

SCHEDULES

SCHEDULE 6

ESTATE AGENTS' REDRESS SCHEMES

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;

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

- (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.”