

**EXPLANATORY MEMORANDUM TO
THE DUTY OF LETTING AGENTS TO PUBLICISE FEES ETC (EXCLUSION)
(ENGLAND) REGULATIONS**

2015 No. 951

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

2. Purpose of the instrument

2.1 The Consumer Rights Act 2015 requires letting agents to publicise their fees and statements regarding their membership of client money protection and redress schemes (if applicable). The definition of a letting agent in the Consumer Rights Act is someone who carries out letting agency work, which is defined as things done by a person in the course of a business in response to instructions received from either:

(a) a person (“a prospective landlord”) seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or

(b) a person (“a prospective tenant”) seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.

2.2 This broad definition therefore includes members of the legal profession acting in a professional legal capacity on lettings-related work, for example if a landlord instructs a solicitor to draft a tenancy agreement. This instrument excludes legal professionals from the requirement to publicise their fees etc when they engage only in legal activity within the meaning of section 12 of the Legal Services Act 2007.

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

3.1 The Regulations are the first exercise of the powers conferred by section 84(3) of the Consumer Rights Act 2015.

4. Legislative Context

4.1 Chapter 3, part 3 of the Consumer Rights Act 2015 (the Chapter) imposes a duty on letting agents in England and Wales to publicise a list of their relevant fees. In England letting agents are also required to publicise statements regarding their membership of redress and client money protection schemes (if applicable).

4.2 Subject to subsections 84(2) and (3), for the purposes of the Chapter a letting agent is a person who engages in letting agency work (whether or not that person engages in other work) and letting agency work means things done in the course of a business in response to instructions received from a prospective landlord or a prospective tenant, as defined in section 86(1).

4.4 Subsection 84(3) provides that a person is not a letting agent for the purposes of the Chapter if the person is, or engages in work of, a description specified in regulations made by the appropriate national authority.

4.5 These Regulations are made under subsection 84(3) and specify persons that are not letting agents for the Purposes of Chapter 3.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The private rented sector in England accounts for around 4 million households, with around 1 million of these households moving every year and the majority of these moves include a letting agent. Around 1 in 5 tenants are dissatisfied with their letting agent and most of these complaints are to do with letting agency fees. As a result, the Consumer Rights Act 2015 requires letting agents to publicise prominently in their office and on their website: a full list of their fees; whether or not they are a member of a client money protection scheme; and which redress scheme they have joined.

7.2 The intended effect of this policy is to increase transparency of fees which will allow both renters and landlords to have a clearer indication of costs at the beginning of the process, thereby allowing them to make a more informed decision before selecting an agent or property. This policy will create more effective competition between letting agencies and make it easier for agents to demonstrate a level of service proportionate to the fees charged. The policy intends to improve the tenant and landlord experience by requiring agents in England to publish which redress scheme they are a member of and whether or not they offer client money protection. This ensures renters and landlords have all of the required information up-front.

7.3 This Statutory Instrument provides that for the purposes of Chapter 3, part 3 of the Consumer Rights Act 2015, legal professionals acting in a legal capacity on lettings-related work are not letting agents, and therefore the provisions relating to the display of

fees etc will not apply unless they also carry out other aspects of letting agency work. In this case these regulations would apply to the relevant legal professionals.

7.4 The intended effect of this secondary legislation is to exempt the legal profession from having to publicise a list of their fees etc when only carrying out lettings-related work in a legal capacity. This is because when acting in a legal capacity they are not engaged with the core letting agent functions of finding tenants for a landlord or finding property for tenants and it would be a disproportionate cost on an already highly regulated industry to require lawyers to publicise their fees in relation to lettings and property management work.

- Consolidation

7.5 No consolidation is necessary.

8. Consultation outcome

8.1 Sector bodies were involved in discussions regarding this topic and a workshop was conducted consisting of landlord and tenant groups as well as letting agency bodies, which discussed the emerging policy and was in agreement with the final policy approach.

9. Guidance

9.1 Guidance will be provided for Local Authorities to download in the form of a word document which will form part of the wider guidance for Local Authorities on housing policy.

10. Impact

10.1 The impact on legal professionals is positive as they will not now be required by the legislation governing letting agents to publicise details of their fees etc.

10.2 The impact on the public sector is positive as Local Authorities now do not have to enforce these regulations on legal professionals.

10.3 An Impact Assessment will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This legislation has not exempted small businesses as these regulations will reduce regulatory burdens on legal companies.

11.3 The basis for the final decision that small businesses will not be exempted is because, if they were, a large proportion of the benefits of this policy would not be achieved.

12. Monitoring & review

12.1 Success for this Instrument is that all persons now exempted by this will not have to display their fees when carrying out lettings-related work in a legal capacity.

12.2 A review of the instrument is planned for a year after its implementation.

13. Contact

Abbie Johnson at the Department for Communities and Local Government Tel: 03034444126 or email: abbie.johnson@communities.gsi.gov.uk can answer any queries regarding the instrument.