

*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

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## EXPLANATORY NOTES

### SCHEDULES+-

#### *Schedule 1: The National Consumer Council*

174. This Schedule makes further provision in relation to appointments to the Council, its members, procedures, status and funding.

#### **Part 1: Members of the Council**

##### **Membership**

175. *Paragraph 1* provides for the Secretary of State to appoint the chairman of the Council and other members. The Council chairman is non-executive (i.e. not appointed from the staff of the Council), and must be consulted by the Secretary of State before the latter appoints other non-executive members to the Council. Executive members of the Council (i.e. Council members who are appointed from the staff of the Council) are appointed by the Secretary of State on the nomination of the Council chairman.
176. The Secretary of State may appoint as non-executive members persons who are members of the OFCOM Consumer Panel and/or the Financial Services Consumer Panel where these persons have been nominated by the Panel in question following consultation with the Council Chairman. The Secretary of State is obliged to secure that a majority of members of the Council are non-executive. In making appointments to the Council, this paragraph provides that the Secretary of State must have regard to the desirability of appointing one or more members with experience of work among and the special needs of disabled persons.
177. *Paragraph 2*, subject to the other provisions of Schedule 1, establishes that members of the Council will be appointed to, and vacate, their office according to the terms and conditions of their appointment.
178. *Paragraph 3* enables the Council to make payments in relation to non-executive members' remuneration, pensions, allowances or gratuities. The Council may also pay travelling and other allowances to any member.
179. *Paragraph 4* defines the term of a non-executive appointment as a fixed period not exceeding five years, and permits re-appointment for one further period of up to five years.
180. *Paragraph 5* describes circumstances where individuals will cease to be members of the Council. The Secretary of State is empowered to terminate the appointment of a chairman or other member who is unable, unfit, or unwilling to fulfil the functions of his or her appointment.

181. *Paragraph 6* enables the Council to pay compensation to members who leave office early.

## **Part 2: Staff of the Council**

182. *Paragraph 7* requires the Council to employ a Chief Executive, and the first such appointment is to be made by the Secretary of State on such terms and conditions as he determines. Subsequent appointments of Chief Executives are to be made by the Council, with the approval of the Secretary of State being required for both the appointment and for the terms and conditions on which the appointment is made.
183. *Paragraph 8* enables the Council to employ other staff as it considers appropriate, with the numbers of staff and their terms and conditions subject to approval by the Secretary of State.
184. *Paragraph 9* makes provision to allow the Chief Executive and staff of the Council to join the Principal Civil Service Pension Scheme and for payments to be made by the Council in respect of this pension provision.
185. *Paragraph 10* provides that the Council may arrange for other parties to provide it with assistance, and to pay fees to such parties.

## **Part 3: Territorial, Regional and Other Committees**

186. *Paragraph 11* sets out the arrangements for territorial committees, which the Council is required to establish by section 1(2) for Scotland, Wales, and Northern Ireland. Each committee comprises executive and non-executive members appointed by the Secretary of State, with a majority of non-executive members. The Chairman of each committee must be a non-executive member. Before appointing a non-executive member (including a chairman), the Secretary of State must consult the Council chairman, and Scottish and Welsh Ministers as appropriate. The Council must have regard to the desirability of appointing one or more members with experience of work among, and the special needs of, disabled persons.
187. *Paragraph 12* enables the Council, with the approval of the Secretary of State, to establish or abolish regional committees to provide advice and information to the Council about consumer matters affecting the relevant region, and for other purposes determined by the Council.
188. *Paragraph 13* specifies that the Council is able to appoint a chairman and members to a regional committee. The chairman and the majority of members must be non-executive. The Council must have regard to the desirability of appointing one or more members with experience of work among, and the special needs of, disabled persons.
189. *Paragraph 14* enables the Council to establish other committees.
190. *Paragraph 18* limits the term of a non-executive appointment to a territorial or regional committee to a fixed period not exceeding five years, and permits re-appointment for one further period of up to five years.
191. *Paragraph 19* makes provision in respect of the circumstances in which the chairmen, or any other member, of a territorial or regional committee shall cease to be a member of the committee. The Secretary of State is empowered to terminate the appointment of a chairman or other member of a territorial committee who is unable, unfit, or unwilling to fulfil the functions of his or her appointment.
192. *Paragraph 20* enables the Council to pay compensation to members of territorial committees when they leave office early.

#### **Part 4: Procedure etc.**

193. *Paragraph 21* enables the Council to regulate its own procedure and that of its committees and sub-committees, including the quorum in each case.
194. *Paragraph 22* states that the validity of any act of the Council is not affected by any vacancy on the Council, its committees or sub-committees; any defect in the appointment of any members of the Council or its committees or sub-committees, or any disqualification of any person as chairman or other member of the Council.
195. *Paragraph 23(1)* enables the Council to delegate its functions to the Chairman or another member of the Council, any committee or sub-committee of the Council, or the Chief Executive or another member of staff. *Paragraph 23(2)* provides that any committee established by the Council has a similar power to delegate its functions.
196. *Paragraphs 24 to 26* make provision in relation to the authentication of Council's seal and the execution of documents by the Council.
197. *Paragraph 27* requires the Council to maintain an office in each of England, Scotland, Wales and Northern Ireland, and authorises the Council to establish additional offices within the United Kingdom with the consent of the Secretary of State.

#### **Part 5: Funding and accounts**

198. *Part 5* sets out how the Council will be funded, and the requirements to be placed on the Council in relation to its accounts.
199. *Paragraph 29* inserts additional provisions in the *Utilities Act 2000 (c.27)* which provide that licensed electricity and gas providers may be required to pay for:
  - a) the appropriate proportion of the expenses of the Council (including a proportion of the establishment costs);
  - b) the appropriate proportion of the costs of the Secretary of State in relation to the establishment of the Council;
  - c) any transfer schemes made under section 35(2)(a) or 35(7) of the Act in respect of energywatch;
  - d) the costs of the Secretary of State in relation to the abolition of energywatch;
  - e) the costs of the OFT in relation to the expansion of any public consumer advice scheme supported by the OFT ("OFT scheme") to enable it to cater for enquiries from electricity and gas consumers;
  - f) the appropriate proportion of the costs of the Office of Fair Trading in relation to the operation of an OFT scheme.
200. In determining the "appropriate proportion" of the funding to come from energy licensees, the Secretary of State must have regard to the functions exercised by the Council or an OFT scheme in relation to electricity and gas consumers.
201. *Paragraph 31* inserts a new provision into the *Postal Services Act 2000 (c.26)* which provides that licensed suppliers of postal services may be required to pay for:
  - a) the appropriate proportion of the expenses of the Council (including a proportion of the establishment costs);
  - b) the appropriate proportion of the costs of the Secretary of State in relation to the establishment of the Council;
  - c) any costs relating to transfer schemes made under section 35(2)(a) or 35(7) of the Act in respect of Postwatch;

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- d) the costs of the Secretary of State in relation to the abolition of Postwatch;
  - e) the costs of the OFT in relation to the expansion of any public consumer advice scheme supported by the OFT (“OFT scheme”) to enable it to cater for enquiries from postal services consumers;
  - f) the appropriate proportion of the costs of the Office of Fair Trading in relation to the operation of an OFT scheme.
202. In determining the “appropriate proportion” of the funding to come from postal services licensees, the Secretary of State must have regard to the functions exercised by the Council or the OFT scheme in relation to postal services consumers.
203. *Paragraph 32* sets out the requirements on the Council in relation to its accounts, including a requirement on the Comptroller and Auditor General (the head of the National Audit Office) to audit the Council’s accounts annually, and for the Secretary of State to lay each year’s certified accounts (as well as the Comptroller and Auditor General’s report on the accounts) before Parliament.

#### **Part 6: Status etc.**

204. *Paragraph 33* provides that the Council is not to be regarded as a servant or agent of the Crown; it does not enjoy any status, immunity of privilege of the Crown; and the Council’s property is not Crown property.
205. *Paragraphs 34 to 37* amend the [House of Commons Disqualification Act 1975 \(c. 24\)](#) and the [Northern Ireland Assembly Disqualification Act 1975 \(c. 25\)](#) provisions so as to disqualify members of the Council from membership of the House of Commons and the Northern Ireland Assembly. They also amend the [Freedom of Information Act 2000 \(c. 36\)](#), the [Public Records Act 1958 \(c.51\)](#) and the [Parliamentary Commissioner Act 1967 \(c.13\)](#) so as to make provision about the Council.
206. *Paragraph 38* provides an exemption from liability for damages for anything done by the Council, any member of the Council or any of its committees or sub-committees, the Chief Executive or any member of the Council’s staff in the exercise (or purported exercise) of the Council’s functions. This exemption does not apply where the act or omission was in bad faith. Nor does it prevent an award of damages made in respect of an act or omission which is unlawful as a result of section 6(1) of the [Human Rights Act 1998 \(c. 42\)](#).

#### **Schedule 2: Enforcement of information requirements**

207. *Schedule 2* amends the [Gas Act 1986 \(c.44\)](#), the [Electricity Act 1989 \(c.29\)](#) and the [Postal Services Act 2000 \(c.26\)](#) in order to make provision in relation to the enforcement of the requirement on licensed providers to comply with a direction (under section 24) by a “designated investigator” to provide information to the Council.
208. The enforcement provisions by virtue of this Schedule operate in the same way as those in respect of Part 2 of the Act. Hence, the relevant regulator may impose an order for breach of the above requirements. The supplier is obliged to comply with such an order and breach of the order can be enforced in the civil courts. Breach of such an order may also render the supplier liable to pay damages to any person who has suffered loss as the result of that breach. In addition to the above, legislation concerning the relevant sector permits the regulator to impose a financial penalty for breach of the above requirements.

#### **Schedule 3: Abolition of consumer bodies: transitional provision**

209. This Schedule sets out the transitional arrangements that will apply when energywatch and Postwatch are abolished and the new Council is set up.

210. *Paragraphs 1 and 2* make provision to ensure that the Council is able to continue to investigate any complaint that energywatch is in the process of investigating at the time of its abolition.
211. *Paragraph 3* makes transitional provision in relation to energywatch's final annual report.
212. *Paragraph 4* makes provision to ensure that the Council is able to continue to investigate any complaint that Postwatch is in the process of investigating at the time of its abolition
213. *Paragraph 5* makes transitional provision in relation to Postwatch's final annual report.

#### ***Schedule 4: Transfer of property etc to Council***

214. This Schedule makes further provision about transfer schemes made by the Secretary of State under section 35(7) or by energywatch, Postwatch, the Consumer Council for Water or the existing National Consumer Council under section 35(2)(a). *Paragraph 5* means that all property, rights and liabilities included within a transfer scheme are transferred to the Council on the day appointed by the scheme, even if other provisions exist that might prevent or restrict their transfer.
215. *Paragraph 6* means that anything done by the body from which the property etc is being transferred (the "transferor") in connection with the property etc being transferred, shall be treated as if it were done by the Council. The Council may continue anything that the transferor was in the process of doing before the transfer, and should be substituted for the transferor in any document that relates to the property etc being transferred.
216. *Paragraphs 7 and 8* apply the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#) to any transfer that relates to rights or liabilities under a contract of employment. Paragraph 8 ensures that there is no break in the continuity of employment of staff transferring to the Council from energywatch, Postwatch, the Consumer Council for Water or the existing National Consumer Council.
217. *Paragraphs 9 to 11* make provision for corporation tax consequences of the transfer schemes. The effect is to remove tax consequences that would otherwise have arisen only because of the transfer and to provide continuity of tax treatment.

#### ***Schedule 5: Information relating to compliance with complaint handling standards***

218. This Schedule amends the [Electricity Act 1989 \(c.29\)](#), [Gas Act 1986 \(c.44\)](#) and [Postal Services Act 2000 \(c.26\)](#) to require the Gas and Electricity Markets Authority and the Postal Services Commission to collect information from licence holders in respect of levels of compliance with any complaint handling standards prescribed by these regulators under section 43 of the Act. The above regulators are given the power to direct licensees to provide them with the above information.

#### ***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 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.

#### ***Schedule 7: Minor and Consequential Amendments***

239. This Schedule makes a number of consequential amendments to legislation.

#### ***Schedule 8: Repeals***

240. *Schedule 8* lists the repeals made by the Act.