

CONSUMERS, ESTATE AGENTS AND REDRESS ACT 2007

EXPLANATORY NOTES

BACKGROUND AND OVERVIEW

Part 3: Estate Agents

14. The work of estate agents is primarily governed by the [Estate Agents Act 1979 \(c.38\)](#) (the 1979 Act), the [Property Misdescriptions Act 1991 \(c.29\)](#), and Part 5 of the [Housing Act 2004 \(c.34\)](#) (the 2004 Act). All of these extend to the whole of the UK save for the 2004 Act which applies to England and Wales.
15. The system for buying and selling a property in Scotland is quite different from the rest of the UK. For example, a significant proportion of transactions make use of the sealed bid system, and houses are often sold through solicitors. These differences are accommodated by the 1979 Act. Housing in Scotland is a devolved matter, and the Scottish equivalent of the Housing Act 2004 is the [Housing \(Scotland\) Act 2006 \(asp1\)](#), which contains provisions for Purchaser Information Packs (PIPs) and single surveys.
16. Section 1 of the 1979 Act provides a definition of “estate agency work” rather than defining an “estate agent”. The definition of estate agency work has been utilised for the purposes of this Act.
17. Estate agents are subject to a “negative licensing” system under the 1979 Act. This means that anyone can set up as an estate agent, but the Office of Fair Trading (OFT) can ban estate agents they consider to be unfit to practise.
18. The legislation mentioned above is enforced by the OFT and trading standards officers (TSOs) in Great Britain, and in Northern Ireland by the Northern Ireland Trading Standards Service, which is part of the Department of Enterprise, Trade and Investment.
19. The OFT published a report on the Estate Agency Market in March 2004. The Government published its response to the report in July 2004. The measures in this Act stem from the OFT’s report and the Government’s response.
20. In summary the Act seeks to:
 - a) require estate agents to belong to a redress scheme for the purposes of all complaints relating to estate agency work carried out in relation to residential property;
 - b) require estate agents to make and keep records, including records of offer letters, for a period of six years;
 - c) give the OFT and TSOs additional powers to require access to premises and to demand on-site production of records when they have reasonable grounds to suspect that an agent has not complied with the 1979 Act; and

These notes refer to the Consumers, Estate Agents and Redress Act 2007 (c.17) which received Royal Assent on 19th July 2007

- d) expand the circumstances in which the OFT can consider the fitness of an estate agent to practise and consequently to take regulatory action against them under sections 3 and 4 of the 1979 Act.

Amendments of the Estate Agents Act 1979

- 21. At present membership of a redress scheme for estate agents is voluntary. The Government stated in its response to the OFT report that it hoped to amend the Housing Act during its passage to provide a power to require all estate agents to belong to a redress scheme. This proved not to be possible due to the scope of the Housing Act. Therefore the 2004 Act includes provision for the Secretary of State to make an order to require an estate agent to be a member of an approved redress scheme but only for the purposes of complaints relating to Home Information Packs. This Act gives the Secretary of State the power to require all estate agents to belong to a redress scheme for the purposes of all complaints against estate agents by buyers and sellers of residential property. This requirement will be UK wide (the 2004 Act extends only to England and Wales).
- 22. The OFT's 2004 report on the estate agents market made some recommendations to improve the regulation of estate agents. The Government supported a number of these recommendations in its response. The other sections in this Act relating to estate agents implement the recommendations from the OFT report set out at points (b) to (d) above.