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## SCHEDULES

### 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 [<sup>F1</sup>lead enforcement authority] 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 [<sup>F2</sup>lead enforcement authority’s] “proposal” are to any proposal of [<sup>F3</sup>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 [<sup>F4</sup>lead enforcement authority] 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, [<sup>F3</sup>it] 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

- F1** Words in Sch. 2 para. 1(1)(a) 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(13)(a)(i)** (with Sch. 1 para. 28, 2 paras. 13-15)
- F2** Words in Sch. 2 para. 1(1)(b) 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(13)(a)(ii)** (with Sch. 1 para. 28, 2 paras. 13-15)
- F3** 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.)
- F4** Words in Sch. 2 para. 1(2) 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(13)(a)(iii)** (with Sch. 1 para. 28, 2 paras. 13-15)

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### *Notice of proposal*

- 2 (1) The [F5lead enforcement authority] shall give to the person affected a notice informing him of the proposal and of the [F6lead enforcement authority'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 [F7lead enforcement authority] intends should be specified as the grounds for the order, and
  - (b) specify any other matters of which the [F7lead enforcement authority] has taken account under subsection (2) of that section, and
  - (c) if the [F7lead enforcement authority] 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 [F8lead enforcement authority] 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 [F8lead enforcement authority], if he thinks fit, that he wishes to make such representations orally,
- and where notice is given under paragraph (b) above the [F8lead enforcement authority] shall arrange for the oral representations to be heard.

#### **Textual Amendments**

- F5** Words in Sch. 2 para. 2(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(13)(a)(iv)(**aa**) (with Sch. 1 para. 28, 2 paras. 13-15)
- F6** Words in Sch. 2 para. 2(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(13)(a)(iv)(**bb**) (with Sch. 1 para. 28, 2 paras. 13-15)
- F7** Words in Sch. 2 para. 2(2) 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(13)(a)(v)(**aa**) (with Sch. 1 para. 28, 2 paras. 13-15)
- F8** Words in Sch. 2 para. 2(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(13)(a)(v)(**aa**) (with Sch. 1 para. 28, 2 paras. 13-15)

### *Hearing of representations*

- 3 Where the [F9lead enforcement authority] receives notice under paragraph 2(3)(b) above [F10it] shall give the person affected not less than twenty-one days' notice, or such shorter notice as the person affected may consent to accept, of the date, time and place at which his representations are to be heard.

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#### Textual Amendments

- F9** Words in Sch. 2 para. 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(13)(a)(v)(bb) (with Sch. 1 para. 28, 2 paras. 13-15)
- F10** 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 <sup>[F11]</sup>lead enforcement authority 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 <sup>[F12]</sup>lead enforcement authority shall not refuse to admit evidence solely on the grounds that it would not be admissible in a court of law.

#### Textual Amendments

- F11** Words in Sch. 2 para. 4(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(13)(a)(v)(cc) (with Sch. 1 para. 28, 2 paras. 13-15)
- F12** Words in Sch. 2 para. 4(2) 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(13)(a)(v)(cc) (with Sch. 1 para. 28, 2 paras. 13-15)

- 5 If the <sup>[F13]</sup>lead enforcement authority adjourns the hearing <sup>[F14]</sup>it shall give the person affected reasonable notice of the date, time and place at which the hearing is to be resumed.

#### Textual Amendments

- F13** Words in Sch. 2 para. 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(13)(a)(v)(dd) (with Sch. 1 para. 28, 2 paras. 13-15)
- F14** Word in Sch. 2 para. 5 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.)

#### Decision

- 6 (1) The <sup>[F15]</sup>lead enforcement authority shall take into account in deciding whether to proceed with <sup>[F16]</sup>its proposal any written or oral representations made in accordance with the preceding provisions of this Schedule.
- (2) If the <sup>[F17]</sup>lead enforcement authority considers that <sup>[F16]</sup>it should proceed with <sup>[F16]</sup>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, <sup>[F16]</sup>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

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out more than one matter which the [F18]lead enforcement authority] intends should be specified as the grounds for the order, and

- (b) it appears to the [F18]lead enforcement authority] 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 [F18]lead enforcement authority] may nevertheless decide to proceed with [F16;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

- F15** Words in Sch. 2 para. 6(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(13)(a)(v)(ee) (with Sch. 1 para. 28, 2 paras. 13-15)
- F16** 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.)
- F17** Words in Sch. 2 para. 6(2) 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(13)(a)(v)(ee) (with Sch. 1 para. 28, 2 paras. 13-15)
- F18** Words in Sch. 2 para. 6(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(13)(a)(v)(ee) (with Sch. 1 para. 28, 2 paras. 13-15)

- 7 If the [F19]lead enforcement authority] decides not to proceed with [F20;its] proposal [F20;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

- F19** Words in Sch. 2 para. 7 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(13)(a)(v)(ff) (with Sch. 1 para. 28, 2 paras. 13-15)
- F20** 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 [F21]lead enforcement authority] decides to proceed with [F22;its] proposal [F22;it] may, if [F22;it] thinks fit having regard to any representations made to [F22;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

- F21** Words in Sch. 2 para. 8 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(13)(a)(v)(gg) (with Sch. 1 para. 28, 2 paras. 13-15)

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**F22** 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 [<sup>F23</sup>lead enforcement authority's] reasons for [<sup>F24</sup>its] decision, including the facts which in [<sup>F24</sup>its] opinion justify the decision.
- (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**

- F23** Words in Sch. 2 para. 9(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\(13\)\(a\)\(vi\)](#) (with Sch. 1 para. 28, 2 paras. 13-15)
- F24** 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 [<sup>F25</sup>lead enforcement authority] states in the notice referred to in paragraph 9(1) above that [<sup>F26</sup>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**

- F25** Words in Sch. 2 para. 10(2) 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\(13\)\(a\)\(vii\)](#) (with Sch. 1 para. 28, 2 paras. 13-15)
- F26** 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.](#))

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## 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 [<sup>F27</sup>lead enforcement authority] under section 6(1) or section 8(3) of this Act, and any reference to the applicant shall be construed accordingly.

#### Textual Amendments

- F27** Words in Sch. 2 para. 11 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(13)(b)(i)** (with Sch. 1 para. 28, 2 paras. 13-15)

- 12 An application shall be in writing and be in such form and accompanied by such particulars as the [<sup>F28</sup>lead enforcement authority] may specify by general notice.

#### Textual Amendments

- F28** Words in Sch. 2 para. 12 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(13)(b)(ii)** (with Sch. 1 para. 28, 2 paras. 13-15)

- 13 The [<sup>F29</sup>lead enforcement authority] 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

- F29** Words in Sch. 2 para. 13 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(13)(b)(iii)** (with Sch. 1 para. 28, 2 paras. 13-15)

- 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 [<sup>F30</sup>lead enforcement authority] may decline to proceed with the application.

#### Textual Amendments

- F30** Words in Sch. 2 para. 14 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(13)(b)(iv)** (with Sch. 1 para. 28, 2 paras. 13-15)

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