

CONSUMERS, ESTATE AGENTS AND REDRESS ACT 2007

EXPLANATORY NOTES

TERRITORIAL EXTENT AND TERRITORIAL APPLICATION

Northern Ireland

28. So far as Northern Ireland is concerned, the Act covers consumer protection in relation to postal services only. The regulation of postal services is a reserved matter. The new Council will therefore represent consumers across all sectors in England, Wales and Scotland, and postal services consumers only in Northern Ireland.

Part 1: the National Consumer Council

Section 1: Establishment of the National Consumer Council and its territorial committees

29. *Subsection (1)* establishes the new National Consumer Council as a body corporate. The Council will be a Non-Departmental Public Body (NDPB). It will be funded by the Secretary of State who will recover some of the Council's costs from payments made by licensees in the electricity, gas, and postal services sectors. Such costs will be collected from licensees by sectoral regulators. After the Consumer Council for Water has been abolished under section 31, licensees in the water sector may also be required to contribute towards the cost of the Council. Part 5 of Schedule 1 and section 33 make provision in relation to funding.
30. *Subsection (2)* requires the Council to establish and maintain a committee in Scotland, to be known as the Scottish Consumer Council; a committee for Wales to be known as the Welsh Consumer Council; and a committee for Northern Ireland, to be known as the Northern Ireland Postal Services Committee. These three committees are called "territorial committees" (*subsection (3)*). The Council's functions extend to Northern Ireland only to the extent that it represents the interests of consumers of postal services (see the definition of consumer in Northern Ireland, in section 3(2)(b)). This is because the existing General Consumer Council for Northern Ireland already has the function of representing the interests of consumers in Northern Ireland in respect of other matters and will continue to perform that function once the Council has been established.
31. *Subsection (4)* introduces *Schedule 1*, which makes further provision about the Council and its territorial committees, and sets out its membership, terms of appointment, procedure, funding and requirements as to its accounts. There is a more detailed explanation of the contents of Schedule 1 in paragraphs 174 to 206 of these Notes.

Section 2: The territorial committees

32. *Subsection (1)* permits the Scottish Consumer Council, the Welsh Consumer Council, and the Northern Ireland Postal Services Committee ("the territorial committees")

to exercise certain functions of the Council, on behalf of the Council, within their territories.

33. *Subsection (2)* provides that the Council may impose restrictions or conditions on the way in which the territorial committees exercise their functions, or may give general or specific directions to the territorial committees in relation to the exercise of their functions. It may do this for the purposes of facilitating or improving co-ordination in the carrying out of the Council's functions.
34. *Subsection (3)* provides that, despite the powers granted to the territorial committees under subsection (1), the Council may concurrently exercise any of its functions specified in that subsection.
35. *Subsection (4)* sets out additional purposes of a territorial committee. These are to provide advice and information to the Council about consumer matters in the relevant area for which the committee is established; the provision of advice to the Council about the exercise of its functions to the extent that they affect the relevant area; and such other purposes as the Council may determine.

Section 3: "Consumer" and "consumer matters"

36. *Section 3* defines "consumer" and "consumer matters" for the purposes of Part 1. For Great Britain the definition covers every person who purchases uses or receives goods or services supplied in the course of a business. A "consumer" includes an existing and a future one (*subsection (3)*); "goods" includes interests in land (*subsection (4) (b)*) and "business" includes a profession and the activities of a government department and public bodies (*subsection (4)(c)*). For Northern Ireland, the definition is limited to persons who purchase, use or receive "relevant postal services" (as defined in section 41(1)). This is because the Council's functions in Northern Ireland will be limited to the postal services sector. The General Consumer Council for Northern Ireland will represent the interests of consumers in other sectors (as it does now).

Section 4: "Designated consumers"

37. *Section 4* defines "designated consumers". The concept of "designated consumers" reflects the proposal to merge sectoral consumer bodies with a specific remit (gas, electricity, postal services and, in future, water), into the Council, and the desire to maintain a specific focus on these merged sectors. "Designated consumers" comprise those consumers in specific sectors previously served by a sectoral consumer body. The focus on designated consumers is retained by the requirement on the new Council to set out its priorities in respect of designated consumers in a forward work plan (see section 5 below). Other provisions in section 5 provide for transparency in funding, because businesses in the sectors relevant to "designated consumers" (i.e. electricity, gas and postal services, and possibly in future water) will partly fund the new Council.
38. *Subsections (2) and (3)* permit the Secretary of State to add, by order, consumers who are provided with water and sewerage services in England and Wales to the list of designated consumers. Before making such an order,, the Secretary of State must consult the Council, Welsh Ministers, and other persons as he thinks appropriate. The Secretary of State can also provide, by order, that classes of consumers are to cease to be "designated consumers". Before making such an order, the Secretary of State must consult the Council, the Scottish Ministers (except in relation to water consumers) and the Welsh Ministers, and other persons as he thinks appropriate.

Section 5: Forward work programmes

39. The Council is required by *section 5* to prepare, publish, and consult on a draft forward work programme for each financial year, and to consider any representations made in response to that consultation. Copies of the draft programme must be sent to the

Secretary of State, Scottish Ministers, Welsh Ministers, the OFT, and regulatory bodies that the Council considers might have an interest.

40. This section specifies that the forward work programme must include a statement of priorities in relation to designated consumers and the main activities and projects to be undertaken in respect of them (*subsection (1)(a) and (b)*). It requires the Council to describe other priorities, activities and projects that it proposes to undertake (*subsection (1)(c) and (d)*). The Council must provide an estimate of the overall expenditure in respect of the work programme, including an estimate of expenditure in relation to work in respect of designated consumers (*subsection (3)(a) and (b)*), with separate estimates for each designated sector (*subsection (4)*).

Section 6: General provision about functions

41. *Section 6* sets out some general requirements the Council must comply with when exercising its functions.
42. *Subsection (2)* requires the Council to have regard to the forward work programme published under section 5.
43. *Subsections (4) and (5)* require the Council to consider the needs of specified groups of vulnerable consumers, although the Council's ability to consider consumers' interests is not limited to these groups.
44. *Subsections (6) and (7)* require the Council to use its resources efficiently, and to consider whether there is another public body with similar functions to the Council. This is to avoid duplicating work.
45. *Subsection (8)* requires the Council to exercise its functions in the manner which it considers is best calculated to contribute to the achievement of sustainable development. Functions are defined in section 41 as including the Council's powers and duties.
46. *Subsection (9)* provides that the Council is not under an obligation to act for an individual consumer, other than when it is approached by a consumer who is facing disconnection from his or her energy supply. This is because the main role of the Council is to act on behalf of all consumers, as opposed to dealing with individual complaints, which is the proper role of Consumer Direct (the consumer advice service supported by the OFT) and the redress schemes (either those already in existence, or those created under the powers in this Act).

Section 7: Annual Report

47. *Section 7* requires the Council to produce and publish an annual report on its activities for each financial year. The report must include details of the progress of projects described in the forward work programme (see section 5); any activities undertaken under section 22 (voluntary activities); and any other matters which the Secretary of State directs the Council to include (*subsection (2)(c)*). The Council must send copies of the annual report to the Secretary of State (who must lay copies before Parliament) and to the Scottish and Welsh Ministers (*subsection (3)*); and arrange for the report to be published (*subsection 5*).

Section 8: The representative function

48. *Subsection (1)* provides for the first of the Council's three core functions: to provide advice and information, to make proposals about consumer matters and to represent the views of consumers to the people set out in *subsection (2)*. Consumer matters are defined in section 3.

49. *Subsection (2)* lists the persons to whom the Council may make representations. These include Ministers, regulators, the European Commission and anyone else the Council considers might have an interest.

Section 9: The research function

50. *Section 9* provides for the second of the Council's core functions: to obtain and keep under review information about consumer matters; information about the views of consumers on such matters; and information of any other description specified in a Secretary of State order..

Section 10: The information function

51. *Section 10* sets out the third of the Council's core functions: to facilitate the dissemination of advice and information to consumers about the Council itself and its functions, and about consumer matters. This means that the Council can either disseminate advice and information itself, or alternatively can work in conjunction with another organisation to disseminate the advice or information. The Secretary of State has power by order to add other matters in respect of which the Council is to exercise this function.
52. *Subsection (2)* gives the Council the power to make available that advice and information in any way it thinks suitable to bring it to the attention of anyone it thinks will have an interest, and also to work with other organisations to make the information available. Under section 20 (described below) the Council is also required to enter into cooperation arrangements with other bodies, including the Office of Fair Trading, the Financial Services Consumer Panel and the OFCOM Consumer Panel .. Such arrangements include those made to secure the coordination of activities relating to the provision of advice or information to consumers (see section 20(2)).

Powers of investigation

Section 11: General powers of investigation

53. *Section 6(9)* provides that the Council is not required to act for individual consumers (except in respect of disconnections – see section 13). The Council is able to investigate complaints made by vulnerable consumers (section 12). *Section 11* enables the Council to investigate a complaint by a consumer where the Council considers that the subject matter is of general relevance. *Subsection (3)* explains in what circumstances a complaint will be regarded as raising an issue of “general relevance”. This section also enables the Council to investigate any matter related to a problem which affects consumers generally or consumers of a particular description, whether or not a complaint is made.

Section 12: Investigation of complaints by vulnerable designated consumers

54. *Section 12* provides that the Council may investigate a complaint made by a vulnerable designated consumer against a supplier. “Designated consumer” is defined by section 4. *Subsection (2)* provides that a designated consumer is “vulnerable” if the Council is satisfied it is not reasonable to expect the consumer to pursue the complaint on his or her own behalf. This might apply to persons who are unable to pursue a complaint by reason of a mental or physical disability, a lack of basic skills (such as literacy) or their personal circumstances (such as a recent bereavement). If the Council thinks it is appropriate, in order to help resolve the complaint, it may provide advice to the individual or may make representations to the relevant supplier (*subsection (4)*).

Section 13: Investigation of complaints relating to disconnection of gas or electricity

55. *Section 13* provides that a gas consumer may complain to the Council where the consumer's premises are disconnected or cut off by a gas transporter or gas supplier (or such action is threatened); where the gas transporter or supplier refuses to reconnect the consumer's premises; or where there is a failure of a prepayment system. Similarly, an electricity consumer may complain to the Council where his premises are disconnected or threatened with disconnection by an electricity distributor, supplier or transmission licence holder; where the supplier etc refuses to reconnect the consumer's premises; or where there is a failure of a prepayment system. The Council must investigate any complaint made by the consumer, and must, if it thinks it appropriate, provide advice to the consumer or make representations to the supplier, distributor, transporter or transmission licence holder on behalf of the consumer.
56. The Council may refuse to investigate a complaint in certain circumstances (specified in *subsections (4) and (5)*).

Section 14: Reference of matters to the Gas and Electricity Markets Authority

57. *Section 14* requires the Council to refer a complaint which it has the power to investigate under section 11(1)(a) (complaints which raise general issues or affect consumers generally) or section 12 (vulnerable consumers) or the duty to investigate under section 13 (complaints about disconnections) to the Gas and Electricity Markets Authority if it considers that the Authority's enforcement powers may be exercisable in relation to the complaint. Having referred a complaint to the Authority, the Council is not obliged to investigate further until the Authority has had a reasonable opportunity to exercise its enforcement functions (*subsection (3)*). The Council is also obliged to inform a complainant if it considers that a complaint which has been referred to it relates to a matter which can be referred to the Gas and Electricity Markets Authority under the *Gas Act 1986 (c.44)* or the *Electricity Act 1989 (c.29)* (*subsection (4)*).

Section 15: Reference of matters to the Postal Services Commission

58. *Section 15* requires the Council to refer a complaint which it has the power to investigate under section 11(1)(a) (complaints which raise general issues or affect consumers generally) or section 12 (complaints by vulnerable consumers) to the Postal Services Commission in certain circumstances, including where the Council considers that the complaint relates to the contravention of a licence condition.

Section 16: Investigations relating to public post offices

59. *Section 16* enables the Council to investigate any matter relating to the number and location of public post offices in any part of the United Kingdom.

Other functions of the Council

Section 17: Reports by the Council

60. *Section 17* enables the Council to prepare and publish reports on any matter within the scope of its functions.

Section 18: Secretary of State's power to require reports

61. *Section 18* enables the Secretary of State to direct the Council to prepare a report in respect of any matter that relates to consumer matters. The Secretary of State may publish these reports.

Section 19: Advice, information and guidance

62. *Section 19(1)* enables the Council to issue advice or guidance to improve standards of service to consumers and promote best practice in relation to complaint handling, or on any other matters related to the interest of consumers.
63. *Subsection (2)* enables the Council to publish advice and information about consumer matters if it thinks publication will promote the interests of consumers.

Section 20: Duty to enter into co-operation arrangements

64. *Section 20* requires the Council to enter into co-operation arrangements with various bodies (“designated bodies”). The designated bodies are the OFT, the Financial Services Consumer Panel, the OFCOM Consumer Panel and any other person designated by the Secretary of State by order. *Subsection (3)* sets out the matters which such arrangements should deal with. These agreements are intended to enable the Council and the designated regulators to work together in exercising their functions in relation to the provision of advice or information to consumers in areas where these functions overlap.
65. *Subsections (4) to (6)* provide that memoranda setting out each co-operation arrangement and any revisions must be sent to the Secretary of State. The Secretary of State must lay any memoranda detailing the cooperation arrangement received by him before Parliament (*subsection (7)*).
66. In addition to these cooperation arrangements, sections 39 and 40 and Schedule 1 paragraph 1(4) make provision about cross-appointments between the Council and the OFCOM Consumer Panel and the Financial Services Consumer Panel. This is also to ensure that the Panels and the Council work closely together.

Section 21: Power to co-operate and give assistance

67. *Section 21* allows the Council to co-operate with or give assistance to any person if it thinks that doing so would contribute towards carrying out its own functions.

Section 22: Voluntary activities

68. *Section 22* enables the Council to undertake other activities in addition to the functions described above. In particular, it has the power to give advice or assistance to others, including research or other services, in respect of any matters in which the Council has skill, experience or expertise. It may charge for services provided under this section. This section is intended to enable the Council to undertake paid work or other work for other persons (for instance research projects).
69. The Council is also given the power to establish a company or, subject to the consent of the Secretary of State, to acquire an interest in one to exercise its functions under this section (*subsections (4) and (5)*). The Secretary of State must publish the reasons for any consent granted to the Council for this purpose.

Section 23: Supplementary powers etc

70. *Section 23* makes provision for the Council to do whatever it sees fit, apart from borrowing money, in the interests of performing its functions. However, the Council may not acquire or dispose of interests in land without approval from the Secretary of State except under a transfer of property scheme provided for in section 35. Section 35 gives the Secretary of State the power, in winding up the Gas and Electricity and Postal Services Consumer Councils, the existing National Consumer Council and the Consumer Council for Water, to transfer their property to the Council or another person.

Section 24: Provision of information to the Council

71. Subsections (1) to (5) enable the Council to serve a notice on a person listed in subsection (3) requiring the person to provide it with information. The listed persons are the OFT, a “designated regulator”, any person who supplies goods or services in the course of business and any person or description of person specified by the Secretary of State. “Designated regulator” means the Gas and Electricity Markets Authority, the Postal Services Commission, the Water Services Regulation Authority and any other person prescribed by the Secretary of State (see subsection (9)). The Council may only ask for information that it needs for the purpose of exercising its functions (subsection (2)). In making a request for information, the Council must consider the desirability of minimising the costs or any other detriment the request might cause for the person on whom the notice is served (subsection (5)).
72. If the Council requests information from the OFT or a designated regulator and it fails to provide the information requested, the Council may require it to give notice of its reasons for failing to provide the information requested (subsection (6)). The Council may publish that notice.

Section 25: Enforcement by regulator of section 24 notice

73. Section 25 applies where a regulated provider in the electricity, gas, postal services or water sectors fails to comply with a notice served by the Council under section 24. The Council may refer the matter to a person prescribed by the Secretary of State, or to the sectoral regulator if no person has been prescribed by the Secretary of State (in both cases the “designated investigator”). The designated investigator must consider any representations made by the Council or by the regulated provider and must determine whether the provider was entitled to refuse to provide the information requested by the Council (subsection (4)). If the designated investigator determines that the provider was not entitled to refuse, then it must direct the provider to provide the information. Such directions are enforceable by the sectoral regulator (see subsections (7), (8) and Schedule 2).

Section 26: Enforcement by court of section 24 notice

74. Section 26 applies where a supplier of goods and services (or a person to whom section 26 applies by virtue of a provision made under section 24(7)(b)) refuses to comply with a notice under section 24 requiring information to be provided to the Council. The Council may apply to the court for an order requiring the person served with the notice to comply with it. This does not apply where the procedure in section 25 applies in relation to the notice.

Section 27: Provision of information by the Council

75. Section 27 allows the OFT, a designated regulator (as defined by section 24(9)) or a person specified by the Secretary of State, to require information from the Council if the information is required for the purpose of exercising its functions. In doing so, they must consider the impact (including the cost) that complying with the requirement will have on the Council.
76. Subsections (6) and (7) mean that, if the Council fails to provide the information, it must give the person who requested the information a notice setting out the reasons for this failure, and the person requesting the information may publish the notice of reasons given by the Council.

Section 28: Exemptions from requirements to provide information

77. Section 28 enables the Secretary of State to prescribe exemptions from the requirements to provide information to the Council by virtue of section 24. The power to prescribe exemptions also applies to the Council’s duty under section 27 to provide information

on request to the OFT, designated regulators, and persons specified by the Secretary of State by order.

78. *Subsection (2)* means that no person may be required under section 24 or 27, or under a court order under section 26, to provide any information or document which he could not be compelled to provide in legal proceedings. This is to ensure that the information gathering powers under the Act do not apply to information that is subject to legal professional privilege.

Section 29: Disclosure of information

79. *Section 29(1)* brings the Act within the general regime in Part 9 of the [Enterprise Act 2002 \(c. 40\)](#) (“the 2002 Act”) that protects information from improper disclosure and use. It does this by adding the Act to the list in Schedule 14 to the 2002 Act. The effect of this is that information which the Council obtains under the Act will be restricted, and it will be an offence to disclose information about the business of a company or the affairs of an individual unless Part 9 of the 2002 Act permits it.
80. *Subsection (2)* adds the Act to Schedule 15 to the 2002 Act. The effect of this is that information which is restricted under the 2002 Act and obtained under legislation other than the Act can be disclosed to the Council to help it carry out its functions under the Act.
81. *Subsection (3)* makes information obtained by the Council under powers in legislation relating to the gas, electricity and postal services sectors subject to the disclosure regime in the 2002 Act. Without these provisions, the information would be subject to the regime in the [Utilities Act 2000 \(c. 27\)](#) or the [Postal Services Act 2000 \(c.26\)](#).
82. *Subsection (4)* states that the 2002 Act restrictions do not apply when the Council makes information available or publishes it under specified powers in the Act, the [Gas Act 1986 \(c.44\)](#) and the [Electricity Act 1989 \(c.29\)](#). In these cases *subsection (5)* requires the Council to consult the individual or business affected first; and *subsection (6)* requires the Council in these cases also to have regard to the considerations in section 244 of the 2002 Act before disclosing or publishing it. These requirements do not apply to the Council publishing information about complaint handling under section 45 of the Act or publication of statistical information about the performance of gas and electricity suppliers.

Abolition of Consumer Bodies

Section 30: Abolition of “energywatch” and “Postwatch”

83. *Subsection (1)* abolishes energywatch.
84. *Subsection (2)* abolishes Postwatch.
85. *Subsection (3)* transfers the functions of energywatch and Postwatch to the Council.
86. *Subsection (4)* replaces a number of references to energywatch and Postwatch in existing legislation with references to the Council established under the Act. The new Council established by the Act will take over certain statutory functions of the existing consumer bodies under the [Gas Act 1986 \(c.44\)](#), [Electricity Act 1989 \(c.29\)](#), [Utilities Act 2000 \(c.27\)](#) and [Postal Services Act 2000 \(c.26\)](#). In particular, there are a number of statutory requirements to consult energywatch and Postwatch on certain issues. In future, those requirements will relate instead to the Council. *Subsection (5)* introduces [Schedule 3](#), which contains transitional provisions in respect of the abolition of energywatch and Postwatch. As the existing National Consumer Council is a company limited by guarantee, there is no need to dissolve this body under the Act. Instead, it will be dissolved under the Companies Acts.

Section 31: Designation of the Consumer Council for Water for abolition

87. *Section 31* gives the Secretary of State the power to designate the Consumer Council for Water for abolition. The Consumer Council for Water is the statutory consumer body established by section 27A of the *Water Industry Act 1991 (c. 56)*. The Consumer Council for Water looks after the interests of consumers of water and sewerage services in England and Wales. An order designating the Consumer Council for Water for abolition must give the earliest date on which a transfer order or an abolition order under section 32 may take effect. Before making an order under section 31, the Secretary of State must consult the Consumer Council for Water, the Council, and anyone else that the Secretary of State considers appropriate. An order under this section can be made only with the consent of Welsh Ministers (*subsection (4)*) and the order may not be made unless a draft has been laid before Parliament and approved by resolution of each House (see section 62).

Section 32: Transfer orders and abolition orders

88. *Section 32(1)* gives the Secretary of State the power to make one or more transfer orders and an abolition order in respect of the Consumer Council for Water. A transfer order is an order that transfers functions of the Consumer Council for Water to the Council. An abolition order is one that abolishes the Consumer Council for Water. These orders may not take effect before the date specified in the designation order under section 31. A transfer order or abolition order in respect of the Consumer Council for Water may be made only with the consent of the Welsh Ministers.

Section 33: Supplementary provision about transfer and abolition orders

89. This section enables the Water Services Regulation Authority (“Ofwat”) to modify water and sewerage undertakers’ conditions of appointment, and water suppliers’ licences, as a result of or in preparation for the abolition of the Consumer Council for Water or the transfer of its functions to the Council. The powers under section 33 may only be exercised if the Consumer Council for Water has been designated for abolition under section 31 (*subsection (1)*).
90. *Subsections (2) to (6)* enable conditions in an appointment or a water supply licence to require the company holding the appointment or licence to pay sums towards various expenses described in subsections (4) and (5). These include the expenses incurred in abolishing the Consumer Council for Water and transferring its assets and liabilities to the Council; in expanding and operating an OFT scheme (described further below) to cater for water consumers; and a proportion of the expense of the Council having regard to its functions in respect of water consumers.
91. *Subsection (7)* enables Ofwat to make other consequential and incidental modifications to the above conditions. This power might (for example) be used to substitute references to the Council for references to the Consumer Council for Water in licence conditions.
92. The reference to an OFT Scheme is included to cover Consumer Direct. This is a telephone and internet based consumer advice service supported by the OFT that offers advice on consumer issues. The intention is to expand the activities of Consumer Direct to deal with individual consumer problems in relation to water and sewerage in England and Wales, if the Consumer Council for Water is abolished after consultation.

Section 34: Compensation for loss of office

93. *Section 34* provides for the payment of compensation by the Secretary of State, with the approval of the Treasury, to members of energywatch, Postwatch, the Consumer Council for Water or the existing National Consumer Council who cease to be members of these consumer bodies because the bodies are abolished as a consequence of the measures in this Act. Compensation may cover loss of office or loss or diminution of pension rights.

Section 35: Transfer of property etc

94. *Section 35* and *Schedule 4* provide for the Secretary of State or the existing consumer bodies to make transfer schemes to transfer property, rights and liabilities from energywatch, Postwatch, the Consumer Council for Water and the existing National Consumer Council to the Council.
95. *Subsection (1)* lists the bodies to which the section applies. *Subsection (2)* allows the Secretary of State to direct these bodies either to make a transfer scheme to transfer property, rights and liabilities to the Council, or to transfer specified property etc. to another specified person or organisation.
96. *Subsection (3)* provides that, before giving, varying or revoking a direction under subsection (2), the Secretary of State must consult both the consumer body from whom the property, rights and liabilities are being transferred, and the person to whom the property etc is being transferred (either the Council or another specified person).
97. *Subsection (4)* requires a consumer body which is directed to make a scheme transferring property to the Council to consult the Council before doing so.
98. *Subsections (5) and (6)* state that a transfer scheme must be approved by the Secretary of State before it has effect and can be modified by him, subject to consultation with the consumer body from whom the property etc is being transferred.
99. *Subsection (7)* allows the Secretary of State to make a transfer scheme from energywatch, Postwatch, the existing National Consumer Council or the Consumer Council for Water to the new Council.
100. *Schedule 4* makes further provision in relation to transfer schemes. This does not apply to transfers to third parties (that is, to persons other than the Council) under section 35(2) (b) as such transfers are not made by way of a transfer scheme.
101. The existing National Consumer Council is a Cross-Border Public Authority under section 88 of the *Scotland Act 1998 (c.46)*. In view of this, the Secretary of State will be required by that section to consult the Scottish Ministers before making a transfer scheme in relation to that body.

Section 36: Directions

102. *Subsections (1) to (3)* allow the Secretary of State to require information from energywatch, Postwatch, the existing National Consumer Council and the Consumer Council for Water about their property, rights, liabilities and functions, and to set out requirements for receiving that information, such as timescale and form.
103. *Subsection (4)* means that the Secretary of State can direct energywatch, Postwatch, the existing National Consumer Council and the Consumer Council for Water not to take a specified action, or not to take a particular action in specified circumstances. For example, the Secretary of State may direct the existing consumer bodies not to sign up to additional property leases which extend beyond the date that the consumer body will be abolished. *Subsection (5)* requires the Secretary of State to consult both the consumer body to which the direction is being given and the Council before giving, changing or revoking a direction under this section.
104. This section is intended to facilitate the making of transfer schemes, in part by ensuring that the Secretary of State is able to obtain the information he needs to make such a scheme.

Section 37: Extension of the Council's functions: Great Britain

105. *Section 37* allows the Secretary of State to make an order giving the Council additional functions if he thinks this is in the interests of consumers. Such functions must appear to the Secretary of State to be connected with the Council's existing functions. Before

making an order, the Secretary of State is required to undertake a consultation. If the exercise of the function to be conferred might affect Wales in relation to any matter in respect of which functions are exercisable by the Welsh Ministers, then he must consult Welsh Ministers.

106. The Secretary of State may not make an order under this section which makes provision which is within the competence of the National Assembly for Wales without the consent of that Assembly. Also the Secretary of State may not make any provision under this section which is within the legislative competence of the Scottish Parliament.

Section 38: Removal of the Council's functions in relation to Northern Ireland

107. *Section 38* provides that if the Secretary of State is content that a body other than the Council is to exercise the Council's functions in relation to Northern Ireland, then he may repeal the relevant parts of this Act that extend the functions of the Council to postal services matters in Northern Ireland. Before making an order under this section the Secretary of State must consult the Council and anyone else he thinks appropriate.

Section 39: The Financial Services Consumer Panel

108. *Section 39* inserts new subsections (5A) to (5C) into section 10 of the [Financial Services and Markets Act 2000 \(c.8\)](#). These allow the Secretary of State to direct the Financial Services Authority to appoint a non-executive member of the Council to the Financial Services Consumer Panel.
109. [Paragraph 1\(4\)\(a\)](#) of Schedule 1 to the Act enables the Secretary of State to appoint a member of the Financial Services Consumer Panel to the Council.

Section 40: The OFCOM Consumer Panel

110. *Section 40* inserts new subsections (4A) to (4C) into section 17 of the [Communications Act 2003 \(c.21\)](#). These allow the Secretary of State to direct the Office of Communications to appoint a non-executive member of the Council to the OFCOM Consumer Panel.
111. *Paragraph 1(4)(b)* of Schedule 1 to the Act enables the Secretary of State to appoint a member of the OFCOM Consumer Panel to the Council.

Section 41: Interpretation of Part 1

112. This section contains interpretation provisions in relation to Part 1 of the Act.
113. This section does not define water or sewerage undertaker. The [Interpretation Act 1978 \(c.30\)](#) provides that these terms should be construed in accordance with section 6 of the [Water Industry Act 1991 \(c.56\)](#) which relates to the appointment of water and sewerage undertakers.

Part 2: Complaints Handling and Redress Schemes

Overview of Part 2

114. *Sections 42 to 52* set out the arrangements being introduced for the handling of complaints made by consumers to service providers in the electricity, gas, postal services and water sectors. In particular, this part will require the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations to prescribe complaint handling standards that will be binding on persons who are "regulated providers" (as defined in section 42) in the electricity, gas and postal services sectors (see section 43). This Part also enables the Secretary of State to make orders to require "regulated providers" in the electricity, gas, postal services and water sectors to belong to an approved redress scheme (see section 47).

Section 42: Interpretation of Part 2

115. *Section 42* defines the key terms used in Part 2. In particular, this section defines the service providers and consumers in relation to whom the powers under Part 2 may be exercised (“regulated provider” and “relevant consumer”). This section also specifies the regulators who may exercise the powers under this Part (“relevant regulator”).

Section 43: Standards for handling complaints

116. *Section 43* places a duty on the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations prescribing complaint handling standards that are binding on service providers. Such regulations will prescribe standards in relation to the way in which service providers handle complaints received from consumers (e.g. they might prescribe maximum response times). Regulations made under this section are not subject to any Parliamentary procedure; however, they may be made only with the consent of the Secretary of State (*subsection (4)*).
117. Under subsection (6) and (7), this section provides for the Secretary of State to make an order prescribing a date on which this duty on regulators to prescribe complaint handling standards will change to a power to prescribe such standards. Before making the order the Secretary of State must consult the regulator, the new Council and other persons as appropriate (*subsection 8*).
118. The power to prescribe complaint handling standards does not apply to the water sector (*subsection 9*). This is because the Secretary of State already has power to impose complaint handling standards in relation to water undertakers and sewerage undertakers under the [Water Industry Act 1991 \(c.56\)](#) in relation to the water sector in England and Wales.

Section 44: Requirements for making regulations under section 43

119. *Section 44* sets out the procedure that the Gas and Electricity Markets Authority and the Postal Services Commission must follow before making regulations to prescribe complaint handling standards. In particular, the regulator must publish a notice of its proposals, consult people likely to be affected and consider any representations made. Actions taken prior to the commencement of the provisions of this section may count as complying with requirements on the regulator under this section.

Section 45: Information with respect to compliance with complaints handling standards

120. *Section 45* requires the Council to publish statistical information in relation to regulated providers’ levels of performance in complying with any complaint handling standards prescribed under section 43 by the Gas and Electricity Markets Authority and the Postal Services Commission.
121. *Subsection (4)* gives effect to [Schedule 5](#) which amends the [Electricity Act 1989 \(c.29\)](#), [Gas Act 1986 \(c.44\)](#) and [Postal Services Act 2000 \(c.26\)](#) to require the Gas and Electricity Markets Authority and the Postal Services Commission to collect information from licence holders in respect of levels of compliance with any complaint handling standards prescribed by these regulators under section 43 of the Act. The above regulators are given the power to direct licensees to provide them with the information

Section 46: Supply of information to consumers

122. *Section 46* enables the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations to require regulated providers to provide consumers with information about any complaint handling standards prescribed by the regulator and about the regulated provider’s levels of compliance with those standards

123. *Subsection (2)* provides for the regulator to specify the form and manner of this information, and the frequency with which, it is to be given.

Section 47: Membership of redress scheme

124. *Section 47* enables the Secretary of State to make orders to require regulated providers to belong to a redress scheme (as defined in section 48(1)). The redress scheme must be one approved by the relevant regulator, or a scheme administered by the Secretary of State or by a person appointed by him and designated by him as an appropriate redress scheme (in which case the Secretary of State must be satisfied that it meets the criteria for approval by the relevant regulator – see section 47(8)).
125. “Redress scheme” is defined in section 48(1) as “a scheme under which consumer complaints may be made to, and investigated and determined by, an independent person (“the independent person”)”. For this purpose, the “independent person” must be independent of the provider against whom the complaint is made and independent of the relevant regulator in respect of that provider (section 48(2)).
126. The Secretary of State may limit the requirement to belong to a redress scheme to schemes which deal with certain types of complaint. Hence, it would be possible to exclude complaints in relation to certain matters from the requirement to belong to a redress scheme (subsections (2) to (3)). Before making an order to require regulated providers to belong to a redress scheme, the Secretary of State must consult the relevant regulator and persons who appear to be representative of persons who have an interest in the matter (subsection (4)). A consultation conducted prior to the commencement of the provisions of this section will count as complying with requirements on the Secretary of State under this section.
127. *Subsection (6)* requires the Secretary of State to seek the consent of Welsh Ministers before making an order which relates to a water undertaker or sewerage undertaker for an area which is wholly or mainly in Wales.
128. *Subsection (7)* provides that the Secretary of State may not make an order under this section unless he is satisfied that there is (or will be when the order comes into force) at least one redress scheme which each regulated provider to whom the order applies is able to join and which will satisfy the requirement imposed by the order. This is to ensure that the Secretary of State may not make an order requiring providers to belong to a redress scheme in circumstances where the providers subject to the order are unable to join a scheme since none exists.
129. *Subsection (9)* enables the Secretary of State to establish or administer a redress scheme. In practice, it is expected that suppliers or a trade association will establish their own redress scheme in respect of which approval will be sought for the purposes of any order under this section. However, in the event that business does not establish a scheme itself, the Secretary of State has the power to establish one.

Section 48: Membership of redress schemes: supplementary

130. *Section 48* defines the key terms in relation to redress schemes.
131. *Subsection (3)* provides that an approved redress scheme may admit persons who are not required to belong to such a scheme and that it may investigate matters other than those to which the duty to belong to a redress scheme applies.
132. *Subsection (4)* provides that, for the purposes of the law of defamation, proceedings before a redress scheme will be treated in the same way as court proceedings. The effect of this is to allow the redress scheme to conduct investigations and determinations freely without the threat of defamation proceedings. Similar provision exists for most other statutory redress schemes.

Section 49: Approval of redress schemes

- 133. *Section 49* sets out the matters to be taken into account by the regulator in giving approval for a redress scheme.
- 134. *Subsection (1)* specifies various matters that the relevant regulator must have regard to when deciding whether to approve a scheme. These include any criteria that, in the opinion of the regulator, constitute generally accepted principles of best practice in relation to redress provision which could reasonably apply to the scheme. An example of such principles would be the guidelines provided by the British and Irish Ombudsman Association (www.bioa.org.uk).
- 135. *Subsection (2)* requires the regulator to have regard to the number of other redress schemes in relation to regulated suppliers when the regulator decides whether to approve a scheme. This is intended to avoid a proliferation of redress schemes as this could be confusing for consumers.
- 136. *Subsections (3), (6) and (7)* set out various conditions that a redress scheme must satisfy in order to be approved by a relevant regulator.

Section 50: Approval of redress schemes: supplementary

- 137. *Section 50* provides that the regulator may determine the manner and form etc of an application for approval of a redress scheme. Changes to an approved scheme must be notified to the regulator within 14 days of any change. The regulator has power to withdraw approval of a redress scheme generally or in relation to consumer complaints of a specified description including in relation to complaints made on or after a specified date.

Section 51: Procedure for refusing or withdrawing approval

- 138. *Section 51* sets out the procedure that the relevant regulator must follow when refusing approval for, or withdrawing approval from, an approved redress scheme.
- 139. *Subsection (1)* requires the relevant regulator to give the scheme administrator notice of the fact that it proposes to refuse or withdraw approval. The notice must give the reasons why the regulator proposes to refuse or withdraw approval and specify a time during which the scheme administrator may make representations to the regulator.
- 140. *Subsection (2)* provides that the regulator must notify the scheme administrator of its decision and the reasons for its decision.
- 141. *Subsection (3)* provides that the regulator must also notify the Secretary of State of its decision to withdraw approval from a redress scheme.
- 142. *Subsection (4)* provides that the regulator must also notify each member of the scheme of its decision to withdraw or refuse approval of the scheme.
- 143. *Subsection (5)* provides that withdrawal of approval of a redress scheme takes effect from the date specified in the notice withdrawing the approval (under subsection (2)).
- 144. *Subsection (6)* provides that the Secretary of State must follow the procedures set out in this section (other than those in subsection (3)) if he has appointed a person to administer a scheme under section 47(1)(b) and decides to revoke that appointment.

Section 52: Enforcement of requirements imposed under Part 2

- 145. *Section 52* makes provision in relation to the enforcement of complaint handling standards prescribed by a regulator under Part 2 of the Act and in relation to any requirement to belong to a redress scheme which has been imposed by the Secretary of State by order under Part 2. These requirements will be enforced under the regulatory regimes in the electricity, gas, postal services and water sectors (where appropriate).

146. *Subsections (1) to (4)* make amendments to the relevant legislation to provide for this. The effect of the enforcement provisions is that the relevant regulator may impose an order to secure compliance with the above requirements. The service provider is obliged to comply with such an order and breach of the order can be enforced in the civil courts. Breach of such an order may also render the service provider liable to pay damages to any person who has suffered loss as the result of that breach. In addition to the above, sectoral legislation permits the regulator to impose a financial penalty for breach of the above requirements.

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

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

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 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.

Part 4: Miscellaneous and General

Section 59: Contracts concluded away from business premises

163. This section enables the Secretary of State to make regulations which give consumers the right to cancel contracts concluded in their home or at their workplace with a trader whom they invited to visit them there. Consumers already have rights to cancel contracts

where the trader's visit was unsolicited². The Secretary of State will set out the details of the new rights, and the circumstances in which they will apply, in the relevant statutory instrument.

Section 60: Orders and Regulations

164. *Section 60* makes provision in relation to orders and regulations made under the Act. Any power to make orders or regulations under the Act is exercisable by statutory instrument.
165. An order or regulations under the Act may also include incidental, supplementary, consequential, transitory and transitional provisions and savings.
166. Such provisions may, if contained in an order or regulations made by the Secretary of State, make amendments to legislation including Acts of the Scottish Parliament and a Measure or Act of the National Assembly for Wales.
167. *Subsection (7)* provides that section 60 does not authorise an order or regulations under the Act to make any provision which is within the legislative competence of the Scottish Parliament. The effect of this is that no provision which is made by virtue of section 60 may be made in relation to devolved matters. Subsection (7) does not prevent an order under the Act amending Acts of the Scottish Parliament for reserved purposes.

Section 61: Directions

168. *Section 61* provides that a notice or direction required to be given under the Act is required to be given in writing, and any power to give a direction includes a power to vary or revoke a direction.

Section 62: Parliamentary control of orders and regulation

169. This section makes provision in relation to the Parliamentary procedure that applies to orders and regulations made by the Secretary of State under the Act.
170. Regulations made by the Gas and Electricity Markets Authority or the Postal Services Commission under sections 43 and 46 are not subject to any Parliament procedure. However, regulations made under section 43 are subject to the consent of the Secretary of State by virtue of section 43(4).

Section 63: Minor, consequential and transitional provision

171. This section provides a power to make such incidental, supplementary, consequential, transitory and transitional provisions and savings as the Secretary of State considers necessary or expedient in relation to the commencement of any provisions of, or made under, the Act. However, such a measure may not make any provision which is within the legislative competence of the Scottish Parliament (*subsection (5)*).

Section 64: Repeals

172. *Section 64* gives effect to Schedule 8 which repeals certain provisions in existing legislation.

Section 65: Extent

173. *Section 65* provides that in general the Act applies to England, Wales, Scotland and Northern Ireland. However, certain provisions apply only to certain parts of the UK (see paragraph 25 of these Notes).