

Status: Point in time view as at 12/09/2011.

Changes to legislation: Estate Agents Act 1979 is up to date with all changes known to be in force on or before 24 January 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)

SCHEDULES

SCHEDULE 1

Section 3(1).

PROVISIONS SUPPLEMENTARY TO SECTION 3(1)

Spent convictions

- [^{F1}1 A person is not to be treated for the purposes of section 3(1)(a) of this Act as having committed an offence if he has been convicted of that offence and that conviction is to be treated as spent for the purposes of the Rehabilitation of Offenders Act 1974 or any corresponding enactment for the time being in force in Northern Ireland.]

Textual Amendments

- F1** Sch. 1 para. 1 substituted (1.10.2008) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), ss. [55\(5\)](#), [66\(2\)](#) (with s. [48\(3\)](#)); S.I. 2008/905, art. [3\(2\)](#), Sch. 2

Discrimination

- 2 [^{F2}(1) A person commits discrimination for the purposes of section 3(1)(b) in the following cases only.
- (2) The first case is where—
- (a) the person has been found to have contravened a relevant equality provision, and
 - (b) no appeal against the finding is pending or can be brought.
- (3) The second case is where—
- (a) the person has been given an unlawful act notice under section 21 of the Equality Act 2006,
 - (b) the notice specifies a relevant equality provision as the provision by virtue of which the act in question is unlawful, and
 - (c) no appeal against the giving of the notice is pending or can be brought.
- (4) The third case is where—
- (a) the person is the subject of an injunction, interdict or order under section 24 of the Equality Act 2006 (unlawful acts), and
 - (b) the unlawful act in question is a contravention of a relevant equality provision.
- (5) The relevant equality provisions are—
- (a) Parts 3 and 4 of the Equality Act 2010 (services and premises) so far as relating to discrimination and victimisation, and
 - (b) section 112 of that Act (aiding contraventions) in relation to either of those Parts of that Act so far as relating to discrimination and victimisation.]

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Textual Amendments

- F2** Sch. 1 para. 2 substituted (E.W.S.) (1.10.2010) by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 6(2) (as inserted (1.10.2010) by [S.I. 2010/2279](#), [art. 1\(2\)](#), [Sch. 1 para. 2](#) (see [S.I. 2010/2317](#), [art. 2](#)))

Marginal Citations

- M1** 1975 c. 65.
M2 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 [^{F3}a contravention of a relevant equality provision] by reason only of that finding or notice.

Textual Amendments

- F3** Words in Sch. 1 para. 3 substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 6(3) (as inserted (1.10.2010) by [S.I. 2010/2279](#), [art. 1\(2\)](#), [Sch. 1 para. 2](#) (see [S.I. 2010/2317](#), [art. 2](#)))

- [^{F4} For the purposes of paragraphs 2 and 3 “discrimination” and “victimisation” have the same meaning as in the Equality Act 2010.]

Textual Amendments

- F4** Sch. 1 para. 4 substituted by Equality Act 2010 (c. 15), Sch. 26 Pt. 1 para. 6(4) (as inserted (1.10.2010) by [S.I. 2010/2279](#), [art. 1\(2\)](#), [Sch. 1 para. 2](#) (see [S.I. 2010/2317](#), [art. 2](#)))

- 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 ^{M3}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
 - (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;
- [^{F5}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

- F5** 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

- M3** [S.I. 1976/1042 \(N.I. 15\)](#)

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- ^{F6}[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

- F6** 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 [^{F7}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 [^{F7}OFT’s] “proposal” are to any proposal of [^{F8}it] 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 [^{F7}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, [^{F8}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

- F7** 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.)
- F8** 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.)

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Notice of proposal

- 2 (1) The [F7OFT] shall give to the person affected a notice informing him of the proposal and of the [F7OFT'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 [F7OFT] intends should be specified as the grounds for the order, and
 - (b) specify any other matters of which the [F7OFT] has taken account under subsection (2) of that section, and
 - (c) if the [F7OFT] 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 [F7OFT] 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 [F7OFT], if he thinks fit, that he wishes to make such representations orally,
- and where notice is given under paragraph (b) above the [F7OFT] shall arrange for the oral representations to be heard.

Textual Amendments

- F7** 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 [F7OFT] receives notice under paragraph 2(3)(b) above [F9it] 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.

Textual Amendments

- F7** 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.)
- F9** 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 [F7OFT] 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.

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- (2) The [F7OFT] shall not refuse to admit evidence solely on the grounds that it would not be admissible in a court of law.

Textual Amendments

- F7** 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 [F10OFT] adjourns the hearing [F11it] shall give the person affected reasonable notice of the date, time and place at which the hearing is to be resumed.

Textual Amendments

- F10** 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.](#))
- F11** 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 [F7OFT] shall take into account in deciding whether to proceed with [F12its] proposal any written or oral representations made in accordance with the preceding provisions of this Schedule.
- (2) If the [F7OFT] considers that [F12it] should proceed with [F12its] 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, [F12it] 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 [F7OFT] intends should be specified as the grounds for the order, and
 - (b) it appears to the [F7OFT] 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 [F7OFT] may nevertheless decide to proceed with [F12its] 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

- F7** 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.](#))
- F12** 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.](#))

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- 7 If the [F7OFT] decides not to proceed with [F13its] proposal [F13it] 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

- F7** 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.](#))
- F13** 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 [F7OFT] decides to proceed with [F14its] proposal [F14it] may, if [F14it] thinks fit having regard to any representations made to [F14it] —
- (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

- F7** 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.](#))
- F14** 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 [F7OFT's] reasons for [F15its] decision, including the facts which in [F15its] 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

- F7** 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.](#))
- F15** 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

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appeal has been finally determined or the period within which such an appeal may be brought has expired.

- (2) Where the [F7OFT] states in the notice referred to in paragraph 9(1) above that [F16;t] 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

- F7** 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.](#))
- F16** 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 [F7OFT] under section 6(1) or section 8(3) of this Act, and any reference to the applicant shall be construed accordingly.

Textual Amendments

- F7** 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 [F7OFT] may specify by general notice.

Textual Amendments

- F7** 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 [F7OFT] 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

- F7** 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 [F7OFT] may decline to proceed with the application.

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Textual Amendments

- F7** 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.](#))

[^{F17}SCHEDULE 3

Section 23A(10)

REDRESS SCHEMES

Textual Amendments

- F17** 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);
 - (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—

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- (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.
- 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—

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- (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);
 - “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).]

Status: Point in time view as at 12/09/2011.

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[F18] SCHEDULE 4

Section 23B(3)

PENALTY NOTICES UNDER SECTION 23B(1)

Textual Amendments

F18 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.
- 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).

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- (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).
- (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—

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- (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:

Point in time view as at 12/09/2011.

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