

# **CONSUMERS, ESTATE AGENTS AND REDRESS ACT 2007**

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## **EXPLANATORY NOTES**

### **BACKGROUND AND OVERVIEW**

#### **Parts 1 and 2**

4. The Department of Trade and Industry published the Government's Consumer Strategy on 21 June 2005, and responded to the earlier consultation on the draft strategy as follows:

“Strengthen and streamline consumer advocacy.

As we set out in our consultation document “Extending Competitive Markets: Empowered Consumers, Successful Business” the Government sees benefits in moving consumer representation in the regulated industries towards a single “National Utilities Consumer Council” model. This remains our view, and we will bring forward further details of possible plans and timetable later this year.”

5. A second consultation was undertaken from January to April 2006, in which options were set out to achieve the objective of strengthening and streamlining consumer advocacy. The Government's response to this second consultation was published on 17 October 2006, together with a Regulatory Impact Assessment.
6. The Act makes provision for new consumer representation as follows:

#### **The (new) National Consumer Council**

7. The Act establishes a “new” National Consumer Council (“the Council”). The Council will initially replace energywatch, Postwatch and the existing National Consumer Council. The Act provides for the abolition of energywatch and Postwatch and enables their assets and liabilities, and those of the existing National Consumer Council, to be transferred to the Council. The existing National Consumer Council will be dissolved under the Companies Acts. The Act also contains a power to dissolve the Consumer Council for Water<sup>1</sup> and transfer its functions, assets and liabilities to the new body established by the Act.
8. The Consumer Panel established by the Financial Services Authority<sup>2</sup> (“the Financial Services Consumer Panel”) and the Consumer Panel established by the Office of Communications<sup>3</sup> (“the OFCOM Consumer Panel”) will be left unchanged, reflecting their particular “regulator-facing” role (i.e. provision of advice to regulators on the consumer interest). The Act provides for a system of cross-appointments seeking to ensure a joined-up approach between the panels and the Council.

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<sup>1</sup> Established by section 27A [Water Industry Act 1991\(c.56\)](#)

<sup>2</sup> Established and maintained by the Financial Services Authority under section 10 of the [Financial Services and Markets Act 2000 \(c.8\)](#)

<sup>3</sup> Established and maintained by the Office of Communications under section 16 of the [Communications Act 2003 \(c.21\)](#)

9. This Council will have three core functions:
- the representative function,
  - the research function, and
  - the information function –.

### **Redress Schemes and Complaint Handling**

10. The Act enables the Secretary of State to require regulated providers in the gas and electricity sector (in Great Britain), the postal services sector (in the United Kingdom) and the water sector (in England and Wales) to belong to redress schemes, providing resolution and redress for their consumers. Redress schemes already exist in the financial services and telecommunications sectors and the power in the Act does not relate to those sectors. There is also an existing redress scheme in respect of billing and transfer disputes in the gas and electricity sectors.
11. The Act imposes a duty on the energy and postal services regulators (the Gas and Electricity Markets Authority and the Postal Services Commission respectively) to make regulations to prescribe standards for complaints handling by regulated service providers in the gas, electricity and postal services sectors.
12. The Act does not extend these powers to the water sector because the Secretary of State already has a power to prescribe complaint handling standards in relation to water undertakers and sewerage undertakers in England and Wales under the [Water Industry Act 1991 \(c. 56\)](#).

### **Consumer Direct**

13. The Act provides a power to require licensees in the electricity and gas (Great Britain), postal services (United Kingdom) and water (England and Wales) sectors to contribute towards the costs of expanding Consumer Direct to enable it to operate in relation to those sectors. Consumer Direct is a telephone and on-line consumer advice service, supported by the OFT. The service will be extended to replace the existing consumer information and advice lines provided by energywatch and Postwatch. It may also be extended to replace the existing consumer information and advice lines provided by the Consumer Council in relation to the water sector.

### **Part 3: Estate Agents**

14. The work of estate agents is primarily governed by the [Estate Agents Act 1979 \(c.38\)](#) (the 1979 Act), the [Property Misdescriptions Act 1991 \(c.29\)](#), and Part 5 of the [Housing Act 2004 \(c.34\)](#) (the 2004 Act). All of these extend to the whole of the UK save for the 2004 Act which applies to England and Wales.
15. The system for buying and selling a property in Scotland is quite different from the rest of the UK. For example, a significant proportion of transactions make use of the sealed bid system, and houses are often sold through solicitors. These differences are accommodated by the 1979 Act. Housing in Scotland is a devolved matter, and the Scottish equivalent of the Housing Act 2004 is the [Housing \(Scotland\) Act 2006 \(asp1\)](#), which contains provisions for Purchaser Information Packs (PIPs) and single surveys.
16. Section 1 of the 1979 Act provides a definition of “estate agency work” rather than defining an “estate agent”. The definition of estate agency work has been utilised for the purposes of this Act.
17. Estate agents are subject to a “negative licensing” system under the 1979 Act. This means that anyone can set up as an estate agent, but the Office of Fair Trading (OFT) can ban estate agents they consider to be unfit to practise.

18. The legislation mentioned above is enforced by the OFT and trading standards officers (TSOs) in Great Britain, and in Northern Ireland by the Northern Ireland Trading Standards Service, which is part of the Department of Enterprise, Trade and Investment.
19. The OFT published a report on the Estate Agency Market in March 2004. The Government published its response to the report in July 2004. The measures in this Act stem from the OFT's report and the Government's response.
20. In summary the Act seeks to:
  - a) require estate agents to belong to a redress scheme for the purposes of all complaints relating to estate agency work carried out in relation to residential property;
  - b) require estate agents to make and keep records, including records of offer letters, for a period of six years;
  - c) give the OFT and TSOs additional powers to require access to premises and to demand on-site production of records when they have reasonable grounds to suspect that an agent has not complied with the 1979 Act; and
  - d) expand the circumstances in which the OFT can consider the fitness of an estate agent to practise and consequently to take regulatory action against them under sections 3 and 4 of the 1979 Act.

#### **Amendments of the Estate Agents Act 1979**

21. At present membership of a redress scheme for estate agents is voluntary. The Government stated in its response to the OFT report that it hoped to amend the Housing Act during its passage to provide a power to require all estate agents to belong to a redress scheme. This proved not to be possible due to the scope of the Housing Act. Therefore the 2004 Act includes provision for the Secretary of State to make an order to require an estate agent to be a member of an approved redress scheme but only for the purposes of complaints relating to Home Information Packs. This Act gives the Secretary of State the power to require all estate agents to belong to a redress scheme for the purposes of all complaints against estate agents by buyers and sellers of residential property. This requirement will be UK wide (the 2004 Act extends only to England and Wales).
22. The OFT's 2004 report on the estate agents market made some recommendations to improve the regulation of estate agents. The Government supported a number of these recommendations in its response. The other sections in this Act relating to estate agents implement the recommendations from the OFT report set out at points (b) to (d) above.

#### **Part 4: Miscellaneous and General**

23. The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987<sup>4</sup> ('Doorstep Selling Regulations') implement Council Directive 85/577/EEC, to protect the consumer in respect of contracts negotiated away from business premises. These Regulations give consumers the right to cancel contracts entered into at home or at a consumer's workplace where the trader visited the home or workplace other than at the express request of the consumer.
24. In 2004 the Government publicly consulted on recommendations put forward by the OFT to improve the protection of consumers when buying in the home. The Government response to the public consultation was published in September 2006. This Act gives the Secretary of State the power to make provision for consumers to have the right to cancel contracts entered into following solicited visits to the consumer's home

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<sup>4</sup> SI 1987 No 2117. [The Consumer Protection \(Cancellation of Contracts Concluded away from Business Premises\) Regulations 1987](#)

*These notes refer to the Consumers, Estate Agents and Redress Act 2007 (c.17) which received Royal Assent on 19th July 2007*

or workplace. These rights are expected to be similar to those consumers currently have for unsolicited visits, under the Doorstep Selling Regulations.