

SCHEDULE 2

Article 5(3)

Consequential, supplementary, incidental and transitional provision and savings relating to the transfer of functions under the Estate Agents Act 1979

PART 1

Amendments to Acts

Estate Agents Act 1979

1.—(1) The 1979 Act(1) is amended as follows.

(2) In the italic heading before section 3 for “*Office of Fair Trading*” substitute “*the lead enforcement authority*”.

(3) In section 3 (orders prohibiting unfit persons from doing estate agency work)—

(a) in subsection (1)—

(i) for “Office of Fair Trading (in this Act referred to as “the OFT”)” substitute “lead enforcement authority”;

(ii) for “OFT” substitute “lead enforcement authority”;

(b) in subsections (2), (4), (5) and (8), in each place it occurs, for “OFT” substitute “lead enforcement authority”;

(4) In the following provisions for “OFT”, in each place it occurs, substitute “lead enforcement authority”—

(a) section 4(1), (1A)(b), (1B)(b), (1C)(b), (2) and (3)(2);

(b) section 5(1)(a), (2), (3) and (5)(3);

(c) section 6(1), (3), (4), (5) and (6)(4);

(d) section 7(1)(5);

(e) section 8(1), (3), (4), (5) and (6);

(f) the heading for section 9;

(g) section 9(1) and (6)(6).

(5) After section 9 insert—

“Notice of convictions and judgments

9A.—(1) This section applies if—

(a) a person is convicted of an offence by or before a court in the United Kingdom, or

(b) a judgment is given against a person by a court in civil proceedings in the United Kingdom.

(1) References in the 1979 Act to the Office of Fair Trading were substituted for references to the Director General of Fair Trading by paragraph 9 of Schedule 25 to the 2002 Act.

(2) Section 4(1), (1A), (1B) and (1C) was substituted for section 4(1), section 4(2) and (3) was amended and section 4(4) was inserted by section 56 of the 2007 Act.

(3) Section 5(3) was amended by paragraph 5(a) of Schedule 26 and paragraph 1 of Schedule 27 to the Equality Act 2010 (c. 15).

(4) Section 6(4) was amended by paragraph 2(a) of Schedule 7 to the 2007 Act.

(5) Section 7(1) and (2) was amended by paragraph 3 of Schedule 1 to S.I. 2009/1836.

(6) Section 9(6) was amended by paragraph 37(a) of Schedule 3 and paragraph 1 of Schedule 4 to the Equality Act 2006 (c. 3).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 No. 631*

- (2) The court may make arrangements to bring the conviction or judgment to the attention of the lead enforcement authority if it appears to the court that—
- (a) having regard to the functions of the lead enforcement authority under this Act it is expedient for the conviction or judgment to be brought to the attention of the lead enforcement authority, and
 - (b) without such arrangements the conviction or judgment may not be brought to the attention of the lead enforcement authority.”.
- (6) In section 11 (powers of entry and inspection) omit subsections (6) and (7).
- (7) In the following provisions for “OFT”, in each place it occurs, substitute “lead enforcement authority”—
- (a) section 13(4);
 - (b) section 15(5);
 - (c) section 17(1), (5) and (6);
 - (d) section 19(6);
 - (e) section 20(3);
 - (f) section 21(6);
 - (g) section 23A(8)(b)(i) and (9)(7).
- (8) In section 23B (enforcement)(8)—
- (a) in subsection (1) omit “other than the OFT”;
 - (b) in subsection (4) for “OFT”, in both places it occurs, substitute “lead enforcement authority”.
- (9) In section 25 (general duties of OFT)—
- (a) in the heading for “OFT” substitute “the lead enforcement authority”;
 - (b) in subsections (1), (2) and (3) for “OFT”, in each place it occurs, substitute “lead enforcement authority”;
- (10) In the following provisions for “OFT”, in each place it occurs, substitute “lead enforcement authority”—
- (a) section 26(1)(a) and (4);
 - (b) section 29(1) and (3);
 - (c) section 30(1).
- (11) In section 33 (general interpretation provisions)(9), in subsection (1)—
- (a) in the definition of “general notice” for “OFT” substitute “lead enforcement authority”;
 - (b) omit the definition of “OFT”;
 - (c) at the appropriate place insert—
““the lead enforcement authority” means Powys County Council;”.
- (12) In section 34 (financial provisions), in subsection (2) for the words from “paid to” to “this Act” substitute “paid to the lead enforcement authority under this Act”.
- (13) In Schedule 2 (procedure etc.)—
- (a) in Part 1 (orders and decisions under sections 3, 4 and 6)—

(7) Section 23A was inserted by paragraph 2 of Schedule 6 to the 2007 Act.

(8) Section 23B was inserted by paragraph 2 of Schedule 6 to the 2007 Act.

(9) The definition of the Director General of Fair Trading was repealed by paragraph 1 of Schedule 26 to the 2002 Act.

- (i) in paragraph 1(1)(a) for “OFT” substitute “lead enforcement authority”;
 - (ii) in paragraph 1(1)(b) for “OFT’s” substitute “lead enforcement authority’s”;
 - (iii) in paragraph 1(2) for “OFT” substitute “lead enforcement authority”;
 - (iv) in paragraph 2(1)—
 - (aa) for “OFT” substitute “lead enforcement authority”; and
 - (bb) for “OFT’s” substitute “lead enforcement authority’s”;
 - (v) in the following provisions for “OFT”, in each place it occurs, substitute “lead enforcement authority”—
 - (aa) paragraph 2(2) and (3);
 - (bb) paragraph 3;
 - (cc) paragraph 4(1) and (2);
 - (dd) paragraph 5;
 - (ee) paragraph 6(1), (2) and (3);
 - (ff) paragraph 7;
 - (gg) paragraph 8;
 - (vi) in paragraph 9(1) for “OFT’s” substitute “lead enforcement authority’s”;
 - (vii) in paragraph 10(2) for “OFT” substitute “lead enforcement authority”;
 - (b) in Part 2 (applications under sections 6(1) and 8(3)), in the following provisions for “OFT”, in each place it occurs, substitute “lead enforcement authority”—
 - (i) paragraph 11;
 - (ii) paragraph 12;
 - (iii) paragraph 13;
 - (iv) paragraph 14.
- (14) In Schedule 3 (redress schemes)(**10**), in the following provisions for “OFT”, in each place it occurs, substitute “lead enforcement authority”—
- (a) paragraph 1;
 - (b) paragraph 2(1) and (2);
 - (c) paragraph 3(1) and (2);
 - (d) paragraph 4;
 - (e) paragraph 5;
 - (f) the italic heading before paragraph 6;
 - (g) paragraph 6;
 - (h) paragraph 7;
 - (i) paragraph 8;
 - (j) paragraph 9;
 - (k) the italic heading before paragraph 10;
 - (l) paragraph 10;
 - (m) paragraph 11;
 - (n) paragraph 12;

(10) Schedule 3 was inserted by paragraph 3 of Schedule 6 to the 2007 Act.

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- (o) paragraph 13.
- (15) In Schedule 4 (penalty notices under section 23B(1)(11)—
 - (a) in paragraph 1 omit “other than the OFT”;
 - (b) in paragraph 10—
 - (i) in paragraph (a) omit “other than the OFT”;
 - (ii) for “by the OFT” substitute “by the lead enforcement authority”.

Companies Act 1985

- 2. In Schedule 15D to the Companies Act 1985(12) (disclosures)—
 - (a) in paragraph 17 omit paragraph (c);
 - (b) after paragraph 27 insert—
 - “27A. A disclosure for the purpose of enabling or assisting the lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) to exercise its functions under the Estate Agents Act 1979.”.

Tribunals and Inquiries Act 1992

- 3.—(1) The Tribunals and Inquiries Act 1992(13) is amended as follows.
 - (2) In section 14 (restricted application of Act in relation to certain tribunals)(14) after subsection (1)(a) insert—
 - “(aa) the lead enforcement authority referred to in paragraph 16A of Schedule 1,”.
 - (3) In Part 1 of Schedule 1 (tribunals under direct supervision of Council)(15)—
 - (a) after paragraph 16 insert—

“Estate agents	16A. The lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) in respect of its functions under the Estate Agents Act 1979, and any member of its staff authorised to exercise those functions.”;
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- (b) in paragraph 17 omit “and the Estate Agents Act 1979”.

Enterprise Act 2002

- 4. In section 231 of the Enterprise Act 2002 (notice of convictions and judgment to OFT), in subsection (2) omit “or under the Estate Agents Act 1979 (c.38)”.

Companies Act 2006

- 5.—(1) The Companies Act 2006(16) is amended as follows.

(11) Schedule 4 was inserted by paragraph 4 of Schedule 6 to the 2007 Act.
 (12) 1985 c. 6; Schedule 15D was inserted by paragraph 25 of Part 3 of Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).
 (13) 1992 c. 53.
 (14) Section 14(1)(b) was amended by paragraph 27(3) of Schedule 25 to the 2002 Act.
 (15) The entry for Fair Trading in paragraph 17 was revoked by paragraph 4 of Part 1 of Schedule 1 to S.I. 2013/1881, which was commenced on 26 July 2013 for the purposes in Article 1(2) of that Order, coming fully into force on 1st April 2014.
 (16) 2006 c. 46.

- (2) In Part 2 of Schedule 2 (specified descriptions of disclosures)(**17**)—
- (a) in paragraph 25 omit paragraph (c);
 - (b) after paragraph 36 insert—
“**36A.** A disclosure for the purpose of enabling or assisting the lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) to exercise its functions under the Estate Agents Act 1979.”
- (3) In Part 2 of Schedule 11A (specified descriptions of disclosures)(**18**)—
- (a) in paragraph 39 omit paragraph (c);
 - (b) after paragraph 51 insert—
“**51A.** A disclosure for the purpose of enabling or assisting the lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) to exercise its functions under the Estate Agents Act 1979.”

Public Bodies Act 2011

6. In Schedule 5 to the Public Bodies Act 2011 (power to modify or transfer functions: bodies and offices) omit the entry for the Office of Fair Trading (“OFT”).

PART 2

Amendments to Acts of the Scottish Parliament

Housing (Scotland) Act 2006

- 7.—(1) In section 117 of the Housing (Scotland) Act 2006(**19**) (notification of breach of duty)—
- (a) in subsection (1)(a) for “Office of Fair Trading” substitute “lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979)”;
 - (b) in subsection (2) for “Office of Fair Trading” substitute “lead enforcement authority”.

PART 3

Amendments to Statutory Instruments

Estate Agents (Entry and Inspection) Regulations 1981

8. The Estate Agents (Entry and Inspection) Regulations 1981(**20**) are revoked.

Energy (Northern Ireland) Order 2003

9. In Article 63 of the Energy (Northern Ireland) Order 2003(**21**) (general restrictions on disclosure of information) after paragraph 4(f) insert—

(17) Schedule 2 was substituted containing new Part headings by paragraph 1 of Schedule 1 to [S.I. 2009/1208](#).

(18) Schedule 11A was inserted by paragraph 1 of Schedule 1 to [S.I. 2007/3494](#).

(19) [2006 asp 1](#).

(20) [S.I. 1981/1519](#).

(21) [S.I. 2003/419](#), to which there are amendments not relevant to this Order.

“(fa) for the purpose of facilitating the performance by the lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) of any of its functions under the Estate Agents Act 1979;”.

Water and Sewerage Services (Northern Ireland) Order 2006

10. In Article 265 of the Water and Sewerage Services (Northern Ireland) Order 2006(22) (restriction on disclosure of information) after paragraph (3)(k) insert—

“(ka) for the purpose of facilitating the performance by the lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) of any of its functions under the Estate Agents Act 1979;”.

Companies (Disclosure of Address) Regulations 2009

11. At the end of Schedule 1 to the Companies (Disclosure of Address) Regulations 2009(23) (specified public authorities) after “the Scottish Housing Regulator”, insert—

“; the lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) exercising functions under the Estate Agents Act 1979”.

Overseas Companies Regulations 2009

12. At the end of Schedule 1 to the Overseas Companies Regulations 2009(24) (specified public authorities), after “the Scottish Housing Regulator” insert—

“; the lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) exercising functions under the Estate Agents Act 1979”.

PART 4

Transitional provisions and savings

General

13.—(1) Nothing in this Order affects the validity of anything done (or having effect as if done) by or in relation to the OFT before the coming into force of article 5(1).

(2) Anything done (or having effect as if done) by or in relation to the OFT, so far as it relates to any of the functions transferred by article 5(1), has effect, so far as is necessary for continuing its effect after the coming into force of article 5(1), as if done by or in relation to the lead enforcement authority.

(3) Anything (including legal proceedings) which at the coming into force of article 5(1) is in the process of being done by or in relation to the OFT, so far as it relates to any of the functions transferred by article 5(1), may be continued by or in relation to the lead enforcement authority.

(4) So far as is necessary or appropriate for the purposes of or in consequence of the transfer effected by article 5(1), after the coming into force of article 5(1), a reference to the OFT in an instrument or other document is to be treated as a reference to the lead enforcement authority.

(5) This paragraph is subject to paragraphs 14 and 15.

(22) *S.I. 2006/3336*, to which there are amendments not relevant to this Order.

(23) *S.I. 2009/214*, the entry for the Scottish Housing Regulator was inserted by paragraph 20 of Part 2 of Schedule 1 to *S.I. 2012/700*; there are other amending instruments, but none are relevant.

(24) *S.I. 2009/1801*, the entry for the Scottish Housing Regulator was inserted by paragraph 21 of Part 2 of Schedule 1 to *S.I. 2012/700*; there are other amending instruments, but none are relevant.

Costs orders

14. Where the OFT is the receiving or paying party under a costs order made in connection with legal proceedings that relate to the exercise of any function transferred by article 5(1), the CMA is to be treated as the receiving or paying party, as the case may be, instead.

General notices issued by the OFT

15.—(1) Any general notices issued by the OFT under the 1979 Act cease to have effect.

(2) In this paragraph “general notice” has the meaning given by section 33(1) of the 1979 Act.

Information

16. The OFT may disclose to the lead enforcement authority any information which the OFT considers it necessary or expedient to disclose to the lead enforcement authority in connection with the transfer of functions by article 5(1).