

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

SCHEDULES+-

Schedule 6: Estate Agents' Redress Schemes

219. This Schedule inserts *new sections 23A, B and C* and *new Schedules 3 and 4* into the 1979 Act.

New section 23A: Redress Schemes

220. *Subsection (1)* of new section 23A gives the Secretary of State a power to make an order requiring persons who engage in estate agency work in relation to residential property to join an approved redress scheme. Such an order may apply to all who engage in estate agency work, or only to specified descriptions of them, and may exclude certain types of estate agency work. *Subsection (3)* provides for an order to limit the types of complaint that may be made under a redress scheme, including doing so by reference to the types of people who can make a complaint. This order will be subject to the negative resolution procedure (*subsection (5)*).
221. New *subsection (4)* means that an order cannot require individual employees to join a scheme. The duty will be that of their employer (who may, for example, be a body corporate or a partnership).
222. New *subsection (6)* provides that before making an order the Secretary of State must be satisfied that everyone who will be required to join an approved scheme will be eligible to do so – but for this purpose he will not have to take account of people who are not permitted to carry out estate agency work, for example because they have been prohibited from acting as an estate agent by the OFT.
223. New *subsection (7)* clarifies that approved redress schemes may be open to people other than estate agents if they wish to join, may deal with a wider range of complaints than those to which the duty imposed by the order applies, and may exclude certain types of complaint e.g. complaints made after a long period of time.
224. New *subsection (8)* defines terms used in this section. An approved redress scheme is a scheme which is approved by the OFT under Schedule 3 or a scheme administered by or on behalf of the Secretary of State and designated by him as an approved redress scheme for the purposes of the new section 23A.
225. This section also introduces the new Schedule 3 to be inserted into the 1979 Act.

New section 23B: Enforcement

226. This new section confers powers on enforcement officers other than officers of the OFT. It allows such an officer (in practice, a Trading Standards Officer) to issue a penalty charge notice if he believes a person engaged in estate agency work in relation

to residential property is not a member of an approved redress scheme, contrary to an order made under section 23A(1). A penalty charge can be issued within a six month period of the breach being committed (or, in the case of a continuing breach, of the last day of it being committed). Subsection (4) requires that a Trading Standards Officer must inform the OFT if he believes an estate agent is carrying out estate agency work without being a member of a redress scheme, and therefore breaching an order under section 23A, so that the OFT can take regulatory action. Section 23B also provides for the new Schedule 4 of the Estate Agents Act 1979 (dealing with penalty charge notices) to have effect.

New section 23C: Meaning of residential property

227. This new section defines “residential property” for the purposes of section 23A. The definition is broad but subsection (1)(b) provides for the Secretary of State to make an order to exclude specified property from the definition if required.

New Schedule 3: redress schemes

228. New *Schedule 3* makes further provision in connection with the approval of redress schemes. The Schedule indicates the minimum requirements which must be met before a redress scheme can be approved. The provisions are broadly similar to section 173 of the [Housing Act 2004 \(c.34\)](#) except that they enable the OFT to approve redress schemes rather than the Secretary of State. (A scheme which is administered by or on behalf of the Secretary of State does not require approval by the OFT).
229. *Paragraphs 2, 4 and 5* set out minimum requirements for a scheme.
230. *Paragraph 3* requires the OFT, in determining whether a scheme is satisfactory, to have regard to the interests of both scheme members and potential complainants. The OFT must also have regard to whether the scheme complies with what the OFT regards as generally accepted principles of best practice, in relation in consumer redress schemes, which may be reasonably regarded as applicable to the estate agency sector. *Paragraph 3(2)* also permits the OFT to have regard to the number of other approved redress schemes in deciding whether to approve a scheme. In other words, the OFT could refuse to approve a redress scheme, even if it met the approval criteria, if it did not feel a further scheme was in the interests of the industry and potential complainants.
231. *Paragraph 4* requires that a scheme must make provision for passing on information to the OFT, or any other relevant regulator, so that they can take regulatory action as a result of a complaint if necessary.
232. As it will be mandatory for estate agents to join a scheme once an order is made under section 23A, paragraph 5 of Schedule 3 requires the OFT to be satisfied that the scheme does not provide for membership to be revoked on unfair grounds, as otherwise the scheme could deprive an estate agent of his/her livelihood in an unfair way.
233. *Paragraphs 6, 7 and 8* deal with procedural matters relating to the OFT’s decision to approve or refuse approval of a scheme.
234. *Paragraph 9* specifies a 14 day period for notifying changes to a scheme.
235. *Paragraphs 10 to 13* set out the process for withdrawing approval. This will require the giving of a notice of the proposal to withdraw approval, specifying the grounds for doing so and indicating that the recipient of the notice may make representations about the proposal. Paragraph 11(c) allows a minimum period of 30 days for representations after the withdrawal notice is issued and is in line with the provisions made for energy and postal redress schemes in Part 2 of the Act.
236. *Paragraph 14* provides that in the case where the Secretary of State has designated a scheme administered by him or on his behalf he must give notice to scheme members if he no longer wishes that scheme to be designated an approved scheme, just as the

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scheme administrator would have to give notice to every member if the OFT was withdrawing approval from the scheme (paragraph 13 (b)).

237. *Paragraph 15* ensures that proceedings under approved schemes (in relation to the investigation and determination of complaints) are covered by the defence of absolute privilege for the purposes of any action for defamation. This means that words spoken, published or reported in the course of redress proceedings cannot be the subject of an action for defamation. This follows the corresponding provision in the Housing Act 2004.

New Schedule 4: Penalty notices under section 23B(1)

238. The new *Schedule 4* to the 1979 Act sets out detailed requirements relating to penalty charge notices. These are very similar to the provisions in Schedule 8 of the [Housing Act 2004 \(c.34\)](#). The amount of the penalty charge will be set by regulations but cannot exceed £ 1,000.