

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

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 53: Membership of redress schemes

147. *Section 53* introduces *Schedule 6* which amends the *Estate Agents Act 1979 (c.38)* to enable the Secretary of State, by order, to require persons engaged in estate agency work to join a redress scheme dealing with complaints from buyers and sellers of residential property. In addition, the section amends section 3 of the 1979 Act by adding engaging in estate agency work when in breach of the duty imposed by such an order to the list of grounds on which the OFT may determine whether a person is unfit to carry on estate agency work.
148. This section also repeals sections 172 to 174 of the *Housing Act 2004 (c.34)* (which give the Secretary of State the power to require estate agents to belong to a redress scheme in relation to complaints regarding Home Information Packs). The intention is to bring the repeal of sections 172 to 174 into force when an order made under the Estate Agents Act 1979 (as amended by Schedule 6) comes into force.

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.

Section 55: Grounds for prohibition orders

152. Section 3(1) of the 1979 Act lists the triggers which allow the OFT to consider the fitness of an estate agent. *Subsection (2)* of this section amends section 3(1) so that the OFT can consider the fitness of estate agents where they have committed an offence even if the individual has not been convicted of the offence. For example, the individual may have accepted a police caution, or the OFT may have evidence from Trading Standards Officers or the Financial Services Authority of an offence having been committed where these authorities do not wish to prosecute for some reason (e.g. the FSA may decide to revoke someone's authorisation instead).
153. In addition, *subsection (3)* further widens the circumstances in which the OFT can consider a person's fitness to engage in estate agency work to include circumstances where an estate agent has breached a statutory undertaking given to the OFT under section 217, 218 or 219 of the [Enterprise Act 2002 \(c.40\)](#) or breached an enforcement order made against him under section 217 of that Act in relation to estate agency work.
154. *Subsection (4)* of the section provides that section 5(4) of the 1979 Act is omitted. Section 5(4) provides for the automatic revocation of orders based on a conviction which becomes spent. Its repeal means that an individual who is subject to a prohibition order on the basis that he has committed an offence and who has been convicted of that offence will have to apply to the OFT to have the prohibition order revoked when the conviction becomes spent. The OFT would be expected to revoke the order in these circumstances. An individual who is subject to a prohibition order due to having committed an offence but who has not been convicted of the offence will also have to apply to the OFT to revoke the order, after a suitable period of time, should they wish to practise as an estate agent again.
155. *Subsection (5)* amends paragraph 1 of Schedule 1 to the 1979 Act. The amendment makes it clear that in determining whether to make a prohibition order on the ground set out in section 3(1)(a) (as amended) the OFT may not rely on convictions that have become spent.

Section 56: Grounds for warning orders

156. In the same way that section 55 widens the circumstances in which the OFT can consider whether a person is fit to engage in estate agency work, potentially leading to a prohibition order, this section widens the circumstances in which the OFT can consider issuing a warning order to an estate agent under section 4(1) of the 1979 Act. Section 4(1) currently provides that a warning order may be issued where a person carrying on estate agency work has failed to comply with an obligation imposed on him under sections 15 or 18 to 21, or has engaged in an undesirable practice as mentioned in section 3(1)(d), and were he again to fail to comply with such an obligation or

¹ SI 1981 No. 1520 [The Estate Agents \(Accounts\) Regulations](#)

continue to engage in that practice the OFT would issue a prohibition order against him. *Subsection (2)* of section 56 extends the circumstances in which warning orders may be issued to include engaging in estate agency work in breach of a duty to belong to a redress scheme, failure to comply with any requirement imposed under sections 9(1) or 11(1A)(b) and breach of a statutory undertaking or an enforcement order under the Enterprise Act 2002.

157. *Subsections (3) to (5)* contain further amendments to section 4 which are consequential on the amendments made by subsection (2).

Investigatory powers

Section 57: Powers of entry and inspection

158. This section widens the powers of entry under the 1979 Act. At present, under section 11 of the 1979 Act, enforcement officers have the power to enter premises when they have reasonable cause to suspect that an offence has been committed. This section extends the power so that enforcement officers can enter premises not only when there is reasonable cause to suspect that an offence has been committed but also where the enforcement officer has reasonable cause to suspect that a breach of the obligations listed under subsection (1)(b) of section 11 (as amended), or an undesirable practice, has occurred. The power is to be used to establish whether the specified breach or undesirable practice has occurred.
159. New subsection (1A) sets out the powers which are for the enforcement officer to enter premises, to require anyone connected with the business to provide him/her with any books or documents (including requiring that documents held on a computer related to the business be produced in a legible form) and to make copies of any books, or documents provided. This re-enacts with minor amendments the provision currently made by section 11(1)(b).
160. New subsection (1B) allows an officer to seize and detain the originals of any books or documents provided they may be required as evidence for use in proceedings that might follow. This replaces the current power in section 11(1)(c) to seize and detain documents and widens the circumstances in which the power is exercisable. In addition, new subsection (1C) allows an enforcement officer to seize and detain a book or document where it is not possible to take a copy of it or of an entry in it. These subsections are qualified by the new subsections (1D), (1E) and (1F), as well as subsections (2) and (3) of section 11.
161. *Subsection (3)* further amends section 11. Section 11(4) currently only allows a warrant to be issued when there are grounds to believe that an offence has been or is being or is about to be committed or that there is documentary evidence on the premises that is likely to reveal that an offence has been committed, and that admission to the premises has been or is likely to be refused or that giving notice would defeat the object of the entry. The new subsections (4), (4A) and (4B) are wider and, in addition to the existing circumstances under section 11, allow a warrant to be issued if there is reason to believe that an estate agent has breached any of the obligations under the Act specified in subsection (4A)(a), or has engaged in an undesirable practice. At least one of the conditions in subsection (4B) must also be satisfied for a warrant to be granted.

Section 58: Failure to produce information

162. This section provides a new power where a person has failed to provide to the OFT (under section 9 (1) of the 1979 Act) or to an enforcement officer (under section 11(1A) (b)) information, books or documents that have been required to be produced. The OFT or the enforcement officer can apply for a court order to require the “defaulter” to produce the information, books or documents asked for, or to take such other steps as may be specified in the order. This section also makes consequential amendments to section 9 and section 27 of the 1979 Act.