

# CONSUMER RIGHTS ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 3 Miscellaneous and General

#### *Chapter 3: Duty of Letting Agents to Publicise Fees Etc.*

#### Summary and background

454. This Chapter imposes a duty on letting agents to publicise their fees, whether or not they are a member of a client money protection scheme and which redress scheme they have joined (fees etc). It explains which letting agents and which fees etc the duty applies to and details the enforcement of the duty.
455. Currently, although consumer rights legislation and guidance recommend that traders are clear and upfront about the fees which they charge, there is no specific duty for letting agents to display or publish their fees.

#### *Section 83: Duty of letting agents to publicise fees etc*

456. This section imposes a duty on letting agents to publicise 'relevant fees' (see commentary on section 85) and sets out how they must do this.
457. *Subsection (2)* requires agents to display a list of their fees at each of their premises where they deal face to face with customers and *subsection (3)* requires them to also publish a list of their fees on their website where they have a website.
458. *Subsection (4)* sets out what must be included in the list as follows. Subsection (4)(a) requires the fees to be described in such a way that a person who may have to pay the fee can understand what service or cost is covered by the fee or the reason why the fee is being imposed. For example, it will not be sufficient to call something an 'administration fee' without further describing what administrative costs or services that fee covers.
459. Subsection (4)(b) requires that where fees are charged to tenants the list should make clear whether the fee relates to each tenant under a tenancy or to the property. Finally, subsection (4)(c) requires the list to include the amount of each fee inclusive of tax, or, where the amount of the fee cannot be determined in advance a description of how that fee will be calculated. An example might be where a letting agent charges a landlord based on a percentage of rent.
460. *Subsection (6)* applies to letting agents who hold money on behalf of their clients as part of their letting agent or property management work. As well as publicising their fees, the agent must publish a statement which states whether or not that agent is a member of a client money protection scheme.
461. *Subsection (7)* means that agents who are required to belong to a redress scheme for dealing with complaints must publish which redress scheme they are a member of.

462. *Subsection (8)* enables the appropriate national authority to specify in regulations other ways in which letting agents must publicise details of their fees and the details that must be published. This could be used, for instance, to require letting agents to include information about fees in advertisements.
463. *Subsection (9)* defines a client money protection scheme and a redress scheme. A client money protection scheme is defined as a scheme which enables a client on whose behalf a letting agent holds money to be compensated by that scheme if all or part of that money is not repaid in circumstances where the scheme applies. A redress scheme is defined as a scheme which has been approved by the Secretary of State by order under section 83 or 84 of the Enterprise and Regulatory Reform Act 2013.

***Section 84: Letting agents to which the duty applies***

464. This section defines who is a ‘letting agent’ and explains when someone who could be regarded as a letting agent is exempt from the requirements of this Chapter.
465. *Subsection (1)* defines a letting agent as someone who engages in ‘letting agency work’, which is defined in section 86.
466. *Subsection (2)* excludes a person who carries out letting agency work as part of their employment contract. This is to ensure that a salaried employee is not held responsible for publishing the fees.
467. *Subsection (3)* gives powers to the appropriate national authority to exclude other persons and activities in regulations.

***Section 85: Fees to which the duty applies***

468. This section defines ‘relevant fees’ for the purposes of the duty to publicise fees.
469. *Subsection (1)* provides that ‘relevant fees’ are the fees, charges or penalties which a landlord or tenant pays to the agent in relation to letting agency work, property management work or otherwise in connection with an assured tenancy or a dwelling-house let under an assured tenancy. *Subsection (2)* excludes certain payments from the definition of ‘relevant fees’. *Subsection (2)(a)* excludes the rent payable to a landlord (many agents collect the rent on behalf of the landlord). *Subsection (2)(b)* excludes fees, charges or penalties which a landlord has to pay the agent but which the agent simply passes onto another person. For example, an agent may pay a gardener on behalf of a landlord and then reclaim this money from the landlord. *Subsection (2)(c)* excludes the deposit which is paid by the tenant in respect of the tenancy. *Subsection (2)(d)* gives the appropriate national authority the power to exclude other payments from the definition of ‘relevant fees’.

***Section 86: Letting agency work and property management work***

470. This section defines letting agency work and property management work for the purposes of this Chapter.
471. *Subsection (1)* defines letting agency work as work undertaken on behalf of prospective landlords and prospective tenants and covers the process both of finding a tenant for the landlord or a property for a tenant and the work done to put the tenancy in place. It applies only to the letting of privately rented homes. *Subsection (2)* excludes from the definition of letting agency work those businesses that simply allow landlords and tenants to find and communicate with one another, provided they do not otherwise participate in the transaction.
472. *Subsection (3)* provides that local authorities are not included and thereby ensures that, for example, any local letting agency business established by local authorities is not caught by the duty in section 83.

473. *Subsection (4)* defines property management work for the purposes of this Chapter. The premises managed must consist of a dwelling-house let under an assured tenancy. As with letting agency work, property management work applies only to privately rented homes (see commentary on section 88 below).

### ***Section 87: Enforcement of the duty***

474. *Subsection (1)* places a duty on every local weights and measures authority in England and Wales to enforce the requirement for letting agents to publicise their fees etc in its area.
475. *Subsection (2)* sets out that, if an agent breaches the duty in section 83(3) to publicise fees on its website, that breach is taken to have occurred in the area in which the property to which the fees relate is located.
476. *Subsection (3)* enables local weights and measures authorities who are satisfied on the balance of probabilities that a letting agent has breached the requirement to impose a financial penalty on the agent in respect of that breach.
477. *Subsection (4)* provides that while it is the duty of local weights and measures authorities to enforce the requirement in their area, they may also impose a penalty in respect of a breach which occurs in England and Wales but outside that authority's area. However, *subsection (6)* ensures that an agent may only be fined once in respect of the same breach.
478. *Subsection (5)* requires a local weights and measures authority who wants to impose a fine in respect of a breach outside its own area but in the area of a Welsh authority, to seek the consent of that authority.
479. *Subsection (7)* provides that local weights and measures authorities may fine letting agents in breach of the requirement up to £5,000. When imposing a fine, *subsection (8)* states that authorities must follow the process described in Schedule 9.
480. *Subsection (9)* requires a local weights and measures authority in England to have regard to any guidance issued by the Secretary of State about how letting agents should comply with the duty to publicise their fees etc and on how the authority should carry out its enforcement duties.
481. Similarly *subsection (10)* requires a local weights and measures authority in Wales to have regard to any guidance issued by the Welsh Ministers about how letting agents should comply with the duty to publicise their fees etc and on how the authority should carry out its enforcement duties.
482. *Subsection (11) and (12)* give both the Secretary of State and the Welsh Ministers the power to make secondary legislation which amends the enforcement provisions and make the necessary consequential amendments for England and Wales respectively.

### ***Section 88: Supplementary provisions***

483. *Subsections (1) to (4)* provide the remaining definitions of the terms used in this Chapter. The definition of an assured tenancy is relevant to determining firstly who is a letting agent for the purposes of this Chapter and, secondly, the fees to which the duty applies. *Subsection (1)* defines an assured tenancy (which is the most common type of tenancy in the private rented sector) for these purposes. In particular, the definition of an assured tenancy excludes assured tenancies granted by a private registered provider of social housing and any assured tenancy that is a long lease. This ensures that the duty applies to agents who let properties in the private rented sector and to the fees, penalties and charges that they charge in connection with the letting, management etc. of such properties.

*These notes refer to the Consumer Rights Act 2015  
(c.15) which received Royal Assent on 26 March 2015*

484. *Subsections (5) to (9)* set out the Parliamentary procedures for making the regulations detailed in this Chapter and *subsections (10) and (11)* provide a power for incidental provision to be made.