

SCHEDULES

SCHEDULE 6

Section 53

ESTATE AGENTS' REDRESS SCHEMES

- 1 The Estate Agents Act 1979 (c. 38) is amended as follows.
2 After section 23 insert—

“Redress schemes

23A Redress schemes

- (1) The Secretary of State may by order require persons who engage in estate agency work in relation to residential property (“relevant estate agency work”) to be members of an approved redress scheme for dealing with complaints in connection with that work.
- (2) An order may provide for the duty to apply—
 - (a) only to specified descriptions of persons who engage in estate agency work; and
 - (b) in relation to any relevant estate agency work carried out by a person to whom the duty applies or only in relation to specified descriptions of work (which may be framed by reference to descriptions of residential property).
- (3) An order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).
- (4) In subsections (1) and (2)(a), the reference to persons who engage in estate agency work does not include a reference to persons who engage in that work in the course of their employment.
- (5) The power to make an order shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Before making an order the Secretary of State must be satisfied that all persons who are to be subject to the duty will be eligible to join a suitable approved redress scheme before the duty applies to them.

For this purpose the Secretary of State may disregard persons who cannot lawfully engage in the relevant estate agency work to which the duty applies.

- (7) Nothing in this section prevents an approved redress scheme from providing—
 - (a) for membership to be open to persons who are not subject to the duty;

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- (b) for the investigation and determination of any complaints in relation to which the duty does not apply, where the members concerned have voluntarily accepted the jurisdiction of the scheme over those complaints;
 - (c) for the exclusion from investigation and determination under the scheme of any complaint in such cases or circumstances as may be specified in or determined under the scheme.
- (8) For the purposes of this section—
- (a) a “redress scheme” is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person (“the ombudsman”);
 - (b) a redress scheme is “approved” if—
 - (i) it is for the time being approved by the OFT under Schedule 3; or
 - (ii) it is administered by or on behalf of the Secretary of State and designated by him as an approved redress scheme for the purposes of this section;
 - (c) a “complaint” is a complaint made by a person by virtue of his being or having been a seller or buyer of residential property;
 - (d) “seller”, in relation to residential property, means a person who claims that he is or may become interested in disposing of an interest in land in respect of that property (and includes a person who disposes of such an interest);
 - (e) “buyer”, in relation to residential property, means a person who claims that he is or may become interested in acquiring an interest in land in respect of that property (and includes a person who acquires such an interest).
- (9) The Secretary of State may not designate a scheme as an approved redress scheme for the purposes of this section unless the Secretary of State is satisfied that the scheme is one which could be approved by the OFT in accordance with paragraphs 2 to 5 of Schedule 3.
- (10) Schedule 3 (which makes further provision in connection with the approval of redress schemes etc.) shall have effect.
- (11) In this section—
- “order” means an order under subsection (1);
 - “the duty” means the requirement under an order to be a member of an approved redress scheme.

23B Enforcement

- (1) If a duly authorised officer of an enforcement authority other than the OFT believes that a person has engaged (or is engaging) in estate agency work in relation to residential property in breach of the duty imposed by an order under section 23A(1) he may give a penalty charge notice to that person.
- (2) A penalty charge notice may not be given after the end of the period of six months beginning with the day (or in the case of a continuing breach the last day) on which the breach of duty was committed.

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- (3) Schedule 4 (which makes further provision in connection with penalty charge notices) shall have effect.
- (4) An enforcement authority other than the OFT must notify the OFT if it believes that a person has engaged (or is engaging) in estate agency work in relation to residential property in breach of the duty imposed by an order under section 23A(1).

23C Meaning of residential property

- (1) For the purposes of sections 23A and 23B “residential property”—
 - (a) has the meaning given by subsection (2); but
 - (b) does not include land of a description specified in an order made by the Secretary of State for the purposes of this section.
- (2) “Residential property” means any land that consists of or includes a building or part of a building—
 - (a) the whole or part of which is used as a dwelling or as more than one dwelling; or
 - (b) that is (or is to be) offered for sale on the basis that the whole or part of it is suitable for such use or is intended to be so suitable by the time the seller disposes of his interest in it.
- (3) In subsection (2), the reference to a building or part of a building (so far as relating to paragraph (b) of that subsection) includes a reference to a building or part that is being or is to be constructed.
- (4) A description of land specified by order under subsection (1)(b) may be framed by reference to the purpose or purposes for which the land (or part of it) is or is intended to be used.
- (5) The power to make an order under subsection (1)(b) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

3 After Schedule 2 insert—

“SCHEDULE 3

Section 23A(10)

REDRESS SCHEMES

Approval of redress schemes

- 1 A redress scheme may be approved for the purposes of section 23A by the OFT acting in accordance with paragraphs 2 to 8.
- 2 (1) A scheme may not be approved unless the OFT considers that—
 - (a) the provisions of the scheme; and
 - (b) the manner in which it will be operated (so far as can be judged from facts known to the authority);are satisfactory for the purposes of section 23A.

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- (2) Without prejudice to the generality of sub-paragraph (1), a scheme must not be approved unless the OFT considers that it makes satisfactory provision about—
- (a) the complaints which may be made under the scheme (which may include complaints about non-compliance with the provisions of a code of practice or other document);
 - (b) the ombudsman's duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a particular complaint);
 - (c) the redress which the ombudsman may require members to provide to complainants, which must include the types of redress specified in sub-paragraph (3);
 - (d) the enforcement of any requirement to provide redress imposed on a member in accordance with the scheme.
- (3) The types of redress mentioned in sub-paragraph (2)(c) are—
- (a) providing an apology or explanation;
 - (b) paying compensation; and
 - (c) taking such other actions in the interests of the complainant as the ombudsman may specify.
- 3 (1) In determining whether a scheme, or any provisions mentioned in paragraph 2(2), are satisfactory the OFT must have regard to—
- (a) the interests of members of the scheme and of sellers and buyers of residential properties; and
 - (b) such principles as—
 - (i) in the opinion of the OFT constitute generally accepted principles of best practice in relation to consumer redress schemes, and
 - (ii) it is reasonable to regard as applicable to the scheme.
- (2) In considering the interests mentioned in sub-paragraph (1)(a), the OFT may have regard to the number of other redress schemes which are (or are likely to become) approved redress schemes.
- 4 The OFT must not approve a scheme unless it considers that the scheme makes satisfactory provision about the provision of information by the ombudsman or the scheme administrator to—
- (a) persons exercising functions under other approved schemes;
 - (b) persons exercising functions under other consumer redress schemes; and
 - (c) the OFT or any other person exercising regulatory functions in relation to the activities of persons engaging in estate agency work.
- 5 The OFT must not approve a scheme if it considers that the scheme provides for membership to be revoked on any unfair grounds.

Applications for approval to the OFT

- 6 An application for approval by the OFT of a redress scheme must—

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- (a) be made in such manner as the OFT may determine; and
 - (b) be accompanied by such information as the OFT may require.
- 7 Where the OFT is proposing to refuse an application for approval it must give the applicant a notice stating—
 - (a) that it is proposing to refuse the application;
 - (b) the grounds for the proposed refusal; and
 - (c) that representations about the proposed refusal may be made within such period of not less than 30 days as is specified in the notice.
- 8 If the OFT decides to refuse an application for approval, it must give the applicant a notice stating—
 - (a) the OFT's decision to refuse the application; and
 - (b) the reasons for the decision.

Notification of changes to an approved scheme

- 9 The scheme administrator of a redress scheme which is approved by the OFT must notify the OFT of any change to the scheme before the end of the period of 14 days beginning with the day on which the change is made.

Withdrawal of approval by the OFT

- 10 The OFT may withdraw approval of a redress scheme which is for the time being approved by it.
- 11 Before withdrawing approval of a scheme, the OFT must give the scheme administrator a notice stating—
 - (a) that it proposes to withdraw its approval;
 - (b) the grounds for the proposed withdrawal of approval; and
 - (c) that representations about the proposed withdrawal may be made within such period of not less than 30 days as is specified in the notice.
- 12 The OFT must give the scheme administrator a notice stating—
 - (a) its decision on a proposal to withdraw approval; and
 - (b) the reasons for its decision.
- 13 If the OFT decides to withdraw approval of a scheme—
 - (a) the withdrawal has effect from such date as may be specified in the notice under paragraph 12;
 - (b) the scheme administrator must give a copy of the notice under paragraph 12 to every member of the scheme.

Revocation of designation by the Secretary of State

- 14 If the Secretary of State decides to revoke his designation of a scheme for the purposes of section 23A, he must give every member of the scheme a notice stating—
 - (a) that he has decided to revoke the designation;
 - (b) the reasons for his decision; and

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- (c) the date from which the revocation has effect.

Defamation proceedings

- 15 For the purposes of the law relating to defamation, proceedings under an approved redress scheme in relation to the investigation and determination of a complaint are to be treated in the same way as proceedings before a court.

Interpretation

- 16 In this Schedule—
- “redress scheme” has the meaning given in section 23A(8)(a);
 - “approved redress scheme” has the meaning given in section 23A(8)(b);
 - “buyer”, in relation to residential property, has the meaning given in section 23A(8)(e);
 - “complaint” has the meaning given in section 23A(8)(c);
 - “ombudsman” means the independent person mentioned in section 23A(8)(a);
 - “residential property” has the meaning given in section 23C;
 - “scheme administrator”, in relation to a redress scheme, means the person who administers the scheme;
 - “seller”, in relation to residential property, has the meaning given by section 23A(8)(d).”

- 4 After Schedule 3 (as inserted by paragraph 3) insert—

“SCHEDULE 4

Section 23B(3)

PENALTY NOTICES UNDER SECTION 23B(1)

- 1 A penalty charge notice given to a person under section 23B(1) by a duly authorised officer of an enforcement authority other than the OFT must—
- (a) state the officer’s belief that that person has committed a breach of the duty imposed by an order under section 23A(1);
 - (b) give such other particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty;
 - (c) require that person, within a period specified in the notice—
 - (i) to pay a penalty charge specified in the notice; or
 - (ii) to give notice to the enforcement authority that he wishes to review the notice;
 - (d) state the effect of paragraph 8;
 - (e) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and
 - (f) specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).

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- 2 The penalty charge specified in the notice shall be of such amount (not exceeding £1,000) as may be prescribed for the time being by regulations made by the Secretary of State.
- 3 (1) The period specified under paragraph 1(c) must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.
- (2) The enforcement authority may extend the period for complying with the requirement mentioned in paragraph 1(c) in any particular case if they consider it appropriate to do so.
- 4 The enforcement authority may, if they consider that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice.
- 5 (1) If, within the period specified under paragraph 1(c) (or that period as extended under paragraph 3(2)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the authority shall—
- (a) consider any representations made by the recipient and all other circumstances of the case;
 - (b) decide whether to confirm or withdraw the notice; and
 - (c) give notice of their decision to the recipient.
- (2) A notice under sub-paragraph (1)(c) confirming the penalty charge notice must also state the effect of paragraphs 6(1) to (3) and 8(1) and (3).
- (3) If the authority are not satisfied—
- (a) that the recipient committed the breach of duty specified in the notice;
 - (b) that the notice was given within the time allowed by section 23B(2) and complies with the other requirements imposed by or under this Schedule; and
 - (c) that in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient;
- they shall withdraw the penalty charge notice.
- 6 (1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under paragraph 5(1)(c) is given, appeal to a county court or, in Scotland, to the sheriff against the penalty charge notice.
- (2) The county court or the sheriff may extend the period for appealing against the notice.
- (3) Such an appeal must be on one (or more) of the following grounds—
- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice;
 - (b) that the notice was not given within the time allowed by section 23B(2) or does not comply with any other requirement imposed by or under this Schedule; or

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- (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient.
- (4) An appeal against a penalty charge notice shall be by way of a rehearing; and the county court or sheriff shall either uphold the notice or quash it.
- 7 If the penalty charge notice is withdrawn or quashed, the authority shall repay any amount previously paid as a penalty charge in pursuance of the notice.
- 8 (1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the authority unless—
- (a) the notice has been withdrawn or quashed; or
 - (b) the charge has been paid.
- (2) Proceedings for the recovery of the penalty charge may not be commenced before the end of the period mentioned in paragraph 5(1).
- (3) And if within that period the recipient of the penalty charge notice gives notice to the authority that he wishes the authority to review the penalty charge notice, such proceedings may not be commenced—
- (a) before the end of the period mentioned in paragraph 6(1); and
 - (b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning with the day on which the appeal is withdrawn or determined.
- 9 In proceedings for the recovery of the penalty charge, a certificate which—
- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and
 - (b) states that payment of the penalty charge was or was not received by a date specified in the certificate;
- is evidence of the facts stated.
- 10 Section 29 (service of notices etc.) applies in relation to—
- (a) any penalty charge notice which is to be given under section 23B(1) by a duly authorised officer of an enforcement authority other than the OFT; and
 - (b) any notice which is to be given under paragraph 5(1)(c) of this Schedule by such an enforcement authority;
- as it applies in relation to any notice which under this Act is to be given to any person by the OFT.
- 11 The Secretary of State may by regulations make provision supplementary or incidental to the provisions of this Schedule, including in particular provision prescribing—
- (a) the form of penalty charge notices or of any other notice mentioned in this Schedule;
 - (b) circumstances in which penalty charge notices may not be given;
 - (c) the method or methods by which penalty charges may be paid.

- 12 Any power to make regulations under this Schedule shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”