



## BRIEFING PAPER

Number 6000, 17 May 2018

# The regulation of letting and managing agents (England)

By Wendy Wilson

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## Summary

The private rented sector is now the second largest tenure in England behind owner occupation. The growth of the sector has prompted an increased focus on management standards and, in particular, on the activities of letting and managing agents.

Housing policy is devolved and divergent approaches to private rented housing are emerging in Scotland, Wales, and Northern Ireland. This paper focuses on policy in England but does draw comparisons with developments in the devolved nations.

There is currently no overarching statutory regulation of private sector letting or managing agents in England, nor is there any legal requirement for them to belong to a trade association, although many letting and managing agents do submit to voluntary regulation.

After a period during which the Government resisted calls for the introduction of regulation for letting/managing agents in England, instead pointing to the existing range of available powers under consumer protection legislation, the then Secretary of State, Sajid Javid, announced that action *would* be taken to regulate letting agents during the Conservative Party's 2017 Conference. A call for evidence, [Protecting Consumers in the letting and managing agent market](#), was issued later in October 2017. Submissions were invited up to 29 November 2017 and the [outcome](#) was published in April 2018. The Government restated the intention to regulate letting and property management agents. Minimum entry standards will be set and an independent body will carry out the regulatory function. A Working Group will be established to assist in developing the new regulatory model.

Since 1 October 2014, agents have been required to be a member of an approved redress scheme, and since 27 May 2015 they have had to comply with requirements relating to the publication of fee tariffs.

The Government also intends to require all landlords to be covered by a redress scheme as well as agents. February 2018 saw the publication of consultation on [Strengthening consumer redress in the housing market](#). Submissions were invited up to 16 April 2018 and are currently being analysed. The consultation paper sought views on how such a redress scheme might operate and posed the possibility of streamlining the various redress schemes by introducing a single housing ombudsman.

Measures in the *Housing and Planning Act 2016* have given additional powers to local authorities to act against 'rogue' landlords and agents. Since 6 April 2017 authorities have been able to impose civil penalties of up to £30,000 in certain circumstances, and there are now additional circumstances in which a Rent Repayment Order may be granted. Since 6 April 2018, local authorities have been able to seek banning orders against landlords and agents who commit certain offences. The Secretary of State is also required to establish a database of landlords and agents subject to a banning order, Regulations setting out the information that should be recorded in the database came into force on 6 April 2018.

There is support within the industry from professional bodies such as the Association of Residential Letting Agents (ARLA), the National Landlords Association (NLA) and Residential Landlords Association (RLA) for improved regulation of letting/managing agents to drive up standards. However, there is resistance amongst these bodies to the Government's intention to legislate to ban letting agent fees for tenants. The *Tenant Fees Bill 2017-19* is now before Parliament.

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Scotland has introduced a registration scheme for letting and managing agents. Wales also requires agents to be licenced and in January 2017 the Department for Communities in Northern Ireland announced an intention to “Introduce a regulatory framework for all letting agents including bringing forward legislation to ban letting agent fees.” This leaves England, currently, as the only area in the UK without comprehensive regulation of letting and managing agents.

This briefing paper sets out the current regulatory regime for letting and managing agents in England.

# 1. Letting/managing agents: current requirements

## 1.1 What is a letting/managing agent?

A landlord might appoint a letting agent to find tenants and/or a managing agent to manage property on the landlord's behalf. Many letting agencies will offer both letting and full management services. Managing agents include organisations managing long leasehold properties, particularly blocks of leasehold flats.

The *Consumer Rights Act 2015* defines a letting agent as:

...a person who engages in letting agency work. The Bill makes it clear that a letting agent doesn't have to exclusively engage in letting agents work but so long as they undertake it they are a letting agent regardless of what else they do.<sup>1</sup>

## 1.2 Are letting/managing agents regulated?

There is currently no overarching statutory regulation of private sector letting agents in England, although they are subject to consumer protection law (see section 1.5 below). There is no legal requirement for a letting agent to belong to a trade association; many letting agents *do* submit to voluntary regulation. In May 2009, the Labour Government indicated the extent of voluntary arrangements at that time:

35. In 2002 we established the National Approved Letting Scheme (NALS) as an independent voluntary regulatory body for letting agents and management agents and we have been encouraged by the way in which the organisation has grown and developed. Industry-led organisations such as the Association of Residential Letting Agents (ARLA) and the Royal Institution of Chartered Surveyors (RICS) have also done excellent work in introducing and encouraging a responsible, regulatory approach to residential managing and letting agents' work.

36. However, of the estimated 8,000 managing and letting agents in England, only about half belong to any of these organisations. Therefore, the voluntary approach to regulation has not been successful in ensuring that all agents reach the same standard and have the right protections.<sup>2</sup>

## 1.3 Requirement to join a redress scheme

A Government amendment to the *Enterprise and Regulatory Reform Act 2013* gave the Secretary of State power to make an order requiring letting and managing agents of privately rented and residential leasehold homes to belong to an approved redress scheme.<sup>3</sup> The purpose of this is to give tenants and landlords a procedure through

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<sup>1</sup> Department for Communities and Local Government (DCLG) [Improving the Private Rented Sector and Tackling Bad Practice](#), March 2015

<sup>2</sup> DCLG, [The private rented sector: professionalism and quality The Government response to the Rugg Review Consultation](#), May 2009

<sup>3</sup> HC Deb 16 April 2013 c223

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which a complaint against an agency can be lodged and considered independently.

The Act received Royal Assent on 25 April 2013. [\*The Redress Schemes for Lettings Agency Work and Property Management Work \(Approval and Designation of Schemes\) \(England\) Order 2013\*](#) (SI 2013/3192) came into force on 13 December 2013.<sup>4</sup> This Order set out the procedure that applies where an application for approval of a redress scheme is made; the conditions that must be satisfied before the Secretary of State may approve a redress scheme; the conditions that must be satisfied before the Secretary of State may designate a scheme as a Government administered redress scheme; and the procedure that applies where the Secretary of State decides to withdraw the approval of a redress scheme, or revoke the designation of a Government administered redress scheme.

The Government fleshed out the meaning and purpose of the various articles in the Order in: [The redress schemes for lettings agency work and property management work: conditions for approval](#).<sup>5</sup> Guidance on how to apply for approval of a redress scheme was also published in December 2013: [Instructions for redress schemes covering lettings agency work and property management work seeking government approval](#).<sup>6</sup> Applications had to be submitted by 28 February 2014.<sup>7</sup>

On 15 April 2014 the then Housing Minister, Kris Hopkins, confirmed that three compulsory redress schemes had been approved: The Property Ombudsman; Ombudsman Services Property; and The Property Redress Scheme. On 6 February 2018, Ombudsman Services Property announced its intention to withdraw from handling property sector complaints.<sup>8</sup> The organisation is handling complaints up to 6 August 2018.

[\*The Redress Scheme for Lettings Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc\) \(England\) Order 2014\*](#) (SI 2014/2359) made membership of a scheme a legal requirement with effect from 1 October 2014.

The Order provides for complaints against members of the scheme to be investigated and determined by an independent person. The Statutory Instrument empowers local authorities to enforce compliance by imposing a fine of up to £5,000 for non-compliance, with a right of appeal to the First-Tier Tribunal.

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<sup>4</sup> The Order was subject to the affirmative procedure and was considered in [Grand Committee in the House of Lords on 26 November 2013 cc518-28](#) and by the [Sixth Delegated Legislation Committee \(2013-14\) House of Commons on 26 November 2013 cc3-8](#).

<sup>5</sup> DCLG, [The redress schemes for lettings agency work and property management work: conditions for approval](#), December 2013

<sup>6</sup> DCLG, [Instructions for redress schemes covering lettings agency work and property management work seeking government approval](#), December 2013

<sup>7</sup> *Ibid.*, paras 2.3-2.4

<sup>8</sup> [OS Press Release](#), 6 February 2018

## 1.4 Complaining about a letting/managing agent

[Shelter's website](#) provides guidance on how to find a reputable letting agency. A separate section, [how to complain about a letting agency](#), advises tenants to raise issues with the letting agent itself in the first instance. If this is not successful, a complaint should be lodged with the agent's approved redress scheme. Shelter has a [letting agent dispute tool](#) to assist tenants with this process.

The three redress schemes received over 20,000 enquiries and 5,000 complaints about property agents in 2016.<sup>9</sup>

If the agent is a member of a professional association, such as the Association of Residential Letting Agents (ARLA), a complaint may be made to these bodies if the agent's complaints procedure has been exhausted.

Complaints can be made to the local authority's Trading Standards officers if the agent is not registered with an approved redress scheme, or if their practices appear to be unfair.

Complaints can also be made direct to the landlord – the landlord may not be aware of the agent's service standards.

Sections **4-6** of this paper explain new powers local authorities are gaining to tackle 'rogue' agents under the *Housing and Planning Act 2016*.

## 1.5 Letting agent fees

### Consumer protection legislation

Currently, there is no cap or direct regulation of letting agent fees. However, consumer protection legislation may apply in certain circumstances. In the parliamentary answer reproduced below, in addition to confirming the Coalition Government's position on the regulation of agents, the Minister provided information on challenging unfair agency fees. The PQ predates the introduction of approved redress schemes:

#### **Asked by Lord Browne of Ladyton**

To ask Her Majesty's Government whether they will regulate landlords and letting agents, in the light of the increase in the number of young people unable to afford a deposit to buy a home; and, if so, how.

#### **The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham):**

Letting and managing agents are already subject to consumer protection legislation. Consumer protection legislation covers issues such as giving false or misleading information, not acting with the standard of care and skill that is in accordance with honest market practice and claiming falsely to be a member of a professional body or approved redress scheme. For tenants or

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<sup>9</sup> MHCLG, [Protecting Consumers in the letting and managing agent market](#), October 2017, para 27

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landlords who are charged unfair or unreasonable fees by an agent, this means that they are able to report this to their local trading standards officer or to the Office of Fair Trading which has both civil and criminal enforcement powers.

[...]

In addition, between a third and a half of all agents belong to voluntary schemes which set standards and offer redress if things go wrong. In the light of these existing schemes, we have no current plans to introduce further statutory regulation. Disproportionate regulation on the private rented sector would push up rents and reduce the choice and availability of accommodation on offer to tenants.

I also refer the noble Lord to the Written Ministerial Statement of 6 September 2012 (Official Report, col. 30WS) on the steps that the coalition Government are taking to provide more homes both to rent and buy.<sup>10</sup>

Guidance on unfair contract terms can be found on the [Competition and Market Authority's website](#).

In its [Lettings Market](#) report (February 2013) the Office of Fair Trading (now the Competitions and Markets Authority, CMA) concluded that greater compliance with existing laws would deal with a number of common complaints and stated an intention to produce additional guidance:

In order to support better compliance with consumer protection law in particular we will be producing and consulting on two guidance documents as to how consumer protection law applies.<sup>11</sup>

Following a consultation exercise, the new CMA guidance was published on 13 June 2014, [Consumer protection law guidance for lettings professionals](#), alongside a further document: [Key principles for lettings professionals](#).

The Property Redress Scheme has also published guides on unfair fees: [Unfair Lettings Fees; a Guide for Agents and their Tenants](#); and [Unfair Lettings Fees; a Guide for Agents and their Landlords](#).

In March 2013 the Advertising Standards Authority upheld a complaint against Your Move UK Ltd (YML) concerning lack of transparency over administration fees chargeable in relation to a rented property:

We told YML to ensure that their ads made clear when non-optional fees and charges, that could not be calculated in advance, were excluded from quoted prices, and to provide enough information to allow the consumer to establish easily how further charges would be calculated.<sup>12</sup>

The Committee of Advertising Practice (CAP) subsequently issued [guidance](#) on non-optional fees in adverts for rental properties in September 2013. The CAP has been monitoring adverts for compliance in all media since 1 November 2013.<sup>13</sup>

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<sup>10</sup> HL Deb 15 October 2012 WA444-5

<sup>11</sup> OFT1479 para 1.6

<sup>12</sup> [ASA Adjudication on Your-move.co.uk Ltd](#), March 2013

<sup>13</sup> CAP, [Guidance on non-optional fees in rental agreements](#), September 2013



## Transparent fee tariffs

On 13 May 2014 the Coalition Government said it would table an amendment to the *Consumer Rights Bill*<sup>14</sup> to:

...require all letting agents to publish a full tariff of their fees - both on their websites and prominently in their offices. Anyone who does not comply with these new rules will face a fine – a much stricter penalty than currently exists.<sup>15</sup>

The amendment was introduced after an unsuccessful attempt by Labour to amend the Bill to abolish letting agent fees.

The provisions are contained in Chapter 3 of Part 3 to the Act (sections 83 to 88). Since 27 May 2015 letting agents have been required to display:

All fees, charges or penalties (however expressed) which are payable to the agent by a landlord or tenant in respect of letting agency work and property management work carried out by the agent in connection with an assured tenancy. This includes fees, charges or penalties in connection with an assured tenancy of a property or a property that is, has been or is proposed to be let under an assured tenancy.<sup>16</sup>

The Government said it intended to review the requirement for greater transparency over fees after 12 months of operation "to confirm it is delivering the expected benefits, and review whether any further steps are needed."<sup>17</sup>

Detailed information on the requirement to display a tariff of fees can be found in Annex D of [Improving the Private Rented Sector and Tacking Bad Practice](#) and also in a leaflet produced by the Property Redress Scheme: [Letting Agent Transparency Leaflet](#).

## The abolition of letting agent fees

The *Tenant Fees Bill 2017-19*, which is currently before Parliament, will abolish most upfront fees for tenants in England. Detailed information can be found in the Library paper: [Tenant Fees Bill 2017-19: analysis for Second Reading](#) (7955).

## Scotland, Wales and Northern Ireland

In 2012 the Scottish Government clarified the law so that since 30 November 2012 all tenant charges, other than rent and a refundable deposit, have been illegal.<sup>18</sup>

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<sup>14</sup> This Bill was carried over from the 2013-14 Session.

<sup>15</sup> DCLG Press Release, [Fees transparency to ensure a fair deal for landlords and tenants](#), 13 May 2014

<sup>16</sup> DCLG, [Improving the Private Rented Sector and Tacking Bad Practice](#), March 2015, Annex D

<sup>17</sup> DCLG Press Release, [Fees transparency to ensure a fair deal for landlords and tenants](#), 13 May 2014

<sup>18</sup> Scottish Government Press Release, [End to illegal charges on tenants](#), 22 November 2012

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The Department for Communities (DfC) in Northern Ireland is proposing to bring forward legislation to ban letting agent fees.<sup>19</sup> Consultation responses were invited up to 3 April 2017.

On 27 June 2017 the Welsh First Minister, Carwyn Jones, set out the Welsh Government's legislative priorities for the coming year, this included a commitment to legislate to ban tenants' fees.<sup>20</sup> The Welsh Government published a consultation paper on [Fees charged to tenants in the private rented sector](#) on 19 July 2017. The consultation sought to determine:

- which fees, if any, are justifiably being charged to tenants;
- fees paid by landlords to agents; and
- possible consequences of banning fees.

The consultation closed on 27 September 2017<sup>21</sup> and a [summary of responses](#) was published in February 2018.

### 1.6 Client money protection

The *Consumer Rights Act 2015* (section 83(6)) also introduced a requirement on agents to declare if they are a member of a client money protection (CMP) scheme.

In addition to the fees letting agents should publicise whether or not they are a member of a client money protection scheme and which redress scheme they have joined. Letting agents who are not members of a client money protection scheme must make this clear, silence on this subject is a breach of the legislation. As with the fees this information should be prominently displayed in every office and on the website.<sup>22</sup>

Amendments were made to the *Housing and Planning Act 2016* to enable the Secretary of State to make regulations (subject to the affirmative resolution procedure<sup>23</sup>) to require letting agents and property management agents to belong to a client money protection scheme and to provide an enforcement mechanism.<sup>24</sup>

Lord Palmer of Childs Hill, who had put his name to the amendments, set out why rent money paid to an agent needs to be protected:

Some 80% of the lettings agency sector—these are the figures used by the Minister—have client money protection. The new amendment and the original amendment are for the 20% who put tenants and landlords at risk. If a letting agent goes bust or goes walkabout in a liquidation, tenants' money held and the rights of landlords and tenants are at the bottom of the creditors' queue in a liquidation or bankruptcy.

[...]

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<sup>19</sup> DfC, [Private Rented Sector in Northern Ireland – Proposals for Change](#), January 2017, p35

<sup>20</sup> [Legislative statement 2017-18](#)

<sup>21</sup> Welsh Government, [WG31810](#), 19 July 2017

<sup>22</sup> DCLG, [Improving the Private Rented Sector and Tackling Bad Practice](#), March 2015, Annex D, p58

<sup>23</sup> Approval is required from both Houses of Parliament.

<sup>24</sup> [HL Deb 20 April 2016 cc641-6](#)

Perhaps the best way of illustrating the need for this amendment is by telling horror stories, of which there are many. This month, it was reported that a company called Whitefield Properties took rental money due to landlords and tenants' deposits over a four-year period. The money was paid into the firm's bank account and was, perhaps carelessly, not protected. It was reported that £123,000 of customers' money went missing. The Staffordshire firm, with branches in Milton, Leek and Crewe, went into administration in 2014. If we were still arguing for this amendment, I would give many more examples to try to make my case.<sup>25</sup>

The Government established a working group to look at how CMP is currently operating and to consider whether to go further by making use of the powers taken through the *Housing and Planning Act 2016* to make CMP mandatory. A [call for evidence](#) took place between 22 August and 2 October 2016. The report of the working group, [Client Money Protection](#), was published in March 2017 and on 28 March 2017 the Parliamentary Under-Secretary of State at DCLG, Lord Bourne of Aberystwyth, confirmed the Government's intention to make CMP mandatory "in line with the recommendation of the review". He said "the Government will consult on how mandatory money protection should be implemented and enforced."<sup>26</sup> This [consultation](#) took place between 1 November and 13 December 2017.<sup>27</sup> The relevant sections of the 2016 Act were brought into force on 19 March 2018<sup>28</sup> but the Regulations setting out the details had not been made at the time of writing.

## 1.7 General information for landlords and tenants

The Ministry of Housing, Communities and Local Government (MHCLG) has published a series of booklets for private tenants and landlords which are accessible online, including:

- [Assured and assured shorthold tenancies: a guide for landlords](#) (archived, so good for an overview but not up to date)
- [Assured and assured shorthold tenancies: a guide for tenants](#) (archived, so good for an overview but not up to date)
- [Regulated Tenancies](#)
- [How to rent: the checklist for renting in England](#) (updated January 2018)
- [Private renting on the Gov.UK website](#).

A voluntary [Code of Practice](#) on the management of property in the private rented sector was developed by the Royal Institute of Chartered Surveyors (RICS) with other industry bodies and first published in

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<sup>25</sup> [HL Deb 20 April 2016 cc643](#)

<sup>26</sup> HL Deb 28 March 2017 c466

<sup>27</sup> DCLG, [Mandatory Client Money Protection Schemes for Property Agents](#), 1 November 2017

<sup>28</sup> [The Housing and Planning Act 2016 \(Commencement No. 7 and Transitional Provisions\) Regulations 2018](#)

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October 2014.<sup>29</sup> There is a possibility that this Code will be put on a statutory footing. A voluntary [model tenancy agreement](#) "which landlords and tenants can use for longer tenancies to provide extra security and stability for families" was first published in September 2014 and has subsequently been updated.

A DCLG guide for local authorities: [Dealing with rogue landlords](#) was published in August 2012; March 2015 saw publication of additional guidance for local authorities by DCLG: [Improving the Private Rented Sector and Tackling Bad Practice](#).

### 1.8 Regulation in Scotland, Wales & Northern Ireland

Annex A of [Banning letting agent fees paid by tenants: a consultation paper](#) provides information on letting agent fees in the devolved administrations and covers wider regulatory requirements.

**Scotland:** the *Housing (Scotland) Act 2014* has introduced a framework for the regulation of letting agents (which includes managing agents) in Scotland. This new framework includes:

- a mandatory register of letting agents with an associated 'fit and proper' person test and training requirement that must be met to be admitted to the register;
- a statutory code of practice all letting agents must follow;
- a new way for tenants and landlords to resolve complaints against letting agents for breaches of the statutory code of practice through a new specialist First-Tier Tribunal; and
- powers for Scottish Ministers to obtain information and of inspection to support monitoring of compliance.

Agents must submit an application by 1 October 2018. The Scottish Parliament approved the [Letting Agent Code of Practice \(Scotland\) Regulations 2016](#) in February 2016; these regulations came into force on 31 January 2018. The Code sets out the standards of practice letting agents must meet, a requirement to hold client money protection and professional indemnity insurance.

Alongside joining a mandatory register of letting agents, key individuals in a letting agency are required to have met a minimum level of training. [The Letting Agent Registration \(Scotland\) Regulations 2016](#) came into force on 31 January 2018 and set out details of the training requirement and the additional information required for registration.

Further information is available on the Scottish Government's [website](#).

**Wales:** Concerns about the standards and practices of some letting and managing agents in Wales have been acknowledged in the National Assembly and by the Welsh Government.

In March 2011, the Assembly's Communities and Culture Committee published its report, [Making the most of the private rented sector in](#)

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<sup>29</sup> RICS, [Private rented sector code of practice](#), October 2014 [revised July 2015]

[Wales](#), following a detailed inquiry. The Committee's report included a recommendation that "the Welsh Government takes appropriate legislative action to enable the introduction of statutory regulation of all letting agencies in Wales." This was taken forward through Part 1 of the *Housing (Wales) Act 2014* (the 2014 Act).

The 2014 Act requires agents who engage in lettings or property management work<sup>30</sup> to obtain a licence. Licences are issued by [Rent Smart Wales](#), a service within Cardiff Council, which acts as the licensing authority for the whole of Wales. The relevant sections of the 2014 Act are in force and agents must apply to become licensed through the [Rent Smart Wales](#) service. Failure to obtain a licence is an offence.

When the legislation was initially introduced, it was proposed that for an agent to obtain a licence, they would have to join an approved professional body. As the Bill progressed through the Assembly, that requirement was removed. However, agents who are members of the UK Association of Letting Agents, the Association of Residential Letting Agents, the Royal Institution of Chartered Surveyors, or the National Approved Letting Scheme receive a discount on their licence fee.

Agents must undertake approved training to obtain a licence. Licences are issued subject to a condition that the Code of Practice issued under the 2014 Act is adhered to. The Code of Practice sets standards relating to letting and managing rental properties. A range of other conditions can also be attached to agent licences, including conditions which address client money protection, professional indemnity insurance, membership of a redress scheme as well as other issues relating specifically to agents.

**Northern Ireland:** There is currently no letting agent regulation in Northern Ireland. However, in January 2017 the Department for Communities (DfC) in Northern Ireland published a consultation document, [Private Rented Sector in Northern Ireland – Proposals for Change](#), in which it noted:

72% of tenants who responded to the Department's tenants' survey deal directly with a letting agent as opposed to the owner of the property, and there were many references to tenant dissatisfaction with the poor service delivered by many letting agents particularly around the fees for various checks.<sup>31</sup>

The DfC is proposing to:

Introduce a regulatory framework for all letting agents including bringing forward legislation to ban letting agent fees.<sup>32</sup>

Consultation closed on 3 April 2017.

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<sup>30</sup> As defined in sections 10 and 12 of the *Housing (Wales) Act 2014*.

<sup>31</sup> DfC, [Private Rented Sector in Northern Ireland – Proposals for Change](#), January 2017, para 7.27

<sup>32</sup> *Ibid.*, p35

## 2. The case for and against additional regulation

There is a growing body of research on standards within the private rented sector; for example, the Resolution Foundation published [Renting in the dark: creating a lettings market that works for tenants](#) in December 2011 in which it referred to “a lack of consumer confidence and professionalism in parts of the market” which have resulted in “numerous calls from the industry, tenant and landlord groups for regulation.” In November 2012 the consumer organisation Which? published research into the consumer experience of the lettings market, [Renting Roulette](#), which identified the following ‘widespread’ problems:

- **Tenants disempowered and dissatisfied:** three quarters of tenants (73%) search for a property not the agent, yet lettings agents are ranked second from the bottom in our comparison of markets and one in five tenants told us they are dissatisfied with their agent.
- **Unexpected and unfair fees:** we found less than a third of tenants said agents (29%) provided information about fees before they asked, 41% of tenants thought upfront fees were unfair and none of the 32 lettings agents we looked at had information on tenant fees on their website.<sup>33</sup>
- **Widespread bad practice:** we found evidence of agents using aggressive sales tactics, poor customer service, missing appointments and misleading tenants through out-of-date advertisements.
- **Tenants and landlords losing money:** both tenants and landlords were found to have lost money through agents not passing on rent, unfairly handling holding deposits or failing to put deposits into protection schemes, as they are required by law.<sup>34</sup>

Which? called for:

...increased consumer protection in the lettings market by extending the legal protection for people buying and selling property to those renting. This would mean lettings agents would be covered by the same legislation as estate agents, which would also require them to sign up to an ombudsman scheme. By changing the legislation, the Office of Fair Trading would also have the power to ban lettings agents that break the rules.

We also want to see increased transparency with lettings agents including fees in the headline price and made clear at the point of sale, in adverts and on websites. Agents should also provide full details of the terms and conditions of the agreement before any upfront fees are paid.<sup>35</sup>

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<sup>33</sup> Note that this report was written before the requirement to publish fees came into force.

<sup>34</sup> Which? [Press Release](#), 24 November 2012

<sup>35</sup> Ibid.

[See section **1.3** of this note for information on the requirement on agents to join a redress scheme and **1.5** for information on the requirement to publish a tariff of fees]

June 2013 saw publication of [Letting Agencies: The Price You Pay](#) in which Shelter called for:

...new legislation to ensure that renters cannot be charged for the costs of setting up a tenancy. This is part of the core service provided by agencies for landlords and should be factored into their pricing accordingly.<sup>36</sup>

Shelter has also campaigned for the abolition of letting agency fees in England based on the Scottish experience, where these fees have been unlawful since 30 November 2012.

This research demonstrates that renters, landlords and the industry as a whole has benefited from banning fees to renters in Scotland. It highlights that this change could be implemented in England without significant impact on the viability of the industry, or rents.<sup>37</sup>

OFT's [Lettings Market](#) report (February 2013) highlighted a growing number of complaints received by the Property Ombudsman:

In 2011 the Property Ombudsman dealt with 7,641 letting enquiries, an increase of 26 per cent on 2010 figures. Our Intelligence Report based on Consumer Direct complaint analysis identified that 'fees and charges' represented the main area of concern for landlords and tenants as almost a third (30 per cent) of all complaints fall into this category. Agents tend to charge fees to both landlords and tenants for their services. 'Agents providing poor service' was the second most complained about area, with 23 per cent of complaints being about this.<sup>38</sup>

OFT (now CMA) concluded that participants in the market "should have access to an adequate redress mechanism so that any problems that may arise are dealt with quickly and easily."<sup>39</sup> In summary, OFT said that, to work more effectively, the market requires:

- improved up-front information provision – particularly in relation to fees and charges;
- initiatives to help in assessing quality and compare letting agency services;
- a general redress mechanism;
- more consistency within the industry (e.g. in the way a tenant's suitability is assessed);
- mechanisms to protect money; and
- an agreed enforcement strategy.

The OFT report set out the following next steps:

Ideally, we would like the UK Government, industry, enforcers, and those involved in consumer empowerment and education to

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<sup>36</sup> Shelter, [Letting Agencies: The Price You Pay](#), June 2013

<sup>37</sup> Shelter, [End Letting Fees: Lessons from the Scottish lettings market](#), June 2013, p3

<sup>38</sup> OFT1479 para 2.5

<sup>39</sup> OFT1479 para 2.20

## 16 The regulation of letting and managing agents (England)

work together, to devise and deliver an agreed strategy to raise standards within the lettings sector.

### **For the UK Government to consider:**

a) Whether it would be beneficial to require agents to sign up to a code of practice, or join a redress scheme, and give some thought to what sanctions would be required to support this obligation. Whilst such a requirement may have obvious benefits in terms of providing redress, there would also be implications such as the financial burdens this might place on business (and attendant potential increase in costs for consumers and reduction in competition). We think it is also important to consider this in light of the European Commission's draft Directive on alternative dispute resolution for consumer disputes (Directive on consumer ADR) and a draft Regulation on online dispute resolution for consumer disputes (Regulation on consumer ODR).

b) Whether the level of consumer protection law coverage is right in the context of the lettings market, and if not whether any legislative changes should be made to deal with this. This could be in the context of a wider review of consumer protection law.

c) The benefit of introducing any elements of other regulatory regimes into the lettings framework in England. This should include assessing the effectiveness and impact on the market of the reforms enacted by the devolved administrations, and in particular whether greater regulation of landlords would be likely to constrain supply of properties to tenants, which could lead to higher prices for tenants.

### **For UK Government and industry to:**

d) Discuss if more could be done for landlords and tenants to understand and compare what existing codes offer, so they can more easily make informed choices and know what to look for when trying to find a good letting agent.

e) Think about the feasibility of 'portable' reference checks, so that consumers could provide and reuse reference and credit checks, instead of paying for this service each time they try to secure a property.

**For industry bodies** to think about the feasibility of introducing common principles to achieve more consistency, so tenants' experience in the renting process is more predictable, and it is easier to shop around for properties, while not inhibiting beneficial innovation.

The [Property Ombudsman's 2012 Annual Report](#) (February 2013) expressed support for strengthened regulation of letting agents. Looking back over previous years, the Ombudsman drew attention to growing issues around the work of letting agents. He referred to the fact that his 2008 Annual Report had highlighted an increasing number of consumers "who were expressing dissatisfaction about the agent with whom they had dealings" and to the presentation of "disquieting issues relating to the security of rents." The 2009 Annual Report called for the new government after the 2010 General Election to "address the inconsistency between the legislation relating to the way sales agents are required to conduct business and that relating to letting agents." The 2010 and 2011 reports returned to this theme and the



fact that ARLA had supported increased regulation of agents for 20 years:

...over the lengthy period I have been expressing views on the subject, it has become clear to me that consumer organisations and those sector professional / trade associations such as ARLA and RICS share my view that a form of regulation is very necessary to set a level playing field for those operating in the private rented sector. The only silence outside this consensus is from those agents (estimated to represent about 40% of the lettings sector in the UK) who have so far declined to register voluntarily with TPO or to affiliate themselves to bodies such as ARLA or RICS. Clearly, for them a lack of control or the ability to act without adhering to any set of standards is serving them advantageously, even if the landlords and tenants of the properties they look after are potentially at risk with no access to free redress or, importantly, no protection of clients' money.<sup>40</sup>

The Ombudsman referred to the desirability of setting consistent standards across the sector to better serve consumers and to provide a level playing field in which agents could compete. He said: "realistically legislation is the only vehicle that can bring 100 per cent of letting agents within the fold."<sup>41</sup> He was critical of the Coalition Government's Red Tape Challenge:

I understand the Government approach to de-cluttering but it appears to me that we are seeing deregulation which benefits neither the agents nor consumers.<sup>42</sup>

The Property Ombudsman's [2015 Annual Report](#) recorded further increases in complaints concerning letting agencies:

Lettings statistical highlights:

- 1,965 formal complaints were resolved (33% more than the year before)
- 83% of complaints were supported by the Ombudsman
- 50% of complaints were made by landlords, while 47% were made by tenants
- The highest award issued last year was £16,954 for a lettings dispute
- The average lettings award was £522
- The regions with the highest volume of complaints were the South East (24%) and Greater London (24%), followed by South West (9%)
- The top three causes of complaints were: 'Management (including repairs and maintenance)', 'Communication & record keeping' and 'End of tenancy issues (e.g. deposits, disputes and damages)'<sup>43</sup>

Research published by Citizens Advice in February 2015, [Still let down](#), found "widespread evidence of the routine exploitation of renters by letting agents." Citizens Advice described its findings on fees as "the

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<sup>40</sup> [Property Ombudsman's 2012 Annual Report](#), February 2013

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> The Property Ombudsman Press Release, 2015 Annual Report

most striking” and argued that there is no competitive dynamic in the letting agent market:

We are not surprised to find that most letting agents (88 per cent) still impose additional charges, although it is worrying that fees remain so high---the total average fee for a tenancy is now £337--and that they may even be rising. But we also find that fees vary wildly and inexplicably, with letting agents charging anywhere from £6 to £300 to check a reference and from £15 to £300 to renew a tenancy. Fees also bear no discernible relationship to the cost of the service provided; we found agents charging as much as £300 for credit checks that are widely available on the market for £25. Our wider findings reinforce the case that letting agent fees are not governed by a competitive dynamic. Far from advertising their fees and services, and competing on that basis, only a third (34 per cent) of letting agents willingly gave us full written details of their charges when asked. More fundamentally, only a quarter (25 per cent) of renters said they even considered letting agent fees when shopping for a property. This reveals a defining feature of the market: renters do not choose between letting agents, they choose between properties. This is why competition and transparency have no bite on tenant fees - because it is landlords, not tenants, that shop for letting agents, and because, from a tenant’s perspective, fees are at best an afterthought and at worst an unavoidable imposition, arising only once a deposit, contract or living arrangement is already in place.<sup>44</sup>

On standards, Citizens Advice found that 56% of renters surveyed were dissatisfied with the service provided by the agent, representing an improvement on 73% in 2009. Almost a fifth (18%) of agents surveyed said that they were not a member of an approved redress scheme and only 4% of renters knew the name of the redress scheme their agent had joined. Renters expressed continued dissatisfaction with repairs services.<sup>45</sup> Citizens Advice concluded:

- On fees, **there is now a sufficient case for the government to ban letting agent fees for renters for functions that are part of the routine letting and management process.** This would limit fees to a part of the market that functions: the fees that are charged to landlords when they choose a letting agent. The result would be a business model akin to employment agencies, with fees charged on one side of the transaction and not the other.
- To tackle poor practice we also believe **letting agents should be required to belong to a trade body and trade bodies should operate a shared ‘banned list’ to drive the worst traders out of the industry.**
- And to give renters clearer routes to redress we believe **a single redress scheme should be appointed.** Together these steps would help create a better letting agent industry much closer to fulfilling its pivotal role.<sup>46</sup>

The Communities and Local Government Select Committee published the report of an inquiry into the private rented sector in the 2013-14

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<sup>44</sup> Citizens Advice, [Still let down](#), February 2015

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

Parliamentary Session. The Committee received evidence from industry bodies such as the Residential Landlords Association (RLA) and RICS in support of increased regulation of letting/managing agents:

The Residential Landlords Association stated that the letting and managing agent part of the sector had “remained unregulated far too long and as such is on occasion unprofessional”. The Royal Institution of Chartered Surveyors (RICS), which has described the lettings sector as “the property industry’s Wild West”, considered that the “the regulatory framework in the lettings market and the ever-increasing number of registration schemes offers limited protection for the consumer and costs business money”. Time and again, we heard concern that anyone could set up as a letting agent without qualifications or prior knowledge of the industry.<sup>47</sup>

The Committee recommended that increased regulation of agents be considered:

We recommend that the Government make letting and managing agents subject to the same regulation that currently governs sales agents. This includes giving the Office of Fair Trading the power to ban agents who act improperly, and making client money protection and professional indemnity insurance mandatory. Moreover, if any changes are made to the regulation of sales agents, these changes should also be applied to letting and managing agents. Any proposal to require sales agents to meet minimum professional standards before they begin trading should also be applied to letting and managing agents. In addition, if at any point a requirement for sales agents to be registered with an accredited industry body is to be introduced, this should be part of a wider framework also covering letting and managing agents. We recommend that the Government review these arrangements in two years’ time.<sup>48</sup>

The Coalition Government’s response, published in October 2013, said that the extension of regulation covering sales agents would “impose a new burden on local authorities, increase costs for consumers, and reduce the choice and availability of accommodation on offer to tenants.”<sup>49</sup>

There is some scepticism within the lettings industry about the value of increased regulation, arguing that the sector is already too burdened and that further measures would not stop bad practices:

Much regulation in the private rented sector that aims to stop bad practice faces the problem that it is extremely difficult for regulatory agencies to identify exactly where it is occurring, to enforce penalties, and to monitor them. Cost effectiveness in such a context is likely to be poor.<sup>50</sup>

In a report written by Professor Michael Ball for the Residential Landlords Association, *The Impact of Regulation on the private rented sector* (April 2014), he suggested that increased regulation of agents would push up costs for landlords and tenants:

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<sup>47</sup> CLG Committee, [The Private Rented Sector](#), HC 50, 18 July 2013, para 69

<sup>48</sup> *Ibid.*, para 78

<sup>49</sup> [Cm 8730](#), October 2013

<sup>50</sup> Professor Michael Ball for the Residential Landlords Association, *The impact of regulation on the private rented sector*, April 2014

...legislation imposed on third parties may encourage them to charge landlords higher fees (as is likely with current independent moves to regulate lettings agents in England, Wales and Northern Ireland).<sup>51</sup>

A joint report by the Chartered Institute of Housing and Resolution Foundation, [More than a roof: how incentives can improve the private rented sector](#) (August 2014), a system of incentives for landlords, such as additional tax breaks, was recommended for those who sign up to a national accreditation scheme to raise standards in the sector. However, the authors also recommended the extension of regulation covering estate agents to letting agents and the abolition of tenants' fees.<sup>52</sup>

Although there has been support from professional trade bodies within the private rented sector for more regulation of letting agents, as opposed to more regulation of the private rented sector in general, this support does not extend to the Government's intention to abolish letting agent fees. In its response to the Government's proposal on fees, ARLA argued that instead of looking at the issue in isolation, "Government should take this opportunity to create a professional, trained, lettings industry in order to eradicate the tiny minority of unscrupulous agents who bring the industry into disrepute."<sup>53</sup>

## 2.1 Government approaches to regulation

### Labour Government 2005 to 2010

In February 2010 the Labour Government published [The Private Rented Sector: Professionalism and Quality—Consultation Summary of Responses and Next Steps](#). This indicated that a majority of respondents to the consultation exercise had supported the full regulation of private sector letting and managing agents by an independent regulatory body. The then Government agreed:

We agree with the emerging consensus around the need to regulate letting and managing agents. We think that the drivers for regulation are overwhelming:

- **Consumer protection** for both tenants and landlords with a particular focus on protecting consumers' money
- **Increase the professionalism and reputation of the management sector** (which will, in itself, contribute to removing barriers to institutional investment in the private rented sector)
- **Drive improvements in condition** of the private rented sector
- **Create a level playing field for all agents** (rather than a disincentive to the best).<sup>54</sup>

The Labour Government proposed:

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<sup>51</sup> Ibid.

<sup>52</sup> "[Landlords need carrot as well as stick to improve the private rented sector](#)", CIH, 30 August 2014

<sup>53</sup> ARLA, *Proposals for a Ban on Letting Fees to Tenants*, January 2017

<sup>54</sup> [The Private Rented Sector: Professionalism and Quality—Consultation Summary of Responses and Next Steps](#), pp8-9

- to establish a national register of private landlords which was to be run by an independent organisation procured by the Government;
- that all tenancy agreements should take the form of written agreements; and
- to introduce full mandatory regulation of private sector letting and managing agents.

The register and new regulatory framework (including written tenancy agreements) were not established prior to the 2010 General Election, although impact assessments were prepared on the proposed national landlord register and the regulation of letting agents.<sup>55</sup>

Labour's [2015 Election Manifesto](#) contained a commitment to introduce a ban on unfair letting agent fees and create a national register of private landlords.<sup>56</sup> Sadiq Khan's Manifesto [Homes for Londoners](#) said he would: "Set up a London-wide not-for-profit lettings agency for good landlords, building on the work that councils have started, and ending rip-off fees for renters."<sup>57</sup> The Mayor launched a public online database for "naming and shaming" landlords and lettings agents who have been successfully prosecuted, or have faced civil enforcement action for housing offences, in December 2017.<sup>58</sup>

## Coalition Government 2010 to 2015

In June 2010, the Housing Minister, Grant Shapps, announced that the Government would not introduce new regulations for letting agents and managing agents in the private rented sector. He said that this would "introduce too much additional red tape" and that there were already wide-ranging powers within the present legal framework to address problems.<sup>59</sup> The DCLG website provided more information on the Coalition Government's stance:

We are keen to encourage responsible letting through the use of voluntary accreditation schemes for landlords and letting agents. These can offer landlords the benefit of a market advantage and tenants a guaranteed standard of accommodation and service. We are working with the leading industry bodies to examine how to increase the use of voluntary schemes by landlords and agents.<sup>60</sup>

In February 2013 the then Housing Minister, Mark Prisk, responded to a Westminster Hall debate on letting agents initiated by Sarah Champion. The Minister rejected the claim that letting agents are not regulated, referring to the *Consumer Protection from Unfair Trading Regulations 2008* and the *Unfair Terms in Consumer Contracts Regulations 1999*, he went on:

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<sup>55</sup> [Impact Assessment of a national register for landlords; Impact Assessment of regulation of letting and management agents by an independent body](#) June 2009

<sup>56</sup> Labour's [2015 Election Manifesto](#), p62

<sup>57</sup> [Homes for Londoners](#), 2016

<sup>58</sup> London Assembly, "[There's nowhere to hide](#)", 19 December 2017

<sup>59</sup> DCLG Press Release, "[Shapps promises 'no more red tape' for private landlords](#)", 10 June 2010

<sup>60</sup> Accessed on 13 June 2011

**Mr Prisk:** It is important to recognise that we need a number of elements to deal with the different problems that have been raised. We need to make sure that we use existing consumer protection legislation now and that enforcement is put in place effectively. I want trading standards bodies to take action not just in the serious cases, such as those that I have flagged up, but in the less serious cases. We have a problem with enforcement. The right hon. Gentleman is right. We cannot mandate trading standards bodies to act in individual cases, but I am determined to encourage those national bodies to ensure that they tackle these issues right across the marketplace. It is not good enough at the moment. We want to make it stronger.

As the hon. Member for Rotherham said, many letting agents who provide services do so quite well and within the law. Several hon. Members have highlighted the *Which?* report, which showed that one in five tenants are dissatisfied with their agent. That is still too high, but I think that if it is one in five, people will realise that the vast majority—four out of five—seem satisfied with the service that they get. The *Which?* report is a pretty independent and extensive survey in that context. However, there remain too many agents whose service is poor and unacceptable. Several hon. Members, including the hon. Member for Birmingham, Erdington, mentioned the fact that this is the second lowest of consumer markets.

Our view has been that regulation should not be the first option. Although we recognise that there might be a case for it, the challenge is to make sure that existing law works properly. There is a temptation among all of us as politicians to believe that passing new legislation will deal with people who currently ignore existing regulation. I am sceptical that the changes we make, of a statutory nature or otherwise, will actually catch the rogues that Members of all parties have highlighted. That is the challenge. I am open to consideration. We are looking carefully at what the Office of Fair Trading has said. There are some strong and positive elements there. However, if we are to do this properly—if we are to catch the rogue agents and landlords who perfectly happily flout every other law—we need to make sure that if we change the rules and change the law, we do so in a way that will deal with the individuals in question.<sup>61</sup>

Subsequently, the Coalition Government *did* act to require letting/managing agents to be a member of an approved redress scheme and to publish a tariff of fees and state if they are a member of a client money protection scheme.

### Conservative Government 2015

Initially, the 2015 Government, like the Coalition Government, did not support wholesale regulation of letting and managing agents. The then Housing Minister, Gavin Barwell, convened the first meeting of the Private Rented Sector Affordability and Security Working Group, which was established by his predecessor, Brandon Lewis, in July 2016. ARLA and other bodies were represented on this group. Up to the announcement of the decision to ban letting agent fees for tenants in November 2016, the Government had resisted a ban on fees. ARLA said that the announcement “undermined” the efforts of the Private Rented

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<sup>61</sup> [HC Deb 27 February 2013 cc98-122WH](#)

Sector Affordability and Security Working Group.<sup>62</sup> [Banning letting agent fees paid by tenants: a consultation paper](#) (April 2017) sought views on the need for wider regulation of the sector:

The government recognises the appetite for wider regulation of the sector in order to combat the minority of rogue or incompetent agents and better protect consumers and is interested to explore the views of those across the sector on wider regulation measures that could be introduced to improve the letting market. Such measures could include a national register of agents, a statutory code of practice (building on previous work coordinated by RICS) and requiring agents to comply with training requirements and/or satisfy fit and proper person tests.

The benefits of additional regulation in the sector are that it would more consistently improve standards and help to tackle rogue practices by the small minority of rogue landlords. Additional regulatory requirements could play an important role in ensuring the compliance of agents with the ban on letting fees.

However, the Government does not want to unduly burden the sector and any additional regulation should have a clear role in tackling rogue practices whilst not making it more difficult for firms to enter and compete in the lettings market. Where possible, action should be taken through non-legislative routes with this supported by additional regulation only if necessary. The Government is keen to explore views as to whether further regulation of the sector is needed in addition to the ban on letting fees paid by tenants.<sup>63</sup>

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<sup>62</sup> ARLA, *Proposals for a Ban on Letting Fees to Tenants*, January 2017

<sup>63</sup> DCLG, [Banning letting agent fees paid by tenants: a consultation paper](#), April 2017, paras 93-95

## 3. An intention to introduce regulation

### 3.1 The call for evidence

On 1 October 2017, at the Conservative Party's 2017 Conference, the then Secretary of State at Communities and Local Government, Sajid Javid, announced that action *would* be taken to regulate letting agents.

A call for evidence, [Protecting Consumers in the letting and managing agent market](#), was issued later in October 2017. Submissions were invited up to 29 November 2017.

The paper said that 72% of responses to the consultation on banning letting agent fees were in favour of wider regulation in the letting sector to improve standards and tackle rogue landlords.<sup>64</sup> Issues identified with letting agents included:

- Tenants having limited ability to negotiate or challenge the type and quality of agent services as the agent is appointed by the landlord.
- Difficulty in assessing whether the services provided represents value for money.
- No ability of tenants to switch agents.
- No minimum entry requirements for letting/property agents.

The paper posed several questions about the need for a new regulatory approach. Views were sought on minimum entry requirements and standards for agents, and whether a mandatory approach was necessary. Several regulatory models were explored including:

- Requiring all agents to be members of an approved professional body.
- As above but with oversight from a regulatory body established or approved by Government.
- A new regulatory body established or approved by Government which all agents are required to sign up to.

Options for enforcement and sanctions were also explored, including the possibility of introducing a lead enforcement authority.

### 3.2 The outcome

The [outcome](#) of the consultation exercise was published in April 2018.<sup>65</sup> The Government reiterated the intention to regulate letting agents and clarified that this would also apply to managing agents, i.e. businesses

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<sup>64</sup> MHCLG, [Protecting consumers in the letting and managing agent market](#), October 2017, para 15

<sup>65</sup> MHCLG, [Protecting Consumers in the letting and managing agent market – Government response](#), April 2018



and individuals who provide block management services in the private leasehold sector.<sup>66</sup>

The Government is proposing to introduce “a single, mandatory and legally enforceable Code of Practice covering letting and managing agents.”

The Code of Practice will, as a minimum, set standards for:

- transparency of potential conflicts of interest;
- transparency of current and future financial commitments to which clients are agreeing;
- service charges;
- communication and customer service;
- handling of clients’ money; and
- dispute resolution.<sup>67</sup>

Letting and managing agents will be required to have a nationally recognised qualification to practice and will be required to undertake continuing professional development.

Regulation will be carried out by an independent body that will own the Code of Practice and which will have enforcement powers. The feasibility of a single overarching regulatory structure for letting and managing agents will be investigated.

The Government said that work would be carried out with stakeholders to develop the regulatory regime:

To this end, we intend to establish a Working Group to develop our new regulatory model. We will announce its composition and terms of reference in due course.<sup>68</sup>

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<sup>66</sup> Ibid., p7

<sup>67</sup> Ibid., p7

<sup>68</sup> Ibid., p7

## 4. Banning orders & a database of rogue landlords/agents

Since 6 April 2018, local authorities have been able to seek banning orders against landlords and agents who commit certain offences.<sup>69</sup> The Government [consulted](#) on what might amount to a banning order offence. [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#) came into force on 6 April 2018. Regulation 3 and the Schedule list the offences that amount to banning order offences. These regulations were debated and approved by House of Commons Delegated Legislation Committee on 9 January 2018.<sup>70</sup>

The 2016 Act also contains provisions which mean that someone who has been convicted of a banning order offence, or has received two or more civil penalties as an alternative to prosecution for banning order offences within a 12 month period, can be included in a database of rogue landlords and property agents. [The Housing and Planning Act 2016 \(Database of Rogue Landlords and Property Agents\) Regulations 2018](#) (SI 2018/258) came into force on 6 April 2018 and prescribe the information that must be included in the database, including the name of the banned person, the offence which led to the ban and the length of the ban. The database is not be accessible to the public but is accessible to HMRC, MHCLG and local housing authorities, it “enables local authorities to keep track of, and focus their enforcement activity against those landlords and property agents on the database”.<sup>71</sup>

## 5. Civil penalties

The *Housing and Planning Act 2016* introduced a power for local authorities in England to impose a civil penalty of up to £30,000 as an alternative to prosecution. Penalties can be imposed on landlords and/or letting agents. This power came into force on 6 April 2017. The sort of offences under the *Housing Act 2004* that might attract a civil penalty include:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).

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<sup>69</sup> [The Housing and Planning Act 2016 \(Commencement No. 8\) Regulations 2018](#)

<sup>70</sup> [HC Fifth Delegated Legislation Committee](#), 9 January 2018, cc1-12

<sup>71</sup> DCLG, [Proposed banning order offences in the Housing and Planning Act 2016](#), December 2016

MHCLG has published [statutory guidance](#) for local authorities (April 2017).

## 6. Rent Repayment Orders (RRO)

The *Housing and Planning Act 2016* also extended the circumstances in which an authority can apply to a First-Tier Tribunal (FTT) for a RRO to cover illegal eviction, breach of a banning order and certain other specified offences. This power came into force on 6 April 2017. RROs can be sought against letting agents. MHCLG has published [guidance for local authorities](#) to which FTTs will be expected to have regard when dealing with applications.

## 7. Consumer redress proposals

In addition to announcing that regulation would be extended to letting/property agents during the Conservative Party's 2017 Conference on 1 October 2017, the then Secretary of State said that all landlords would have to be covered by a redress scheme.

February 2018 saw the publication of consultation on [Strengthening consumer redress in the housing market](#). Submissions were invited up to 16 April 2018. This paper made the point that tenants whose properties are let or managed directly by their landlord "often have little recourse to dispute resolution or redress except via the courts."<sup>72</sup>

The consultation paper raised the following issues for consideration:

- Coverage – should the requirement only apply to landlords who do not employ an agent?
- Who might be best placed to provide a redress scheme?
- Cost – possibly a fee per complaint model or tiered fee structure.
- Who would enforce the requirement?
- Penalties for non-compliance – possible removal of the ability to serve a section 21 notice.
- Communications – how to ensure all landlords are aware of the requirement?

The consultation paper went wider than private rented housing and considered whether the "array" of redress schemes across the residential housing sector should be simplified and streamlined, possibly by the introduction of a single housing ombudsman.

Response to the consultation exercise are currently being analysed.

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<sup>72</sup> MHCLG, [Strengthening consumer redress in the housing market](#), February 2018, para 36

## 8. Relevant Private Members' Bills

Regulation of letting/managing agents has been the subject of several Private Members' Bills.

### Regulation of the Private Rented Sector Bill 2012-13

On 26 February 2013 Jeremy Corbyn introduced a Ten-Minute Rule Bill on regulation in the private rented sector. Mr Corbyn said the Bill would:

...provide for the regulation of letting agents; to protect tenants' deposits; to require the enforcement of environmental and energy-efficiency standards in private-sector rented accommodation; to amend the law on secure tenancies; to provide for fair rent to be applicable to all rented accommodation; to require landlords not to discriminate against people in receipt of state benefits; to require local authorities to establish a private rented sector office; and for connected purposes.<sup>73</sup>

This Bill also failed to progress beyond its First Reading stage before the end of the 2012-13 session.

### Letting Agents (Choice, Competition and Standards) Bill 2013-14

This Ten-Minute Rule Bill was introduced by John Healey on 2 July 2013.<sup>74</sup> The Bill would have:

- established a national mandatory licensing scheme for letting and managing agents, with established standards and redress for landlords, tenants and leaseholders;
- restricted letting and management agent charges to just rent and a deposit, so that tenants and leaseholders are not hit by huge upfront fees;
- mandated that all tenants have a written tenancy agreement with their landlord;
- enabled local authorities to administer and enforce these new powers to find the right solution for each local area; and
- empowered local authorities, either alone or in partnership, to trade as letting and managing agents – encouraging competition, standards and public enterprise.

The Bill was withdrawn.

### [Private Landlords and Letting and Managing Agents \(Regulation\) Bill 2013-14](#)

This Private Member's Bill was sponsored by Sir Alan Meale. It was introduced on 19 June 2013; its [Second Reading](#) took place on 25 October and was ongoing when the House adjourned. The Bill was not moved for debate on 1 November 2013. The order to read the Bill a second time lapsed.

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<sup>73</sup> HC Deb 26 February 2013 c173

<sup>74</sup> [HC Deb 2 July 2013 cc783-5](#)

This Bill would have established a mandatory national register of private landlords; introduced regulation of private sector letting and managing agents; established a body to administer the national register and monitor compliance with regulations applying to letting and managing agents; and required all tenancy agreements entered into with private landlords to take the form of written agreements.

### [Regulation of the Private Rented Sector Bill 2013-14](#)

On 15 October 2013 Jeremy Corbyn reintroduced his Ten-Minute Rule Bill which failed to make progress in the 2012-13 parliamentary session.<sup>75</sup> Mr Corbyn nominated 16 May 2014 for the debate on Second Reading but the House did not sit. Again, the Bill only had a First Reading in the Commons.

### **Private Rented Sector Bill 2013-14**

On 12 March 2014, Dr Huppert used the Ten Minute Rule Motion to call for the introduction of a Bill to:

...prevent the charging by letting agents of above-cost fees; to provide that the Consumers, Estate Agents and Redress Act 2007 and Estate Agents Act 1979 apply to letting agencies; to facilitate the establishment by councils of landlord and property accreditation schemes; to establish a housing ombudsman service for tenants in the private rented sector; to require the Secretary of State to undertake a review of the legislation applying to the private rented sector; and for connected purposes.<sup>76</sup>

The Bill also failed to progress beyond the First Reading stage.

### [Renters' Rights Bill \[HL\] 2016-17](#)

This Bill was introduced in the House of Lords on 23 May 2016 by the Liberal Democrat Peer, Baroness Greender. The Bill provides for:

- the abolition of certain letting agents' fees for tenants;
- tenants to have access to the database of rogue landlords which will be created as a result of provisions in the *Housing and Planning Act 2016*;
- introduce a duty to carry out mandatory electrical checks; and
- prevent rogue landlords from obtaining an HMO licence.

The Bill completed its committee stages in the Lords but failed to progress any further.

### [Housing \(Tenants Rights\) Bill 2016-17](#)

Caroline Lucas introduced this Private Member's Bill on 4 July 2016. The debate on Second Reading was scheduled for 24 March 2017. The Bill, amongst other things, provides for the establishment of a mandatory national register of landlords and letting agents and a prohibition on charging letting or management fees to tenants.

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<sup>75</sup> [HC Deb 15 October 2013 cc599-601](#)

<sup>76</sup> [HC Deb 12 March 2014 cc319-21](#)

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