

# Enterprise and Regulatory Reform Bill

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## COMMONS DISAGREEMENTS, REASONS, AMENDMENTS TO WORDS SO RESTORED TO THE BILL AND AMENDMENTS IN LIEU

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[The page and line references are to HL Bill 45, the bill as first printed for the Lords.]

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### Clause 56

35 Page 54, line 40, leave out paragraph (a)

#### COMMONS DISAGREEMENT AND REASON

*The Commons disagree to Lords Amendment No. 35 for the following Reason –*

35A *Because it is appropriate for section 3 of the Equality Act 2006 to be repealed.*

36 Page 55, line 8, leave out subsection (6)

#### COMMONS DISAGREEMENT AND REASON

*The Commons disagree to Lords Amendment No. 36 for the following Reason –*

36A *Because it is more appropriate for the Commission for Equality and Human Rights to monitor progress by reference to its duties under sections 8 and 9 of the Equality Act 2006.*

### After Clause 56

37 Insert the following new Clause –

#### “Equality Act 2010: caste discrimination

(1) The Equality Act 2010 is amended as follows.

(2) After section 9(1)(c) (race) insert –  
“(d) caste;”.

## COMMONS DISAGREEMENT AND REASON

*The Commons disagree to Lords Amendment No. 37 for the following Reason –*

- 37A** *Because it is inappropriate to provide for caste to be an aspect of race for the purposes of the Equality Act 2010 without further consultation.*

**Clause 61**

- 38** Page 58, line 25, leave out subsection (3)

## COMMONS DISAGREEMENT AND AMENDMENTS TO WORDS SO RESTORED TO THE BILL

*The Commons disagree to Lords Amendment No. 38, and propose Amendments 38A and B to the words so restored to the Bill –*

- 38A** Page 58, line 34, leave out from beginning to end of line 2 on page 59
- 38B** Page 59, line 5, leave out “ , (2A) or (2B)” and insert “or (2A)”

**After Clause 61**

- 40** Insert the following new Clause –

**“Letting agents etc.**

- (1) Section 1 of the Estate Agents Act 1979 (estate agency work) is amended as follows.
- (2) In subsection (1) for the words “to which this Act applies” substitute “and in subsection (1A) below to which this Act applies.
  - (1A) This Act also applies, subject to subsections (2) to (4) below, to—
    - (a) things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as “the client”) who wishes to let or have the letting of an interest in land managed (for example, the collection of rents on his behalf)—
      - (i) for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to let an interest in land; or
      - (ii) after such introduction has been effected in the course of that business, for the purpose of securing the letting of the interest in land; or
      - (iii) for the purpose of, or with a view to, managing the letting of the interest in land on behalf of the client; or
      - (iv) for the purpose of, or with a view to, block management of interests in land; and
    - (b) management activities undertaken by any person in the course of a business (including a business in which he is employed) in connection with land or interests in land.””

## COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

*The Commons disagree to Lords Amendment No. 40, but propose Amendments 40A to H in lieu –*

**40A** Page 73, line 2, at end insert –

**“Redress schemes: lettings agency work**

- (1) The Secretary of State may by order require persons who engage in lettings agency work to be members of a redress scheme for dealing with complaints in connection with that work which is either –
  - (a) a redress scheme approved by the Secretary of State, or
  - (b) a government administered redress scheme.
- (2) A “redress scheme” is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person.
- (3) A “government administered redress scheme” means a redress scheme which is –
  - (a) administered by or on behalf of the Secretary of State, and
  - (b) designated for the purposes of the order by the Secretary of State.
- (4) The order may provide for the duty mentioned in subsection (1) to apply –
  - (a) only to specified descriptions of persons who engage in lettings agency work;
  - (b) only in relation to specified descriptions of such work.
- (5) The order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).
- (6) Before making the order, the Secretary of State must be satisfied that all persons who are to be subject to the duty will be eligible to join a redress scheme before the duty applies to them.
- (7) In this section, “lettings agency work” means things done by any person in the course of a business in response to instructions received from –
  - (a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”);
  - (b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it (“a prospective tenant”).
- (8) However, “lettings agency work” does not include any of the following things when done by a person who does no other things falling within subsection (7) –
  - (a) publishing advertisements or disseminating information;
  - (b) providing a means by which –
    - (i) a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or (as the case may be) prospective landlord;

- (ii) a prospective landlord and a prospective tenant can continue to communicate directly with each other.
- (9) “Lettings agency work” also does not include –
  - (a) things done by a local authority;
  - (b) things of a description, or things done by a person of a description, specified for the purposes of this section in an order made by the Secretary of State.
- (10) In subsection (7), “domestic tenancy” means –
  - (a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988 except where –
    - (i) the landlord is a private registered provider of social housing (as to which see section 80 of the Housing and Regeneration Act 2008), or
    - (ii) the tenancy is a long lease within the meaning given by section (*Redress schemes: property management work*)(10);
  - (b) a tenancy under which a dwelling-house is let as a separate dwelling and which is of a description specified for the purposes of this section in an order made by the Secretary of State.
- (11) An order under subsection (10)(b) may not provide for any of the following to be a domestic tenancy –
  - (a) a tenancy where the landlord is a registered provider of social housing (as to which see section 80 of the Housing and Regeneration Act 2008);
  - (b) a long lease within the meaning given by section (*Redress schemes: property management work*)(10).”

**40B** Page 73, line 2, at end insert –

**“Redress schemes: property management work**

- (1) The Secretary of State may by order require persons who engage in property management work to be members of a redress scheme for dealing with complaints in connection with that work which is either –
  - (a) a redress scheme approved by the Secretary of State, or
  - (b) a government administered redress scheme.
- (2) “Redress scheme” and “government administered redress scheme” have the same meanings as in section (*Redress schemes: lettings agency work*).
- (3) The order may provide for the duty mentioned in subsection (1) to apply –
  - (a) only to specified descriptions of persons who engage in property management work;
  - (b) only in relation to specified descriptions of such work.
- (4) The order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).
- (5) Before making the order, the Secretary of State must be satisfied that all persons who are to be subject to the duty will be eligible to join a redress scheme before the duty applies to them.

- (6) In this section, “property management work” means things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where—
- (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C’s behalf, and
  - (b) the premises consist of or include a dwelling-house let under a relevant tenancy.
- (7) However, “property management work” does not include—
- (a) things done by a person who is a social landlord for the purposes of Schedule 2 to the Housing Act 1996;
  - (b) things of a description, or things done by a person of a description, specified for the purposes of this section in an order made by the Secretary of State.
- (8) In subsection (6), “relevant tenancy” means—
- (a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988;
  - (b) a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977;
  - (c) a long lease other than one to which Part 2 of the Landlord and Tenant Act 1954 applies;
  - (d) a tenancy of a description specified for the purposes of this section in an order made by the Secretary of State.
- (9) An order under subsection (8)(d) may not provide for a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies to be a relevant tenancy.
- (10) In subsection (8)(c), “long lease” means a lease which is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 or which, in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be such a lease if the tenant’s total share (within the meaning given by that section) were 100 per cent.”

40C Page 73, line 2, at end insert—

**“Orders under section (Redress schemes: lettings agency work) or (Redress schemes: property management work): enforcement**

- (1) An order under section (*Redress schemes: lettings agency work*)(1) or (*Redress schemes: property management work*)(1) may make provision—
- (a) for sanctions to be imposed in respect of a breach of a requirement imposed by the order;
  - (b) for the investigation of suspected breaches of such a requirement.
- (2) The sanctions for which provision may be made in the order are—
- (a) the imposition of civil penalties;
  - (b) the making of orders prohibiting a person from engaging in lettings agency work or (as the case may be) property management work or from engaging in a particular description of such work;
  - (c) the creation of criminal offences in respect of breaches of orders mentioned in paragraph (b).

- (3) Provision made for the imposition of a sanction by virtue of subsection (1)(a) must include—
  - (a) provision for appeals to a court or tribunal against the imposition of the sanction, and
  - (b) such other provision as the Secretary of State considers appropriate for safeguarding the interests of persons on whom the sanction may be imposed.
- (4) Provision made by virtue of this section may confer functions on a person that exercises functions of a public nature.
- (5) The Secretary of State may make payments out of money provided by Parliament to a person on whom functions are conferred by virtue of this section.”

**40D** Page 73, line 2, at end insert—

**“Sections (Redress schemes: lettings agency work) to (Orders under section (Redress schemes: lettings agency work) or (Redress schemes: property management work): enforcement): minor definitions**

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

**40E** Page 73, line 2, at end insert—

**“Approval of redress schemes for the purposes of section (Redress schemes: lettings agency work) or (Redress schemes: property management work)**

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

State may be designated for the purposes of section (*Redress schemes: lettings agency work*) or (*Redress schemes: property management work*).”

40F Page 73, line 2, at end insert –

**‘Orders under sections (Redress schemes: lettings agency work) to (Approval of redress schemes for the purposes of section (Redress schemes: lettings agency work) or (Redress schemes: property management work)): supplemental**

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

40G Page 76, line 2, at end insert –

“( ) sections (*Redress schemes: lettings agency work*) to (*Orders under sections (Redress schemes: lettings agency work) to (Approval of redress schemes for the purposes of section (Redress schemes: lettings agency work) or (Redress schemes: property management work))*): supplemental) extend only to England and Wales;”

**40H** Title, line 7, after “directors” insert “to make provision about redress schemes relating to lettings agency work and property management work;”