Estate Agents Act 1979

1979 CHAPTER 38

An Act to make provision with respect to the carrying on of and to persons who carry on, certain activities in connection with the disposal and acquisition of interests in land; and for purposes connected therewith. [4th April 1979]

Modifications etc. (not altering text)

C1 Act excluded (*prosp.*) by Administration of Justice Act 1985 (c. 61, SIF 98:1), **s. 34(3)**

C2 Act applied (1.8.2007 for specified purposes, 10.9.2007 for specified purposes, 14.12.2007 for specified purposes, 6.4.2008 in so far as not already in force) by Housing Act 2004 (c. 34), **ss. 175(3)**, 270(6); S.I. 2007/1668, art. 2 (with arts. 3,4); S.I. 2007/2471, art. 2 (with arts. 3,4); S.I. 2007/3308, art. 2 (with arts. 3,4); S.I. 2008/898, art. 2(1) (with art. 2(2))

Commencement Information

I1 Act not in force at Royal Assent see s. 36(2); Act partly in force at 3. 5. 1982 see S.I. 1981/1517.

Application of Act

1 Estate agency work.

(1) This Act applies, subject to subsections (2) to (4) below to 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 dispose of or acquire an interest in land—

(a) for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to acquire or, as the case may be, dispose of such an interest; and

(b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or, as the case may be, the acquisition of that interest;

and in this Act the expression "estate agency work" refers to things done as mentioned above to which this Act applies.

(2) This Act does not apply to things done—

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(a) in the course of his profession by a practising solicitor or a person employed by him **[**[F1]or by an incorporated practice (within the meaning of the Solicitors (Scotland) Act 1980) or a person employed by it**]**; or

(b) in the course of credit brokerage, within the meaning of the [M1]Consumer Credit Act 1974; or

[F2](c) . . . . . .

(d) in the course of carrying out any survey or valuation pursuant to a contract which is distinct from that under which other things falling within subsection (1) above are done; or

(e) in connection with applications and other matters arising under **[**[F3]the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990**]** or **[**[F4]the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997**]** or the [M2]Planning (Northern Ireland) **[**[F5]Order 1991**]**.

(3) This Act does not apply to things done by any person—

(a) pursuant to instructions received by him in the course of his employment in relation to an interest in land if his employer is the person who, on his own behalf, wishes to dispose of or acquire that interest; or

(b) in relation to any interest in any property if the property is subject to a mortgage and he is the receiver of the income of it; or

(c) in relation to a present, prospective or former employee of his or of any person by whom he also is employed if the things are done by reason of the employment (whether past, present or future).

(4) This Act does not apply to the publication of advertisements or the dissemination of information by a person who does no other acts which fall within subsection (1) above.

(5) In this section—

(a) "practising solicitor" means, except in Scotland, a solicitor who is qualified to act as such under section 1 of the [M3]Solicitors Act 1974 or Article 4 of the [M4]Solicitors (Northern Ireland) Order 1976, and in Scotland includes a firm of practising solicitors;

(b) "mortgage" includes a debenture and any other charge on property for securing money or money's worth; and

(c) any reference to employment is a reference to employment under a contract of employment.

Textual Amendments

F1 Words inserted (S.) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. I para. 40**

F2 S. 1(2)(c) omitted (30.4.2001) by virtue of S.I. 2001/1283, **art. 3(1)**

F3 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 42**

F4 Words in s. 1(2)(e) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 28** (with s. 5, Sch. 3)

F5 Words in s. 1(2)(e) substituted (N.I.)(21.8.1991) by S.I. 1991/1220, art. 133(1), **Sch.5**.

Modifications etc. (not altering text)

C3 S. 1 excluded (E.W.) (*prosp.*) by Administration of Justice Act 1985 (c. 61, SIF 98), **s. 34(3)**

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C4 S. 1(2)(a) amended (E.W.)(1.2.1992) by S.I. 1991/2684, arts. 4, 5, **Sch.2**
s. 1(2)(a) modified (22.5.2000) by S.S.I. 2000/121, regs. 1, 37(2), **Sch. 2 Pt. II para. 2**
s. 1(2)(a) modified (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), **Sch. 4 para. 17** (as amended (1.7.2009) by S.I. 2009/1587, arts. 1(1)(c), **3(13)**)

C5 S. 1(5)(a) amended (E.W.)(1.2.1992) by S.I. 1991/2684, arts. 4, 5, **Sch. 2**%

Marginal Citations

M1 1974 c. 39.
M2 S.I. 1972/1634 (N.I. 17)
M3 1974 c. 47.
M4 S.I. 1976/582 (N.I. 12)

2 Interests in land.

(1) Subject to subsection (3) below, any reference in this Act to disposing of an interest in land is a reference to—

(a) transferring a legal estate in fee simple absolute in possession; or

(b) transferring or creating, elsewhere than in Scotland, a lease which, by reason of the level of the rent, the length of the term or both, has a capital value which may be lawfully realised on the open market; or

(c) transferring or creating in Scotland any estate or interest in land which is capable of being owned or held as a separate interest and to which a title may be recorded in the Register of Sasines;

and any reference to acquiring an interest in land shall be construed accordingly.

(2) In subsection (1)(b) above the expression "lease" includes the rights and obligations arising under an agreement to grant a lease.

(3) Notwithstanding anything in subsections (1) and (2) above, references in this Act to disposing of an interest in land do not extend to disposing of—

(a) the interest of a creditor whose debt is secured by way of a mortgage or charge of any kind over land or an agreement for any such mortgage or charge; or

(b) in Scotland, the interest of a creditor in a heritable security as defined in section 9(8) of the [M5]Conveyancing and Feudal Reform (Scotland) Act 1970.

Modifications etc. (not altering text)

C6 S. 2 applied by Property Misdescriptions Act 1991 (c. 29, SIF 124:4), **s. 1(6)(a)**

Marginal Citations

M5 1970 c. 35.

Orders by [[F6]Office of Fair Trading]

Textual Amendments

F6 Words in cross-heading substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(2)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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3 Orders prohibiting unfit persons from doing estate agency work.

(1) The power of **[**[F7]the Office of Fair Trading (in this Act referred to as "the OFT")**]** to make an order under this section with respect to any person shall not be exercisable unless the **[**[F8]OFT**]** is satisfied that that person—

(a) has been convicted of—

(i) an offence involving fraud or other dishonesty or violence, or

(ii) an offence under any provision of this Act, other than section 10(6), section 22(3) or section 23(4), or

(iii) any other offence which, at the time it was committed, was specified for the purposes of this section by an order made by the Secretary of State; or

(b) has committed discrimination in the course of estate agency work; or

(c) has failed to comply with any obligation imposed on him under any of sections 15 and 18 to 21 below; or

(d) has engaged in a practice which, in relation to estate agency work, has been declared undesirable by an order made by the Secretary of State;

and the provisions of Schedule 1 to the Act shall have effect for supplementing paragraphs (a) and (b) above.

(2) Subject to subsection (1) above, if the **[**[F8]OFT**]** is satisfied that any person is unfit to carry on estate agency work generally or of a particular description **[**[F9]it**]** may make an order prohibiting that person—

(a) from doing any estate agency work at all; or

(b) from doing estate agency work of a description specified in the order;

and in determining whether a person is so unfit the **[**[F8]OFT**]** may, in addition to taking account of any matters falling within subsection (1) above, also take account of whether, in the course of estate agency work or any other business activity, that person has engaged in any practice which involves breaches of a duty owed by virtue of any enactment, contract or rule of law and which is material to his fitness to carry on estate agency work.

(3) For the purposes of paragraphs (c) and (d) of subsection (1) above,—

(a) anything done by a person in the course of his employment shall be treated as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval, unless the employer shows that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description; and

(b) anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that person shall be treated as done by that other person as well as by him; and

(c) anything done by a business associate of a person shall be treated as done by that person as well, unless he can show that the act was done without his connivance or consent.

(4) In an order under this section the **[**[F8]OFT**]** shall specify as the grounds for the order those matters falling within paragraphs (a) to (d) of subsection (1) above as to which **[**[F10]it**]** is satisfied and on which, accordingly, **[**[F10]it**]** relies to give **[**[F10]it**]** power to make the order.

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(5) If the **[**[F8]OFT**]** considers it appropriate, **[**[F10]it**]** may in an order under this section limit the scope of the prohibition imposed by the order to a particular part of or area within the United Kingdom.

(6) An order under paragraph (a)(iii) or paragraph (d) of subsection (1) above—

(a) shall be made by statutory instrument;

(b) shall be laid before Parliament after being made; and

(c) shall cease to have effect (without prejudice to anything previously done in reliance on the order) after the expiry of the period of twenty-eight days beginning with the date on which it was made unless within that period it has been approved by a resolution of each House of Parliament.

(7) In reckoning for the purposes of subsection (6)(c) above any period of twenty-eight days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(8) A person who fails without reasonable excuse to comply with an order of the **[**[F8]OFT**]** under this section shall be liable on conviction on indictment or on summary conviction to a fine which on summary conviction shall not exceed the statutory maximum.

Subordinate Legislation Made

P1 S. 3(1)(a)(iii) power exercised by S.I. 1991/860.
S. 3(1)(a)(iii) power exercised by S.I.1991/1091.

P2 S. 3(1)(d) power exercised by S.I. 1991/861.
S. 3(1)(d) power exercised by S.I. 1991/1032.

Textual Amendments

F7 Words in s. 3(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(2)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F8 Word in s. 3 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(2)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F9 Word in s. 3(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(2)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F10 Word in s. 3(4)(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(2)(d)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

4 Warning orders.

(1) If the **[**[F11]OFT**]** is satisfied that—

(a) in the course of estate agency work any person has failed to comply with any such obligation as is referred to in section 3(1)(c) above (in this section referred to as a "relevant statutory obligation") or has engaged in such a practice as is referred to in section 3(1)(d) above, and

(b) if that person were again to fail to comply with a relevant statutory obligation or, as the case may be, were to continue to engage in that practice, the **[**[F11]OFT**]** would consider him unfit as mentioned in subsection (2) of section 3 above and would proceed to make an order under that section,

the **[**[F11]OFT**]** may by order notify that person that **[**[F12]it**]** is so satisfied.

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(2) An order under this section shall state whether, in the opinion of the **[**[F11]OFT**]** , a further failure to comply with a relevant statutory obligation or, as the case may be, continuation of the practice specified in the order would render the person to whom the order is addressed unfit to carry on estate agency work generally or estate agency work of a description specified in the order.

(3) If, after an order has been made under this section, the person to whom it is addressed fails to comply with a relevant statutory obligation or, as the case may be, engages in the practice specified in the order then, for the purposes of this Act, that fact shall be treated as conclusive evidence that he is unfit to carry on estate agency work as stated in the order in accordance with subsection (2) above; and the **[**[F11]OFT**]** may proceed to make an order under section 3 above accordingly.

Textual Amendments

F11 Word in s. 4 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(3)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F12 Word in s. 4(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(3)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

5 Supplementary provisions as to orders under sections 3 and 4.

(1) The provisions of Part I of Schedule 2 to this Act shall have effect—

(a) with respect to the procedure to be followed before an order is made by the **[**[F13]OFT**]** under section 3 or section 4 above; and

(b) in connection with the making and coming into operation of any such order.

(2) Where an order is made by the **[**[F13]OFT**]** under section 3 or section 4 above against a partnership, it may, if the **[**[F13]OFT**]** thinks it appropriate, have effect also as an order against some or all of the partners individually, and in such a case the order shall so provide and shall specify the names of the partners affected by the order.

(3) Nothing in section 62 of the [M6]Sex Discrimination Act 1975, section 53 of the [M7]Race Relations Act 1976 or Article 62 of the [M8]Sex Discrimination (Northern Ireland) Order 1976 **[**[F14]or Article 51 of the Race Relations (Northern Ireland) Order 1997**]** (restriction of sanctions for breaches of those Acts and **[**[F15]those Orders**]**) shall be construed as applying to the making of an order by the **[**[F13]OFT**]** under section 3 above.

(4) In any case where—

(a) an order of the **[**[F13]OFT**]** under section 3 above specifies a conviction as a ground for the order, and

(b) the conviction becomes spent for the purposes of the [M9]Rehabilitation of Offenders Act 1974 or any corresponding enactment for the time being in force in Northern Ireland,

then, unless the order also specifies other grounds which remain valid, the order shall cease to have effect on the day on which the conviction becomes so spent.

(5) In any case where—

(a) an order of the **[**[F13]OFT**]** under section 3 above specifies as grounds for the order the fact that the person concerned committed discrimination by reason of the existence of any such finding or notice as is referred to in paragraph 2 of Schedule 1 to this Act, and

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(b) the period expires at the end of which, by virtue of paragraph 3 of that Schedule, the person concerned would no longer be treated for the purposes of section 3(1)(b) above as having committed discrimination by reason only of that finding or notice,

then, unless the order also specifies other grounds which remain valid, the order shall cease to have effect at the end of that period.

Textual Amendments

F13 Word in s. 5 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(4)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F14 Words in s. 5(3) inserted (4.8.1997) by S.I. 1997/869 (N.I. 6), art. 73, **Sch. 2 para. 2(1)**; S.R. 1997/273, **art. 2(4)**

F15 Words in s. 5(3) substituted (4.8.1997) by S.I. 1997/869 (N.I. 6), art. 73, **Sch. 2 para. 2(1)**; S.R. 1997/273, **art. 2(4)**

Marginal Citations

M6 1975 c. 65.

M7 1976 c. 74.

M8 S.I. 1976/1042 (N.I. 15)

M9 1974 c. 53.

6 Revocation and variation of orders under sections 3 and 4.

(1) On an application made to **[**[F16]it**]** by the person in respect of whom the **[**[F17]OFT**]** has made an order under section 3 or section 4 above, the **[**[F17]OFT**]** may revoke or vary the order.

(2) An application under subsection (1) above—

(a) shall state the reasons why the applicant considers that the order should be revoked or varied;

(b) in the case of an application for a variation, shall indicate the variation which the applicant seeks; and

(c) shall be accompanied by the prescribed fee.

(3) If the **[**[F17]OFT**]** decides to accede to an application under subsection (1) above, **[**[F18]it**]** shall give notice in writing of **[**[F19]its**]** decision to the applicant and, upon the giving of that notice, the revocation or, as the case may be, the variation specified in the application shall take effect.

(4) The **[**[F17]OFT**]** may decide to refuse an application under subsection (1) above—

(a) where it relates to an order under section 3 above, if **[**[F18]it**]** considers that the applicant remains unfit to carry on any estate agency work at all or, as the case may be, estate agency work of the description which is prohibited by the order; and

(b) where it relates to an order under section 4 above, if **[**[F18]it**]** considers that the applicant may again fail to comply with a relevant statutory obligation or, as the case may be, again engage in the practice specified in the order.

(5) If, on an application under subsection (1) above, the **[**[F17]OFT**]** decides that—

(a) **[**[F18]it**]** cannot accede to the application because **[**[F18]it**]** considers that the applicant remains unfit to carry on any estate agency work at all in a particular

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part of or area within the United Kingdom or remains unfit to carry on estate agency work of a particular description (either throughout the United Kingdom or in a particular part of or area within it) or, as the case may be, remains likely to fail to comply with a relevant statutory obligation or to engage in a particular practice, but

(b) the order to which the application relates could, without detriment to the public, be varied in favour of the applicant,

the **[**[F17]OFT**]** may make such a variation accordingly.

(6) The provisions of Part II of Schedule 2 to this Act shall have effect in relation to any application to the **[**[F17]OFT**]** under subsection (1) above and the provisions of Part I of that Schedule shall have effect—

(a) with respect to the procedure to be followed before the **[**[F17]OFT**]** comes to a decision under subsection (4) or subsection (5) above; and

(b) in connection with the making and coming into operation of such a decision.

(7) In this section "relevant statutory obligation" has the meaning assigned to it by section 4(1)(a) above.

Textual Amendments

F16 Word in s. 6(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(5)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F17 Word in s. 6 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(5)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F18 Word in s. 6(3)-(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(5)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F19 Word in s. 6(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(5)(d)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

7 Appeals.

(1) A person who receives notice under paragraph 9 of Schedule 2 to this Act of—

(a) a decision of the **[**[F20]OFT**]** to make an order in respect of him under section 3 or section 4 above, or

(b) a decision of the **[**[F20]OFT**]** under subsection (4) or subsection (5) of section 6 above on an application made by him,

may appeal against the decision to the Secretary of State.

(2) On an appeal under subsection (1) above the Secretary of State may give such directions for disposing of the appeal as he thinks just, including a direction for the payment of costs or expenses by any party to the appeal.

(3) The Secretary of State shall make provision by regulations with respect to appeals under subsection (1) above—

(a) as to the period within which and the manner in which such appeals are to be brought;

(b) as to the persons by whom such appeals are to be heard on behalf of the Secretary of State;

(c) as to the manner in which such appeals are to be conducted;

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(d) for taxing or otherwise settling any costs or expenses directed to be paid under subsection (2) above and for the enforcement of any such direction; and

(e) as to any other matter connected with such appeals;

and such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) If the appellant is dissatisfied in point of law with a decision of the Secretary of State under this section he may appeal against that decision to the High Court, the Court of Session or a judge of the High Court in Northern Ireland.

(5) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (4) above except with the leave of that Court or of the court or judge from whose decision the appeal is brought.

(6) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

Textual Amendments

F20 Word in s. 7(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(6)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Modifications etc. (not altering text)

C7 S. 7 power to transfer functions conferred (19.9.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), **ss. 30**, 35, 148; S.I. 2007/2709, art. 2(a)

8 Register of orders etc.

(1) The **[**[F21]OFT**]** shall establish and maintain a register on which there shall be entered particulars of every order made by **[**[F22]it**]** under section 3 or section 4 above and of **[**[F22]its**]** decision on any application for revocation or variation of such an order.

(2) The particulars referred to in subsection (1) above shall include—

(a) the terms of the order and of any variation of it; and

(b) the date on which the order or variation came into operation or is expected to come into operation or if an appeal against the decision is pending and the order or variation has in consequence not come into operation, a statement to that effect.

(3) The **[**[F21]OFT**]** may, of **[**[F23]its**]** own motion or on the application of any person aggrieved, rectify the register by the addition, variation or removal of any particulars; and the provisions of Part II of Schedule 2 to this Act shall have effect in relation to an application under this subsection.

(4) If it comes to the attention of the **[**[F21]OFT**]** that any order of which particulars appear in the register is no longer in operation, **[**[F24]it**]** shall remove those particulars from the register.

(5) Any person shall be entitled on payment of the prescribed fee—

(a) to inspect the register during such office hours as may be specified by a general notice made by the **[**[F21]OFT**]** and to take copies of any entry, or

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(b) to obtain from the **[**[F21]OFT**]** a copy, certified by **[**[F25]it**]** to be correct, of any entry in the register.

(6) A certificate given by the **[**[F21]OFT**]** under subsection (5)(b) above shall be conclusive evidence of the fact that, on the date on which the certificate was given, the particulars contained in the copy to which the certificate relates were entered on the register; and particulars of any matters required to be entered on the register which are so entered shall be evidence and, in Scotland, sufficient evidence of those matters and shall be presumed, unless the contrary is proved, to be correct.

Textual Amendments

F21 Word in s. 8 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(7)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F22 Words in s. 8(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(7)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F23 Word in s. 8(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(7)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F24 Word in s. 8(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(7)(d)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F25 Word in s. 8(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(7)(e)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Information, entry and inspection

9 Information for the [F26]OFT] .

(1) The **[**[F26]OFT**]** may, for the purpose of assisting **[**[F27]it**]** —

(a) to determine whether to make an order under section 3 or section 4 above, and

(b) in the exercise of any of **[**[F27]its**]** functions under sections 5, 6 and 8 above and 13 and 17 below,

by notice require any person to furnish to **[**[F27]it**]** such information as may be specified or described in the notice or to produce to **[**[F27]it**]** any documents so specified or described.

(2) A notice under this section—

(a) may specify the way in which and the time within which it is to be complied with and, in the case of a notice requiring the production of documents, the facilities to be afforded for making extracts, or taking copies of, the documents; and

(b) may be varied or revoked by a subsequent notice.

(3) Nothing in this section shall be taken to require a person who has acted as counsel or solicitor for any person to disclose any privileged communication made by or to him in that capacity.

(4) A person who—

(a) refuses or wilfully neglects to comply with a notice under this section, or

(b) in furnishing any information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, or

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(c) with intent to deceive, produces in compliance with such a notice a document which is false in a material particular,

shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

[F28](5) . . . . . .

(6) It shall be the duty of—

[[F29](a) the Equal Opportunities Commission,the Commission for Equality and Human Rights, and**]**

(b) the Equal Opportunities Commission for Northern Ireland, **[**[F30]and

(c) the Commission for Racial Equality,**]**

to furnish to the **[**[F26]OFT**]** such information relating to any finding, notice, injunction or order falling within paragraph 2 of Schedule 1 to this Act as is in their possession and appears to them to be relevant to the functions of the **[**[F26]OFT**]** under this Act.

Textual Amendments

F26 Word in s. 9 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(8)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F27 Words in s. 9(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(8)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F28 S. 9(5) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

F29 S. 9(6)(a) substituted (E.W.S.) (1.10.2007) by Equality Act 2006 (c. 3), s. 93(1), **Sch. 3 para. 37(a)** (with s. 92); S.I. 2007/2603, art. 2(d)

F30 S. 9(6)(c) and preceding word repealed (E.W.S.) (1.10.2007) by Equality Act 2006 (c. 3), s. 93(1), Sch. 3 para. 37(b), **Sch. 4** (with s. 92); S.I. 2007/2603, art. 2(d)

[F31]10 Restriction on disclosure of information.

. . . . . .

Textual Amendments

F31 S. 10 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 247(e), 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 6)

11 Powers of entry and inspection.

(1) A duly authorised officer of an enforcement authority, at all reasonable hours and on production, if required, of his credentials may—

(a) if he has reasonable cause to suspect that an offence has been committed under this Act, in order to ascertain whether it has been committed, enter any premises (other than premises used only as a dwelling);

(b) if he has reasonable cause to suspect that an offence has been committed under this Act, in order to ascertain whether it has been committed, require any person—

(i) carrying on, or employed in connection with, a business to produce any books or documents relating to it, or

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(ii) having control of any information relating to a business recorded otherwise than in a legible form, to provide a document containing a legible reproduction of the whole or any part of the information;

and take copies of, or of any entry in, the books or documents;

(c) seize and detain any books or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act;

(d) for the purpose of exercising his powers under this subsection to seize books and documents, but only if and to the extent that it is reasonably necessary for securing that the provisions of this Act are duly observed, require any person having authority to do so to break open any container and, if that person does not comply, break it open himself.

(2) An officer seizing books or documents in exercise of his powers under this section shall not do so without informing the person from whom he seizes them.

(3) If and so long as any books or documents which have been seized under this section are not required as evidence in connection with proceedings which have been begun for an offence under this Act, the enforcement authority by whose officer they were seized shall afford to the person to whom the books or documents belong and to any person authorised by him in writing reasonable facilities to inspect them and to take copies of or make extracts from them.

(4) If a justice of the peace, on sworn information in writing, or, in Scotland, a sheriff or a justice of the peace, on evidence on oath,—

(a) is satisfied that there is reasonable ground to believe either—

(i) that any books or documents which a duly authorised officer has power to inspect under this section are on any premises and their inspection is likely to disclose evidence of the commission of an offence under this Act, or

(ii) that an offence under this Act has been, or is being or is about to be, committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier, or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to wait for his return,

the justice or, as the case may be, the sheriff may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of an enforcement authority to enter the premises, by force if need be.

(5) An officer entering premises by virtue of this section may take such other persons and equipment with him as he thinks necessary, and on leaving premises entered by virtue of a warrant under subsection (4) above shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(6) The Secretary of State may by regulations provide that, in cases specified in the regulations, an officer of a local weights and measures authority is not to be taken to be duly authorised for the purposes of this section unless he is authorised by the **[**[F32]OFT**]** .

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(7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) Nothing in this section shall be taken to require a person who has acted as counsel or solicitor for any person to produce a document containing a privileged communication made by or to him in that capacity or authorises the seizing of any such document in his possession.

Textual Amendments

F32 Word in s. 11(6) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(9)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Modifications etc. (not altering text)

C8 S. 11(1)(c) powers of seizure extended (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 50, 138(2), **Sch. 1 para. 24** (with ss. 52-54, 68); S.I. 2003/708, art. 2(a)

C9 S. 11(3) applied (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), s. 138(2), **Sch. 2 para. 5** (with s. 61); S.I. 2003/708, art. 2(k)

C10 S. 11(8) extended (E.W.) by Administration of Justice Act 1985 (c. 61, SIF 98), **s. 34(2)**(*e*)

Clients' money and accounts

12 Meaning of "clients' money" etc.

(1) In this Act "clients' money", in relation to a person engaged in estate agency work, means any money received by him in the course of that work which is a contract or pre-contract deposit—

(a) in respect of the acquisition of an interest in land in the United Kingdom, or

(b) in respect of a connected contract,

whether that money is held or received by him as agent, bailee, stakeholder or in any other capacity.

(2) In this Act "contract deposit" means any sum paid by a purchaser—

(a) which in whole or in part is, or is intended to form part of, the consideration for acquiring such an interest as is referred to in subsection (1)(a) above or for a connected contract; and

(b) which is paid by him at or after the time at which he acquires the interest or enters into an enforceable contract to acquire it.

(3) In this Act "pre-contract deposit" means any sum paid by any person—

(a) in whole or in part as an earnest of his intention to acquire such an interest as is referred to in subsection (1)(a) above, or

(b) in whole or in part towards meeting any liability of his in respect of the consideration for the acquisition of such an interest which will arise if he acquires or enters into an enforceable contract to acquire the interest, or

(c) in respect of a connected contract,

and which is paid by him at a time before he either acquires the interest or enters into an enforceable contract to acquire it.

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(4) In this Act "connected contract", in relation to the acquisition of an interest in land, means a contract which is conditional upon such an acquisition or upon entering into an enforceable contract for such an acquisition (whether or not it is also conditional on other matters).

13 Clients' money held on trust or as agent.

(1) It is hereby declared that clients' money received by any person in the course of estate agency work in England, Wales or Northern Ireland—

(a) is held by him on trust for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him, or

(b) if it is received by him as stakeholder, is held by him on trust for the person who may become so entitled on the occurrence of the event against which the money is held.

(2) It is hereby declared that clients' money received by any person in the course of estate agency work in Scotland is held by him as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.

(3) The provisions of sections 14 and 15 below as to the investment of clients' money, the keeping of accounts and records and accounting for interest shall have effect in place of the corresponding duties which would be owed by a person holding clients' money as trustee, or in Scotland as agent, under the general law.

(4) Where an order of the **[**[F33]OFT**]** under section 3 above has the effect of prohibiting a person from holding clients' money the order may contain provision—

(a) appointing another person as trustee, or in Scotland as agent, in place of the person to whom the order relates to hold and deal with clients' money held by that person when the order comes into effect; and

(b) requiring the expenses and such reasonable remuneration of the new trustee or agent as may be specified in the order to be paid by the person to whom the order relates or, if the order so provides, out of the clients' money;

but nothing in this subsection shall affect the power conferred by section 41 of the [M10]Trustee Act 1925 or section 40 of the [M11]Trustee Act (Northern Ireland) 1958 to appoint a new trustee to hold clients' money.

(5) For the avoidance of doubt it is hereby declared that the fact that any person has or may have a lien on clients' money held by him does not affect the operation of this section and also that nothing in this section shall prevent such a lien from being given effect.

Textual Amendments

F33 Word in s. 13(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(9)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Marginal Citations

M10 1925 c. 19.

M11 1958 c. 23 (N.I.)

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14 Keeping of client accounts.

(1) Subject to such provision as may be made by accounts regulations, every person who receives clients' money in the course of estate agency work shall, without delay, pay the money into a client account maintained by him or by a person in whose employment he is.

(2) In this Act a "client account" means a current or deposit account which—
- (a) is with an institution authorised for the purposes of this section, and
- (b) is in the name of a person who is or has been engaged in estate agency work; and
- (c) contains in its title the word "client".

(3) The Secretary of State may make provision by regulations (in this section referred to as "accounts regulations") as to the opening and keeping of client accounts, the keeping of accounts and records relating to clients' money and the auditing of those accounts; and such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) As to the opening and keeping of client accounts, accounts regulations may in particular specify—
- (a) the institutions which are authorised for the purposes of this section;
- (b) any persons or classes of persons to whom, or any circumstances in which, the obligation imposed by subsection (1) above does not apply;
- (c) any circumstances in which money other than clients' money may be paid into a client account; and
- (d) the occasions on which, and the persons to whom, money held in a client account may be paid out.

(5) As to the auditing of accounts relating to clients' money, accounts regulations may in particular make provision—
- (a) requiring such accounts to be drawn up in respect of specified accounting periods and to be audited by a qualified auditor within a specified time after the end of each such period;
- (b) requiring the auditor to report whether in his opinion the requirements of this Act and of the accounts regulations have been complied with or have been substantially complied with;
- (c) as to the matters to which such a report is to relate and the circumstances in which a report of substantial compliance may be given; and
- (d) requiring a person who maintains a client account to produce on demand to a duly authorised officer of an enforcement authority the latest auditor's report.

[F34][(6) Subject to subsection (7) below, "qualified auditor" in subsection (5)(a) above means a person who is [[F35]eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006].

(7) A person is not a qualified auditor for the purposes of subsection (5)(a) above if, in the case of a client account maintained by a company, he is [[F36]prohibited from acting as statutory auditor of the company by virtue of section 1214 of the Companies Act 2006 (independence requirement)].]

(8) A person who—

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(a) contravenes any provision of this Act or of accounts regulations as to the manner in which clients' money is to be dealt with or accounts and records relating to such money are to be kept, or

(b) fails to produce an auditor's report when required to do so by accounts regulations,

shall be liable on summary conviction to a fine not exceeding **[**[F37]level 4 on the standard scale**]**.

Textual Amendments

F34 S. 14(6)(7) substituted (1.10.1991) by S.I. 1991/1997, regs. 2, 4, **Sch. para.33**

F35 Words in s. 14(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 8(2)** (with arts. 6, 11, 12)

F36 Words in s. 14(7) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 8(3)** (with arts. 6, 11, 12)

F37 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46** and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G** and (N.I.) by S.I. 1984/703 (N.I. 3), **arts. 5**, 6

15 Interest on clients' money.

(1) Accounts regulations may make provision for requiring a person who has received any clients' money to account, in such cases as may be prescribed by the regulations, to the person who is or becomes entitled to the money for the interest which was, or could have been, earned by putting the money in a separate deposit account at an institution authorised for the purposes of section 14 above.

(2) The cases in which a person may be required by accounts regulations to account for interest as mentioned in subsection (1) above may be defined, amongst other things, by reference to the amount of the sum held or received by him or the period for which it is likely to be retained, or both.

(3) Except as provided by accounts regulations and subject to subsection (4) below, a person who maintains a client account in which he keeps clients' money generally shall not be liable to account to any person for interest received by him on money in that account.

(4) Nothing in this section or in accounts regulations shall affect any arrangement in writing, whenever made, between a person engaged in estate agency work and any other person as to the application of, or of any interest on, money in which that other person has or may have an interest.

(5) Failure of any person to comply with any provision of accounts regulations made by virtue of this section may be taken into account by the **[**[F38]OFT**]** in accordance with section 3(1)(c) above and may form the basis of a civil claim for interest which was or should have been earned on clients' money but shall not render that person liable to any criminal penalty.

(6) In this section "accounts regulations" has the same meaning as in section 14 above.

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Textual Amendments

F38 Word in s. 15(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(9)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

PROSPECTIVE

16 Insurance cover for clients' money.

(1) Subject to the provisions of this section, a person may not accept clients' money in the course of estate agency work unless there are in force authorised arrangements under which, in the event of his failing to account for such money to the person entitled to it, his liability will be made good by another.

(2) The Secretary of State may by regulations made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament,—

(a) specify any persons or classes of persons to whom subsection (1) above does not apply;

(b) specify arrangements which are authorised for the purposes of this section including arrangements to which an enforcement authority nominated for the purpose by the Secretary of State or any other person so nominated is a party;

(c) specify the terms and conditions upon which any payment is to be made under such arrangements and any circumstances in which the right to any such payment may be excluded or modified;

(d) provide that any limit on the amount of any such payment is to be not less than a specified amount;

(e) require a person providing authorised arrangements covering any person carrying on estate agency work to issue a certificate in a form specified in the regulations certifying that arrangements complying with the regulations have been made with respect to that person; and

(f) prescribe any matter required to be prescribed for the purposes of subsection (4) below.

(3) Every guarantee entered into by a person (in this subsection referred to as "the insurer") who provides authorised arrangements covering another person (in this subsection referred to as "the agent") carrying on estate agency work shall enure for the benefit of every person from whom the agent has received clients' money as if—

(a) the guarantee were contained in a contract made by the insurer with every such person; and

(b) except in Scotland, that contract were under seal; and

(c) where the guarantee is given by two or more insurers, they had bound themselves jointly and severally.

(4) No person who carries on estate agency work may describe himself as an "estate agent" or so use any name or in any way hold himself out as to indicate or reasonably be understood to indicate that he is carrying on a business in the course of which he is prepared to act as a broker in the acquisition or disposal of interests in land unless, in such manner as may be prescribed,—

(a) there is displayed at his place of business, and

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(b) there is included in any relevant document issued or displayed in connection with his business,

any prescribed information relating to arrangements authorised for the purposes of this section.

(5) For the purposes of subsection (4) above,—

(a) any business premises at which a person carries on estate agency work and to which the public has access is a place of business of his; and

(b) "relevant document" means any advertisement, notice or other written material which might reasonably induce any person to use the services of another in connection with the acquisition or disposal of an interest in land.

(6) A person who fails to comply with any provision of subsection (1) or subsection (4) above or of regulations under subsection (2) above which is binding on him shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

PROSPECTIVE

17 Exemptions from section 16.

(1) If, on an application made to **[**[F39]it**]** in that behalf, the **[**[F40]lead enforcement authority**]** considers that a person engaged in estate agency work may, without loss of adequate protection to consumers, be exempted from all or any of the provisions of subsection (1) of section 16 above or of regulations under subsection (2) of that section, **[**[F39]it**]** may issue to that person a certificate of exemption under this section.

(2) An application under subsection (1) above—

(a) shall state the reasons why the applicant considers that he should be granted a certificate of exemption; and

(b) shall be accompanied by the prescribed fee.

(3) A certificate of exemption under this section—

(a) may impose conditions of exemption on the person to whom it is issued;

(b) may be issued to have effect for a period specified in the certificate or without limit of time.

(4) If and so long as—

(a) a certificate of exemption has effect, and

(b) the person to whom it is issued complies with any conditions of exemption specified in the certificate,

that person shall be exempt, to the extent so specified, from the provisions of subsection (1) of section 16 above and of any regulations made under subsection (2) of that section.

(5) If the **[**[F41]lead enforcement authority**]** decides to refuse an application under subsection (1) above **[**[F42]it**]** shall give the applicant notice of **[**[F42]its**]** decision and of the reasons for it, including any facts which in **[**[F42]its**]** opinion justify the decision.

(6) If a person who made an application under subsection (1) above is aggrieved by a decision of the **[**[F43]lead enforcement authority**]**—

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(a) to refuse his application, or

(b) to grant him a certificate of exemption subject to conditions,

he may appeal against the decision to the Secretary of State; and subsections (2) to (6) of section 7 above shall apply to such an appeal as they apply to an appeal under that section.

(7) A person who fails to comply with any condition of exemption specified in a current certificate of exemption issued to him shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

Textual Amendments

F39 Word in s. 17(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(10)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F40 Words in s. 17(1) substituted (31.3.2014) by 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 (S.I. 2014/631), art. 1(5), **Sch. 2 para. 1(7)(c)** (with Sch. 1 para. 28, 2 paras. 13-15)

F41 Words in s. 17(5) substituted (31.3.2014) by 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 (S.I. 2014/631), art. 1(5), **Sch. 2 para. 1(7)(c)** (with Sch. 1 para. 28, 2 paras. 13-15)

F42 Words in s. 17(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(10)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F43 Words in s. 17(6) substituted (31.3.2014) by 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 (S.I. 2014/631), art. 1(5), **Sch. 2 para. 1(7)(c)** (with Sch. 1 para. 28, 2 paras. 13-15)

Regulation of other aspects of estate agency work

18 Information to clients of prospective liabilities.

(1) Subject to subsection (2) below, before any person (in this section referred to as "the client") enters into a contract with another (in this section referred to as "the agent") under which the agent will engage in estate agency work on behalf of the client, the agent shall give the client—

(a) the information specified in subsection (2) below; and

(b) any additional information which may be prescribed under subsection (4) below.

(2) The following is the information to be given under subsection (1)(a) above—

(a) particulars of the circumstances in which the client will become liable to pay remuneration to the agent for carrying out estate agency work;

(b) particulars of the amount of the agent's remuneration for carrying out estate agency work or, if that amount is not ascertainable at the time the information is given, particulars of the manner in which the remuneration will be calculated;

(c) particulars of any payments which do not form part of the agent's remuneration for carrying out estate agency work or a contract or pre-contract deposit but which, under the contract referred to in subsection (1) above, will or may in certain circumstances be payable by the client to the agent or any

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other person and particulars of the circumstances in which any such payments will become payable; and

(d) particulars of the amount of any payment falling within paragraph (c) above or, if that amount is not ascertainable at the time the information is given, an estimate of that amount together with particulars of the manner in which it will be calculated.

(3) If, at any time after the client and the agent have entered into such a contract as is referred to in subsection (1) above, the parties are agreed that the terms of the contract should be varied so far as they relate to the carrying out of estate agency work or any payment falling within subsection (2)(c) above, the agent shall give the client details of any changes which, at the time the statement is given, fall to be made in the information which was given to the client under subsection (1) above before the contract was entered into.

(4) The Secretary of State may by regulations—

(a) prescribe for the purposes of subsection (1)(b) above additional information relating to any estate agency work to be performed under the contract; and

(b) make provision with respect to the time and the manner in which the obligation of the agent under subsection (1) or subsection (3) above is to be performed;

and the power to make regulations under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) If any person—

(a) fails to comply with the obligation under subsection (1) above with respect to a contract or with any provision of regulations under subsection (4) above relating to that obligation, or

(b) fails to comply with the obligation under subsection (3) above with respect to any variation of a contract or with any provision of regulations under subsection (4) above relating to that obligation,

the contract or, as the case may be, the variation of it shall not be enforceable by him except pursuant to an order of the court under subsection (6) below.

(6) If, in a case where subsection (5) above applies in relation to a contract or a variation of a contract, the agent concerned makes an application to the court for the enforcement of the contract or, as the case may be, of a contract as varied by the variation,—

(a) the court shall dismiss the application if, but only if, it considers it just to do so having regard to prejudice caused to the client by the agent's failure to comply with his obligation and the degree of culpability for the failure; and

(b) where the court does not dismiss the application, it may nevertheless order that any sum payable by the client under the contract or, as the case may be, under the contract as varied shall be reduced or discharged so as to compensate the client for prejudice suffered as a result of the agent's failure to comply with his obligation.

(7) In this section—

(a) references to the enforcement of a contract or variation include the withholding of money in pursuance of a lien for money alleged to be due under the contract or as a result of the variation; and

(b) "the court" means any court having jurisdiction to hear and determine matters arising out of the contract.

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Subordinate Legislation Made

P3 S. 18(4): power exercised by S.I. 1991/859

PROSPECTIVE

19 Regulation of pre-contract deposits outside Scotland.

(1) No person may, in the course of estate agency work in England, Wales or Northern Ireland, seek from any other person (in this section referred to as a "prospective purchaser") who wishes to acquire an interest in land in the United Kingdom, a payment which, if made, would constitute a pre-contract deposit in excess of the prescribed limit.

(2) If, in the course of estate agency work, any person receives from a prospective purchaser a pre-contract deposit which exceeds the prescribed limit, so much of that deposit as exceeds the prescribed limit shall forthwith be either repaid to the prospective purchaser or paid to such other person as the prospective purchaser may direct.

(3) In relation to a prospective purchaser, references in subsections (1) and (2) above to a pre-contract deposit shall be treated as references to the aggregate of all the payments which constitute pre-contract deposits in relation to his proposed acquisition of a particular interest in land in the United Kingdom.

(4) In this section "the prescribed limit" means such limit as the Secretary of State may by regulations prescribe; and such a limit may be so prescribed either as a specific amount or as a percentage or fraction of a price or other amount determined in any particular case in accordance with the regulations.

(5) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Failure by any person to comply with subsection (1) or subsection (2) above may be taken into account by the **[**[F44]lead enforcement authority**]** in accordance with section 3(1)(c) above but shall not render that person liable to any criminal penalty nor constitute a ground for any civil claim, other than a claim for the recovery of such an excess as is referred to in subsection (2) above.

(7) This section does not form part of the law of Scotland.

Textual Amendments

F44 Words in s. 19(6) substituted (31.3.2014) by 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 (S.I. 2014/631), art. 1(5), **Sch. 2 para. 1(7)(d)** (with Sch. 1 para. 28, 2 paras. 13-15)

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Supervision, enforcement, publicity, etc.

20 Prohibition of pre-contract deposits in Scotland.

(1) No person may, in the course of estate agency work in Scotland, seek or accept from any person (in this section referred to as a "prospective purchaser") who wishes to acquire an interest in land in the United Kingdom a payment which, if made, would constitute a pre-contract deposit or, as the case may be, which constitutes such a deposit.

(2) If, in the course of estate agency work in Scotland, any person receives from a prospective purchaser a payment which constitutes a pre-contract deposit, it shall forthwith be either repaid to the prospective purchaser or paid to such person as the prospective purchaser shall direct.

(3) Failure by any person to comply with subsection (1) or subsection (2) above may be taken into account by the **[**[F45]OFT**]** in accordance with section 3(1)(c) above but shall not render that person liable to any criminal penalty nor constitute a ground for any civil claim, other than a claim under subsection (2) above for the recovery of the pre-contract deposit.

(4) This section forms part of the law of Scotland only.

Textual Amendments

F45 Word in s. 20(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(11)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

21 Transactions in which an estate agent has a personal interest.

(1) A person who is engaged in estate agency work (in this section referred to as an "estate agent") and has a personal interest in any land shall not enter into negotiations with any person with respect to the acquisition or disposal by that person of any interest in that land until the estate agent has diclosed to that person the nature and extent of his personal interest in it.

(2) In any case where the result of a proposed disposal of an interest in land or of such a proposed disposal and other transactions would be that an estate agent would have a personal interest in that land, the estate agent shall not enter into negotiations with any person with respect to the proposed disposal until he has disclosed to that person the nature and extent of that personal interest.

(3) Subsections (1) and (2) above apply where an estate agent is negotiating on his own behalf as well as where he is negotiating in the course of estate agency work.

(4) An estate agent may not seek or receive a contract or pre-contract deposit in respect of the acquisition or proposed acquisition of—

(a) a personal interest of his in land in the United Kingdom; or

(b) any other interest in any such land in which he has a personal interest.

(5) For the purposes of this section, an estate agent has a personal interest in land if—

(a) he has a beneficial interest in the land or in the proceeds of sale of any interest in it; or

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(b) he knows or might reasonably be expected to know that any of the following persons has such a beneficial interest, namely,—

(i) his employer or principal, or

(ii) any employee or agent of his, or

(iii) any associate of his or of any person mentioned in sub-paragraphs (i) and (ii) above.

(6) Failure by an estate agent to comply with any of the preceding provisions of this section may be taken into account by the **[**[F46]OFT**]** in accordance with section 3(1)(c) above but shall not render the estate agent liable to any criminal penalty nor constitute a ground for any civil claim.

Textual Amendments

F46 Word in s. 21(6) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(11)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

PROSPECTIVE

22 Standards of competence.

(1) The Secretary of State may by regulations made by statutory instrument make provision for ensuring that persons engaged in estate agency work satisfy minimum standards of competence.

(2) If the Secretary of State exercises his power to make regulations under subsection (1) above, he shall in the regulations prescribe a degree of practical experience which is to be taken as evidence of competence and, without prejudice to the generality of subsection (1) above, the regulations may, in addition,—

(a) prescribe professional or academic qualifications which shall also be taken to be evidence of competence;

(b) designate any body of persons as a body which may itself specify professional qualifications the holding of which is to be taken as evidence of competence;

(c) make provision for and in connection with the establishment of a body having power to examine and inquire into the competence of persons engaged or professing to engage in estate agency work; and

(d) delegate to a body established as mentioned in paragraph (c) above powers of the Secretary of State with respect to the matters referred to in paragraph (a) above;

and any reference in the following provisions of this section to a person who has attained the required standard of competence is a reference to a person who has that degree of practical experience which, in accordance with the regulations, is to be taken as evidence of competence or, where the regulations so provide, holds such qualifications or otherwise fulfils such conditions as, in accordance with the regulations, are to be taken to be evidence of competence.

(3) After the day appointed for the coming into force of this subsection,—

(a) no individual may engage in estate agency work on his own account unless he has attained the required standard of competence;

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(b) no member of a partnership may engage in estate agency work on the partnership's behalf unless such number of the partners as may be prescribed have attained the required standard of competence; and

(c) no body corporate or unincorporated association may engage in estate agency work unless such numbers and descriptions of the officers, members or employees as may be prescribed have attained the required standard of competence;

and any person who contravenes this subsection shall be liable on conviction, on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

(4) In subsection (3) above "prescribed" means prescribed by the Secretary of State by order made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) No regulations shall be made under this section unless a draft of them has been laid before Parliament and approved by a resolution of each House.

23 Bankrupts not to engage in estate agency work.

(1) An individual who is adjudged bankrupt after the day appointed for the coming into force of this section or, in Scotland, whose estate is sequestrated after that day shall not engage in estate agency work of any description except as an employee of another person.

(2) The prohibition imposed on an individual by subsection (1) above shall cease to have effect if and when—

(a) the adjudication of bankruptcy against him is annulled, or, in Scotland, the sequestration of his estate is recalled **[**[F47]or reduced**]**; or

[[F48](b) he is discharged from bankruptcy.**]**

(3) The reference in subsection (1) above to employment of an individual by another person does not include employment of him by a body corporate of which he is a director or controller.

(4) If a person engages in estate agency work in contravention of subsection (1) above he shall be liable on conviction on indictment or on summary conviction to a fine which on summary conviction shall not exceed the statutory maximum.

Textual Amendments

F47 Words inserted (S.) by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), s. 75(1), **Sch. 7 para. 17**

F48 S. 23(b) substituted by Insolvency Act 1985 (c. 65, SIF 66), s. 235(1), **Sch. 8 para. 33**

[[F49]*Redress schemes*

Textual Amendments

F49 Ss. 23A-23C and cross-heading inserted (12.10.2007) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 6 para. 2**; S.I. 2007/2934, art. 3, Sch.

Status: *Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.*
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23A Redress schemes

(1) The Secretary of State may by order require persons who engage in estate agency work in relation to residential property ("relevant estate agency work") to be members of an approved redress scheme for dealing with complaints in connection with that work.

(2) An order may provide for the duty to apply—
- (a) only to specified descriptions of persons who engage in estate agency work; and
- (b) in relation to any relevant estate agency work carried out by a person to whom the duty applies or only in relation to specified descriptions of work (which may be framed by reference to descriptions of residential property).

(3) An 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).

(4) In subsections (1) and (2)(a), the reference to persons who engage in estate agency work does not include a reference to persons who engage in that work in the course of their employment.

(5) The power to make an order shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Before making an 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 suitable approved redress scheme before the duty applies to them.

For this purpose the Secretary of State may disregard persons who cannot lawfully engage in the relevant estate agency work to which the duty applies.

(7) Nothing in this section prevents an approved redress scheme from providing—
- (a) for membership to be open to persons who are not subject to the duty;
- (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.

(8) For the purposes of this section—
- (a) a "redress scheme" is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person ("the ombudsman");
- (b) a redress scheme is "approved" if—
  - (i) it is for the time being approved by the OFT under Schedule 3; or
  - (ii) it is administered by or on behalf of the Secretary of State and designated by him as an approved redress scheme for the purposes of this section;
- (c) a "complaint" is a complaint made by a person by virtue of his being or having been a seller or buyer of residential property;
- (d) "seller", in relation to residential property, means a person who claims that he is or may become interested in disposing of an interest in land in respect of that property (and includes a person who disposes of such an interest);

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(e) "buyer", in relation to residential property, means a person who claims that he is or may become interested in acquiring an interest in land in respect of that property (and includes a person who acquires such an interest).

(9) The Secretary of State may not designate a scheme as an approved redress scheme for the purposes of this section unless the Secretary of State is satisfied that the scheme is one which could be approved by the OFT in accordance with paragraphs 2 to 5 of Schedule 3.

(10) Schedule 3 (which makes further provision in connection with the approval of redress schemes etc.) shall have effect.

(11) In this section—

"order" means an order under subsection (1);

"the duty" means the requirement under an order to be a member of an approved redress scheme.

23B Enforcement

(1) If a duly authorised officer of an enforcement authority other than the OFT believes that a person has engaged (or is engaging) in estate agency work in relation to residential property in breach of the duty imposed by an order under section 23A(1) he may give a penalty charge notice to that person.

(2) A penalty charge notice may not be given after the end of the period of six months beginning with the day (or in the case of a continuing breach the last day) on which the breach of duty was committed.

(3) Schedule 4 (which makes further provision in connection with penalty charge notices) shall have effect.

(4) An enforcement authority other than the OFT must notify the OFT if it believes that a person has engaged (or is engaging) in estate agency work in relation to residential property in breach of the duty imposed by an order under section 23A(1).

23C Meaning of residential property

(1) For the purposes of sections 23A and 23B "residential property"—

(a) has the meaning given by subsection (2); but

(b) does not include land of a description specified in an order made by the Secretary of State for the purposes of this section.

(2) "Residential property" means any land that consists of or includes a building or part of a building—

(a) the whole or part of which is used as a dwelling or as more than one dwelling; or

(b) that is (or is to be) offered for sale on the basis that the whole or part of it is suitable for such use or is intended to be so suitable by the time the seller disposes of his interest in it.

(3) In subsection (2), the reference to a building or part of a building (so far as relating to paragraph (b) of that subsection) includes a reference to a building or part that is being or is to be constructed.

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(4) A description of land specified by order under subsection (1)(b) may be framed by reference to the purpose or purposes for which the land (or part of it) is or is intended to be used.

(5) The power to make an order under subsection (1)(b) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Supervision, enforcement, publicity etc.

24 Supervision by Council on Tribunals.

[F50](1) . . . . . .

[F51](2) . . . . . .

Textual Amendments

F50 S. 24(1) repealed (1.10.1992) by Tribunals and Enquiries Act 1992 (c. 53), ss. 18(2), 19(2), **Sch. 4 Pt.I**.

F51 S. 24(2) repealed (1.11.2007) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 8 para. 8, **Sch. 23 Pt. 1**; S.I. 2007/2709, art. 3(b)(d)(i)

25 General duties of [[F52]OFT] .

(1) Subject to section 26(3) below, it is the duty of the **[**[F52]OFT**]** —

(a) generally to superintend the working and enforcement of this Act, and

(b) where necessary or expedient, **[**[F53]itself**]** to take steps to enforce this Act.

(2) It is the duty of the **[**[F52]OFT**]** , so far as appears to **[**[F54]it**]** to be practicable and having regard both to the national interest and the interests of persons engaged in estate agency work and of consumers, to keep under review and from time to time advise the Secretary of State about—

(a) social and commercial developments in the United Kingdom and elsewhere relating to the carrying on of estate agency work and related activities; and

(b) the working and enforcement of this Act.

(3) The **[**[F52]OFT**]** shall arrange for the dissemination, in such form and manner as **[**[F55]it**]** considers appropriate, of such information and advice as it may appear to **[**[F54]it**]** expedient to give the public in the United Kingdom about the operation of this Act.

Textual Amendments

F52 Word in s. 25 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(12)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F53 Word in s. 25(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(12)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F54 Word in s. 25(2)(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(12)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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F55 Word in s. 25(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(12)(d)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

26 Enforcement authorities.

(1) Without prejudice to section 25(1) above, the following authorities (in this Act referred to as "enforcement authorities") have a duty to enforce this Act—

(a) the **[**[F56]OFT**]** ,

(b) in Great Britain, a local weights and measures authority, and

(c) in Northern Ireland, the Department of Commerce for Northern Ireland.

[F57](2) . . . . . .

(3) Nothing in this section or in section 25 above authorises an enforcement authority to institute proceedings in Scotland for an offence.

(4) Every local weights and measures authority shall, whenever the **[**[F56]OFT**]** requires, report to **[**[F58]it**]** in such form and with such particulars as **[**[F58]it**]** requires on the exercise of their functions under this Act.

(5) . . . . . [F59]

Textual Amendments

F56 Word in s. 26 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(13)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F57 S. 26(2) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 9(13)(b), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F58 Word in s. 26(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(13)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F59 S. 26(5)–(8) repealed by Local Government, Planning and Land Act 1980 (c. 65, SIF 81:1, 2), s. 1(4), **Sch. 34 Pt. IV**

27 Obstruction and personation of authorised officers.

(1) Any person who—

(a) wilfully obstructs an authorised officer, or

(b) wilfully fails to comply with any requirement properly made to him under section 11 above by an authorised officer, or

(c) without reasonable cause fails to give an authorised officer other assistance or information he may reasonably require in performing his functions under this Act, or

(d) in giving information to an authorised officer, makes any statement which he knows to be false,

shall be liable on summary conviction to a fine not exceeding **[**[F60]level 4 on the standard scale**]**.

(2) A person who is not an authorised officer but purports to act as such shall be liable on summary conviction to a fine not exceeding **[**[F60]level 5 on the standard scale**]**.

(3) In this section "authorised officer" means a duly authorised officer of an enforcement authority who is acting in pursuance of this Act.

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(4) Nothing in subsection (1) above requires a person to answer any question or give any information if to do so might incriminate that person or that person's **[**[F61]spouse or civil partner**]** .

Textual Amendments

F60 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 46** and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **s. 289G** and (N.I.) by S.I. 1984/703 (N.I. 3), **arts. 5**, 6

F61 Words in s. 27(4) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 62**; S.I. 2005/3175, art. 2(2)

Supplementary

28 General provisions as to offences.

(1) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of an offence by himself or any person under his control.

(2) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be lible to be proceeded against and punished accordingly.

29 Service of notices etc.

(1) Any notice which under this Act is to be given to any person by the **[**[F62]OFT**]** shall be so given—
- (a) by delivering it to him, or
- (b) by leaving it at his proper address, or
- (c) by sending it by post to him at that address.

(2) Any such notice may,—
- (a) in the case of a body corporate or unincorporated association, be given to the secretary or clerk of that body or association; and
- (b) in the case of a partnership, be given to a partner or a person having the control or management of the partnership business.

(3) Any application or other document which under this Act may be made or given to the **[**[F62]OFT**]** may be so made or given by sending it by post to the **[**[F62]OFT**]** at such address as may be specified for the purposes of this Act by a general notice.

(4) For the purposes of subsections (1) and (2) above and section 7 of the [M12]Interpretation Act 1978 (service of documents by post) in its application to those subsections, the proper address of any person to whom a notice is to be given shall be his last-known address, except that—
- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;

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Changes to legislation: *Estate Agents Act 1979 is up to date with all changes known to be in force on or before 04 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in the case of an unincorporated association or their secretary or clerk, it shall be that of the principal office of that association;

(c) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of an unincorporated association or partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(5) If the person to be given any notice mentioned in subsection (1) above has specified an address within the United Kingdom other than his proper address, within the meaning of subsection (4) above, as the one at which he or someone on his behalf will accept notices under this Act, that address shall also be treated for the purposes mentioned in subsection (4) above as his proper address.

Textual Amendments

F62 Word in s. 29 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(14)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Marginal Citations

M12 1978 c. 30.

30 Orders and regulations.

(1) Before making any order or regulations under any provision of this Act to which this subsection applies, the Secretary of State shall consult the **[**[F63]OFT**]** , such bodies representative of persons carrying on estate agency work, such bodies representative of consumers and such other persons as he thinks fit.

(2) Subsection (1) above applies to paragraphs (a)(iii) and (d) of section 3(1) above and to sections 14, 15, 16, 18, 19 and 22 above.

(3) Any power of the Secretary of State to make orders or regulations under this Act—

(a) may be so exercised as to make different provision in relation to different cases or classes of cases and to exclude certain cases or classes of case; and

(b) includes power to make such supplemental, incidental and transitional provisions as he thinks fit.

Textual Amendments

F63 Word in s. 30(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(14)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

31 Meaning of “business associate” and “controller”.

(1) The provisions of this section shall have effect for determining the meaning of “business associate” and “controller” for the purposes of this Act.

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(2) As respects acts done in the course of a business carried on by a body corporate, every director and conroller of that body is a business associate of it.

(3) As respects acts done in the course of a business carried on by a partnership, each partner is a business associate of every other member of the partnership and also of the partnership itself and, in the case of a partner which is a body corporate, every person who, by virtue of subsection (2) above, is a business associate of that body is also a business associate of every other member of the partnership.

(4) As respects acts done in the course of a business carried on by an unincorporated association, every officer of the association and any other person who has the management or control of its activities is a business associate of that association.

(5) In relation to a body corporate "controller" means a person—

(a) in accordance with whose directions or instructions the directors of the body corporate or of any other body corporate which is its controller (or any of them) are accustomed to act; or

(b) who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.

32 Meaning of "associate".

(1) In this Act "associate" includes a business associate and otherwise has the meaning given by the following provisions of this section.

(2) A person is an associate of another if he is the spouse **[**[F64] or civil partner **]** or a relative of that other or of a business associate of that other.

(3) In subsection (2) above "relative" means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or linear descendant, [F65]... references to a spouse include a former spouse and a **[**[F66]reputed spouse, and references to a civil partner include a former civil partner **[**[F67]and a reputed civil partner**]**;**]** and for the purposes of this subsection a relationship shall be established as if an illegitimate child or step-child of a person **[**[F68]were the legitimate child of the relationship in question**]** .

(4) A body corporate is an associate of another body corporate—

(a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other; or

(b) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(5) An unincorporated association is an associate of another unincorporated association if any person—

(a) is an officer of both associations;

(b) has the management or control of the activities of both associations; or

(c) is an officer of one association and has the management or control of the activities of the other association.

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(6) A partnership is an associate of another partnership if—

(a) any person is a member of both partnerships; or

(b) a person who is a member of one partnership is an associate of a member of the other partnership; or

(c) a member of one partnership has an associate who is also an associate of a member of the other partnership.

Textual Amendments

F64 Words in s. 32(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 63(2)**; S.I. 2005/3175, art. 2(2)

F65 Word in s. 32(3) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), Sch. 27 para. 63(3)(a), **Sch. 30**; S.I. 2005/3175, art. 2(2)(6)

F66 Words in s. 32(3) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 63(3)(b)**; S.I. 2005/3175, art. 2(2)

F67 Words in s. 32(3) inserted (5.12.2005) by The Civil Partnership Act 2004 (Overseas Relationships and Consequential, etc. Amendments) Order 2005 (S.I. 2005/3129), art. 1, **Sch. 4 para. 5**

F68 Words in s. 32(3) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), **Sch. 27 para. 63(3)(c)**; S.I. 2005/3175, art. 2(2)

33 General interpretation provisions.

(1) In this Act, unless the context otherwise requires,—

"associate" has the meaning assigned to it by section 32 above and "business associate" has the meaning assigned to it by section 31 above;

"client account" has the meaning assigned to it by section 14(2) above;

"client's money" has the meaning assigned to it by section 12(1) above;

"connected contract", in relation to the acquisition of an interest in land, has the meaning assigned to it by section 12(4) above;

"contract deposit" has the meaning assigned to it by section 12(2) above;

"controller", in relation to a body corporate, has the meaning assigned to it by section 31(5) above;

[F69] ...

"enforcement authority" has the meaning assigned to it by section 26(1) above;

"estate agency work" has the meaning assigned to it by section 1(1) above;

"general notice" means a notice published by the **[**[F70]OFT**]** at a time and in a manner appearing to **[**[F70]it**]** suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

[[F71]"OFT" means the Office of Fair Trading;**]**

"pre-contract deposit" has the meaning assigned to it by section 12(3) above;

"prescribed fee" means such fee as may be prescribed by regulations made by the Secretary of State;

[F72] . . .

"unincorporated association" does not include a partnership.

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(2) The power to make regulations under subsection (1) above prescribing fees shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F69 Words in s. 33 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(15)(a)**, Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F70 Words in s. 33 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(15)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F71 Words in s. 33 inserted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(15)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F72 Definition in s. 33(1) repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV** Group2.

34 Financial provisions.

(1) There shall be defrayed out of moneys provided by Parliament—

(a) any expenses incurred by the Secretary of State in consequence of the provisions of this Act; and

(b) any increase attributable to this Act in the sums payable out of moneys so provided under any other Act.

(2) Any fees paid to the Director under this Act shall be paid into the Consolidated Fund.

35 Scotland.

. . . . . **F73**

Textual Amendments

F73 S. 35 repealed by Statute Law (Repeals) Act 1981 (c. 19), **Sch. 1 Pt. IV**

36 Short title, commencement and extent.

(1) This Act may be cited as the Estate Agents Act 1979.

(2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be so appointed for different provisions and for different purposes.

(3) This Act extends to Northern Ireland.

Modifications etc. (not altering text)

C11 Power of appointment conferred by s. 36(2) partly exercised: S.I. 1981/1517

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SCHEDULES

SCHEDULE 1

Section 3(1).

PROVISIONS SUPPLEMENTARY TO SECTION 3(1)

Spent convictions

1 A conviction which is to be treated as spent for the purposes of the [M13]Rehabilitation of Offenders Act 1974 or any corresponding enactment for the time being in force in Northern Ireland shall be disregarded for the purposes of section 3(1)(a) of this Act.

Marginal Citations
M13 1974 c. 53.

Discrimination

2 A person shall be deemed to have committed discrimination for the purposes of section 3(1)(b) of this Act in the following cases only, namely—

(a) where a finding of discrimination has been made against him in proceedings under section 66 of the [M14]Sex Discrimination Act 1975 (in this Schedule referred to as "the 1975 Act") and the finding has become final;

[[F74](b) where he has been given an unlawful act notice under section 21 of the Equality Act 2006 and no appeal under that section is pending or can be brought;

(c) where he is the subject of an injunction, interdict or order under section 24 (unlawful acts) or 25 (unlawful advertising, pressure, &c.) of the Equality Act 2006;

(d) where—

(i) a county court has determined in accordance with section 25 of the Equality Act 2006 that he committed an act which is unlawful under section 38, 39 or 40 of the Sex Discrimination Act 1975 or section 29, 30 or 31 of the Race Relations Act 1976 (unlawful advertising, pressure, &c.), and

(ii) no appeal under section 25 of the Equality Act 2006 is pending or can be brought (disregarding an appeal out of time);]

(e) where a finding of discrimination has been made against him in proceedings under section 57 of the [M15]Race Relations Act 1976 (in this Schedule referred to as "the 1976 Act") and the finding has become final;

[[F75](f) where a non-discrimination notice has been served on him under the 1976 Act and the notice has become final;

(g) if he is for the time being subject to the restraints of an injunction or order granted against him in proceedings under section 62 (persistent

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discrimination) or section 63(4) (enforcement of sections 29 to 31) of the 1976 Act; or

(h) if, on an application under section 63(2)(a) of the 1976 Act, there has been a finding against him that a contravention of section 29, section 30 or section 31 of that Act has occurred and that finding has become final;**]**

and the finding, notice, injunction **[**[F76], interdict **]** or order related or relates to discrimination falling within Part III of the 1975 Act or the 1976 Act (discrimination in fields other than employment).

Textual Amendments

F74 Sch. 1 para. 2(b)-(d) substituted (E.W.S.) (1.10.2007) by Equality Act 2006 (c. 3), s. 93(1), **Sch. 3 para. 38(2)** (with s. 92); S.I. 2007/2603, art. 2(d)

F75 Sch. 1 para. 2(f)(h) repealed (E.W.S.) (1.10.2007) by Equality Act 2006 (c. 3), s. 93(1), Sch. 3 para. 38(3), **Sch. 4** (with s. 92); S.I. 2007/2603, art. 2(d)

F76 Word in Sch. 1 para. 2 inserted (E.W.S.) (1.10.2007) by Equality Act 2006 (c. 3), s. 93(1), **Sch. 3 para. 38(4)** (with s. 92); S.I. 2007/2603, art. 2(d)

Marginal Citations

M14 1975 c. 65.

M15 1976 c. 74.

3 After the expiry of the period of five years beginning on the day on which any such finding or notice as is referred to in paragraph 2 above became final, no person shall be treated for the purposes of section 3(1)(b) of this Act as having committed discrimination by reason only of that finding or notice.

4 (1) So far as paragraphs 2 and 3 above relate to findings **[**[F77]and notices**]** under the 1975 Act, subsections **[**[F78](1) and**]** (4) of section 82 of that Act (general interpretation provisions) shall have effect as if those paragraphs were contained in that Act.

(2) So far as paragraphs 2 and 3 above relate to findings **[**[F77]and notices**]** under the 1976 Act, subsections **[**[F78](1) and**]** (4) of section 78 of that Act (general interpretation provisions) shall have effect as if those paragraphs were contained in that Act.

Textual Amendments

F77 Words in Sch. 1 para. 4(1)(2) repealed (E.W.S.) (1.10.2007) by Equality Act 2006 (c. 3), s. 93(1), Sch. 3 para. 38(5)(a), **Sch. 4** (with s. 92); S.I. 2007/2603, art. 2(d); S.I. 2007/2603, art. 2(d)

F78 Words in Sch. 1 para. 4(1)(2) repealed (E.W.S.) (1.10.2007) by Equality Act 2006 (c. 3), s. 93(1), Sch. 3 para. 38(5)(b), **Sch. 4** (with s. 92); S.I. 2007/2603, art. 2(d); S.I. 2007/2603, art. 2(d)

5 In the application of paragraphs 2 to 4 above to Northern Ireland references to the 1975 Act shall be construed as references to the [M16]Sex Discrimination (Northern Ireland) Order 1976, and in particular—

(a) the references to sections 38, 39 and 40 of the 1975 Act shall be construed as references to Articles 39, 40 and 41 of that Order;

(b) the reference to subsections (1) and (4) of section 82 of the 1975 Act shall be construed as a reference to paragraphs (1), (2) and (5) or Article 2 of that Order; and

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(c) other references to numbered sections of the 1975 Act shall be construed as references to the Articles of that Order bearing the same number;

[[F79]and there shall be omitted sub-paragraphs (e) to (h) of paragraph 2, sub-paragraph (2) of paragraph 4 and so much of paragraph 3 as relates to findings or notices under the 1976 Act.**]**

Textual Amendments

F79 By S.I. 1997/869 (N.I. 6), art. 73, **Sch. 2 para. 2(2)**; S.R. 1997/273, **art. 2(4)** it is provided (4.8.1997) that for these words in Sch. 1 para. 5 there shall be substituted para. 6

Marginal Citations

M16 S.I. 1976/1042 (N.I. 15)

[F80]**[**6 In the application of paragraphs 2 to 4 above to Northern Ireland references to the 1976 Act shall be construed as references to the Race Relations (Northern Ireland) Order 1997, and in particular the references to sections 29, 30, 31, 57, 62, 63(2)(a) and (4) and 78(1) and (4) of the 1976 Act shall be construed as references to Articles 29, 30, 31, 54, 59, 60(2)(a) and (4) and 2(2) and (3) respectively of that Order.**]**

Textual Amendments

F80 By S.I. 1997/869 (N.I. 6), art. 73, **Sch. 2 para. 2(2)**; S.R. 1997/273, **art. 2(4)** it is provided (4.8.1997) that for certain words in Sch. 1 para. 5 there shall be substituted para. 6

SCHEDULE 2

Sections 5, 6 and 8(3).

PROCEDURE ETC.

PART I

ORDERS AND DECISIONS UNDER SECTIONS 3, 4 AND 6

Introductory

1 In this Schedule—

(a) subject to sub-paragraph (2) below, references to "the person affected" are to the person in respect of whom the **[**[F81]OFT**]** proposes to make, or has made, an order under section 3 or section 4 of this Act, or who has made an application under section 6 of this Act for the variation or revocation of such an order; and

(b) references to the **[**[F81]OFT's**]** "proposal" are to any proposal of **[**[F82]its**]** to make such an order or to make a decision under subsection (4) or subsection (5) of section 6 of this Act on such an application.

(2) In the case of a proposal of the **[**[F81]OFT**]** to make an order under section 3 or section 4 of this Act against a partnership where, by virtue of section 5(2) of this Act, **[**[F82]it**]**

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intends that the order shall have effect as an order against some or all of the partners individually, references in the following provisions of this Schedule to the person affected shall be construed, except where the contrary is provided, as references to each of the partners affected by the order, as well as to the partnership itself.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F82 Words in Sch. 2 para. 1 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Notice of proposal

2 (1) The **[**[F81]OFT**]** shall give to the person affected a notice informing him of the proposal and of the **[**[F81]OFT's**]** reason for it; but paragraph 1(2) above shall not apply for the purposes of this sub-paragraph.

(2) In the case of a proposal to make an order, the notice under sub-paragraph (1) above shall inform the person affected of the substance of the proposed order and, in the case of a proposal to make an order under section 3 of this Act, shall—

(a) set out those matters falling within subsection (1) of that section which the **[**[F81]OFT**]** intends should be specified as the grounds for the order, and

(b) specify any other matters of which the **[**[F81]OFT**]** has taken account under subsection (2) of that section, and

(c) if the **[**[F81]OFT**]** proposes to rely on section 4(3) of this Act to establish the unfitness of the person affected, state that fact.

(3) The notice given under sub-paragraph (1) above shall invite the person affected, within such period of not less than twenty-one days as may be specified in the notice—

(a) to submit to the **[**[F81]OFT**]** his representations in writing as to why the order should not be made or, as the case may be, should be varied or revoked in accordance with the application, and

(b) to give notice to the **[**[F81]OFT**]** , if he thinks fit, that he wishes to make such representations orally,

and where notice is given under paragraph (b) above the **[**[F81]OFT**]** shall arrange for the oral representations to be heard.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Hearing of representations

3 Where the **[**[F81]OFT**]** receives notice under paragraph 2(3)(b) above **[**[F83]it**]** shall give the person affected not less than twenty-one days' notice, or such shorter notice as

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the person affected may consent to accept, of the date, time and place at which his representations are to be heard.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F83 Word in Sch. 2 para. 3 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

4 (1) In the course of the hearing of oral representations the **[**[F81]OFT**]** shall, at the request of the person affected, permit any other person (in addition to the person affected) to make representations on his behalf or to give evidence or to introduce documents for him.

(2) The **[**[F81]OFT**]** shall not refuse to admit evidence solely on the grounds that it would not be admissible in a court of law.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

5 If the **[**[F84]OFT**]** adjourns the hearing **[**[F85]it**]** shall give the person affected reasonable notice of the date, time and place at which the hearing is to be resumed.

Textual Amendments

F84 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), **Sch.**)

F85 Word in Sch. 2 para. 5 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Decision

6 (1) The **[**[F81]OFT**]** shall take into account in deciding whether to proceed with **[**[F86]its**]** proposal any written or oral representations made in accordance with the preceding provisions of this Schedule.

(2) If the **[**[F81]OFT**]** considers that **[**[F86]it**]** should proceed with **[**[F86]its**]** proposal but for a reason which differs, or on grounds which differ, from those set out in the notice of the proposal under paragraph 2 above, **[**[F86]it**]** shall give a further notice under that paragraph.

(3) In any case where—

(a) a notice under paragraph 2 above gives more than one reason for the proposal or (in the case of a proposal to make an order under section 3 of this Act) sets out more than one matter which the **[**[F81]OFT**]** intends should be specified as the grounds for the order, and

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(b) it appears to the **[**[F81]OFT**]** that one or more of those reasons should be abandoned or, as the case may be, that one or more of those matters should not be so specified,

the **[**[F81]OFT**]** may nevertheless decide to proceed with **[**[F86]its**]** proposal on the basis of any other reason given in the notice or, as the case may be, on any other grounds set out in the notice.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F86 Words in Sch. 2 para. 6 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(d)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

7 If the **[**[F81]OFT**]** decides not to proceed with **[**[F87]its**]** proposal **[**[F87]it**]** shall give notice of that decision to the person affected and, in the case of a notice of a decision on an application under section 6 of this Act, such a notice shall be combined with a notice under subsection (3) of that section.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F87 Words in Sch. 2 para. 7 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(e)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

8 If the **[**[F81]OFT**]** decides to proceed with **[**[F88]its**]** proposal **[**[F88]it**]** may, if **[**[F88]it**]** thinks fit having regard to any representations made to **[**[F88]it**]** —

(a) where the proposal is for the making of an order, make the order in a form which varies from that of the proposed order mentioned in the notice under paragraph 2 above, or

(b) where the proposal is to vary an order, make a variation other than that mentioned in the notice under paragraph 2 above, or

(c) where the proposal is to refuse to revoke an order, vary the order.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F88 Words in Sch. 2 para. 8 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(f)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Notification of decision

9 (1) Notice of the decision to make the order, and of the terms of the order or, as the case may be, notice of the decision on the application for variation or revocation of the order, shall be given to the person affected, together with the **[**[F81]OFT's**]** reasons for **[**[F89]its**]** decision, including the facts which in **[**[F89]its**]** opinion justify the decision.

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(2) The notice referred to in sub-paragraph (1) above shall also inform the person affected of his right to appeal against the decision and of the period within which an appeal may be brought and of how notice of appeal may be given.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F89 Word in Sch. 2 para. 9(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(g)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

10 (1) Subject to sub-paragraph (2) below, the order to which the decision relates or, as the case may be, any variation of an order for which the decision provides shall not come into operation until any appeal under section 7(1) of this Act and any further appeal has been finally determined or the period within which such an appeal may be brought has expired.

(2) Where the **[**[F81]OFT**]** states in the notice referred to in paragraph 9(1) above that **[**[F90]it**]** is satisfied that there are special circumstances which require it, an order shall come into operation immediately upon the giving of notice of the decision to make it.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F90 Word in Sch. 2 para. 10(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(h)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

PART II

APPLICATIONS UNDER SECTIONS 6(1) AND 8(3)

11 Any reference in this Part of this Schedule to an application is a reference to an application to the **[**[F81]OFT**]** under section 6(1) or section 8(3) of this Act, and any reference to the applicant shall be construed accordingly.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

12 An application shall be in writing and be in such form and accompanied by such particulars as the **[**[F81]OFT**]** may specify by general notice.

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Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

13 The **[**[F81]OFT**]** may by notice require the applicant to publish details of his application at a time or times and in a manner specified in the notice.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

14 If an application does not comply with paragraph 12 above or if an applicant fails to comply with a notice under section 9 of this Act requiring the furnishing of information or the production of documents in connection with the application, the **[**[F81]OFT**]** may decline to proceed with the application.

Textual Amendments

F81 Word in Sch. 2 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 9(16)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

[[F91]SCHEDULE 3

Section 23A(10)

REDRESS SCHEMES

Textual Amendments

F91 Sch. 3 inserted (12.10.2007) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 6 para. 3**; S.I. 2007/2934, art. 3, Sch.

Approval of redress schemes

1 A redress scheme may be approved for the purposes of section 23A by the OFT acting in accordance with paragraphs 2 to 8.

2 (1) A scheme may not be approved unless the OFT considers that—

(a) the provisions of the scheme; and

(b) the manner in which it will be operated (so far as can be judged from facts known to the authority);

are satisfactory for the purposes of section 23A.

(2) Without prejudice to the generality of sub-paragraph (1), a scheme must not be approved unless the OFT considers that it makes satisfactory provision about—

(a) the complaints which may be made under the scheme (which may include complaints about non-compliance with the provisions of a code of practice or other document);

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(b) the ombudsman'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 particular complaint);

(c) the redress which the ombudsman may require members to provide to complainants, which must include the types of redress specified in sub-paragraph (3);

(d) the enforcement of any requirement to provide redress imposed on a member in accordance with the scheme.

(3) The types of redress mentioned in sub-paragraph (2)(c) are—

(a) providing an apology or explanation;

(b) paying compensation; and

(c) taking such other actions in the interests of the complainant as the ombudsman may specify.

3 (1) In determining whether a scheme, or any provisions mentioned in paragraph 2(2), are satisfactory the OFT must have regard to—

(a) the interests of members of the scheme and of sellers and buyers of residential properties; and

(b) such principles as—

(i) in the opinion of the OFT constitute generally accepted principles of best practice in relation to consumer redress schemes, and

(ii) it is reasonable to regard as applicable to the scheme.

(2) In considering the interests mentioned in sub-paragraph (1)(a), the OFT may have regard to the number of other redress schemes which are (or are likely to become) approved redress schemes.

4 The OFT must not approve a scheme unless it considers that the scheme makes satisfactory provision about the provision of information by the ombudsman or the scheme administrator to—

(a) persons exercising functions under other approved schemes;

(b) persons exercising functions under other consumer redress schemes; and

(c) the OFT or any other person exercising regulatory functions in relation to the activities of persons engaging in estate agency work.

5 The OFT must not approve a scheme if it considers that the scheme provides for membership to be revoked on any unfair grounds.

Applications for approval to the OFT

6 An application for approval by the OFT of a redress scheme must—

(a) be made in such manner as the OFT may determine; and

(b) be accompanied by such information as the OFT may require.

7 Where the OFT is proposing to refuse an application for approval it must give the applicant a notice stating—

(a) that it is proposing to refuse the application;

(b) the grounds for the proposed refusal; and

(c) that representations about the proposed refusal may be made within such period of not less than 30 days as is specified in the notice.

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8 If the OFT decides to refuse an application for approval, it must give the applicant a notice stating—

(a) the OFT's decision to refuse the application; and

(b) the reasons for the decision.

Notification of changes to an approved scheme

9 The scheme administrator of a redress scheme which is approved by the OFT must notify the OFT 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.

Withdrawal of approval by the OFT

10 The OFT may withdraw approval of a redress scheme which is for the time being approved by it.

11 Before withdrawing approval of a scheme, the OFT must give the scheme administrator a notice stating—

(a) that it proposes to withdraw its approval;

(b) the grounds for the proposed withdrawal of approval; and

(c) that representations about the proposed withdrawal may be made within such period of not less than 30 days as is specified in the notice.

12 The OFT must give the scheme administrator a notice stating—

(a) its decision on a proposal to withdraw approval; and

(b) the reasons for its decision.

13 If the OFT decides to withdraw approval of a scheme—

(a) the withdrawal has effect from such date as may be specified in the notice under paragraph 12;

(b) the scheme administrator must give a copy of the notice under paragraph 12 to every member of the scheme.

Revocation of designation by the Secretary of State

14 If the Secretary of State decides to revoke his designation of a scheme for the purposes of section 23A, he must give every member of the scheme a notice stating—

(a) that he has decided to revoke the designation;

(b) the reasons for his decision; and

(c) the date from which the revocation has effect.

Defamation proceedings

15 For the purposes of the law relating to defamation, proceedings under an approved redress scheme in relation to the investigation and determination of a complaint are to be treated in the same way as proceedings before a court.

Interpretation

16 In this Schedule—

"redress scheme" has the meaning given in section 23A(8)(a);

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"approved redress scheme" has the meaning given in section 23A(8)(b);

"buyer", in relation to residential property, has the meaning given in section 23A(8)(e);

"complaint" has the meaning given in section 23A(8)(c);

"ombudsman" means the independent person mentioned in section 23A(8)(a);

"residential property" has the meaning given in section 23C;

"scheme administrator", in relation to a redress scheme, means the person who administers the scheme;

"seller", in relation to residential property, has the meaning given by section 23A(8)(d).**]**

[F92SCHEDULE 4

Section 23B(3)

PENALTY NOTICES UNDER SECTION 23B(1)

Textual Amendments

F92 Sch. 4 inserted (12.10.2007) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 6 para. 4**; S.I. 2007/2934, art. 3, Sch.

1 A penalty charge notice given to a person under section 23B(1) by a duly authorised officer of an enforcement authority other than the OFT must—

(a) state the officer's belief that that person has committed a breach of the duty imposed by an order under section 23A(1);

(b) give such other particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty;

(c) require that person, within a period specified in the notice—

(i) to pay a penalty charge specified in the notice; or

(ii) to give notice to the enforcement authority that he wishes to review the notice;

(d) state the effect of paragraph 8;

(e) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and

(f) specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).

2 The penalty charge specified in the notice shall be of such amount (not exceeding £1,000) as may be prescribed for the time being by regulations made by the Secretary of State.

3 (1) The period specified under paragraph 1(c) must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.

(2) The enforcement authority may extend the period for complying with the requirement mentioned in paragraph 1(c) in any particular case if they consider it appropriate to do so.

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4 The enforcement authority may, if they consider that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice.

5 (1) If, within the period specified under paragraph 1(c) (or that period as extended under paragraph 3(2)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the authority shall—

(a) consider any representations made by the recipient and all other circumstances of the case;

(b) decide whether to confirm or withdraw the notice; and

(c) give notice of their decision to the recipient.

(2) A notice under sub-paragraph (1)(c) confirming the penalty charge notice must also state the effect of paragraphs 6(1) to (3) and 8(1) and (3).

(3) If the authority are not satisfied—

(a) that the recipient committed the breach of duty specified in the notice;

(b) that the notice was given within the time allowed by section 23B(2) and complies with the other requirements imposed by or under this Schedule; and

(c) that in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient;

they shall withdraw the penalty charge notice.

6 (1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under paragraph 5(1)(c) is given, appeal to a county court or, in Scotland, to the sheriff against the penalty charge notice.

(2) The county court or the sheriff may extend the period for appealing against the notice.

(3) Such an appeal must be on one (or more) of the following grounds—

(a) that the recipient did not commit the breach of duty specified in the penalty charge notice;

(b) that the notice was not given within the time allowed by section 23B(2) or does not comply with any other requirement imposed by or under this Schedule; or

(c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.

(4) An appeal against a penalty charge notice shall be by way of a rehearing; and the county court or sheriff shall either uphold the notice or quash it.

7 If the penalty charge notice is withdrawn or quashed, the authority shall repay any amount previously paid as a penalty charge in pursuance of the notice.

8 (1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the authority unless—

(a) the notice has been withdrawn or quashed; or

(b) the charge has been paid.

(2) Proceedings for the recovery of the penalty charge may not be commenced before the end of the period mentioned in paragraph 5(1).

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(3) And if within that period the recipient of the penalty charge notice gives notice to the authority that he wishes the authority to review the penalty charge notice, such proceedings may not be commenced—

(a) before the end of the period mentioned in paragraph 6(1); and

(b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined.

9 In proceedings for the recovery of the penalty charge, a certificate which—

(a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and

(b) states that payment of the penalty charge was or was not received by a date specified in the certificate;

is evidence of the facts stated.

10 Section 29 (service of notices etc.) applies in relation to—

(a) any penalty charge notice which is to be given under section 23B(1) by a duly authorised officer of an enforcement authority other than the OFT; and

(b) any notice which is to be given under paragraph 5(1)(c) of this Schedule by such an enforcement authority;

as it applies in relation to any notice which under this Act is to be given to any person by the OFT.

11 The Secretary of State may by regulations make provision supplementary or incidental to the provisions of this Schedule, including in particular provision prescribing—

(a) the form of penalty charge notices or of any other notice mentioned in this Schedule;

(b) circumstances in which penalty charge notices may not be given;

(c) the method or methods by which penalty charges may be paid.

12 Any power to make regulations under this Schedule shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Status:
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