



Estate Agents Act 1979

1979 CHAPTER 38

Orders by Director General of Fair Trading

3 Orders prohibiting unfit persons from doing estate agency work.

(1) The power of the Director General of Fair Trading (in this Act referred to as “the Director”) to make an order under this section with respect to any person shall not be exercisable unless the Director is satisfied that that person—

- (a) has been convicted of—
 - (i) an offence involving fraud or other dishonesty or violence, or
 - (ii) an offence under any provision of this Act, other than section 10(6), section 22(3) or section 23(4), or
 - (iii) any other offence which, at the time it was committed, was specified for the purposes of this section by an order made by the Secretary of State; or
- (b) has committed discrimination in the course of estate agency work; or
- (c) has failed to comply with any obligation imposed on him under any of sections 15 and 18 to 21 below; or
- (d) has engaged in a practice which, in relation to estate agency work, has been declared undesirable by an order made by the Secretary of State;

and the provisions of Schedule 1 to the Act shall have effect for supplementing paragraphs (a) and (b) above.

(2) Subject to subsection (1) above, if the Director is satisfied that any person is unfit to carry on estate agency work generally or of a particular description he may make an order prohibiting that person—

- (a) from doing any estate agency work at all; or
- (b) from doing estate agency work of a description specified in the order;

and in determining whether a person is so unfit the Director may, in addition to taking account of any matters falling within subsection (1) above, also take account of whether, in the course of estate agency work or any other business activity, that person has engaged in any practice which involves breaches of a duty owed by virtue

Status: Point in time view as at 01/02/1991.

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of any enactment, contract or rule of law and which is material to his fitness to carry on estate agency work.

- (3) For the purposes of paragraphs (c) and (d) of subsection (1) above,—
- (a) anything done by a person in the course of his employment shall be treated as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval, unless the employer shows that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description; and
 - (b) anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that person shall be treated as done by that other person as well as by him; and
 - (c) anything done by a business associate of a person shall be treated as done by that person as well, unless he can show that the act was done without his connivance or consent.
- (4) In an order under this section the Director shall specify as the grounds for the order those matters falling within paragraphs (a) to (d) of subsection (1) above as to which he is satisfied and on which, accordingly, he relies to give him power to make the order.
- (5) If the Director considers it appropriate, he may in an order under this section limit the scope of the prohibition imposed by the order to a particular part of or area within the United Kingdom.
- (6) An order under paragraph (a)(iii) or paragraph (d) of subsection (1) above—
- (a) shall be made by statutory instrument;
 - (b) shall be laid before Parliament after being made; and
 - (c) shall cease to have effect (without prejudice to anything previously done in reliance on the order) after the expiry of the period of twenty-eight days beginning with the date on which it was made unless within that period it has been approved by a resolution of each House of Parliament.
- (7) In reckoning for the purposes of subsection (6)(c) above any period of twenty-eight days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) A person who fails without reasonable excuse to comply with an order of the Director under this section shall be liable on conviction on indictment or on summary conviction to a fine which on summary conviction shall not exceed the statutory maximum.

4 Warning orders.

- (1) If the Director is satisfied that—
- (a) in the course of estate agency work any person has failed to comply with any such obligation as is referred to in section 3(1)(c) above (in this section referred to as a “relevant statutory obligation”) or has engaged in such a practice as is referred to in section 3(1)(d) above, and
 - (b) if that person were again to fail to comply with a relevant statutory obligation or, as the case may be, were to continue to engage in that practice, the Director would consider him unfit as mentioned in subsection (2) of section 3 above and would proceed to make an order under that section,

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the Director may by order notify that person that he is so satisfied.

- (2) An order under this section shall state whether, in the opinion of the Director, a further failure to comply with a relevant statutory obligation or, as the case may be, continuation of the practice specified in the order would render the person to whom the order is addressed unfit to carry on estate agency work generally or estate agency work of a description specified in the order.
- (3) If, after an order has been made under this section, the person to whom it is addressed fails to comply with a relevant statutory obligation or, as the case may be, engages in the practice specified in the order then, for the purposes of this Act, that fact shall be treated as conclusive evidence that he is unfit to carry on estate agency work as stated in the order in accordance with subsection (2) above; and the Director may proceed to make an order under section 3 above accordingly.

5 Supplementary provisions as to orders under sections 3 and 4.

- (1) The provisions of Part I of Schedule 2 to this Act shall have effect—
 - (a) with respect to the procedure to be followed before an order is made by the Director under section 3 or section 4 above; and
 - (b) in connection with the making and coming into operation of any such order.
- (2) Where an order is made by the Director under section 3 or section 4 above against a partnership, it may, if the Director thinks it appropriate, have effect also as an order against some or all of the partners individually, and in such a case the order shall so provide and shall specify the names of the partners affected by the order.
- (3) Nothing in section 62 of the ^{M1}Sex Discrimination Act 1975, section 53 of the ^{M2}Race Relations Act 1976 or Article 62 of the ^{M3}Sex Discrimination (Northern Ireland) Order 1976 (restriction of sanctions for breaches of those Acts and that Order) shall be construed as applying to the making of an order by the Director under section 3 above.
- (4) In any case where—
 - (a) an order of the Director under section 3 above specifies a conviction as a ground for the order, and
 - (b) the conviction becomes spent for the purposes of the ^{M4}Rehabilitation of Offenders Act 1974 or any corresponding enactment for the time being in force in Northern Ireland,then, unless the order also specifies other grounds which remain valid, the order shall cease to have effect on the day on which the conviction becomes so spent.
- (5) In any case where—
 - (a) an order of the Director under section 3 above specifies as grounds for the order the fact that the person concerned committed discrimination by reason of the existence of any such finding or notice as is referred to in paragraph 2 of Schedule 1 to this Act, and
 - (b) the period expires at the end of which, by virtue of paragraph 3 of that Schedule, the person concerned would no longer be treated for the purposes of section 3(1)(b) above as having committed discrimination by reason only of that finding or notice,

then, unless the order also specifies other grounds which remain valid, the order shall cease to have effect at the end of that period.

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Marginal Citations

- M1 1975 c. 65.
- M2 1976 c. 74.
- M3 S.I. 1976/1042 (N.I. 15)
- M4 1974 c. 53.

6 Revocation and variation of orders under sections 3 and 4.

- (1) On an application made to him by the person in respect of whom the Director has made an order under section 3 or section 4 above, the Director may revoke or vary the order.
- (2) An application under subsection (1) above—
 - (a) shall state the reasons why the applicant considers that the order should be revoked or varied;
 - (b) in the case of an application for a variation, shall indicate the variation which the applicant seeks; and
 - (c) shall be accompanied by the prescribed fee.
- (3) If the Director decides to accede to an application under subsection (1) above, he shall give notice in writing of his decision to the applicant and, upon the giving of that notice, the revocation or, as the case may be, the variation specified in the application shall take effect.
- (4) The Director may decide to refuse an application under subsection (1) above—
 - (a) where it relates to an order under section 3 above, if he considers that the applicant remains unfit to carry on any estate agency work at all or, as the case may be, estate agency work of the description which is prohibited by the order; and
 - (b) where it relates to an order under section 4 above, if he considers that the applicant may again fail to comply with a relevant statutory obligation or, as the case may be, again engage in the practice specified in the order.
- (5) If, on an application under subsection (1) above, the Director decides that—
 - (a) he cannot accede to the application because he considers that the applicant remains unfit to carry on any estate agency work at all in a particular part of or area within the United Kingdom or remains unfit to carry on estate agency work of a particular description (either throughout the United Kingdom or in a particular part of or area within it) or, as the case may be, remains likely to fail to comply with a relevant statutory obligation or to engage in a particular practice, but
 - (b) the order to which the application relates could, without detriment to the public, be varied in favour of the applicant,
 the Director may make such a variation accordingly.
- (6) The provisions of Part II of Schedule 2 to this Act shall have effect in relation to any application to the Director under subsection (1) above and the provisions of Part I of that Schedule shall have effect—
 - (a) with respect to the procedure to be followed before the Director comes to a decision under subsection (4) or subsection (5) above; and
 - (b) in connection with the making and coming into operation of such a decision.

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- (7) In this section “relevant statutory obligation” has the meaning assigned to it by section 4(1)(a) above.

7 Appeals.

- (1) A person who receives notice under paragraph 9 of Schedule 2 to this Act of—
- (a) a decision of the Director to make an order in respect of him under section 3 or section 4 above, or
 - (b) a decision of the Director under subsection (4) or subsection (5) of section 6 above on an application made by him,
- may appeal against the decision to the Secretary of State.
- (2) On an appeal under subsection (1) above the Secretary of State may give such directions for disposing of the appeal as he thinks just, including a direction for the payment of costs or expenses by any party to the appeal.
- (3) The Secretary of State shall make provision by regulations with respect to appeals under subsection (1) above—
- (a) as to the period within which and the manner in which such appeals are to be brought;
 - (b) as to the persons by whom such appeals are to be heard on behalf of the Secretary of State;
 - (c) as to the manner in which such appeals are to be conducted;
 - (d) for taxing or otherwise settling any costs or expenses directed to be paid under subsection (2) above and for the enforcement of any such direction; and
 - (e) as to any other matter connected with such appeals;
- and such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) If the appellant is dissatisfied in point of law with a decision of the Secretary of State under this section he may appeal against that decision to the High Court, the Court of Session or a judge of the High Court in Northern Ireland.
- (5) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (4) above except with the leave of that Court or of the court or judge from whose decision the appeal is brought.
- (6) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

8 Register of orders etc.

- (1) The Director shall establish and maintain a register on which there shall be entered particulars of every order made by him under section 3 or section 4 above and of his decision on any application for revocation or variation of such an order.
- (2) The particulars referred to in subsection (1) above shall include—
- (a) the terms of the order and of any variation of it; and
 - (b) the date on which the order or variation came into operation or is expected to come into operation or if an appeal against the decision is pending and the

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order or variation has in consequence not come into operation, a statement to that effect.

- (3) The Director may, of his own motion or on the application of any person aggrieved, rectify the register by the addition, variation or removal of any particulars; and the provisions of Part II of Schedule 2 to this Act shall have effect in relation to an application under this subsection.
- (4) If it comes to the attention of the Director that any order of which particulars appear in the register is no longer in operation, he shall remove those particulars from the register.
- (5) Any person shall be entitled on payment of the prescribed fee—
 - (a) to inspect the register during such office hours as may be specified by a general notice made by the Director and to take copies of any entry, or
 - (b) to obtain from the Director a copy, certified by him to be correct, of any entry in the register.
- (6) A certificate given by the Director under subsection (5)(b) above shall be conclusive evidence of the fact that, on the date on which the certificate was given, the particulars contained in the copy to which the certificate relates were entered on the register; and particulars of any matters required to be entered on the register which are so entered shall be evidence and, in Scotland, sufficient evidence of those matters and shall be presumed, unless the contrary is proved, to be correct.

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