



# Estate Agents Act 1979

## 1979 CHAPTER 38

*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 [F1lead 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 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**

- F1** Words in s. 20(3) 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\(7\)\(e\)](#) (with Sch. 1 para. 28, 2 paras. 13-15)

### **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

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any person with respect to the acquisition or disposal by that person of any interest in that land until the estate agent has disclosed 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
  - (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 <sup>F2</sup>lead enforcement authority] 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

- F2** Words in s. 21(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)(f)** (with Sch. 1 para. 28, 2 paras. 13-15)

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,—

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- (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;
  - (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.

[<sup>F3</sup>(1A) An individual in respect of whom a debt relief order (under Part 7A of the Insolvency Act 1986) is made 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—

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- (a) the adjudication of bankruptcy against him is annulled, or, in Scotland, the sequestration of his estate is recalled [<sup>F4</sup>or reduced]; or
- [<sup>F5</sup>(b) he is discharged from bankruptcy.]
- [<sup>F6</sup>(2A) The prohibition imposed on an individual by subsection (1A) shall cease to have effect if and when—
- (a) the debt relief order is revoked for reasons falling within section 251(L)(2)(a) or (c) of the Insolvency Act 1986;
- (b) the individual is discharged from all the qualifying debts specified under the debt relief order at the end of the moratorium period applicable to the order; or
- (c) the debt relief order is revoked and a period of one year has elapsed beginning with the effective date for the order.]
- (3) [<sup>F7</sup>The references in this section] 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 [<sup>F8</sup>of this section] 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

- F3** S. 23(1A) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 10(2)** (with art. 5)
- F4** Words inserted (S.) by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), s. 75(1), **Sch. 7 para. 17**
- F5** S. 23(b) substituted by Insolvency Act 1985 (c. 65, SIF 66), s. 235(1), **Sch. 8 para. 33**
- F6** S. 23(2A) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 10(3)** (with art. 5)
- F7** Words in s. 23(3) substituted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 10(4)** (with art. 5)
- F8** Words in s. 23(4) substituted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 10(5)** (with art. 5)

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