



Consumers, Estate Agents and Redress Act 2007

2007 CHAPTER 17

PART 2

COMPLAINTS HANDLING AND REDRESS SCHEMES

Introductory

42 Interpretation of Part 2

(1) In this Part—

“regulated provider” means a person within an entry in column 1 of the table;

“relevant consumer”, in relation to a regulated provider, means a person within the corresponding entry in column 2 of the table;

“relevant regulator”, in relation to a regulated provider, means the body specified in the corresponding entry in column 3 of the table.

TABLE

<i>Regulated provider</i>	<i>Relevant consumer</i>	<i>Relevant regulator</i>
A person holding a licence under section 7A(1) of the Gas Act 1986 (c. 44) (supply licences).	A person who is a consumer in relation to gas supplied by a gas supplier (within the meaning of Part 1 of that Act).	The Gas and Electricity Markets Authority.
A person holding a licence under section 7(2) of the Gas Act 1986 (transportation licences).	A person (other than a gas licensee) who is a consumer in relation to services provided by a	The Gas and Electricity Markets Authority.

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<i>Regulated provider</i>	<i>Relevant consumer</i>	<i>Relevant regulator</i>
	gas transporter (within the meaning of Part 1 of that Act).	
A person holding a licence under section 6(1)(d) of the Electricity Act 1989 (c. 29) (supply licences).	A person who is a consumer in relation to electricity supplied by an electricity supplier (within the meaning of Part 1 of that Act).	The Gas and Electricity Markets Authority.
A person holding a licence under section 6(1)(c) of the Electricity Act 1989 (distribution licences).	A person (other than an electricity licensee) who is a consumer in relation to services provided by an electricity distributor (within the meaning of Part 1 of that Act).	The Gas and Electricity Markets Authority.
A person holding a licence under Part 2 of the Postal Services Act 2000 (c. 26).	A person who is a consumer in relation to relevant postal services (within the meaning of section 41).	The Postal Services Commission.
A water undertaker, sewerage undertaker or licensed water supplier.	A person who is a consumer in relation to services provided by a water undertaker, sewerage undertaker or licensed water supplier in its capacity as such.	The Water Services Regulation Authority.

(2) In this Part—

“consumer” has the same meaning as in Part 1;

“consumer complaint” means a complaint which is made against a regulated provider by or on behalf of a person in that person’s capacity as a relevant consumer in relation to the regulated provider;

“licensed water supplier” has the same meaning as in Part 1;

“regulator” means a body listed in column 3 of the table.

(3) In this Part references to a regulator’s regulated providers are to the regulated providers in relation to which the regulator is the relevant regulator.

(4) In this section—

“electricity licensee” means—

- (a) an electricity supplier (within the meaning of Part 1 of the Electricity Act 1989);
- (b) an electricity distributor (within the meaning of that Part);
- (c) the holder of a licence under section 6(1)(a), (b) or (e) of that Act (generation licences, transmission licences and interconnector licences), except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence;

“gas licensee” means—

- (a) a gas supplier (within the meaning of Part 1 of the Gas Act 1986 (c. 44));
- (b) a gas transporter (within the meaning of that Part);
- (c) a gas shipper (within the meaning of that Part);
- (d) the holder of a licence under section 7ZA of that Act (licences for operation of gas interconnectors), except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

Standards for handling complaints

43 Standards for handling complaints

- (1) A regulator must by regulations prescribe standards for the handling by its regulated providers of consumer complaints made to them.
- (2) The regulations may prescribe standards in relation to all consumer complaints, or consumer complaints of a kind specified in the regulations.
- (3) In particular, the regulations may specify a kind of consumer complaint by reference to the subject-matter of a complaint, or the description of person making a complaint.
- (4) Regulations under this section may be made only with the consent of the Secretary of State.
- (5) A regulator must make arrangements for securing that regulations made by it under this section are available to the public, by whatever means it considers appropriate.
- (6) If a date is prescribed in relation to a regulator for the purposes of this subsection, from that date subsection (1) has effect in relation to that regulator as if, in that subsection, for “must” there were substituted “may”.
- (7) In subsection (6) “prescribed” means prescribed by order made by the Secretary of State under this section.
- (8) Before prescribing a date in relation to a regulator for the purposes of subsection (6), the Secretary of State must consult—
 - (a) the regulator,
 - (b) the Council, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (9) This section does not apply to the Water Services Regulation Authority.

44 Requirements for making regulations under section 43

- (1) Before making regulations under section 43 a regulator must—
 - (a) arrange for such research as it considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected, and consider the results,
 - (b) publish a notice of its proposals (a “proposals notice”) in such manner as the regulator considers appropriate for bringing it to the attention of those likely to be affected by the proposals,
 - (c) consider any representations duly made, and

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- (d) consult persons or bodies appearing to it to be representative of persons likely to be affected by the proposals.
- (2) The proposals notice must—
 - (a) set out the standards the regulator proposes to prescribe,
 - (b) give the reasons why the regulator proposes to prescribe those standards,
 - (c) explain how the standards will be enforced, and
 - (d) specify a time (not being earlier than the end of the period of 30 days beginning with the day on which the notice is published) before which representations may be made.
- (3) The requirements of subsection (1) may be satisfied by action taken before the commencement of this section or the passing of this Act.

45 Information with respect to compliance with complaints handling standards

- (1) This section applies in relation to standards prescribed by a regulator by regulations under section 43 in relation to its regulated providers (or some of them).
- (2) The Council must publish such statistical information as it considers appropriate relating to the levels of compliance with the standards which those regulated providers have achieved.
- (3) That information must be published in such form and manner, and with such frequency, as the Council thinks appropriate.
- (4) Schedule 5 makes further provision with respect to information about compliance with complaints handling standards.

46 Supply of information to consumers

- (1) A regulator may make regulations requiring each of its regulated providers in relation to which standards are prescribed under section 43 to give to the provider's relevant consumers such information as may be specified or described in the regulations about—
 - (a) the standards, and
 - (b) the levels of compliance with those standards achieved by the provider.
- (2) Regulations under this section may include provision specifying the form and manner in which, and the frequency with which, information is to be given.

Requirements relating to redress schemes

47 Membership of redress scheme

- (1) The Secretary of State may by order require regulated providers to be members of a redress scheme which is—
 - (a) approved by their relevant regulator in accordance with section 49, or
 - (b) administered by the Secretary of State (or a person appointed by the Secretary of State) and designated by the Secretary of State as an appropriate redress scheme in relation to them.

- (2) The order may provide that the requirement applies only in relation to consumer complaints of a kind specified in the order.
- (3) In particular, the order may specify a kind of consumer complaint by reference to the subject-matter of a complaint, or the description of person making a complaint.
- (4) Before making an order under this section the Secretary of State must consult—
 - (a) each relevant regulator (in relation to regulated providers to which the order will apply), and
 - (b) other persons appearing to the Secretary of State to be representative of persons who have an interest in the matter.
- (5) The requirements of subsection (4) may be satisfied by consultation undertaken before the commencement of this section or the passing of this Act.
- (6) An order under this section which applies to a water undertaker or sewerage undertaker for an area which is wholly or mainly in Wales may be made only with the consent of the Welsh Ministers.
- (7) The Secretary of State may not make an order under this section unless satisfied, in relation to each regulated provider to which the order will apply, that—
 - (a) there is at least one qualifying redress scheme which the provider is eligible to join and membership of which will satisfy the requirement imposed by the order, or
 - (b) there will be such a scheme when the order comes into force.
- (8) The Secretary of State may not designate a scheme in relation to regulated providers under subsection (1)(b) unless the Secretary of State is satisfied that the scheme is one which could be approved by their relevant regulator in accordance with section 49.
- (9) The Secretary of State may establish or administer a scheme for the purposes of subsection (1)(b), or provide financial assistance to a person who establishes or administers such a scheme; and such a scheme may provide for fees to be payable by members of the scheme.

48 Membership of redress schemes: supplementary

- (1) In this Part—
 - “qualifying redress scheme” means a redress scheme within paragraph (a) or (b) of section 47(1);
 - “redress scheme” means a scheme under which consumer complaints may be made to, and investigated and determined by, an independent person (“the independent person”);
 - “scheme administrator”, in relation to a redress scheme, means the person who administers the scheme,and references to approval of a redress scheme are to approval of the scheme for the purposes of section 47(1)(a).
- (2) In the definition of “redress scheme”, “independent”, in relation to a consumer complaint, means independent of—
 - (a) the regulated provider against whom the complaint is made, and
 - (b) the regulator who is the relevant regulator in relation to the regulated provider.

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- (3) Nothing in this Part prevents a qualifying redress scheme providing—
 - (a) for membership to be open to persons who are not subject to any duty to belong to a qualifying redress scheme;
 - (b) for the investigation and determination of complaints other than those in relation to which such a duty applies, made against members who have voluntarily accepted the jurisdiction of the scheme over such complaints.
- (4) For the purposes of the law relating to defamation, proceedings under a qualifying redress scheme (in relation to a consumer complaint and a regulated provider to which an order under section 47 applies) are to be treated in the same way as proceedings before a court.

49 Approval of redress schemes

- (1) In deciding whether to approve a redress scheme, a regulator must have regard to—
 - (a) the provisions of the scheme;
 - (b) the manner in which the scheme will be operated (so far as that can be judged from the facts known to the regulator);
 - (c) the interests of relevant consumers (in relation to the regulator’s regulated providers);
 - (d) such principles as—
 - (i) in the opinion of the regulator constitute generally accepted principles of best practice in relation to schemes for providing redress to consumers, and
 - (ii) it is reasonable to regard as applicable to the scheme.
- (2) In considering the interests of relevant consumers under subsection (1)(c), the regulator must in particular have regard to the number of other redress schemes applying to its regulated providers which are (or are likely to become) qualifying redress schemes.
- (3) A regulator must not approve a redress scheme unless—
 - (a) membership of the scheme is open to all the regulator’s regulated providers, and those regulated providers may not be expelled from membership of the scheme,
 - (b) if, at the time the approval is given, any of the regulator’s regulated providers are required under section 47 to be a member of a redress scheme (or would be so required but for the fact that an order which has been made under that section is not yet in force), the scheme covers all the consumer complaints to which the requirement applies,
 - (c) the independent person may require regulated providers to provide complainants with the types of redress listed in subsection (6) (whether or not other types of redress are available), and
 - (d) the regulator considers that the scheme makes satisfactory provision about the matters listed in subsection (7).
- (4) Subsection (3)(a) does not prevent the Gas and Electricity Markets Authority approving—
 - (a) a scheme which is open to all regulated gas providers, but not regulated electricity providers,

- (b) a scheme which is open to all regulated electricity providers, but not regulated gas providers,
and, in the case of such a scheme, subsection (3)(b) applies as if the reference to the regulator’s regulated providers were to the regulated gas providers or, as the case may be, regulated electricity providers.
- (5) For this purpose—
“regulated electricity provider” means a person holding a licence under section 6(1)(c) or (d) of the Electricity Act 1989 (c. 29);
“regulated gas provider” means a person holding a licence under section 7(2) or 7A(1) of the Gas Act 1986 (c. 44).
- (6) The types of redress mentioned in subsection (3)(c) are—
(a) providing an apology or explanation,
(b) paying compensation, and
(c) taking such other action in the interests of the complainant as the independent person may specify.
- (7) The matters mentioned in subsection (3)(d) are—
(a) the matters about which complaints may be made (which may include non-compliance with a code of practice or other document);
(b) the independent person’s duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint);
(c) the enforcement of any requirement to provide redress imposed on a regulated provider in accordance with the scheme;
(d) the provision of information by the independent person to the regulator and to persons within subsection (8);
(e) the provision of information by the independent person—
(i) to the Office of Fair Trading, for the purposes of any public consumer advice scheme supported by it, and
(ii) to persons who operate a public consumer advice scheme supported by the Office of Fair Trading, for the purposes of that scheme;
(f) the acceptance and handling of complaints transferred from redress schemes which have their approval withdrawn under section 51.
- (8) The persons within this subsection are—
(a) any other body having regulatory functions in relation to the regulated providers to which the scheme applies;
(b) persons exercising functions under other redress schemes which apply to the regulator’s regulated providers;
(c) the Council;
(d) the Secretary of State.

50 Approval of redress schemes: supplementary

- (1) An application for approval of a redress scheme must be made in such manner, and accompanied by such information, as the regulator to which the application is made may determine.
- (2) Section 51 applies if the regulator is minded to refuse an application for approval.

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- (3) The scheme administrator of a redress scheme approved by a regulator must notify the regulator of any change to the scheme before the end of the period of 14 days beginning with the day on which the change is made.
- (4) A regulator may, in accordance with section 51, withdraw its approval of a redress scheme, and may do so generally or in relation to consumer complaints of a description specified by the regulator.
- (5) In particular, a regulator may withdraw its approval in relation to consumer complaints made on or after a date specified by the regulator.

51 Procedure for refusing or withdrawing approval

- (1) Before refusing or withdrawing its approval of a redress scheme, the regulator must give the scheme administrator a notice—
 - (a) stating that the regulator proposes to refuse or withdraw its approval,
 - (b) giving the reasons for the proposed refusal or withdrawal, and
 - (c) specifying a time (not being earlier than the end of the period of 30 days beginning with the day on which the notice is given to the scheme administrator) before which representations about the proposed refusal or withdrawal may be made.
- (2) The regulator must give notice to the scheme administrator of—
 - (a) the regulator’s decision on a proposal to refuse or withdraw approval, and
 - (b) the reasons for its decision.
- (3) In the case of a decision to withdraw approval, the regulator must also give notice of its decision and the reasons for it to the Secretary of State.
- (4) The scheme administrator must give a copy of the notice under subsection (2) to each member of the scheme.
- (5) If the regulator decides to withdraw approval, the withdrawal has effect in accordance with, and from the date specified in, the notice under subsection (2).
- (6) Where a redress scheme designated under section 47(1)(b) is administered by a person appointed by the Secretary of State, this section (other than subsection (3)) applies in relation to a revocation by the Secretary of State of that person’s appointment as it applies in relation to a withdrawal by a regulator of the approval of a redress scheme.

Enforcement

52 Enforcement of requirements imposed under Part 2

- (1) In section 28 of the Gas Act 1986 (c. 44) (orders for securing compliance), in subsection (8), in the definition of “relevant requirement”, after “that Act” (as inserted by paragraph 1 of Schedule 2) insert “, or section 43, 46 or 47 of that Act (complaints).”
- (2) In section 25 of the Electricity Act 1989 (c. 29) (orders for securing compliance), in subsection (8), in the definition of “relevant requirement”, after “that Act” (as inserted by paragraph 2 of Schedule 2) insert “, or section 43, 46 or 47 of that Act (complaints).”

- (3) A requirement imposed under section 47 on a water undertaker, sewerage undertaker or licensed water supplier is enforceable by the Water Services Regulation Authority under section 18 of the Water Industry Act 1991 (c. 56) (orders for securing compliance).
- (4) In section 22 of the Postal Services Act 2000 (c. 26) (final orders), in the definition of “relevant requirement” in subsection (5) (as substituted by paragraph 3(2) of Schedule 2 and amended by Schedule 5), after paragraph (b) insert “, or
 - (c) an obligation imposed under section 43, 46 or 47 of that Act (complaints).”