

1981 No. 1518**ESTATE AGENTS****The Estate Agents (Appeals) Regulations 1981**

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Coming into Operation 3rd May 1982

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The Secretary of State, in exercise of the powers conferred on him by sections 7(3) and 30(3) of the Estate Agents Act 1979(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Estate Agents (Appeals) Regulations 1981 and shall come into operation on 3rd May 1982.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the Estate Agents Act 1979;

“appeal” means appeal to the Secretary of State under section 7 of the Act, and “the appeal” shall be construed accordingly;

“appellant” means a person making, or proposing to make, an appeal against a decision, being a person who receives notice under paragraph 9 of Schedule 2 to the Act;

“appointed person” means a person or persons appointed by the Secretary of State in relation to an appeal in accordance with the provisions of Regulation 19;

“decision” means a decision of the Director mentioned in section 7 of the Act;

“the Director’s reply” means a notice given under Regulation 4(c) together with any document given therewith;

“notice”, where required or authorised to be given under these Regulations, means a notice in writing;

“notice of appeal” means a notice given under Regulation 2(1);

“notice of grounds” means a notice given under Regulation 3(1);

“notice of amendment” means a notice given under Regulation 6(3);

“party”, in relation to an appeal, means any party to the appeal, including the Director;

“period for appeal” means the period mentioned in Regulation 2(1).

COMMENCEMENT OF APPEAL

Notice of appeal

2.—(1) An appellant may appeal by giving to the Secretary of State, within the period of 28 days beginning with the date on which notice under paragraph 9 of Schedule 2 to the Act is given to him (“period for appeal”), a notice (“notice of appeal”); and a notice of appeal shall comply with the requirements of Schedule 1 to these Regulations.

(2) In the case of a notice of appeal which—

(a) is given to the Secretary of State within the period for appeal; and

(b) appears to him to comply with the requirements of Schedule 1;

the Secretary of State shall—

(i) inform the appellant of its receipt; and

(ii) send a copy of it to the Director.

Notice of grounds of appeal

3.—(1) An appellant shall at or after the time when he gives notice of appeal to the Secretary of State (but not later than the end of the period for appeal) give to the Secretary of State notice of the grounds of appeal (“notice of grounds”) and a notice of grounds shall comply with the requirements of Schedule 2 to these Regulations.

(2) In the case of a notice of grounds which—

(a) is given to the Secretary of State at a time which satisfies paragraph (1) above; and

(b) appears to him to comply with the requirements of Schedule 2;

the Secretary of State shall—

(i) inform the appellant of its receipt; and

(ii) send a copy of it to the Director.

Director’s reply

4. The Director shall, within the period of 28 days beginning with the date on which a copy of the notice of grounds is given to him, give to the Secretary of State—

(a) a copy of the notice given to the appellant under paragraph 9 of Schedule 2 to the Act together with the Director’s reasons for his decision, including the facts which in his opinion justify the decision;

(b) in the case of an appeal against a decision of the Director under section 6(4) or (5) of the Act on an application made by the appellant, a copy of the application and of any document containing information in support of the application; and

(c) notice setting out any representations which the Director wishes to make together with a copy of any document which he wishes to produce (“the Director’s reply”).

Appellant’s rejoinder

5. The Secretary of State shall—

(a) give a copy of the Director’s reply to the appellant with a notice inviting him to give to the Secretary of State, within a period of 28 days beginning with the date on which the notice is given to him, notice setting out any further representations he wishes to make and a copy of any document he wishes to produce; and

(b) give a copy of any notice or other document received under paragraph (a) above to the Director.

Amendment of grounds before directions for hearing

6.—(1) The Secretary of State shall amend the notice of grounds where—

(a) the appellant has given to the Secretary of State at a time when he is permitted to do so under paragraph (2) below a notice setting out the proposed amendment; and

(b) it appears to the Secretary of State that the amendment should be made.

(2) An appellant may give notice to the Secretary of State under paragraph (1)(a) above at any time before the Secretary of State gives notice to the

parties under Regulation 9(4) below that a hearing of oral representations is not necessary or gives directions under Regulation 10(1) below for oral representations to be heard by an appointed person.

(3) When the Secretary of State makes an amendment of a notice of grounds under this Regulation he shall give notice of that fact setting out the amendment ("notice of amendment") to the appellant and to the Director.

(4) Where an appellant has given notice to the Secretary of State under paragraph (1)(a) above and it does not appear to the Secretary of State that the amendment should be made he shall give the appellant notice of that fact, giving his reasons.

Director's reply to amendment

7.—(1) The Director shall within the period of 14 days beginning with the date on which a notice of amendment is given to him give to the Secretary of State notice setting out any representations he wishes to make thereon together with a copy of any further document which he wishes to produce.

(2) The Secretary of State shall—

(a) give a copy of any notice or document given under paragraph (1) above to the appellant with a notice inviting him to give to the Secretary of State, within a period of 14 days beginning with the date on which the notice is given to him, notice setting out any further representations he wishes to make and a copy of any further document he wishes to produce; and

(b) give a copy of any notice or other document received under sub-paragraph (a) above to the Director.

DISPOSAL OF APPEAL WITHOUT HEARING

Director's consent to allowing of appeal

8.—(1) The Secretary of State after taking into account any notice and any document received under Regulations 2 to 7 above, or 21 below, may at any time give notice to the Director that he proposes under section 7(2) of the Act to give the directions which the appellant seeks unless the Director objects by notice given to the Secretary of State within a period of 14 days beginning with the date on which that notice is given.

(2) If, pursuant to a notice under paragraph (1) above, the Director—

(a) does not so object, or informs the Secretary of State that he will not so object, within that period, the Secretary of State shall give those directions; or

(b) does so object within that period, the Secretary of State shall give notice to the appellant in accordance with the provisions of Regulation 9(1) below.

Contested appeal without hearing

9.—(1) In a case where Regulation 8(2)(a) above does not have effect the Secretary of State shall give notice to the appellant that he will give directions for oral representations to be heard unless, within a period of 14 days beginning with the date on which that notice is given, the appellant gives notice to him that the appellant prefers the appeal to be heard without oral representations.

(2) Where the appellant has given notice pursuant to paragraph (1) above the Secretary of State may give notice to any party—

- (a) specifying any question which appears to him to be material; and
- (b) inviting that party to give to him, within a period of 14 days beginning with the date on which that notice is given, notice setting out any representations which he wishes to make;

and where a notice is given to the Secretary of State under sub-paragraph (b) above he shall—

- (i) send a copy of it to the other party; and
- (ii) by notice invite that party to give to him, within a period of 14 days beginning with the date on which that notice is given, notice setting out any representations he wishes to make.

(3) Where the appellant has given notice pursuant to paragraph (1) above and it appears to the Secretary of State that it is not necessary for oral representations to be heard, the Secretary of State shall give notice to the Director—

- (a) informing him of that fact; and
- (b) inviting him, within a period of 7 days beginning with the date on which that notice is given, to give to the Secretary of State notice setting out any representations he wishes to make about the necessity of oral representations being heard.

(4) Where the appellant has given notice pursuant to paragraph (1) above and it appears to the Secretary of State after taking account of any notice given to him under this Regulation that it is not necessary for oral representations to be heard, the Secretary of State shall give notice to the parties—

- (a) that a hearing of oral representations is not necessary; and
- (b) that the Secretary of State is proceeding to—
 - (i) refer the appeal to an appointed person for consideration and report without a hearing of oral representations; or
 - (ii) give directions under section 7(2) of the Act for disposing of the appeal;

and the Secretary of State shall so refer the appeal or give those directions.

DISPOSAL OF APPEAL WITH HEARING

Directions for hearing

10.—(1) Where the Secretary of State so directs, oral representations shall be heard by three appointed persons on his behalf unless he directs that they shall be heard by a different number of persons.

(2) The Secretary of State shall give notice to the parties of any direction under paragraph (1) above.

(3) A direction shall not be given under paragraph (1) above that oral representations shall be heard by a different number of persons unless the Secretary of State has afforded the parties an opportunity of making representations to him thereon.

Amendment of grounds at hearing

11.—(1) An appellant may amend a notice of grounds in the course of the hearing of oral representations if the appointed person gives leave for the amendment which is proposed to be made.

(2) The appointed person shall not give such leave unless he has informed the Director that he is minded to do so and afforded to him an opportunity of making representations on the proposed amendment.

Notice of hearing

12. In any case other than a case where the appeal is—

(a) disposed of under Regulation 8(2)(a) above or 9(4)(b)(ii) above; or
(b) referred to an appointed person under Regulation 9(4)(b)(i) above;
the Secretary of State shall, after taking into account any notice, statement and other document which has been sent to the Secretary of State under the foregoing provisions of these Regulations and not less than 21 days before the date on which oral representations are to be heard, give notice to the parties of the date, time and place of the hearing.

Admission of members of Council on Tribunals, etc

13. A member of the Council on Tribunals or of the Scottish Committee of the Council shall be permitted to attend the hearing of oral representations in his capacity as such a member.

Procedure at hearing

14.—(1) The appointed person shall give such directions at the hearing of oral representations as appear to him to be appropriate for the proper conduct thereof.

(2) Without prejudice to the generality of paragraph (1) above, the appointed person shall—

- (a) permit any person authorised by any party to do so (“representative”) to conduct that party’s case on his behalf;
- (b) afford to the parties or their representatives an opportunity to make an opening and a closing statement;
- (c) if he adjourns the hearing, inform the parties a reasonable time before its resumption of the date, time and place of that resumption;
- (d) permit each party or his representative to call witnesses;
- (e) address any questions which appear to him to be appropriate to each party and to any witness; and
- (f) permit any questions which appear to him to be appropriate to be addressed by each party or his representative to any party who is present and to any witness.

Appellant’s failure to appear at hearing

15. Where the appellant or his representative does not appear at the date, time and place of the hearing the appointed person may—

- (a) adjourn the hearing; or
- (b) if there appears to him to be good reason to do so—
 - (i) proceed to hear the Director, or his representative, if he appears;
or
 - (ii) proceed forthwith to prepare his report in accordance with Regulation 16 below.

Appointed person's report

16.—(1) Where the appeal is referred to the appointed person under Regulation 9(4)(b)(i) above or the appointed person has completed the hearing of oral representations under Regulations 10 to 15 above, he shall take into account any representations made and evidence produced in the course of the appeal and give to the Secretary of State a reasoned report in writing thereon.

(2) Where the appointed person has proceeded under Regulation 15(b) above he shall expressly state that he has done so in his report.

Dismissal of appeal after appellant's failure to appear

17.—(1) Where it appears from the report of the appointed person that he has proceeded under Regulation 15(b) above the Secretary of State may (subject to paragraphs (2) and (3) below) give directions dismissing the appeal.

(2) Where it so appears from that report and the Secretary of State is minded to give directions dismissing the appeal (whether or not by virtue of paragraph (1) above) the Secretary of State shall (unless it appears that an appointed person has proceeded under Regulation 15(b) above on more than one occasion), not less than 7 days before he gives such directions, give notice to the appellant of the fact that he is so minded.

(3) In a notice given under paragraph (2) above the Secretary of State shall inform the appellant that he will give directions dismissing the appeal unless the appellant satisfies him within a period of 7 days beginning with the date on which the notice is given that there was sufficient reason for the failure to appear; but where the appellant so satisfies the Secretary of State, the Secretary of State shall give such directions as appear to him to be appropriate for a further hearing of oral representations and these Regulations shall apply accordingly.

GENERAL PROVISIONS

Notice of directions disposing of appeal

18.—(1) The Secretary of State shall give notice to the parties of his directions for disposing of the appeal under section 7(2) of the Act and that notice shall in addition contain a statement—

- (a) setting out the Secretary of State's reasons for his directions under section 7(2) of the Act;
- (b) declaring that if the appellant is dissatisfied in point of law with the decision of the Secretary of State, the appellant may by virtue of section 7 of the Act appeal against that decision to the High Court, the Court of Session or a judge of the High Court in Northern Ireland.

(2) In any case where the directions which the Secretary of State gives under section 7(2) of the Act are not those which the appellant stated that he wished the Secretary of State to give in the notice of grounds, or in that notice as amended under Regulations 6 and 11 above as the case may be, the Secretary of State shall give to the appellant a copy of any report relating to the appeal which was given to the Secretary of State under Regulation 16(1) above.

Appointment of appointed person

19.—(1) The Secretary of State may appoint to hear an appeal on his behalf any person excluding a person who is in the civil employment of Her Majesty (“appointed person”) who appears to him by reason of his knowledge or experience to be qualified to do so; and except where he appoints only one such person in relation to an appeal he may determine which of them is to preside.

(2) The Secretary of State may appoint any person to give the appointed person advice on matters of law or on any other matter relating to the appeal.

Evidence

20. For the avoidance of doubt it is hereby declared that evidence may be admitted in an appeal whether or not it would be admissible in a court of law.

Disclosure of documents

21.—(1) The Secretary of State at any time, or the appointed person during the hearing of oral representations by him, may invite any party to supply to him any document or copy thereof which appears to him to be material to the appeal.

- (2) Where any document is supplied by a party under paragraph (1) above—
- (a) to the Secretary of State, he shall send a copy thereof to any other party; or
 - (b) to the appointed person, he shall afford to any other party an opportunity to examine it or shall otherwise make known its contents to that party.

Protection of confidentiality, etc. of documents

22. In any case where under these Regulations he is required to make known in any way the contents of any document to any party, the Secretary of State or the appointed person, as the case may be, may, so far as that is practicable, exclude from any copy of any document or from information about its contents any matter which relates to the private affairs of a person who is not a party and the publication of which would or might in the opinion of the Secretary of State or of the appointed person prejudicially affect the interests of that person.

Abandonment of appeal

23.—(1) The appellant may at any time by notice to the Secretary of State abandon the appeal.

(2) The Secretary of State shall send a copy of any notice given under paragraph (1) to the Director.

Effect of non-compliance with these Regulations

24. Where, by reason of anything done or left undone, there has been a failure in any respect to comply with the requirements of these Regulations, other than those of Regulation 2(1) above, the failure shall not terminate the appeal unless the Secretary of State so directs; but where there has been such a failure he may give such directions dealing with the proceedings generally as he thinks fit.

Costs of appeals

25.—(1) Any costs directed to be paid under section 7(2) of the Act and required to be taxed shall be taxed by a Master of the Supreme Court Taxing Office.

(2) Any sum payable in respect of any costs directed to be paid under section 7(2) of the Act shall, on application being made to the High Court by the party to whom costs have been directed to be paid, be enforceable as if he had obtained a judgement of that Court in his favour.

(3) In Scotland any expenses directed to be paid under section 7(2) of the Act and required to be taxed shall be taxed by the Auditor of the Court of Session.

(4) The certificate of taxation of such expenses taxed in accordance with paragraph (3) above may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued from the Books of Council and Session.

Extensions of time

26. At any time the Secretary of State may extend the period, other than the period for giving notice of appeal under Regulation 2(1) above, within which a person is required or authorised by these Regulations to do anything and these Regulations shall have effect accordingly.

Power of Secretary of State to give procedural directions

27. Subject to the provisions of the Act and of these Regulations, the procedure to be followed in the course of an appeal except in the course of the hearing of oral representations shall be such as the Secretary of State directs.

26th October 1981.

Sally Oppenheim,
Minister of State,
Department of Trade.

SCHEDULE 1

(Regulation 2)

NOTICE OF APPEAL

Every notice of appeal shall—

- (1) identify the appellant and give his business address and his address for service of documents (if different);
- (2) identify the decision against which the appellant is appealing; and
- (3) be signed by or on behalf of the appellant.

SCHEDULE 2

(Regulation 3)

NOTICE OF GROUNDS OF APPEAL

Every notice of grounds of appeal shall—

- (1) if it is not given to the Secretary of State together with the notice of appeal to which it relates, identify that notice;
- (2) contain a concise statement of the grounds of appeal—
 - (a) indicating—
 - (i) any reason; and
 - (ii) any finding of fact
relied on by the Director for his decision which the appellant disputes;
 - (b) giving particulars of any reason or fact upon which the appellant relies in relation to the matters disputed under sub-paragraph (a) above;
 - (c) giving particulars of any other reason or fact upon which the appellant relies;
and
 - (d) indicating any point on which he relies under sub-paragraphs (b) and (c) above which appears to him to be a point of law;
- (3) state the nature of the directions which the appellant wishes the Secretary of State to give under section 7(2) of the Act; and
- (4) be signed by or on behalf of the appellant.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations prescribe the period within which and the manner in which appeals may be brought under section 7 of the Estate Agents Act 1979, which provides for the bringing of appeals to the Secretary of State against certain decisions of the Director General of Fair Trading—referred to as “the Director” in the Regulations—in relation to Orders prohibiting unfit persons from doing estate agency work, to Warning Orders and to applications to revoke or vary such Orders.

The Regulations impose certain time limits and provide for them to be extended by the Secretary of State, other than the period for bringing an appeal under Regulation 2(1). A fixed period for bringing an appeal is prescribed by the Regulations since, under paragraph 10 of Schedule 2 to the Act, the Director’s Order cannot come into operation (except in special circumstances) until the period for bringing an appeal under section 7(1) of the Act has expired (or, if an appeal is brought, until it has been finally determined).

The Regulations also make provision as to the persons by whom such appeals are to be heard, the manner in which they are to be conducted, for taxing costs, or in Scotland expenses, directed to be paid and for the enforcement of any such direction and as to other matters connected with such appeals.

