

CONSUMERS, ESTATE AGENTS AND REDRESS ACT 2007

EXPLANATORY NOTES

TERRITORIAL EXTENT AND TERRITORIAL APPLICATION

Northern Ireland

Part 3: Amendments of the Estate Agents' Act 1979

Estate agents' duties

Section 54: Duty to keep records

149. At present, it is an undesirable practice under the 1979 Act for an estate agent to fail to pass on an offer to the seller promptly and in writing (except where the client has indicated that he does not want particular types of offer to be passed on), or to misrepresent an offer (see Articles 1 and 2 and Schedule 3 to the Estate Agents (Undesirable Practices) (No.2) Order 1991). An undesirable practice is one of the triggers for considering a person's fitness to engage in estate agency work under section 3(1) of the 1979 Act and hence can lead to a prohibition order. However, estate agents are not currently required to maintain records of offers made and passed on.
150. The section inserts a new section 21A in the 1979 Act. Subsection (1) of the new section introduces a requirement for persons engaged in estate agency work to keep records (referred to in the section as "the permanent records"). Subsection (3) requires persons engaged in estate agency work to ensure that records of certain information and events are included in those records. The details of what must be included are specified in subsection (4) (e.g. information to clients regarding their prospective liabilities to the person carrying on estate agency work, information about offers and other information of a description prescribed by the Secretary of State). The records must be kept for a period of at least six years. The period of six years is the period for which accounting records under the Estate Agents (Accounts) Regulations 1981¹ have to be kept and is also the basic limitation period for most claims.
151. The new section makes special provision for persons who are engaged in estate agency work as employees. The duty under subsection (1) to keep records is that of the employer and not the employee (see subsection (2)). But the duty under subsection (3) does apply to employees so they must, for example, ensure that information about offers received by them is included in the records. Under subsection (5) employers, as well as employees, are also required to ensure that records are kept up to date in this way, but the employer is not in breach of the duty if he can show that he took such steps as were reasonably practicable to ensure that his employees complied with their duty. Regulatory action can be taken against the employer for failing to keep records or to keep them up to date (subject to the defence just mentioned) and against the employee for failing to keep the records up to date.

¹ SI 1981 No. 1520 The Estate Agents (Accounts) Regulations