under subsection (2)(b)—
  - (a) the director shows that he or she has acted honestly and reasonably, and
  - (b) the court considers that, having regard to all the circumstances of the case, the director ought to be relieved of liability,

the court may relieve the director, either wholly or in part, from liability on such terms as the court thinks fit.

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#### **226F Relationship with requirements under Chapter 4**

- (1) This Chapter does not affect any requirement for approval by a resolution of the members of a company which applies in relation to the company under Chapter 4.
- (2) Where the making of a payment to which section 226B or 226C applies requires approval by a resolution of the members of the company concerned under Chapter 4, approval obtained for the purposes of that Chapter is to be treated as satisfying the requirements of section 226B(1)(b) or (as the case may be) 226C(1)(b)."

#### **Commencement Information**

**I4** S. 80 in force at 1.10.2013 by S.I. 2013/2227, art. 2(h)

#### **81 Payments to directors: minor and consequential amendments**

- (1) The Companies Act 2006 is amended as follows.
- (2) In section 180 (consent, approval or authorisation by members)—
  - (a) in subsection (2), in the words before paragraph (a)—
    - (i) after “Chapter 4” insert “ or 4A ”, and
    - (ii) for “that Chapter” substitute “ either of those Chapters ”,
  - (b) in that subsection, in paragraph (a), for “that Chapter” substitute “ the Chapter concerned ”, and
  - (c) in subsection (3), after “Chapter 4” insert “ or 4A ”.
- (3) In section 190 (substantial property transactions: requirement of members' approval), in subsection (6)(b), for the words in brackets substitute “ (payments to which the requirements of Chapter 4 or 4A apply) ”.
- (4) In section 215 (payments for loss of office), after subsection (4) insert—

“(5) Nothing in this section or sections 216 to 222 applies in relation to a payment for loss of office to a director of a quoted company other than a payment to which section 226C does not apply by virtue of section 226D(6).”
- (5) Section 430 (quoted companies: annual accounts and reports to be made available on website) is amended as follows.
- (6) After subsection (2) insert—

“(2A) If the directors' remuneration policy of a quoted company is revised in accordance with section 422A, the company must ensure that the revised policy is made available on the website on which its annual accounts and reports are made available.

(2B) If a person ceases to be a director of a quoted company, the company must ensure that the following information is made available on the website on which its annual accounts and reports are made available—

  - (a) the name of the person concerned,

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- (b) particulars of any remuneration payment (within the meaning of Chapter 4A of Part 10) made or to be made to the person after ceasing to be a director, including its amount and how it was calculated, and
  - (c) particulars of any payment for loss of office (within the meaning of that Chapter) made or to be made to the person, including its amount and how it was calculated.”
- (7) In subsection (3) —
- (a) for “the annual accounts and reports on the website” substitute “ the material made available on the website under subsections (1) to (2B) ”, and
  - (b) for “the annual accounts and reports from” substitute “ such material from ”.
- (8) After subsection (4) insert—
- “(4A) Where subsection (2A) or (2B) applies, the material in question—
- (a) must be made available as soon as reasonably practicable, and
  - (b) must be kept available until the next directors' remuneration report of the company is made available on the website.”
- (9) In subsection (5)—
- (a) in the words before paragraph (a), for the words from “the annual accounts and reports” to “that period” substitute “ material available on a website throughout the period mentioned in subsection (4) or (as the case may be) (4A) ”, and
  - (b) in paragraph (a) for “the annual accounts and reports are” substitute “ the material is ”.
- (10) In section 440 (quoted companies: offences in connection with procedure for approval) —
- (a) in subsection (1) —
    - (i) after “section 439(1)” insert “ or 439A(1) or (2) ”, and
    - (ii) in the words in brackets, after “report” insert “ or policy ”,
  - (b) in subsection (2), for “the accounts meeting” substitute “ the meeting to which it relates ”, and
  - (c) in subsection (5), omit the definition of “the accounts meeting”.
- (11) In Schedule 8 (in the index of defined expressions), at the appropriate places insert—
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- “directors' remuneration policy (in Chapter 4A section 226A(1)) of Part 10)
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- “payment for loss of office (in Chapter 4A of section 226A(1)) Part 10)
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- “remuneration payment (in Chapter 4A of Part section 226A(1))”. 10)
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- (12) In that Schedule, after “quoted company”, insert—
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- “— in Chapter 4A of Part 10 section 226A(1)”.
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*Status: This version of this part contains provisions that are prospective.*  
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#### Commencement Information

**I5** S. 81 in force at 1.10.2013 by S.I. 2013/2227, art. 2(h)

### 82 Payments to directors: transitional provision

- (1) In relation to a company that is a quoted company immediately before the day on which section 79 of this Act comes into force, section 439A(1)(a) of the Companies Act 2006 (as inserted by section 79(4) of this Act) applies as if—
  - (a) the reference to the day on which the company becomes a quoted company were a reference to the day on which section 79 of this Act comes into force, and
  - (b) at the end of the paragraph (but before the “, and”) there were inserted “or at an earlier general meeting”.
- (2) In relation to a company that is a quoted company immediately before the day on which section 79 of this Act comes into force, section 226D(6)(a) of the Companies Act 2006 (as inserted by section 80 of this Act) applies as if the reference to the day on which the company becomes a quoted company were a reference to the day on which section 79 of this Act comes into force.
- (3) Chapter 4A of Part 10 of the Companies Act 2006 does not apply in relation to remuneration payments or payments for loss of office that are required to be made under an agreement entered into before 27 June 2012 or in consequence of any other obligation arising before that date.
- (4) An agreement entered into, or any other obligation arising, before 27 June 2012 that is modified or renewed on or after that date is to be treated for the purposes of subsection (3) as having been entered into or (as the case may be) as having arisen on the date on which it was modified or renewed.
- (5) The amendment made by section 81(4) does not apply in relation to a payment for loss of office to which subsection (3) of this section applies.

#### Commencement Information

**I6** S. 82 in force at 1.10.2013 by S.I. 2013/2227, art. 2(h)

*Redress schemes: lettings and property management agents*

### 83 Redress schemes: lettings agency work

- (1) The Secretary of State may by order require persons who engage in lettings agency work to be members of a redress scheme for dealing with complaints in connection with that work which is either—
  - (a) a redress scheme approved by the Secretary of State, or
  - (b) a government administered redress scheme.
- (2) A “redress scheme” is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person.

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- (3) A “government administered redress scheme” means a redress scheme which is—
- (a) administered by or on behalf of the Secretary of State, and
  - (b) designated for the purposes of the order by the Secretary of State.
- (4) The order may provide for the duty mentioned in subsection (1) to apply—
- (a) only to specified descriptions of persons who engage in lettings agency work;
  - (b) only in relation to specified descriptions of such work.
- (5) The order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).
- (6) Before making the order, the Secretary of State must 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.
- (7) In this section, “lettings agency work” means things done by any person in the course of a business in response to instructions received from—
- (a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”);
  - (b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it (“a prospective tenant”).
- (8) However, “lettings agency work” does not include any of the following things when done by a person who does no other things falling within subsection (7)—
- (a) publishing advertisements or disseminating information;
  - (b) providing a means by which—
    - (i) a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or (as the case may be) prospective landlord;
    - (ii) a prospective landlord and a prospective tenant can continue to communicate directly with each other.
- (9) “Lettings agency work” also does not include —
- (a) things done by a local authority;
  - (b) things of a description, or things done by a person of a description, specified for the purposes of this section in an order made by the Secretary of State.
- (10) In subsection (7), “domestic tenancy” means—
- (a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988 except where—
    - (i) the landlord is a private registered provider of social housing (as to which see section 80 of the Housing and Regeneration Act 2008), or
    - (ii) the tenancy is a long lease within the meaning given by section 84(10);
  - (b) a tenancy under which a dwelling-house is let as a separate dwelling and which is of a description specified for the purposes of this section in an order made by the Secretary of State.

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*Status:* This version of this part contains provisions that are prospective.  
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- (11) An order under subsection (10)(b) may not provide for any of the following to be a domestic tenancy—
- (a) a tenancy where the landlord is a registered provider of social housing (as to which see section 80 of the Housing and Regeneration Act 2008);
  - (b) a long lease within the meaning given by section 84(10).

**Commencement Information**

**I7** S. 83 partly in force; s. 83 in force for specified purposes at Royal Assent, see s. 103(1)(i)

**84 Redress schemes: property management work**

- (1) The Secretary of State may by order require persons who engage in property management work to be members of a redress scheme for dealing with complaints in connection with that work which is either—
- (a) a redress scheme approved by the Secretary of State, or
  - (b) a government administered redress scheme.
- (2) “Redress scheme” and “government administered redress scheme” have the same meanings as in section 83.
- (3) The order may provide for the duty mentioned in subsection (1) to apply—
- (a) only to specified descriptions of persons who engage in property management work;
  - (b) only in relation to specified descriptions of such work.
- (4) The order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).
- (5) Before making the order, the Secretary of State must 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.
- (6) In this section, “property management work” means things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where—
- (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C's behalf, and
  - (b) the premises consist of or include a dwelling-house let under a relevant tenancy.
- (7) However, “property management work” does not include—
- (a) things done by a person who is a social landlord for the purposes of Schedule 2 to the Housing Act 1996;
  - (b) things of a description, or things done by a person of a description, specified for the purposes of this section in an order made by the Secretary of State.
- (8) In subsection (6), “relevant tenancy” means—
- (a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988;

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- (b) a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977;
  - (c) a long lease other than one to which Part 2 of the Landlord and Tenant Act 1954 applies;
  - (d) a tenancy of a description specified for the purposes of this section in an order made by the Secretary of State.
- (9) An order under subsection (8)(d) may not provide for a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies to be a relevant tenancy.
- (10) In subsection (8)(c), “long lease” means a lease which is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 or which, in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be such a lease if the tenant's total share (within the meaning given by that section) were 100 per cent.

#### **Commencement Information**

**I8** S. 84 partly in force; s. 84 in force for specified purposes at Royal Assent, see s. 103(1)(i)

### **85 Orders under section 83 or 84: enforcement**

- (1) An order under section 83(1) or 84(1) may make provision —
    - (a) for sanctions to be imposed in respect of a breach of a requirement imposed by the order;
    - (b) for the investigation of suspected breaches of such a requirement.
  - (2) The sanctions for which provision may be made in the order are—
    - (a) the imposition of civil penalties;
    - (b) the making of orders prohibiting a person from engaging in lettings agency work or (as the case may be) property management work or from engaging in a particular description of such work;
    - (c) the creation of criminal offences in respect of breaches of orders mentioned in paragraph (b).
  - (3) Provision made for the imposition of a sanction by virtue of subsection (1)(a) must include—
    - (a) provision for appeals to a court or tribunal against the imposition of the sanction, and
    - (b) such other provision as the Secretary of State considers appropriate for safeguarding the interests of persons on whom the sanction may be imposed.
  - (4) Provision made by virtue of this section may confer functions on a person that exercises functions of a public nature.
- [<sup>F1</sup>(4A) A person on whom functions are conferred under subsection (4) must have regard to any guidance issued by the Secretary of State or the lead enforcement authority (if not the Secretary of State) relating to the enforcement of an order under section 83(1) or 84(1).]
- (5) The Secretary of State may make payments out of money provided by Parliament to a person on whom functions are conferred by virtue of this section.

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[<sup>F2</sup>(6) For provisions about enforcement of an order under section 83(1) or 84(1) by the lead enforcement authority, see sections 24 to 26 of the Tenant Fees Act 2019.

(7) In this section “lead enforcement authority” has the meaning given by section 24(1) of the Tenant Fees Act 2019.]

#### Textual Amendments

**F1** S. 85(4A) inserted (15.4.2019) by [Tenant Fees Act 2019 \(c. 4\)](#), **ss. 29(2)(a)**, 34(1); S.I. 2019/857, reg. 2(d)

**F2** S. 85(6)(7) inserted (15.4.2019) by [Tenant Fees Act 2019 \(c. 4\)](#), **ss. 29(2)(b)**, 34(1); S.I. 2019/857, reg. 2(d)

#### Commencement Information

**I9** S. 85 partly in force; s. 85 in force for specified purposes at Royal Assent, see s. 103(1)(i)

PROSPECTIVE

### 86 Sections 83 to 85: minor definitions

- (1) This section applies for the purposes of sections 83 to 85.
- (2) References to persons who engage in lettings agency work or property management work do not include references to persons who engage in that work in the course of their employment under a contract of employment.
- (3) A “dwelling-house” may be a house or part of a house.
- (4) “Local authority” means—
  - (a) a county or district council;
  - (b) a London borough council;
  - (c) the Common Council of the City of London in its capacity as a local authority;
  - (d) the Council of the Isles of Scilly.

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

- (1) The Secretary of State may by order make provision about the approval of redress schemes for the purposes of section 83 or 84, including provision as to—
  - (a) the making of applications for approval;
  - (b) conditions which must be satisfied before approval may be given;
  - (c) conditions which must be complied with by administrators of approved redress schemes;
  - (d) the withdrawal of approval.
- (2) The order may make provision about the conditions which must be satisfied before a scheme administered by or on behalf of the Secretary of State may be designated for the purposes of section 83 or 84.

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**Commencement Information**

**I10** S. 87 partly in force; s. 87 in force for specified purposes at Royal Assent, see s. 103(1)(i)

**88 Redress schemes: supplemental**

- (1) The power to make an order under section 83, 84 or 87 includes power to make incidental, supplementary, consequential, transitional or saving provision, including doing so by amending any provision made by or under an Act.
- (2) An order under any of those sections must be made by statutory instrument.
- (3) A statutory instrument containing (whether alone or with other provision)—
  - (a) an order under section 83 or 84 which includes—
    - (i) provision by virtue of section 85, or
    - (ii) provision by virtue of subsection (1) of this section that amends an Act, or
  - (b) an order under section 87,
 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing an order under section 83 or 84, other than one to which subsection (3) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Nothing in sections 83 to 87 prevents a redress scheme from providing—
  - (a) for membership to be open to persons who are not subject to the duty to be a member of a scheme;
  - (b) for the investigation and determination of any complaints in relation to which the duty does not apply, where the members concerned have voluntarily accepted the jurisdiction of the scheme over those complaints;
  - (c) for the exclusion from investigation and determination under the scheme of any complaint in such cases or circumstances as may be specified in or determined under the scheme.

**Commencement Information**

**I11** S. 88 partly in force; s. 88 in force for specified purposes at Royal Assent, see s. 103(1)(i)

*Supply of customer data*

**89 Supply of customer data**

- (1) The Secretary of State may by regulations require a regulated person to provide customer data—
  - (a) to a customer, at the customer's request;
  - (b) to a person who is authorised by a customer to receive the data, at the customer's request or, if the regulations so provide, at the authorised person's request.

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- (2) “Regulated person” means—
- (a) a person who, in the course of a business, supplies gas or electricity to any premises;
  - (b) a person who, in the course of a business, provides a mobile phone service;
  - (c) a person who, in the course of a business, provides financial services consisting of the provision of current account or credit card facilities;
  - (d) any other person who, in the course of a business, supplies or provides goods or services of a description specified in the regulations.
- (3) “Customer data” means information which—
- (a) is held in electronic form by or on behalf of the regulated person, and
  - (b) relates to transactions between the regulated person and the customer.
- (4) Regulations under subsection (1) may make provision as to the form in which customer data is to be provided and when it is to be provided (and any such provision may differ depending on the form in which a request for the data is made).
- (5) Regulations under subsection (1)—
- (a) may authorise the making of charges by a regulated person for complying with requests for customer data, and
  - (b) if they do so, must provide that the amount of any such charge—
    - (i) is to be determined by the regulated person, but
    - (ii) may not exceed the cost to that person of complying with the request.
- (6) Regulations under subsection (1)(b) may provide that the requirement applies only if the authorised person satisfies any conditions specified in the regulations.
- (7) In deciding whether to specify a description of goods or services for the purposes of subsection (2)(d), the Secretary of State must (among other things) have regard to the following—
- (a) the typical duration of the period during which transactions between suppliers or providers of the goods or services and their customers take place;
  - (b) the typical volume and frequency of the transactions;
  - (c) the typical significance for customers of the costs incurred by them through the transactions;
  - (d) the effect that specifying the goods or services might have on the ability of customers to make an informed choice about which supplier or provider of the goods or services, or which particular goods or services, to use;
  - (e) the effect that specifying the goods or services might have on competition between suppliers or providers of the goods or services.
- (8) The power to make regulations under this section may be exercised—
- (a) so as to make provision generally, only in relation to particular descriptions of regulated persons, customers or customer data or only in relation to England, Wales, Scotland or Northern Ireland;
  - (b) so as to make different provision for different descriptions of regulated persons, customers or customer data;
  - (c) so as to make different provision in relation to England, Wales, Scotland and Northern Ireland;
  - (d) so as to provide for exceptions or exemptions from any requirement imposed by the regulations, including doing so by reference to the costs to the regulated

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person of complying with the requirement (whether generally or in particular cases).

- (9) For the purposes of this section, a person (“C”) is a customer of another person (“R”) if—
- (a) C has at any time, including a time before the commencement of this section, purchased (whether for the use of C or another person) goods or services supplied or provided by R or received such goods or services free of charge, and
  - (b) the purchase or receipt occurred—
    - (i) otherwise than in the course of a business, or
    - (ii) in the course of a business of a description specified in the regulations.
- (10) In this section, “mobile phone service” means an electronic communications service which is provided wholly or mainly so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone.

**Commencement Information**

**I12** S. 89 partly in force; s. 89 in force for specified purposes at Royal Assent, see s. 103(1)(i)

**90 Supply of customer data: enforcement**

- (1) Regulations may make provision for the enforcement of regulations under section 89 (“customer data regulations”) by the Information Commissioner or any other person specified in the regulations (and, in this section, “enforcer” means a person on whom functions of enforcement are conferred by the regulations).
- (2) The provision that may be made under subsection (1) includes provision—
  - (a) for applications for orders requiring compliance with the customer data regulations to be made by an enforcer to a court or tribunal;
  - (b) for notices requiring compliance with the customer data regulations to be issued by an enforcer and for the enforcement of such notices (including provision for their enforcement as if they were orders of a court or tribunal).
- (3) The provision that may be made under subsection (1) also includes provision—
  - (a) as to the powers of an enforcer for the purposes of investigating whether there has been, or is likely to be, a breach of the customer data regulations or of orders or notices of a kind mentioned in subsection (2)(a) or (b) (which may include powers to require the provision of information and powers of entry, search, inspection and seizure);
  - (b) for the enforcement of requirements imposed by an enforcer in the exercise of such powers (which may include provision comparable to any provision that is, or could be, included in the regulations for the purposes of enforcing the customer data regulations).
- (4) Regulations under subsection (1) may—
  - (a) require an enforcer (if not the Information Commissioner) to inform the Information Commissioner if the enforcer intends to exercise functions under the regulations in a particular case;
  - (b) provide for functions under the regulations to be exercisable by more than one enforcer (whether concurrently or jointly);

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- (c) where such functions are exercisable concurrently by more than one enforcer—
- (i) designate one of the enforcers as the lead enforcer;
  - (ii) require the other enforcers to consult the lead enforcer before exercising the functions in a particular case;
  - (iii) authorise the lead enforcer to give directions as to which of the enforcers is to exercise the functions in a particular case.
- (5) Regulations may make provision for applications for orders requiring compliance with the customer data regulations to be made to a court or tribunal by a customer who has made a request under those regulations or in respect of whom such a request has been made.
- (6) Subsection (8)(a) to (c) of section 89 applies for the purposes of this section as it applies for the purposes of that section.
- (7) The Secretary of State may make payments out of money provided by Parliament to an enforcer.
- (8) In this section, “customer” and “regulated person” have the same meaning as in section 89.

#### Commencement Information

- I13** S. 90 partly in force; s. 90 in force for specified purposes at Royal Assent, see s. 103(1)(i)  
**I14** S. 90(7) in force at 1.10.2013 in so far as not already in force by S.I. 2013/2227, art. 2(i)

## 91 Supply of customer data: supplemental

- (1) The power to make regulations under section 89 or 90 includes—
- (a) power to make incidental, supplementary, consequential, transitional or saving provision;
  - (b) power to provide for a person to exercise a discretion in a matter.
- (2) Regulations under either of those sections must be made by statutory instrument.
- (3) A statutory instrument containing (whether alone or with other provision)—
- (a) regulations under section 89 which make provision by virtue of section 89(2)(d), or
  - (b) regulations under section 90,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument which—
- (a) contains regulations under section 89, and
  - (b) is not an instrument to which subsection (3) applies,
- is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

- I15** S. 91 partly in force; s. 91 in force for specified purposes at Royal Assent, see s. 103(1)(i)

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*Insolvency: protection of essential supplies*

**92 Power to add to supplies protected under Insolvency Act 1986**

- (1) The Secretary of State may by order amend section 233 of the Insolvency Act 1986 so as to add to the supplies mentioned in subsection (3) of that section any of the following—
  - (a) a supply of gas, electricity, water or communication services by a specified description of person;
  - (b) a supply of a specified description of goods or services by a specified description of person where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.
- (2) The Secretary of State may by order amend section 372 of that Act of 1986 so as to add to the supplies mentioned in subsection (4) of that section any of the following—
  - (a) a supply of gas, electricity, water or communication services by a specified description of person;
  - (b) a supply of a specified description of goods or services by a specified description of person where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.
- (3) The power to make an order under this section includes power to make incidental, supplementary, consequential, transitional or saving provision, including doing so by amending any enactment.
- (4) An order under this section must be made by statutory instrument.
- (5) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section—
 

“enactment” includes—

  - (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales; and

“specified” means specified in the order.

**93 Corporate insolvency: power to give further protection to essential supplies**

- (1) The Secretary of State may by order make provision for insolvency-related terms of a contract for the supply of essential goods or services to a company to cease to have effect where—
  - (a) the company enters administration or a voluntary arrangement under Part 1 of the Insolvency Act 1986 takes effect in relation to it, and
  - (b) any conditions specified in the order are met.
- (2) The order must include provision for securing that, where an insolvency-related term of a contract ceases to have effect under the order, the contract may be terminated by the supplier if—

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- (a) an insolvency office-holder consents to the termination,
  - (b) a court grants permission for the termination, or
  - (c) any charges in respect of the supply that are incurred after the company enters administration or the voluntary arrangement takes effect are not paid within the period of 28 days beginning with the day on which payment is due.
- (3) The order must include provision for securing that, where an insolvency-related term of a contract ceases to have effect under the order, the supplier may terminate the supply unless an insolvency office-holder personally guarantees the payment of any charges in respect of the continuation of the supply.
- (4) The order may provide for exceptions to the right of a supplier to terminate a supply under provision made by virtue of subsection (3).
- (5) The order must (in addition to the provision mentioned in subsections (2) and (3)) include such other provision as the Secretary of State considers appropriate for securing that the interests of suppliers are protected.
- (6) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 233(3) of the Insolvency Act 1986.
- (7) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—
- (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (8) In this section, “insolvency office-holder” means—
- (a) in a case where a company enters administration, the administrator;
  - (b) in the case where a voluntary arrangement under Part 1 of the Insolvency Act 1986 takes effect in relation to a company, the supervisor of the voluntary arrangement.

#### **94 Individual insolvency: power to give further protection to essential supplies**

- (1) The Secretary of State may by order make provision for insolvency-related terms of a contract for the supply of essential goods or services to an individual to cease to have effect where—
- (a) a voluntary arrangement proposed by the individual is approved under Part 8 of the Insolvency Act 1986, and
  - (b) any conditions specified in the order are met.
- (2) The order must include a condition that ensures that an insolvency-related term of a contract for the supply of essential goods or services to an individual does not cease to have effect unless the supply is for the purpose of a business that is or has been carried on by the individual or with which the individual has or had another connection of a kind specified in the order.

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- (3) The order must include provision for securing that, where an insolvency-related term of a contract ceases to have effect under the order, the contract may be terminated by the supplier if—
  - (a) the supervisor of the voluntary arrangement consents to the termination,
  - (b) a court grants permission for the termination, or
  - (c) any charges in respect of the supply that are incurred after the voluntary arrangement proposed by the individual is approved are not paid within the period of 28 days beginning with the day on which payment is due.
- (4) The order must include provision for securing that, where an insolvency-related term of a contract ceases to have effect under the order, the supplier may terminate the supply unless the supervisor of the voluntary arrangement personally guarantees the payment of any charges in respect of the continuation of the supply.
- (5) The order may provide for exceptions to the right of a supplier to terminate a supply under provision made by virtue of subsection (4).
- (6) The order must (in addition to the provision mentioned in subsections (3) and (4)) include such other provision as the Secretary of State considers appropriate for securing that the interests of suppliers are protected.
- (7) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 372(4) of the Insolvency Act 1986.
- (8) An insolvency-related term of a contract for the supply of essential goods or services to an individual is a provision of the contract under which—
  - (a) the contract or the supply would terminate, or any other thing would take place, because the voluntary arrangement proposed by the individual is approved,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the voluntary arrangement proposed by the individual is approved, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the voluntary arrangement proposed by the individual is approved.

## **95 Sections 93 and 94: supplemental**

- (1) The power to make an order under section 93 or 94 includes—
  - (a) power to make different provision for different cases;
  - (b) power to provide for a person to exercise a discretion in a matter;
  - (c) power to make incidental, supplementary, consequential, transitional or saving provision;
  - (d) power to make any provision that may be made by the order by amending the Insolvency Act 1986 or any other enactment.
- (2) An order under either of those sections may not be made so as to have effect in relation to contracts entered into before the order come into force.
- (3) An order under either of those sections must be made by statutory instrument.

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- (4) A statutory instrument containing an order under either of those sections may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) In this section, “enactment” has the same meaning as in section 92.

### *Royal Charters*

## **96 Royal Charters: requirements for Parliamentary approval**

Where a body is established by Royal Charter after 1 March 2013 with functions relating to the carrying on of an industry, no recommendation may be made to Her Majesty in Council to amend the body's Charter or dissolve the body unless any requirements included in the Charter on the date it is granted for Parliament to approve the amendment or dissolution have been met.

### *Caste as an aspect of race*

## **97 Equality Act 2010: caste as an aspect of race**

- (1) Section 9(5) of the Equality Act 2010 is amended in accordance with subsections (2) to (4).
- (2) Omit “may by order”.
- (3) In paragraph (a) (power to provide for caste to be an aspect of race) at the beginning insert “ must by order ”.
- (4) In paragraph (b) (power to provide for exceptions to apply or not to apply to caste) at the beginning insert “ may by order ”.
- (5) A Minister of the Crown—
  - (a) may carry out a review of the effect of section 9(5) of the Equality Act 2010 (and orders made under it) and whether it remains appropriate, and
  - (b) must publish a report on the outcome of any such review.
- (6) The power under subsection (5)(a) may not be exercised before the end of the period of 5 years beginning with the day on which this Act is passed (but may be exercised on more than one occasion after that).
- (7) If a Minister of the Crown considers it appropriate in the light of the outcome of a review under subsection (5), the Minister may by order repeal or otherwise amend section 9(5) of the Equality Act 2010.
- (8) The power to make an order under subsection (7) includes power to make incidental, supplementary, consequential, transitional or saving provision, including doing so by amending an Act or subordinate legislation (within the meaning of the Interpretation Act 1978).
- (9) An order under subsection (7) must be made by statutory instrument.
- (10) A statutory instrument containing an order under subsection (7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

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*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the*  
*Enterprise and Regulatory Reform Act 2013, PART 6. (See end of Document for details)*

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### Commencement Information

**I16** S. 97 wholly in force at 25.6.2013; s. 97 in force for specified purposes at Royal Assent and otherwise in force at 25.6.2013, see s. 103(1)(i)(2)(e)

### *Equal pay audits*

## 98 Power to provide for equal pay audits

- (1) The Equality Act 2010 is amended as follows.
- (2) After section 139 insert—

### “139A Equal pay audits

- (1) Regulations may make provision requiring an employment tribunal to order the respondent to carry out an equal pay audit in any case where the tribunal finds that there has been an equal pay breach.
- (2) An equal pay breach is—
  - (a) a breach of an equality clause, or
  - (b) a contravention in relation to pay of section 39(2), 49(6) or 50(6), so far as relating to sex discrimination.
- (3) An equal pay audit is an audit designed to identify action to be taken to avoid equal pay breaches occurring or continuing.
- (4) The regulations may make further provision about equal pay audits, including provision about—
  - (a) the content of an audit;
  - (b) the powers and duties of a tribunal for deciding whether its order has been complied with;
  - (c) any circumstances in which an audit may be required to be published or may be disclosed to any person.
- (5) The regulations must provide for an equal pay audit not to be ordered where the tribunal considers that—
  - (a) an audit completed by the respondent in the previous 3 years meets requirements prescribed for this purpose,
  - (b) it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing,
  - (c) the breach the tribunal has found gives no reason to think that there may be other breaches, or
  - (d) the disadvantages of an equal pay audit would outweigh its benefits.
- (6) The regulations may provide for an employment tribunal to have power, where a person fails to comply with an order to carry out an equal pay audit, to order that person to pay a penalty to the Secretary of State of not more than an amount specified in the regulations.
- (7) The regulations may provide for that power—

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- (a) to be exercisable in prescribed circumstances;
  - (b) to be exercisable more than once, if the failure to comply continues.
- (8) The first regulations made by virtue of subsection (6) must not specify an amount of more than £5,000.
- (9) Sums received by the Secretary of State under the regulations must be paid into the Consolidated Fund.
- (10) The first regulations under this section must specify an exemption period during which the requirement to order an equal pay audit does not apply in the case of a business that—
  - (a) had fewer than 10 employees immediately before a specified time, or
  - (b) was begun as a new business in a specified period.
- (11) For the purposes of subsection (10)—
  - (a) “specified” means specified in the regulations, and
  - (b) the number of employees a business had or the time when a business was begun as a new business is to be determined in accordance with the regulations.
- (12) Before making regulations under this section, a Minister of the Crown must consult any other Minister of the Crown with responsibility for employment tribunals.”
- (3) In section 207(6) (exercise of power to make subordinate legislation: power to amend enactments) after “37,” and after “in the case of section” insert “ 139A, ”.
- (4) In section 208(5) (subordinate legislation by Ministers of the Crown etc: affirmative procedure) after paragraph (e) insert—
  - “(ea) regulations under section 139A (equal pay audits);”.

### *General*

## **99 Consequential amendments, repeals and revocations**

- (1) The Secretary of State may by order made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (2) The power conferred by subsection (1) includes power—
  - (a) to make transitional, transitory or saving provision;
  - (b) to amend, repeal, revoke or otherwise modify any provision made by or under an enactment (including any enactment passed or made in the same Session as this Act).
- (3) An order under subsection (1) which makes provision for the transfer of a function from the Competition Commission or the Office of Fair Trading to the Competition and Markets Authority in consequence of Part 3 of this Act may make such modifications to the function as the Secretary of State considers appropriate in consequence of the transfer.
- (4) The modifications mentioned in subsection (3) may, in particular, alter the circumstances in which, or the conditions under which, the function is exercisable.

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- (5) A statutory instrument containing (whether alone or with other provision) an order under this section which amends, repeals or revokes any provision of primary legislation is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing an order under this section which does not amend, repeal or revoke any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—  
     “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation;  
     “primary legislation” means—  
     (a) an Act of Parliament,  
     (b) an Act of the Scottish Parliament,  
     (c) a Measure or Act of the National Assembly for Wales, and  
     (d) Northern Ireland legislation.

#### **100 Transitional, transitory or saving provision**

The Secretary of State may by order made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.

#### **101 Financial provision**

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by the Secretary of State or the Competition and Markets Authority, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

#### **102 Extent**

- (1) Part 1 extends to England and Wales, Scotland and Northern Ireland.
- (2) Part 2 extends only to England and Wales and Scotland, except that the following provisions of that Part extend also to Northern Ireland—  
  - (a) section 23(3);
  - (b) paragraph 11 of Schedule 1;
  - (c) paragraphs 36 to 39 of Schedule 2.
- (3) Part 3 extends to England and Wales, Scotland and Northern Ireland, except as follows—  
  - (a) paragraphs 15 to 44, 69 to 84 and 101 to 107 of Schedule 6 extend only to England and Wales and Scotland;
  - (b) paragraphs 52 to 68, 96, 108 to 123 and 127 to 139 of that Schedule extend only to England and Wales;
  - (c) paragraphs 9 to 14, 45 to 51, 171 to 180 and 192 to 209 of that Schedule extend only to Scotland;

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- (d) paragraphs 149 to 170 and 181 to 191 of that Schedule extend only to Northern Ireland.
- (4) Part 4 extends to England and Wales, Scotland and Northern Ireland, except as follows—
  - (a) paragraphs 1 to 7 and 11 to 14 of Schedule 14 and paragraphs 2, 3, 7, 13 and 41 of Schedule 15, extend only to England and Wales and Scotland;
  - (b) paragraphs 8 to 10 and 20 to 22 of Schedule 14, and paragraphs 4 to 6 and 47 to 49 of Schedule 15, extend only to England and Wales;
  - (c) paragraphs 23 to 29 of Schedule 14, and paragraphs 53 to 55 of Schedule 15, extend only to Northern Ireland.
- (5) Part 5 extends as follows—
  - (a) sections 59, 62, 67, 68 and 70 and Part 1 of Schedule 21 extend to England and Wales, Scotland and Northern Ireland,
  - (b) section 69 extends only to England and Wales and Scotland except that it also extends to Northern Ireland so far as Parts 1 and 4 of the Health and Safety at Work etc. Act 1974 extend there,
  - (c) sections 64, 65 and 66 and paragraphs 1, 56 to 58, 60 and 66 of Schedule 19 (and section 71(3) so far as it relates to those paragraphs) extend only to England and Wales and Scotland,
  - (d) sections 60, 61, 63, 71(1) and (2) and 72(1) to (3), Schedules 16, 17 and 18, paragraphs 2 to 55, 59, 61 to 65 of Schedule 19 (and section 71(3) so far as it relates to those paragraphs) and Parts 2 and 3 of Schedule 21 extend only to England and Wales, and
  - (e) an amendment, repeal or revocation made by Schedule 20 has the same extent as the provision amended, repealed or revoked, subject to subsection (6).
- (6) The repeals of the following provisions in Schedule 20 extend to England and Wales only—
  - (a) section 67 of the Agriculture Act 1967,
  - (b) paragraph 32 of Schedule 2 to the Social Security (Consequential Provisions) Act 1975,
  - (c) paragraph 10 of Schedule 4 to the Social Security Pensions Act 1975,
  - (d) paragraph 12 of Schedule 17 to the Employment Protection Act 1975, and
  - (e) paragraph 4 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992.
- (7) If a provision repealed by Part 1 of Schedule 21 extends to the Isle of Man or any of the Channel Islands, Her Majesty may by Order in Council extend the repeal there.
- (8) This Part extends to England and Wales, Scotland and Northern Ireland except that—
  - (a) sections 92, 93, 95, 97 and 98 extend only to England and Wales and Scotland;
  - (b) sections 83 to 88, 94 and 96 extend only to England and Wales.

### 103 Commencement

- (1) The following provisions come into force on the day on which this Act is passed—
  - (a) section 10;
  - (b) section 24;
  - (c) section 28;

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- (d) sections 52 and 53;
  - (e) section 59;
  - (f) sections 75 to 78 and Schedule 22;
  - (g) sections 92 to 96;
  - (h) sections 98 to 104;
  - (i) any other provision so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power (arising under or by virtue of that provision) to make provision by regulations, rules or order made by statutory instrument.
- (2) The following provisions (so far as not already in force by virtue of subsection (1) (i)) come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) Part 1;
  - (b) sections 12, 13, 15, 17, 18, 20, 21 and 22;
  - (c) section 62;
  - (d) section 64;
  - (e) section 97;
  - (f) paragraphs 7 and 8 of Schedule 17 (and section 63 so far as it relates to them);
  - (g) Parts 1 and 2 of Schedule 21 (and section 73 so far as it relates to them).
- (3) Except as provided by subsections (1) and (2), the provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (4) An order under subsection (3) may appoint different days for different purposes.

#### **104 Short title**

This Act may be cited as the Enterprise and Regulatory Reform Act 2013.

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, PART 6.