



Consumers, Estate Agents and Redress Act 2007

2007 CHAPTER 17

PART 3

AMENDMENT OF THE ESTATE AGENTS ACT 1979

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

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- (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;

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- (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—
- (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;

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- (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.
- (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.”