



# Consumers, Estate Agents and Redress Act 2007

## 2007 CHAPTER 17

### PART 3

#### AMENDMENT OF THE ESTATE AGENTS ACT 1979

##### *Estate agents' duties*

#### **53 Membership of redress schemes**

- (1) Schedule 6 (which amends the Estate Agents Act 1979 (c. 38) to make provision for redress schemes dealing with complaints about estate agents) has effect.
- (2) In section 3(1) of the Estate Agents Act 1979 (grounds for making prohibition orders), after paragraph (c) insert—
  - “(ca) has engaged in estate agency work in relation to residential property in breach of the duty imposed by an order under section 23A(1) below; or”.
- (3) Sections 172 to 174 of the Housing Act 2004 (c. 34) (redress schemes dealing with complaints about the activities of estate agents in relation to home information packs) are omitted.

#### **54 Duty to keep records**

- (1) After section 21 of the Estate Agents Act 1979 (transactions in which an estate agent has a personal interest) insert—

##### **“21A Duty to keep permanent records**

- (1) A person engaged in estate agency work shall—

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- (a) keep records for the purposes of this section (“the permanent records”); and
    - (b) ensure that anything required by subsection (3) to be included in the permanent records is kept for a period of at least six years beginning with the day on which it is included.
  - (2) In the case of a person engaged in estate agency work in the course of employment the duties under subsection (1) are duties of the employer (and not the employee).
  - (3) A person engaged in estate agency work shall ensure that a record of any information or event to which this subsection applies is included in the permanent records kept by that person or his employer (as the case may be).
  - (4) Subsection (3) applies to—
    - (a) information the person concerned is required to give by section 18(1) or (3) and any prescribed information relating to the giving of that information;
    - (b) information the person concerned is required to disclose by section 21(1) or (2) and any prescribed information relating to the disclosure of that information;
    - (c) any offer of a prescribed description received by the person concerned and any prescribed information relating to the making of the offer;
    - (d) any action of a prescribed description taken by the person concerned in relation to such an offer and any prescribed information relating to that action; and
    - (e) any other information or event of a prescribed description.
  - (5) If the person concerned is acting in the course of employment, it is also the duty of the employer to ensure that the record of the information or event is included in the permanent records; but the employer is not to be regarded as having breached his duty if he shows that he took such steps as were reasonably practicable to ensure that the duty under subsection (3) was complied with by his employees.
  - (6) The Secretary of State may by regulations make provision as to—
    - (a) the manner in which the permanent records are to be kept;
    - (b) the place or places at which they are to be kept.
  - (7) In this section “prescribed” means prescribed by regulations made by the Secretary of State.
  - (8) Any power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 3(1) of that Act (grounds for making prohibition orders), in paragraph (c), for “21” substitute “21A”.

### *Prohibition and warning orders*

#### **55 Grounds for prohibition orders**

- (1) Section 3(1) of the Estate Agents Act 1979 (c. 38) (grounds for making prohibition orders) is amended as follows.
- (2) In paragraph (a), for “has been convicted of” substitute “has committed”.
- (3) After paragraph (b) insert—
  - “(ba) has failed to comply with an undertaking accepted from him under section 217, 218 or 219 of the Enterprise Act 2002 and given in relation to estate agency work; or
  - (bb) has failed to comply with an enforcement order under section 217 of the Enterprise Act 2002 which was made against him in relation to estate agency work; or”.
- (4) Section 5(4) of that Act (which provides for section 3 orders based on a person’s conviction to cease to have effect when the conviction is spent) is omitted.
- (5) For paragraph 1 of Schedule 1 to that Act substitute—

“1 A person is not to be treated for the purposes of section 3(1)(a) of this Act as having committed an offence if he has been convicted of that offence and that conviction is to be treated as spent for the purposes of the Rehabilitation of Offenders Act 1974 or any corresponding enactment for the time being in force in Northern Ireland.”

#### **56 Grounds for warning orders**

- (1) Section 4 of the Estate Agents Act 1979 (warning orders) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) If the OFT is satisfied that any of subsections (1A), (1B) or (1C) apply in relation to a person it may by order notify that person that it is satisfied of the matters mentioned in that subsection.
  - (1A) This subsection applies in relation to a person if—
    - (a) in the course of estate agency work, he has engaged in conduct falling within paragraph (a), (b), (c), (ca) or (cb) of section 3(1); and
    - (b) were he to engage again in any conduct falling within that paragraph, the OFT would consider him unfit and proceed to make a prohibition order.
  - (1B) This subsection applies in relation to a person if—
    - (a) in the course of estate agency work, he has engaged in conduct constituting a failure to comply with—
      - (i) an undertaking mentioned in section 3(1)(ba); or
      - (ii) an enforcement order mentioned in section 3(1)(bb); and
    - (b) were he to fail again to comply with that undertaking or order by engaging in the same or similar conduct, the OFT would consider him unfit and proceed to make a prohibition order.
  - (1C) This subsection applies in relation to a person if—

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- (a) in the course of estate agency work, he has engaged in a practice mentioned in section 3(1)(d); and
  - (b) were he to engage again in that practice, the OFT would consider him unfit and proceed to make a prohibition order.”
- (3) In subsection (2) for the words from “a further” to “order” (in the second place it appears) substitute “further conduct as mentioned in subsection (1A)(b) or (1B)(b) or engaging again in the practice specified in the order, as the case may be,”.
- (4) In subsection (3) for the words from “fails to comply” to “order” (in the second place it appears) substitute “engages in further conduct as mentioned in subsection (1A)(b) or (1B)(b) or engages again in the practice specified in the order, as the case may be,”.
- (5) After subsection (3) insert—
- “(4) In this section “unfit” means unfit as mentioned in subsection (2) of section 3 and “prohibition order” means an order under that section.”

#### *Investigatory powers*

### **57 Powers of entry and inspection**

- (1) Section 11 of the Estate Agents Act 1979 (c. 38) (powers of entry and inspection) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) If a duly authorised officer of an enforcement authority (“an officer”) has reasonable cause to suspect—
- (a) that an offence has been committed under this Act;
  - (b) that a person has failed to comply with an obligation imposed on him under any of sections 15 and 18 to 21A; or
  - (c) that a person has engaged in a practice mentioned in section 3(1)(d);
- he may, in order to ascertain whether the offence has been committed, whether the person has failed to comply with the obligation or whether the person has engaged in the practice (as the case may be), exercise any power specified in subsection (1A).
- (1A) The powers are—
- (a) to enter any premises (other than premises used only as a dwelling);
  - (b) to require—
    - (i) any person carrying on, or employed in connection with, a business to produce any books or document relating to it, or
    - (ii) any person having control of any information relating to a business which is stored in any electronic form to produce the information in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form);
  - (c) to take copies of, or of any entry in, any books or documents produced or provided in pursuance of a requirement imposed under paragraph (b).

- (1B) An officer may seize and detain any books or documents which he has reason to believe may be required as evidence—
- (a) in proceedings for an offence under this Act; or
  - (b) in proceedings under any of sections 3, 4, 6 or 7 relating to an allegation—
    - (i) that an offence has been committed under this Act;
    - (ii) that a person has failed to comply with an obligation imposed on him under any of sections 15 and 18 to 21A; or
    - (iii) that a person has engaged in a practice mentioned in section 3(1)(d).
- (1C) If it is not reasonably practicable to exercise any power under subsection (1A) (c) to take a copy of, or of any entry in, a book or document, an officer may seize and detain the book or document for the purpose of inspecting it (or any entry in it).
- (1D) A book or document which is seized in exercise of the power under subsection (1C) must be returned to the person from whom it was seized unless an officer has reason to believe that the book or document may be required as evidence in any proceedings mentioned in subsection (1B).
- (1E) Any power conferred by subsection (1) to (1C) may be exercised at all reasonable hours.
- (1F) An officer exercising any such power must, if required, produce his credentials.”
- (3) For subsection (4) substitute—
- “(4) An appropriate judicial officer may, by warrant under his hand, authorise an officer of an enforcement authority to enter any premises, by force if need be, if on sworn information in writing or, in Scotland, on evidence on oath the appropriate judicial officer—
- (a) is satisfied that there is reasonable ground to believe that either of the conditions in subsection (4A) applies; and
  - (b) is also satisfied that at least one of the conditions in subsection (4B) applies.
- (4A) The conditions in this subsection are—
- (a) that any books or documents which a duly authorised officer has power to inspect under this section are on the premises and their inspection is likely to disclose evidence—
    - (i) that an offence has been committed under this Act;
    - (ii) that a person has failed to comply with an obligation imposed on him under any of sections 15 and 18 to 21A; or
    - (iii) that a person has engaged in a practice mentioned in section 3(1)(d);
  - (b) that an offence under this Act has been, is being or is about to be committed on the premises.
- (4B) The conditions in this subsection are—

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- (a) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under subsection (4) has been given to the occupier;
- (b) that an application for admission, or the giving of such a notice of intention, would defeat the object of the entry;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent and it might defeat the object of the entry to wait for his return.

(4C) A warrant issued under subsection (4) shall continue in force for a period of one month.

(4D) In subsection (4) “appropriate judicial officer” means—

- (a) in England and Wales, a justice of the peace;
- (b) in Scotland, the sheriff or a justice of the peace;
- (c) in Northern Ireland, a lay magistrate.”

## 58 Failure to produce information

(1) After section 11 of the Estate Agents Act 1979 (c. 38) (powers of entry and inspection) insert—

### “11A Failure to produce information

- (1) If on an application made by a duly authorised officer of an enforcement authority it appears to the court that a person (“the defaulter”) has failed to do something that he is required to do by virtue of section 9(1) or 11(1A)(b) the court may make an order under this section.
- (2) An order under this section may require the defaulter—
  - (a) to do the thing that it appears he failed to do within such period as may be specified in the order;
  - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.
- (3) If the defaulter is a body corporate, a partnership or an unincorporated association, the order may require any officer who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.
- (4) In this section—
  - “court” means—
    - (a) in England and Wales and Northern Ireland, the High Court or a county court;
    - (b) in Scotland, the Court of Session or the sheriff;
  - “officer” means—
    - (a) in relation to a body corporate, a person holding a position of director, manager or secretary of the body or any similar position;
    - (b) in relation to a partnership or an unincorporated association, a member of the partnership or association.

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- (5) In subsection (4) “director” means, in relation to a body corporate whose affairs are managed by its members, a member of the body.”
- (2) In section 3(1) of that Act (grounds for making prohibition orders), after paragraph (ca) (inserted by section 53(2)) insert—
- “*(cb)* has failed to comply with any requirement imposed on him under section 9(1) or 11(1A)(b) below; or”.
- (3) In section 9 of that Act (information for the OFT), in subsection (4)—
- (a) omit paragraph (a); and
- (b) in paragraph (b) for “such a notice” substitute “a notice under this section”.
- (4) In section 27 of that Act (obstruction and personation of authorised officers)—
- (a) in subsection (1)—
- (i) omit paragraph (b); and
- (ii) in paragraph (c) for “other” substitute “any”; and
- (b) after subsection (1) insert—
- “(1A) A failure to give assistance or information shall not constitute an offence under subsection (1)(c) if it is also a failure in relation to which an authorised officer may apply for an order under section 11A above.”