



# Estate Agents Act 1979

## 1979 CHAPTER 38

An Act to make provision with respect to the carrying on of and to persons who carry on, certain activities in connection with the disposal and acquisition of interests in land; and for purposes connected therewith. [4th April 1979]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Application of Act*

#### **1 Estate agency work**

(1) This Act applies, subject to subsections (2) to (4) below to things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as "the client") who wishes to dispose of or acquire an interest in land—

- (a) for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to acquire or, as the case may be, dispose of such an interest; and
- (b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or, as the case may be, the acquisition of that interest;

and in this Act the expression "estate agency work" refers to things done as mentioned above to which this Act applies.

(2) This Act does not apply to things done—

- (a) in the course of his profession by a practising solicitor or a person employed by him; or
- (b) in the course of credit brokerage, within the meaning of the Consumer Credit Act 1974 ; or

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- (c) in the course of insurance brokerage by a person who is for the time being registered under section 2, or enrolled under section 4, of the Insurance Brokers (Registration) Act 1977; or
  - (d) in the course of carrying out any survey or valuation pursuant to a contract which is distinct from that under which other things falling within subsection (1) above are done ; or
  - (e) in connection with applications and other matters arising under the Town and Country Planning Act 1971 or the Town and Country Planning (Scotland) Act 1972 or the Planning (Northern Ireland) Order 1972.
- (3) This Act does not apply to things done by any person—
- (a) pursuant to instructions received by him in the course of his employment in relation to an interest in land if his employer is the person who, on his own behalf, wishes to dispose of or acquire that interest; or
  - (b) in relation to any interest in any property if the property is subject to a mortgage and he is the receiver of the income of it; or
  - (c) in relation to a present, prospective or former employee of his or of any person by whom he also is employed if the things are done by reason of the employment (whether past, present or future).
- (4) This Act does not apply to the publication of advertisements or the dissemination of information by a person who does no other acts which fall within subsection (1) above.
- (5) In this section—
- (a) " practising solicitor" means, except in Scotland, a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974 or Article 4 of the Solicitors (Northern Ireland) Order 1976, and in Scotland includes a firm of practising solicitors;
  - (b) " mortgage " includes a debenture and any other charge on property for securing money or money's worth ; and
  - (c) any reference to employment is a reference to employment under a contract of employment.

## **2 Interests in land**

- (1) Subject to subsection (3) below, any reference in this Act to disposing of an interest in land is a reference to—
- (a) transferring a legal estate in fee simple absolute in possession; or
  - (b) transferring or creating, elsewhere than in Scotland, a lease which, by reason of the level of the rent, the length of the term or both, has a capital value which may be lawfully realised on the open market; or
  - (c) transferring or creating in Scotland any estate or interest in land which is capable of being owned or held as a separate interest and to which a title may be recorded in the Register of Sasines;
- and any reference to acquiring an interest in land shall be construed accordingly.
- (2) In subsection (1)(b) above the expression " lease " includes the rights and obligations arising under an agreement to grant a lease.
- (3) Notwithstanding anything in subsections (1) and (2) above, references in this Act to disposing of an interest in land do not extend to disposing of—

- (a) the interest of a creditor whose debt is secured by way of a mortgage or charge of any kind over land or an agreement for any such mortgage or charge; or
- (b) in Scotland, the interest of a creditor in a heritable security as defined in section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

*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 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

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- (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,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 Sex Discrimination Act 1975, section 53 of the Race Relations Act 1976 or Article 62 of the 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 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.

## **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

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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.
- (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 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

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shall be evidence and, in Scotland, sufficient evidence of those matters and shall be presumed, unless the contrary is proved, to be correct.

*Information, entry and inspection*

**9 Information for the Director**

- (1) The Director may, for the purpose of assisting him—
- (a) to determine whether to make an order under section 3 or section 4 above, and
  - (b) in the exercise of any of his functions under sections 5, 6 and 8 above and 13 and 17 below,

by notice require any person to furnish to him such information as may be specified or described in the notice or to produce to him any documents so specified or described.

- (2) A notice under this section—
- (a) may specify the way in which and the time within which it is to be complied with and, in the case of a notice requiring the production of documents, the facilities to be afforded for making extracts, or taking copies of, the documents ; and
  - (b) may be varied or revoked by a subsequent notice.

- (3) Nothing in this section shall be taken to require a person who has acted as counsel or solicitor for any person to disclose any privileged communication made by or to him in that capacity.

- (4) A person who—
- (a) refuses or wilfully neglects to comply with a notice under this section, or
  - (b) in furnishing any information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, or
  - (c) with intent to deceive, produces in compliance with such a notice a document which is false in a material particular,

shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

- (5) In section 131 of the Fair Trading Act 1973 (which provides for the Director to be notified by courts of convictions and judgments which may be relevant to his functions under Part III of that Act) after the words " this Act" there shall be inserted the words " or under the Estate Agents Act 1979 ".

- (6) It shall be the duty of—
- (a) the Equal Opportunities Commission,
  - (b) the Equal Opportunities Commission for Northern Ireland, and
  - (c) the Commission for Racial Equality,

to furnish to the Director such information relating to any finding, notice, injunction or order falling within paragraph 2 of Schedule 1 to this Act as is in their possession and appears to them to be relevant to the functions of the Director under this Act.



## **10 Restriction on disclosure of information**

- (1) Subject to subsections (3) to (5) below, no information obtained under or by virtue of this Act about any individual shall be disclosed without his consent.
- (2) Subject to subsections (3) to (5) below, no information obtained under or by virtue of this Act about any business shall be disclosed except, so long as the business continues to be carried on, with the consent of the person for the time being carrying it on.
- (3) Subsections (1) and (2) above do not apply to any disclosure of information made—
  - (a) for the purpose of facilitating the performance of any functions under this Act, the Trade Descriptions Act 1968, the Fair Trading Act 1973, the Consumer Credit Act 1974 or the Restrictive Trade Practices Act 1976 of any Minister of the Crown, any Northern Ireland department, the Director or a local weights and measures authority in Great Britain, or
  - (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings, or
  - (c) for the purposes of any civil proceedings brought under or by virtue of this Act or any of the other enactments specified in paragraph (a) above.
- (4) For the purpose of enabling the Director to use, in connection with his functions under this Act, information obtained by him in the exercise of functions under certain other enactments, the following amendments shall be made in provisions restricting disclosure of information, namely,—
  - (a) at the end of paragraph (a) of subsection (2) of section 133 of the Fair Trading Act 1973 there shall be added the words " the Estate Agents Act 1979, or ";
  - (b) in paragraph (a) of subsection (3) of section 174 of the Consumer Credit Act 1974 after the words " Fair Trading Act 1973 " there shall be added the words " or the Estate Agents Act 1979 "; and
  - (c) at the end of paragraph (a) of subsection (1) of section 41 of the Restrictive Trade Practices Act 1976 there shall be added the words " or the Estate Agents Act 1979 ".
- (5) Nothing in subsections (1) and (2) above shall be construed—
  - (a) as limiting the particulars which may be entered in the register; or
  - (b) as applying to any information which has been made public as part of the register.
- (6) Any person who discloses information in contravention of this section shall be liable on summary conviction to a fine not exceeding the statutory maximum and, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

## **11 Powers of entry and inspection**

- (1) A duly authorised officer of an enforcement authority, at all reasonable hours and on production, if required, of his credentials may—
  - (a) if he has reasonable cause to suspect that an offence has been committed under this Act, in order to ascertain whether it has been committed, enter any premises (other than premises used only as a dwelling);
  - (b) if he has reasonable cause to suspect that an offence has been committed under this Act, in order to ascertain whether it has been committed, require any person—

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- (i) carrying on, or employed in connection with, a business to produce any books or documents relating to it, or
  - (ii) having control of any information relating to a business recorded otherwise than in a legible form, to provide a document containing a legible reproduction of the whole or any part of the information;

and take copies of, or of any entry in, the books or documents;

  - (c) seize and detain any books or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act;
  - (d) for the purpose of exercising his powers under this subsection to seize books and documents, but only if and to the extent that it is reasonably necessary for securing that the provisions of this Act are duly observed, require any person having authority to do so to break open any container and, if that person does not comply, break it open himself.
- (2) An officer seizing books or documents in exercise of his powers under this section shall not do so without informing the person from whom he seizes them.
- (3) If and so long as any books or documents which have been seized under this section are not required as evidence in connection with proceedings which have been begun for an offence under this Act, the enforcement authority by whose officer they were seized shall afford to the person to whom the books or documents belong and to any person authorised by him in writing reasonable facilities to inspect them and to take copies of or make extracts from them.
- (4) If a justice of the peace, on sworn information in writing, or, in Scotland, a sheriff or a justice of the peace, on evidence on oath.—
  - (a) is satisfied that there is reasonable ground to believe either—
    - (i) that any books or documents which a duly authorised officer has power to inspect under this section are on any premises and their inspection is likely to disclose evidence of the commission of an offence under this Act, or
    - (ii) that an offence under this Act has been, or is being or is about to be, committed on any premises ; and
  - (b) is also satisfied either—
    - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier, or
    - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to wait for his return,

the justice or, as the case may be, the sheriff may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of an enforcement authority to enter the premises, by force if need be.
- (5) An officer entering premises by virtue of this section may take such other persons and equipment with him as he thinks necessary, and on leaving premises entered by virtue of a warrant under subsection (4) above shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

- (6) The Secretary of State may by regulations provide that, in cases specified in the regulations, an officer of a local weights and measures authority is not to be taken to be duly authorised for the purposes of this section unless he is authorised by the Director.
- (7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Nothing in this section shall be taken to require a person who has acted as counsel or solicitor for any person to produce a document containing a privileged communication made by or to him in that capacity or authorises the seizing of any such document in his possession.

### *Clients' money and accounts*

## **12 Meaning of " clients' money " etc.**

- (1) In this Act " clients' money ", in relation to a person engaged in estate agency work, means any money received by him in the course of that work which is a contract or pre-contract deposit—
  - (a) in respect of the acquisition of an interest in land in the United Kingdom, or
  - (b) in respect of a connected contract,whether that money is held or received by him as agent, bailee, stakeholder or in any other capacity.
- (2) In this Act " contract deposit" means any sum paid by a purchaser—
  - (a) which in whole or in part is, or is intended to form part of, the consideration for acquiring such an interest as is referred to in subsection (1)(a) above or for a connected contract; and
  - (b) which is paid by him at or after the time at which he acquires the interest or enters into an enforceable contract to acquire it.
- (3) In this Act " pre-contract deposit" means any sum paid by any person—
  - (a) in whole or in part as an earnest of his intention to acquire such an interest as is referred to in subsection (1)(a) above, or
  - (b) in whole or in part towards meeting any liability of his in respect of the consideration for the acquisition of such an interest which will arise if he acquires or enters into an enforceable contract to acquire the interest, or
  - (c) in respect of a connected contract,and which is paid by him at a time before he either acquires the interest or enters into an enforceable contract to acquire it.
- (4) In this Act " connected contract", in relation to the acquisition of an interest in land, means a contract which is conditional upon such an acquisition or upon entering into an enforceable contract for such an acquisition (whether or not it is also conditional on other matters).

## **13 Clients' money held on trust or as agent**

- (1) It is hereby declared that clients' money received by any person in the course of estate agency work in England, Wales or Northern Ireland—

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- (a) is held by him on trust for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him, or
  - (b) if it is received by him as stakeholder, is held by him on trust for the person who may become so entitled on the occurrence of the event against which the money is held.
- (2) It is hereby declared that clients' money received by any person in the course of estate agency work in Scotland is held by him as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.
- (3) The provisions of sections 14 and 15 below as to the investment of clients' money, the keeping of accounts and records and accounting for interest shall have effect in place of the corresponding duties which would be owed by a person holding clients' money as trustee, or in Scotland as agent, under the general law.
- (4) Where an order of the Director under section 3 above has the effect of prohibiting a person from holding clients' money the order may contain provision—
- (a) appointing another person as trustee, or in Scotland as agent, in place of the person to whom the order relates to hold and deal with clients' money held by that person when the order comes into effect; and
  - (b) requiring the expenses and such reasonable remuneration of the new trustee or agent as may be specified in the order to be paid by the person to whom the order relates or, if the order so provides, out of the clients' money;
- but nothing in this subsection shall affect the power conferred by section 41 of the Trustee Act 1925 or section 40 of the Trustee Act (Northern Ireland) 1958 to appoint a new trustee to hold clients' money.
- (5) For the avoidance of doubt it is hereby declared that the fact that any person has or may have a lien on clients' money held by him does not affect the operation of this section and also that nothing in this section shall prevent such a lien from being given effect.

#### **14 Keeping of client accounts**

- (1) Subject to such provision as may be made by accounts regulations, every person who receives clients' money in the course of estate agency work shall, without delay, pay the money into a client account maintained by him or by a person in whose employment he is.
- (2) In this Act a " client account" means a current or deposit account which—
- (a) is with an institution authorised for the purposes of this section, and
  - (b) is in the name of a person who is or has been engaged in estate agency work ;  
and
  - (c) contains in its title the word " client".
- (3) The Secretary of State may make provision by regulations (in this section referred to as " accounts regulations ") as to the opening and keeping of client accounts, the keeping of accounts and records relating to clients' money and the auditing of those accounts; 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) As to the opening and keeping of client accounts, accounts regulations may in particular specify—

- (a) the institutions which are authorised for the purposes of this section;
  - (b) any persons or classes of persons to whom, or any circumstances in which, the obligation imposed by subsection (1) above does not apply ;
  - (c) any circumstances in which money other than clients' money may be paid into a client account; and
  - (d) the occasions on which, and the persons to whom, money held in a client account may be paid out.
- (5) As to the auditing of accounts relating to clients' money, accounts regulations may in particular make provision—
- (a) requiring such accounts to be drawn up in respect of specified accounting periods and to be audited by a qualified auditor within a specified time after the end of each such period ;
  - (b) requiring the auditor to report whether in his opinion the requirements of this Act and of the accounts regulations have been complied with or have been substantially complied with;
  - (c) as to the matters to which such a report is to relate and the circumstances in which a report of substantial compliance may be given ; and
  - (d) requiring a person who maintains a client account to produce on demand to a duly authorised officer of an enforcement authority the latest auditor's report.
- (6) Subject to subsection (7) below, "qualified auditor" in subsection (5)(a) above means—
- (a) a person who is a member of one or more bodies of accountants established in the United Kingdom and for the time being recognised by the Secretary of State for the purposes of section 161(1)(a) of the Companies Act 1948 or, in Northern Ireland, recognised by the Department of Commerce for Northern Ireland for the purposes of section 155(1)(a) of the Companies Act (Northern Ireland) 1960 ; or
  - (b) a person who is for the time being authorised by the Secretary of State under section 161(1)(6) of the Companies Act 1948 or, in Northern Ireland, by the Department of Commerce for Northern Ireland under section 155(1)(b) of the Companies Act (Northern Ireland) 1960; or
  - (c) in the case of a client account maintained by a company, a person who is qualified to audit the accounts of the company by virtue of section 13(1) of the Companies Act 1967 (unqualified auditors of former exempt private companies); or
  - (d) a Scottish firm of which all the members are qualified auditors within paragraphs (a) to (c) above.
- (7) A person is not a qualified auditor for the purposes of subsection (5)(a) above if, in the case of a client account maintained by a company, he is disqualified from auditing the accounts of the company by subsection (2), subsection (3) or subsection (4) of either section 161 of the Companies Act 1948 or section 155 of the Companies Act (Northern Ireland) 1960.
- (8) A person who—
- (a) contravenes any provision of this Act or of accounts regulations as to the manner in which clients' money is to be dealt with or accounts and records relating to such money are to be kept, or
  - (b) fails to produce an auditor's report when required to do so by accounts regulations,

shall be liable on summary conviction to a fine not exceeding £500.

## **15 Interest on clients' money**

- (1) Accounts regulations may make provision for requiring a person who has received any clients' money to account, in such cases as may be prescribed by the regulations, to the person who is or becomes entitled to the money for the interest which was, or could have been, earned by putting the money in a separate deposit account at an institution authorised for the purposes of section 14 above.
- (2) The cases in which a person may be required by accounts regulations to account for interest as mentioned in subsection (1) above may be defined, amongst other things, by reference to the amount of the sum held or received by him or the period for which it is likely to be retained, or both.
- (3) Except as provided by accounts regulations and subject to subsection (4) below, a person who maintains a client account in which he keeps clients' money generally shall not be liable to account to any person for interest received by him on money in that account.
- (4) Nothing in this section or in accounts regulations shall affect any arrangement in writing, whenever made, between a person engaged in estate agency work and any other person as to the application of, or of any interest on, money in which that other person has or may have an interest.
- (5) Failure of any person to comply with any provision of accounts regulations made by virtue of this section may be taken into account by the Director in accordance with section 3(1)(c) above and may form the basis of a civil claim for interest which was or should have been earned on clients' money but shall not render that person liable to any criminal penalty.
- (6) In this section "accounts regulations" has the same meaning as in section 14 above.

## **16 Insurance cover for clients' money**

- (1) Subject to the provisions of this section, a person may not accept clients' money in the course of estate agency work unless there are in force authorised arrangements under which, in the event of his failing to account for such money to the person entitled to it, his liability will be made good by another.
- (2) The Secretary of State may by regulations made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.—
  - (a) specify any persons or classes of persons to whom subsection (1) above does not apply ;
  - (b) specify arrangements which are authorised for the purposes of this section including arrangements to which an enforcement authority nominated for the purpose by the Secretary of State or any other person so nominated is a party ;
  - (c) specify the terms and conditions upon which any payment is to be made under such arrangements and any circumstances in which the right to any such payment may be excluded or modified ;
  - (d) provide that any limit on the amount of any such payment is to be not less than a specified amount;

- (e) require a person providing authorised arrangements covering any person carrying on estate agency work to issue a certificate in a form specified in the regulations certifying that arrangements complying with the regulations have been made with respect to that person ; and
  - (f) prescribe any matter required to be prescribed for the purposes of subsection (4) below.
- (3) Every guarantee entered into by a person (in this subsection referred to as " the insurer") who provides authorised arrangements covering another person (in this subsection referred to as " the agent") carrying on estate agency work shall enure for the benefit of every person from whom the agent has received clients' money as if—
- (a) the guarantee were contained in a contract made by the insurer with every such person; and
  - (b) except in Scotland, that contract were under seal; and
  - (c) where the guarantee is given by two or more insurers, they had bound themselves jointly and severally.
- (4) No person who carries on estate agency work may describe himself as an " estate agent" or so use any name or in any way hold himself out as to indicate or reasonably be understood to indicate that he is carrying on a business in the course of which he is prepared to act as a broker in the acquisition or disposal of interests in land unless, in such manner as may be prescribed,—
- (a) there is displayed at his place of business, and
  - (b) there is included in any relevant document issued or displayed in connection with his business,
- any prescribed information relating to arrangements authorised for the purposes of this section.
- (5) For the purposes of subsection (4) above,—
- (a) any business premises at which a person carries on estate agency work and to which the public has access is a place of business of his ; and
  - (b) " relevant document" means any advertisement, notice or other written material which might reasonably induce any person to use the services of another in connection with the acquisition or disposal of an interest in land.
- (6) A person who fails to comply with any provision of subsection (1) or subsection (4) above or of regulations under subsection (2) above which is binding on him shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

## **17 Exemptions from section 16**

- (1) If, on an application made to him in that behalf, the Director considers that a person engaged in estate agency work may, without loss of adequate protection to consumers, be exempted from all or any of the provisions of subsection (1) of section 16 above or of regulations under subsection (2) of that section, he may issue to that person a certificate of exemption under this section.
- (2) An application under subsection (1) above—
- (a) shall state the reasons why the applicant considers that he should be granted a certificate of exemption; and
  - (b) shall be accompanied by the prescribed fee.

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- (3) A certificate of exemption under this section—
- (a) may impose conditions of exemption on the person to whom it is issued ;
  - (b) may be issued to have effect for a period specified in the certificate or without limit of time.
- (4) If and so long as—
- (a) a certificate of exemption has effect, and
  - (b) the person to whom it is issued complies with any conditions of exemption specified in the certificate,
- that person shall be exempt, to the extent so specified, from the provisions of subsection (1) of section 16 above and of any regulations made under subsection (2) of that section.
- (5) If the Director decides to refuse an application under subsection (1) above he shall give the applicant notice of his decision and of the reasons for it, including any facts which in his opinion justify the decision.
- (6) If a person who made an application under subsection (1) above is aggrieved by a decision of the Director—
- (a) to refuse his application, or
  - (b) to grant him a certificate of exemption subject to conditions,
- he may appeal against the decision to the Secretary of State; and subsections (2) to (6) of section 7 above shall apply to such an appeal as they apply to an appeal under that section.
- (7) A person who fails to comply with any condition of exemption specified in a current certificate of exemption issued to him shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

*Regulation of other aspects of estate agency work*

**18 Information to clients of prospective liabilities**

- (1) Subject to subsection (2) below, before any person (in this section referred to as " the client") enters into a contract with another (in this section referred to as " the agent") under which the agent will engage in estate agency work on behalf of the client, the agent shall give the client—
- (a) the information specified in subsection (2) below; and
  - (b) any additional information which may be prescribed under subsection (4) below.
- (2) The following is the information to be given under subsection (1)(a) above—
- (a) particulars of the circumstances in which the client will become liable to pay remuneration to the agent for carrying out estate agency work ;
  - (b) particulars of the amount of the agent's remuneration for carrying out estate agency work or, if that amount is not ascertainable at the time the information is given, particulars of the, manner in which the remuneration will be calculated;
  - (c) particulars of any payments which do not form part of the agent's remuneration for carrying out estate agency work or a contract or pre-contract deposit but



which, under the contract referred to in subsection (1) above, will or may in certain circumstances be payable by the client to the agent or any other person and particulars of the circumstances in which any such payments will become payable; and

- (d) particulars of the amount of any payment falling within paragraph (c) above or, if that amount is not ascertainable at the time the information is given, an estimate of that amount together with particulars of the manner in which it will be calculated.
- (3) If, at any time after the client and the agent have entered into such a contract as is referred to in subsection (1) above, the parties are agreed that the terms of the contract should be varied so far as they relate to the carrying out of estate agency work or any payment falling within subsection (2)(c) above, the agent shall give the client details of any changes which, at the time the statement is given, fall to be made in the information which was given to the client under subsection (1) above before the contract was entered into.
- (4) The Secretary of State may by regulations—
- (a) prescribe for the purposes of subsection (1)(b) above additional information relating to any estate agency work to be performed under the contract; and
  - (b) make provision with respect to the time and the manner in which the obligation of the agent under subsection (1) or subsection (3) above is to be performed;
- and the power to make regulations under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) If any person—
- (a) fails to comply with the obligation under subsection (1) above with respect to a contract or with any provision of regulations under subsection (4) above relating to that obligation, or
  - (b) fails to comply with the obligation under subsection (3) above with respect to any variation of a contract or with any provision of regulations under subsection (4) above relating to that obligation,
- the contract or, as the case may be, the variation of it shall not be enforceable by him except pursuant to an order of the court under subsection (6) below.
- (6) If, in a case where subsection (5) above applies in relation to a contract or a variation of a contract, the agent concerned makes an application to the court for the enforcement of the contract or, as the case may be, of a contract as varied by the variation,—
- (a) the court shall dismiss the application if, but only if, it considers it just to do so having regard to prejudice caused to the client by the agent's failure to comply with his obligation and the degree of culpability for the failure; and
  - (b) where the court does not dismiss the application, it may nevertheless order that any sum payable by the client under the contract or, as the case may be, under the contract as varied shall be reduced or discharged so as to compensate the client for prejudice suffered as a result of the agent's failure to comply with his obligation.
- (7) In this section—
- (a) references to the enforcement of a contract or variation include the withholding of money in pursuance of a lien for money alleged to be due under the contract or as a result of the variation; and

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- (b) "the court" means any court having jurisdiction to hear and determine matters arising out of the contract.

## **19 Regulation of pre-contract deposits outside Scotland**

- (1) No person may, in the course of estate agency work in England, Wales or Northern Ireland, seek from any other person (in this section referred to as a " prospective purchaser ") who wishes to acquire an interest in land in the United Kingdom, a payment which, if made, would constitute a pre-contract deposit in excess of the prescribed limit.
- (2) If, in the course of estate agency work, any person receives from a prospective purchaser a pre-contract deposit which exceeds the prescribed limit, so much of that deposit as exceeds the prescribed limit shall forthwith be either repaid to the prospective purchaser or paid to such other person as the prospective purchaser may direct.
- (3) In relation to a prospective purchaser, references in subsections (1) and (2) above to a pre-contract deposit shall be treated as references to the aggregate of all the payments which constitute pre-contract deposits in relation to his proposed acquisition of a particular interest in land in the United Kingdom.
- (4) In this section " the prescribed limit" means such limit as the Secretary of State may by regulations prescribe ; and such a limit may be so prescribed either as a specific amount or as a percentage or fraction of a price or other amount determined in any particular case in accordance with the regulations.
- (5) The 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.
- (6) Failure by any person to comply with subsection (1) or subsection (2) above may be taken into account by the Director in accordance with section 3(1)(c) above but shall not render that person liable to any criminal penalty nor constitute a ground for any civil claim, other than a claim for the recovery of such an excess as is referred to in subsection (2) above.
- (7) This section does not form part of the law of Scotland.

## **20 Prohibition of pre-contract deposits in Scotland**

- (1) No person may, in the course of estate agency work in Scotland, seek or accept from any person (in this section referred to as a " prospective purchaser ") who wishes to acquire an interest in land in the United Kingdom a payment which, if made, would constitute a pre-contract deposit or, as the case may be, which constitutes such a deposit.
- (2) If, in the course of estate agency work in Scotland, any person receives from a prospective purchaser a payment which constitutes a pre-contract deposit, it shall forthwith be either repaid to the prospective purchaser or paid to such person as the prospective purchaser shall direct.
- (3) Failure by any person to comply with subsection (1) or subsection (2) above may be taken into account by the Director in accordance with section 3(1)(c) above but shall not render that person liable to any criminal penalty nor constitute a ground for any

civil claim, other than a claim under subsection (2) above for the recovery of the pre-contract deposit.

(4) This section forms part of the law of Scotland only.

## **21 Transactions in which an estate agent has a personal interest**

- (1) A person who is engaged in estate agency work (in this section referred to as an "estate agent") and has a personal interest in any land shall not enter into negotiations with any person with respect to the acquisition or disposal by that person of any interest in that land until the estate agent has disclosed to that person the nature and extent of his personal interest in it.
- (2) In any case where the result of a proposed disposal of an interest in land or of such a proposed disposal and other transactions would be that an estate agent would have a personal interest in that land, the estate agent shall not enter into negotiations with any person with respect to the proposed disposal until he has disclosed to that person the nature and extent of that personal interest.
- (3) Subsections (1) and (2) above apply where an estate agent is negotiating on his own behalf as well as where he is negotiating in the course of estate agency work.
- (4) An estate agent may not seek or receive a contract or precontract deposit in respect of the acquisition or proposed acquisition of—
  - (a) a personal interest of his in land in the United Kingdom; or
  - (b) any other interest in any such land in which he has a personal interest.
- (5) For the purposes of this section, an estate agent has a personal interest in land if—
  - (a) he has a beneficial interest in the land or in the proceeds of sale of any interest in it; or
  - (b) he knows or might reasonably be expected to know that any of the following persons has such a beneficial interest, namely,—
    - (i) his employer or principal, or
    - (ii) any employee or agent of his, or
    - (iii) any associate of his or of any person mentioned in sub-paragraphs (i) and (ii) above.
- (6) Failure by an estate agent to comply with any of the preceding provisions of this section may be taken into account by the Director in accordance with section 3(1)(c) above but shall not render the estate agent liable to any criminal penalty nor constitute a ground for any civil claim.

## **22 Standards of competence**

- (1) The Secretary of State may by regulations made by statutory instrument make provision for ensuring that persons engaged in estate agency work satisfy minimum standards of competence.
- (2) If the Secretary of State exercises his power to make regulations under subsection (1) above, he shall in the regulations prescribe a degree of practical experience which is to be taken as evidence of competence and, without prejudice to the generality of subsection (1) above, the regulations may, in addition.—

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- (a) prescribe professional or academic qualifications which shall also be taken to be evidence of competence;
- (b) designate any body of persons as a body which may itself specify professional qualifications the holding of which is to be taken as evidence of competence ;
- (c) make provision for and in connection with the establishment of a body having power to examine and inquire into the competence of persons engaged or professing to engage in estate agency work ; and
- (d) delegate to a body established as mentioned in paragraph (c) above powers of the Secretary of State with respect to the matters referred to in paragraph (a) above;

and any reference in the following provisions of this section to a person who has attained the required standard of competence is a reference to a person who has that degree of practical experience which, in accordance with the regulations, is to be taken as evidence of competence or, where the regulations so provide, holds such qualifications or otherwise fulfils such conditions as, in accordance with the regulations, are to be taken to be evidence of competence.

- (3) After the day appointed for the coming into force of this subsection,—
- (a) no individual may engage in estate agency work on his own account unless he has attained the required standard of competence;
  - (b) no member of a partnership may engage in estate agency work on the partnership's behalf unless such number of the partners as may be prescribed have attained the required standard of competence; and
  - (c) no body corporate or unincorporated association may engage in estate agency work unless such numbers and descriptions of the officers, members or employees as may be prescribed have attained the required standard of competence;

and any person who contravenes this subsection 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) In subsection (3) above "prescribed" means prescribed by the Secretary of State by order made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) No regulations shall be made under this section unless a draft of them has been laid before Parliament and approved by a resolution of each House.

## **23 Bankrupts not to engage in estate agency work**

- (1) An individual who is adjudged bankrupt after the day appointed for the coming into force of this section or, in Scotland, whose estate is sequestrated after that day shall not engage in estate agency work of any description except as an employee of another person.
- (2) The prohibition imposed on an individual by subsection (1) above shall cease to have effect if and when—
- (a) the adjudication of bankruptcy against him is annulled, or, in Scotland, the sequestration of his estate is recalled; or
  - (b) he obtains his discharge.

- (3) The reference in subsection (1) above to employment of an individual by another person does not include employment of him by a body corporate of which he is a director or controller.
- (4) If a person engages in estate agency work in contravention of subsection (1) above he shall be liable on conviction on indictment or on summary conviction to a fine which on summary conviction shall not exceed the statutory maximum.

*Supervision, enforcement, publicity etc.*

## **24 Supervision by Council on Tribunals**

- (1) The Tribunals and Inquiries Act 1971 shall be amended as follows (the amendments bringing the adjudicating functions of the Director under this Act under the supervision of the Council on Tribunals)—
  - (a) in section 8(2) and section 19(4), for " 5A " there shall be substituted " 6A "; and
  - (b) in Schedule 1, paragraph 5A is hereby repealed and after paragraph 6 there shall be inserted—

*"Fair Trading.*

6A The Director General of Fair Trading in respect of his functions under the [Consumer Credit Act 1974 \(c. 39\)](#) and the [Estate Agents Act 1979 \(c. 38\)](#), and any member of the Director's staff authorised to exercise those functions under paragraph 7 of Schedule 1 to the [Fair Trading Act 1973 \(c. 41\)](#)."

- (2) Any member of the Council on Tribunals or of the Scottish Committee of the Council, in his capacity as such, may attend any hearing of representations conducted in accordance with Part I of Schedule 2 to this Act.

## **25 General duties of Director**

- (1) Subject to section 26(3) below, it is the duty of the Director—
  - (a) generally to superintend the working and enforcement of this Act, and
  - (b) where necessary or expedient, himself to take steps to enforce this Act.
- (2) It is the duty of the Director, so far as appears to him to be practicable and having regard both to the national interest and the interests of persons engaged in estate agency work and of consumers, to keep under review and from time to time advise the Secretary of State about—
  - (a) social and commercial developments in the United Kingdom and elsewhere relating to the carrying on of estate agency work and related activities; and
  - (b) the working and enforcement of this Act.
- (3) The Director shall arrange for the dissemination, in such form and manner as he considers appropriate, of such information and advice as it may appear to him expedient to give the public in the United Kingdom about the operation of this Act.

## 26 Enforcement authorities

- (1) Without prejudice to section 25(1) above, the following authorities (in this Act referred to as " enforcement authorities ") have a duty to enforce this Act—
  - (a) the Director,
  - (b) in Great Britain, a local weights and measures authority, and
  - (c) in Northern Ireland, the Department of Commerce for Northern Ireland.
- (2) Where a local weights and measures authority in England and Wales propose to institute proceedings for an offence under this Act it shall, as between the authority and the Director, be the duty of the authority to give the Director notice of the intended proceedings, together with a summary of the facts on which the charges are to be founded, and postpone the institution of the proceedings until either—
  - (a) twenty-eight days have expired since that notice was given, or
  - (b) the Director has notified them of receipt of the notice and summary.
- (3) Nothing in this section or in section 25 above authorises an enforcement authority to institute proceedings in Scotland for an offence.
- (4) Every local weights and measures authority shall, whenever the Director requires, report to him in such form and with such particulars as he requires on the exercise of their functions under this Act.
- (5) Where a complaint is made to the Secretary of State that all or any of the functions of a local weights and measures authority under this Act are not being properly discharged in any area, or he is of the opinion that an investigation should be made relating to the proper discharge of those functions in any area, he may cause a local inquiry to be held.
- (6) Subsections (2), (3) and (5) of section 250 of the Local Government Act 1972 (evidence and costs at local inquiries), and, in a case where the Secretary of State so directs, subsection (4) of that section (costs of department), shall apply to an inquiry held under subsection (5) above as if it were an inquiry held in pursuance of that section.
- (7) The person holding an inquiry under subsection (5) above shall make a written report of the results to the Secretary of State, who shall publish it together with such observations on it (if any) as he thinks fit.
- (8) In the application of this section to Scotland, for the references in subsection (6) above to subsections (2), (3) and (5) of section 250 of the Local Government Act 1972 and subsection (4) of that section, there shall be substituted respectively references to subsections (4), (5) and (8) of section 210 of the Local Government (Scotland) Act 1973 and subsection (7) of that section.

## 27 Obstruction and personation of authorised officers

- (1) Any person who—
  - (a) wilfully obstructs an authorised officer, or
  - (b) wilfully fails to comply with any requirement properly made to him under section 11 above by an authorised officer, or
  - (c) without reasonable cause fails to give an authorised officer other assistance or information he may reasonably require in performing his functions under this Act, or

- (d) in giving information to an authorised officer, makes any statement which he knows to be false,  
shall be liable on summary conviction to a fine not exceeding £500.
- (2) A person who is not an authorised officer but purports to act as such shall be liable on summary conviction to a fine not exceeding £1,000.
- (3) In this section " authorised officer " means a duly authorised officer of an enforcement authority who is acting in pursuance of this Act.
- (4) Nothing in subsection (1) above requires a person to answer any question or give any information if to do so might incriminate that person or that person's husband or wife.

### *Supplementary*

## **28 General provisions as to offences**

- (1) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of an offence by himself or any person under his control.
- (2) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## **29 Service of notices etc.**

- (1) Any notice which under this Act is to be given to any person by the Director shall be so given—
- (a) by delivering it to him, or
  - (b) by leaving it at his proper address, or
  - (c) by sending it by post to him at that address.
- (2) Any such notice may,—
- (a) in the case of a body corporate or unincorporated association, be given to the secretary or clerk of that body or association ; and
  - (b) in the case of a partnership, be given to a partner or a person having the control or management of the partnership business.
- (3) Any application or other document which under this Act may be made or given to the Director may be so made or given by sending it by post to the Director at such address as may be specified for the purposes of this Act by a general notice.
- (4) For the purposes of subsections (1) and (2) above and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to those subsections, the proper address of any person to whom a notice is to be given shall be his last-known address, except that—
- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body ;

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- (b) in the case of an unincorporated association or their secretary or clerk, it shall be that of the principal office of that association;
- (c) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership ;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of an unincorporated association or partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

- (5) If the person to be given any notice mentioned in subsection (1) above has specified an address within the United Kingdom other than his proper address, within the meaning of subsection (4) above, as the one at which he or someone on his behalf will accept notices under this Act, that address shall also be treated for the purposes mentioned in subsection (4) above as his proper address.

### **30 Orders and regulations**

- (1) Before making any order or regulations under any provision of this Act to which this subsection applies, the Secretary of State shall consult the Director, such bodies representative of persons carrying on estate agency work, such bodies representative of consumers and such other persons as he thinks fit.
- (2) Subsection (1) above applies to paragraphs (a)(iii) and (d) of section 3(1) above and to sections 14, 15, 16, 18, 19 and 22 above.
- (3) Any power of the Secretary of State to make orders or regulations under this Act—
  - (a) may be so exercised as to make different provision in relation to different cases or classes of cases and to exclude certain cases or classes of case; and
  - (b) includes power to make such supplemental, incidental and transitional provisions as he thinks fit.

### **31 Meaning of " business associate " and " controller "**

- (1) The provisions of this section shall have effect for determining the meaning of " business associate " and " controller " for the purposes of this Act.
- (2) As respects acts done in the course of a business carried on by a body corporate, every director and controller of that body is a business associate of it.
- (3) As respects acts done in the course of a business carried on by a partnership, each partner is a business associate of every other member of the partnership and also of the partnership itself and, in the case of a partner which is a body corporate, every person who, by virtue of subsection (2) above, is a business associate of that body is also a business associate of every other member of the partnership.
- (4) As respects acts done in the course of a business carried on by an unincorporated association, every officer of the association and any other person who has the management or control of its activities is a business associate of that association.
- (5) In relation to a body corporate " controller" means a person—
  - (a) in accordance with whose directions or instructions the directors of the body corporate or of any other body corporate which is its controller (or any of them) are accustomed to act; or



- (b) who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.

### **32 Meaning of " associate "**

- (1) In this Act " associate " includes a business associate and otherwise has the meaning given by the following provisions of this section.
- (2) A person is an associate of another if he is the spouse or a relative of that other or of a business associate of that other
- (3) In subsection (2) above " relative " means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or linear descendant, and references to a spouse include a former spouse and a reputed spouse; and for the purposes of this subsection a relationship shall be established as if an illegitimate child or step-child of a person had been a child born to him in wedlock.
- (4) A body corporate is an associate of another body corporate—
  - (a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other; or
  - (b) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.
- (5) An unincorporated association is an associate of another unincorporated association if any person—
  - (a) is an officer of both associations ;
  - (b) has the management or control of the activities of both associations; or
  - (c) is an officer of one association and has the management or control of the activities of the other association.
- (6) A partnership is an associate of another partnership if—
  - (a) any person is a member of both partnerships ; or
  - (b) a person who is a member of one partnership is an associate of a member of the other partnership ; or
  - (c) a member of one partnership has an associate who is also an associate of a member of the other partnership.

### **33 General interpretation provisions**

- (1) In this Act, unless the context otherwise requires,—
  - " associate " has the meaning assigned to it by section 32 above and " business associate" has the meaning assigned to it by section 31 above;
  - " client account " has the meaning assigned to it by section 14(2) above;
  - " clients' money " has the meaning assigned to it by section 12(1) above;
  - " connected contract", in relation to the acquisition of an interest in land, has the meaning assigned to it by section 12(4) above;
  - " contract deposit " has the meaning assigned to it by section 12(2) above;

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" controller ", in relation to a body corporate, has the meaning assigned to it by section 31(5) above ;

" Director " means the Director General of Fair Trading ;

" enforcement authority " has the meaning assigned to it by section 26(1) above ;

" estate agency work " has the meaning assigned to it by section 1(1) above;

" general notice " means a notice published by the Director at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

" pre-contract deposit " has the meaning assigned to it by section 12(3) above;

" prescribed fee " means such fee as may be prescribed by regulations made by the Secretary of State;

" the statutory maximum ", in relation to a fine on summary conviction, means—

(a) in England and Wales and Northern Ireland, the prescribed sum within the meaning of section 28 of the Criminal Law Act 1977 (at the passing of this Act £1,000); and

(b) in Scotland, the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975 (at the passing of this Act £1,000);

and for the purposes of the application of this definition in Northern Ireland the provisions of the Criminal Law Act 1977 which relate to the sum mentioned in paragraph (a) above shall extend to Northern Ireland; and

" unincorporated association " does not include a partnership.

- (2) The power to make regulations under subsection (1) above prescribing fees shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### 34 Financial provisions

- (1) There shall be defrayed out of moneys provided by Parliament—
- (a) any expenses incurred by the Secretary of State in consequence of the provisions of this Act; and
  - (b) any increase attributable to this Act in the sums payable out of moneys so provided under any other Act.
- (2) Any fees paid to the Director under this Act shall be paid into the Consolidated Fund.

### 35 Scotland

- (1) In the Scotland Act 1978, at the end of Part III of Schedule 10 (matters dealt with by certain enactments to be included, to the extent specified, in the groups of devolved matters) there shall be added the following entry—

“The Estate Agents Act 1979 (c. 38).

Included, except so far as relates to fees paid or to be paid to the Director General of Fair Trading.”
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- (2) For the purpose of the following provisions of the Scotland Act 1978, this Act shall be deemed to have been passed before the passing of that Act, namely—
- (a) section 21(2) (executive powers);
  - (b) subsections (1) and (2) of section 22 (subordinate instruments);
  - (c) section 60 (modification of enactments providing for payments out of moneys provided by Parliament etc.); and
  - (d) section 82 (construction and amendment of existing enactments).

**36 Short title, commencement and extent**

- (1) This Act may be cited as the Estate Agents Act 1979.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be so appointed for different provisions and for different purposes.
- (3) This Act extends to Northern Ireland.

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## SCHEDULES

### SCHEDULE 1

Section 3(1).

#### PROVISIONS SUPPLEMENTARY TO SECTION 3(1)

##### *Spent convictions*

- 1        A conviction which 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 shall be disregarded for the purposes of section 3(1)(a) of this Act.

##### *Discrimination*

- 2        A person shall be deemed to have committed discrimination for the purposes of section 3(1)(b) of this Act in the following cases only, namely.—
- (a) where a finding of discrimination has been made against him in proceedings under section 66 of the Sex Discrimination Act 1975 (in this Schedule referred to as "the 1975 Act") and the finding has become final;
  - (b) where a non-discrimination notice has been served on him under the 1975 Act and the notice has become final;
  - (c) if he is for the time being subject to the restraints of an injunction or order granted against him in proceedings under section 71 (persistent discrimination) or section 72(4) (enforcement of sections 38 to 40) of the 1975 Act;
  - (d) if, on an application under section 72(2)(a) of the 1975 Act, there has been a finding against him that a contravention of section 38, section 39 or section 40 of that Act has occurred and that finding has become final;
  - (e) where a finding of discrimination has been made against him in proceedings under section 57 of the Race Relations Act 1976 (in this Schedule referred to as "the 1976 Act") and the finding has become final;
  - (f) where a non-discrimination notice has been served on him under the 1976 Act and the notice has become final;
  - (g) if he is for the time being subject to the restraints of an injunction or order granted against him in proceedings under section 62 (persistent discrimination) or section 63(4) (enforcement of sections 29 to 31) of the 1976 Act; or
  - (h) if, on an application under section 63(2)(a) of the 1976 Act, there has been a finding against him that a contravention of section 29, section 30 or section 31 of that Act has occurred and that finding has become final;
- and the finding, notice, injunction or order related or relates to discrimination falling within Part III of the 1975 Act or the 1976 Act (discrimination in fields other than employment).
- 3        After the expiry of the period of five years beginning on the day on which any such finding or notice as is referred to in paragraph 2 above became final, no person

- shall be treated for the purposes of section 3(1)(b) of this Act as having committed discrimination by reason only of that finding or notice.
- 4 (1) So far as paragraphs 2 and 3 above relate to findings and notices under the 1975 Act, subsections (1) and (4) of section 82 of that Act (general interpretation provisions) shall have effect as if those paragraphs were contained in that Act.
- (2) So far as paragraphs 2 and 3 above relate to findings and notices under the 1976 Act, subsections (1) and (4) of section 78 of that Act (general interpretation provisions) shall have effect as if those paragraphs were contained in that Act.
- 5 In the application of paragraphs 2 to 4 above to Northern Ireland references to the 1975 Act shall be construed as references to the Sex Discrimination (Northern Ireland) Order 1976, and in particular—
- (a) the references to sections 38, 39 and 40 of the 1975 Act shall be construed as references to Articles 39, 40 and 41 of that Order;
  - (b) the reference to subsections (1) and (4) of section 82 of the 1975 Act shall be construed as a reference to paragraphs (1), (2) and (5) of Article 2 of that Order ; and
  - (c) other references to numbered sections of the 1975 Act shall be construed as references to the Articles of that Order bearing the same number ;
- and there shall be omitted sub-paragraphs (e) to (h) of paragraph 2, sub-paragraph (2) of paragraph 4 and so much of paragraph 3 as relates to findings or notices under the 1976 Act.

## SCHEDULE 2

Sections 5, 6, and 8(3).

### PROCEDURE ETC.

#### PART I

#### ORDERS AND DECISIONS UNDER SECTIONS 3, 4 AND 6

##### *Introductory*

- 1 In this Schedule—
- (a) subject to sub-paragraph (2) below, references to " the person affected " are to the person in respect of whom the Director proposes to make, or has made, an order under section 3 or section 4 of this Act, or who has made an application under section 6 of this Act for the variation or revocation of such an order; and
  - (b) references to the Director's " proposal" are to any proposal of his to make such an order or to make a decision under subsection (4) or subsection (5) of section 6 of this Act on such an application.
- (2) In the case of a proposal of the Director to make an order under section 3 or section 4 of this Act against a partnership where, by virtue of section 5(2) of this Act, he intends that the order shall have effect as an order against some or all of the partners individually, references in the following provisions of this Schedule to the person

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affected shall be construed, except where the contrary is provided, as references to each of the partners affected by the order, as well as to the partnership itself.

*Notice of proposal*

- 2 (1) The Director shall give to the person affected a notice informing him of the proposal and of the Director's reason for it; but paragraph 1(2) above shall not apply for the purposes of this sub-paragraph.
- (2) In the case of a proposal to make an order, the notice under sub-paragraph (1) above shall inform the person affected of the substance of the proposed order and, in the case of a proposal to make an order under section 3 of this Act, shall—
- (a) set out those matters falling within subsection (1) of that section which the Director intends should be specified as the grounds for the order, and
  - (b) specify any other matters of which the Director has taken account under subsection (2) of that section, and
  - (c) if the Director proposes to rely on section 4(3) of this Act to establish the unfitness of the person affected, state that fact.
- (3) The notice given under sub-paragraph (1) above shall invite the person affected, within such period of not less than twenty-one days as may be specified in the notice.
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- (a) to submit to the Director his representations in writing as to why the order should not be made or, as the case may be, should be varied or revoked in accordance with the application, and
  - (b) to give notice to the Director, if he thinks fit, that he wishes to make such representations orally,
- and where notice is given under paragraph (b) above the Director shall arrange for the oral representations to be heard.

*Hearing of representations*

- 3 Where the Director receives notice under paragraph 2(3)(b) above he shall give the person affected not less than twenty-one days notice, or such shorter notice as the person affected may consent to accept, of the date, time and place at which his representations are to be heard.
- 4 (1) In the course of the hearing of oral representations the Director shall, at the request of the person affected, permit any other person (in addition to the person affected) to make representations on his behalf or to give evidence or to introduce documents for him.
- (2) The Director shall not refuse to admit evidence solely on the grounds that it would not be admissible in a court of law.
- 5 If the Director adjourns the hearing he shall give the person affected reasonable notice of the date, time and place at which the hearing is to be resumed.

*Decision*

- 6 (1) The Director shall take into account in deciding whether to proceed with his proposal any written or oral representations made in accordance with the preceding provisions of this Schedule.

- (2) If the Director considers that he should proceed with his proposal but for a reason which differs, or on grounds which differ, from those set out in the notice of the proposal under paragraph 2 above, he shall give a further notice under that paragraph.
- (3) In any case where—
- (a) a notice under paragraph 2 above gives more than one reason for the proposal or (in the case of a proposal to make an order under section 3 of this Act) sets out more than one matter which the Director intends should be specified as the grounds for the order, and
  - (b) it appears to the Director that one or more of those reasons should be abandoned or, as the case may be, that one or more of those matters should not be so specified,

the Director may nevertheless decide to proceed with his proposal on the basis of any other reason given in the notice or, as the case may be, on any other grounds set out in the notice.

- 7 If the Director decides not to proceed with his proposal he shall give notice of that decision to the person affected and, in the case of a notice of a decision on an application under section 6 of this Act, such a notice shall be combined with a notice under subsection (3) of that section.
- 8 If the Director decides to proceed with his proposal he may, if he thinks fit having regard to any representations made to him,—
- (a) where the proposal is for the making of an order, make the order in a form which varies from that of the proposed order mentioned in the notice under paragraph 2 above, or
  - (b) where the proposal is to vary an order, make a variation other than that mentioned in the notice under paragraph 2 above, or
  - (c) where the proposal is to refuse to revoke an order, vary the order.

#### *Notification of decision*

- 9 (1) Notice of the decision to make the order, and of the terms of the order or, as the case may be, notice of the decision on the application for variation or revocation of the order, shall be given to the person affected, together with the Director's reasons for his decision, including the facts which in his opinion justify the decision.
- (2) The notice referred to in sub-paragraph (1) above shall also inform the person affected of his right to appeal against the decision and of the period within which an appeal may be brought and of how notice of appeal may be given.
- 10 (1) Subject to sub-paragraph (2) below, the order to which the decision relates or, as the case may be, any variation of an order for which the decision provides shall not come into operation until any appeal under section 7(1) of this Act and any further appeal has been finally determined or the period within which such an appeal may be brought has expired.
- (2) Where the Director states in the notice referred to in paragraph 9(1) above that he is satisfied that there are special circumstances which require it, an order shall come into operation immediately upon the giving of notice of the decision to make it.

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## **PART II**

### **APPLICATIONS UNDER SECTIONS 6(1) AND 8(3)**

- 11 Any reference in this Part of this Schedule to an application is a reference to an application to the Director under section 6(1) or section 8(3) of this Act, and any reference to the applicant shall be construed accordingly.
- 12 An application shall be in writing and be in such form and accompanied by such particulars as the Director may specify by general notice.
- 13 The Director may by notice require the applicant to publish details of his application at a time or times and in a manner specified in the notice.
- 14 If an application does not comply with paragraph 12 above or if an applicant fails to comply with a notice under section 9 of this Act requiring the furnishing of information or the production of documents in connection with the application, the Director may decline to proceed with the application.