

Order made by the Secretary of State, laid before Parliament under section 3(6) of the Estate Agents Act 1979, for approval by resolution of each House of Parliament within 28 days beginning with the day on which it was made, subject to extension for periods of dissolution, prorogation or adjournment for more than 4 days.

STATUTORY INSTRUMENTS

1991 No. 1032

ESTATE AGENTS

The Estate Agents (Undesirable Practices) (No. 2) Order 1991

<i>Made</i>	- - - -	<i>19th April 1991</i>
<i>Laid before Parliament</i>		<i>19th April 1991</i>
<i>Coming into force</i>	- -	<i>29th July 1991</i>

The Secretary of State, after consulting in accordance with section 30(1) of the Estate Agents Act 1979⁽¹⁾ the persons therein referred to, in exercise of the powers conferred on him by section 3(1)(d) of that Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation, commencement, interpretation and revocation

1.—(1) This Order may be cited as the Estate Agents (Undesirable Practices) (No. 2) Order 1991 and shall come into force on 29th July 1991.

(2) In this Order—

“the Act” means the Estate Agents Act 1979;

“associate” has the meaning given to it in section 32(1) of the Act;

“client” means a person on whose behalf an estate agent acts;

“connected person” in relation to an estate agent means any of the following—

(a) his employer or principal, or

(b) any employee or agent of his, or

(c) any associate of his or of any person mentioned in (a) and (b) above;

“estate agent” means any person who in the course of a business (including one in which he is employed) engages in estate agency work and includes cases where he is negotiating on his own behalf;

“estate agency work” has the meaning given in section 1(1) of the Act;

“financial benefit” includes commission and any performance related bonus;

“interest in land” means any of the interests referred to in section 2 of the Act and references to an

“interest in the land” are references to the particular interest in land of which the estate agent is engaged to secure the disposal or acquisition;

“promptly” means within as short a period as is reasonably practicable in the circumstances, from the moment when what is to be done can reasonably be done;

“purchaser” means a person to whom an interest in land is transferred or in whose favour it is created;

“services” means any service for consideration provided, or to be provided, to a prospective purchaser—

- (a) by an estate agent or a connected person, or (in a case where the estate agent or connected person would derive a financial benefit from the provision of the service) by another person, and which
- (b) is such as would ordinarily be made available to a prospective purchaser in connection with his acquisition of an interest in land or his use or enjoyment of it (including the provision to that purchaser of banking and insurance services and financial assistance and securing the disposal for that purchaser of an interest in land if that disposal is one which has to be made in order for him to be able to make the acquisition he is proposing or is one which is a result of that acquisition).

(3) The Estate Agents (Undesirable Practices) Order 1991(2) is hereby revoked.

Undesirable Practices

2. For the purposes of section 3(1)(d) of the Act the following practices in relation to estate agency work are hereby declared undesirable, that is to say as regards—

- (a) the disclosure of a personal interest, any failure to disclose that interest as described in Schedule 1 to this Order;
- (b) the arrangement and performance of services, any act or omission as described in Schedule 2 to this Order;
- (c) other matters in the course of that work, any misdescription or omission of the kind described in Schedule 3 to this Order;

and the provisions of such Schedules shall have effect for supplementing the above paragraphs.

19th April 1991

Peter Lilley
Secretary of State
Department of Trade and Industry

SCHEDULE 1

Article 2(a)

Disclosure of Personal Interest

Failure by an estate agent:

1. To make disclosure of his personal interest as required by section 21(1) of the Act promptly and in writing.
2. To disclose to his client promptly and in writing that—
 - (a) he himself has, or is seeking to acquire, a beneficial interest in the land or in the proceeds of sale of any interest in the land; or
 - (b) he knows that any connected person has, or is seeking to acquire, a beneficial interest in the land or in the proceeds of sale of any interest in the land.

SCHEDULE 2

Article 2(b)

Arrangement and performance of services

1. Discrimination against a prospective purchaser by an estate agent on the grounds that that purchaser will not be, or is unlikely to be, accepting services.
2. In cases where an estate agent has introduced a prospective purchaser to his client and that purchaser has made an offer, failure by the estate agent to forward to his client promptly and in writing at all stages before contracts for the disposal of the interest in the land have been exchanged, or in Scotland before a contract for the disposal of the interest in the land has been concluded, an accurate list of services, provided that—
 - (a) an application from the prospective purchaser for services has been received by the estate agent or a connected person or (in a case where the estate agent or a connected person would derive a financial benefit from the provision of the service) by another person; and
 - (b) the estate agent knows that such application has been received and that it is an application for services, being services in connection with the prospective purchaser's acquisition of the interest in the land or his use or enjoyment of it, or with his disposal of an interest in land which he has to make in order to make that acquisition or which is the result of that acquisition; and
 - (c) that application has not been refused.

In this paragraph "offer" includes a conditional offer and "forward" means despatch to the client by hand, post or fax at the address or to the number given by the client to the estate agent, which despatch may be made by the person by whom or which the service is being, or is to be, provided.

SCHEDULE 3

Article 2(c)

Other Matters

1. The making by an estate agent, knowingly or recklessly and orally or in writing, of any misrepresentation—
 - (a) as to the existence of, or details relating to, any offer for the interest in the land; or
 - (b) as to the existence or status of any prospective purchaser of an interest in the land.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

2. The failure by an estate agent to forward to his client promptly and in writing accurate details (other than those of a description which the client has indicated in writing he does not wish to receive) of any offer the estate agent has received from a prospective purchaser in respect of an interest in the land.

3. In this Schedule—

- (a) in paragraph 1 a misrepresentation is “recklessly” made if it is made regardless of whether it is true or false, whether or not the estate agent had reasons for believing that it might be false;
- (b) “offer” in paragraphs 1 and 2 includes any conditional offer, but does not include offers of a description which the client has indicated in writing to the estate agent need not be forwarded to him;
- (c) paragraph 1(a) does not affect the right of an auctioneer to bid at an auction in accordance with section 6 of the Sale of Land by Auction Act 1867(3) or in Scotland any rule of law of like effect;
- (d) the “status of any prospective purchaser” in paragraph 1(b) includes the financial standing of that purchaser and his ability to exchange contracts expeditiously or in Scotland conclude a contract expeditiously;
- (e) “forward” in paragraph 2 means despatch to the client by hand, post or fax at the address or to the number given by the client to the estate agent.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 3(1)(d) of the Estate Agents Act 1979 confers power on the Secretary of State to declare practices in relation to estate agency work to be undesirable. When a practice has been so declared the Director General of Fair Trading can, if satisfied that a person has engaged in it and is unfit to carry on estate agency work, make an order prohibiting that person from carrying on estate agency work, either at all or of a description specified.

By this Order certain practices are declared to be undesirable, namely, the failure by an estate agent promptly and in writing to disclose certain interests (article 2(a) and Schedule 1), discriminatory conduct against purchasers who are not accepting services from the agent or from certain other persons, and the failure to keep clients informed as to such services as have been applied for by prospective purchasers (article 2(b) and Schedule 2), the making of misrepresentations and the failure promptly and in writing to forward to the client accurate details of offers received (article 2(c) and Schedule 3).