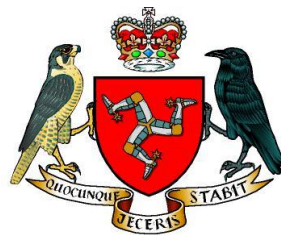




Isle of Man Office of Fair Trading

CONSULTATION ON PROPOSED CHANGES TO LEGISLATION RELATING TO ESTATE AGENTS AND PROPERTY AGENTS



Isle of Man
Government

Reiltys Ellan Vannin

CONTENTS PAGE

Section

1. **Introduction by Chairman**
2. **Background**
3. **Proposals**
4. **Consultation Process**
5. **Appendix 1 – UK Estate Agents (Redress Scheme) 2008**
6. **Appendix 2 - UK Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014**
7. **Appendix 3 – List of Direct Consultees**
8. **Appendix 4 – Code of Practice on Consultation**

INTRODUCTION BY THE CHAIRMAN



For most people, buying and selling property is the most significant transaction which they will undertake and the estate agent generally plays a major role in brokering that transaction.

The current legislation relating to estate agents is the Estate Agents Act 1975 which (inter alia) provided for the registration of estate agents with the former Local Government Board and from 1987 the Department of Local Government and the Environment (DoLGE). In an endeavour to bring the 1975 Act up to date and to close some obvious gaps, DoLGE promoted the Estate Agents Act 1999. Although the 1999 Act was passed, it was never brought into operation through an Appointed Day Order.

In the 2010 restructuring of Government, responsibility for estate agents passed to the OFT.

The Estate Agents Act 1975 has two fundamental purposes:

- To regulate the operation of estate agents
- To provide a framework of consumer protection around the transactions of sale and lease of residential property

The proposed Estate Agents (Amendment) Bill would deal with the necessary changes to the Estate Agents Act 1975, to provide an effective and proportionate framework of regulation. The proposals in the Bill itself are designed to allow estate agents to continue to operate much as at present, whilst essentially modifying those areas where it is at best, unreasonably difficult, and at worst, virtually impossible, to be fully compliant with the law.

In parallel with the proposed Bill the OFT is proposing to use, for the first time, the new section 62A of the Consumer Protection Act 1991 (which was introduced by the Consumer Protection (Amendment) Act 2016). This will enable us to apply to the Island, with necessary modifications, two United Kingdom Statutory Instruments which provide consumers with effective redress in relation to both the purchase and sale of property and property rental.

It should be noted that letting agents are treated as carrying on business as estate agents for the purposes of the 1975 Act due to the fact that the meaning of 'sale of land' includes the grant of a tenancy at a rent. This means that letting agents are required to comply with the provisions of the 1975 Act.

Martyn Perkins MHK
Chairman, Office of Fair Trading

BACKGROUND

In 2012 the Council of Ministers approved the introduction of an Estate Agents and Landlords Bill as part of the Government Legislative Programme. This Bill was promoted jointly by the (then) Department of Social Care (DSC) and OFT and covered areas of interfacing legislation within the remit of both agencies viz:-

Landlord & Tenant	DSC
Estate Agents & Consumer Protection	OFT

Although the original concept was a single Bill when more detailed work was commenced it soon became clear that this would be a very large and complex Bill. Based on advice it was agreed to split the Bill into two parts. DSC would promote new landlord and tenant legislation and OFT would promote new estate agents legislation. In splitting the Bill it was recognised that there was a risk of overlap or gaps in the overall framework and it was agreed that DSC would promote their legislation first and the OFT Bill would follow behind; thus enabling it to be dovetailed with the landlord and tenant framework. Equally both agencies would need to maintain close liaison.

This approach eventually resulted in the Landlord and Tenant (Private Housing) Bill and the Property Agents Bill. The Landlord and Tenant (Private Housing) Bill was drafted and introduced into the Branches, was sent to Committee, and eventually stalled. The Property Agents Bill was developed to second draft stage but was not prioritised for progression during the final year of the last administration.

In the meantime, the OFT has progressed the Consumer Protection (Amendment) Act 2016. Section 62A of the Consumer Protection Act 1991, which was introduced by the 2016 Act, provides an opportunity to deal with substantial parts of the defective consumer protection framework around estate agents.

Whilst the Estate Agents Act 1975 contains important elements of consumer protection, it does much more, including addressing professional qualifications, standards and a disciplinary regime. An Order under section 62A can apply UK secondary legislation relating to the protection of consumers within property transactions, but nothing else.

PROPOSALS

The OFT is proposing to address the defective consumer protection and regulatory framework around property transactions by:-

- (1) Promoting a small Bill to address those areas which are outside the scope of potential Orders under section 62A by modifying the Estate Agents Act 1975 and repealing the Estate Agents Act 1999 (the latter Act is awaiting an Appointed Day Order).
- (2) Making Orders under section 62A of the Consumer Protection Act 1991 applying to the Island; with suitable modifications, key pieces of UK consumer protection legislation around property transactions.

1. ESTATE AGENTS (AMENDMENT) BILL

The OFT is proposing the following changes to the Estate Agents Act 1975.

1.1 Publication of the Estate Agents Register

The Estate Agents Act 1975 provides for the creation of the estate agents register as a paper document. This clause would modernise the system by allowing it to be an electronic document and add transparency by both making the register available for inspection and requiring its publication on the OFT website. This would mean that the public would have 24/7 access to the up to date Register.

Question 1

Do you agree that the Estate Agent Register system should be modernised and that it should be available online, as well as being available to inspect at the OFT's public counter?

1.2 Persons prohibited from carrying on business as estate agents

Section 11 of the Estate Agents Act 1975 is worded as to provide that persons are prohibited from operating as an estate agent unless they meet certain conditions. In practice, however, it is specifying the conditions under which an estate agency can operate. The current "rules" derive from a time when estate agencies were small partnerships rather than larger corporate businesses and are out of step with modern commercial practice.

At the present every Director of a company operating an estate agency must be qualified as an estate agent. As a result, for example, a company which employed a qualified

accountant as its Finance Director would be in breach; and this is clearly nonsensical.

It is proposed to change the rules so that the business (or in the case of a business where estate agency is not the main operation, the estate agency part) must be under the control of a qualified estate agent. The public can continue to be reassured that the business is controlled by a competent qualified person or persons.

Question 2

Do you agree that, rather than requiring every director to be a qualified estate agent, the business must be under the control of a qualified estate agent? If not, please describe how you feel the business should be controlled.

1.3 Misleading Conduct

The Estate Agents Act 1975 has a major gap in terms of the consumer protection it offers. This gap was intended to be plugged by the Estate Agents Act 1999 but that Act was never brought into force through an Appointed Day Order.

The OFT is proposing to introduce a new section into the 1975 Act which deals with misleading conduct by any person who, as part of their business, materially misleads anyone in relation to a property transaction.

The term "mislead" will require careful definition but what the OFT is proposing is that it would be an offence to act in a way that deceives, or is likely to deceive, a reasonable person in relation to any matter about any aspect of the transaction; and causes, or is likely to cause, a reasonable person to make a decision about the transaction that he or she would not have otherwise have made.

It is proposed that this consumer protection would apply to anyone buying, selling or leasing property as a business (including but not limited to estate agents), but not to an individual householder selling or letting their own property.

Question 3

Do you agree that in order to protect consumers it should be illegal for a business to mislead purchasers and tenants?

Question 4

Do you agree that individuals selling or renting their own property should not be covered by the misleading statement provisions?

1.4 Persons treated as practising, or carrying on business, as estate agents

Section 15 of the 1975 Act effectively defines what an estate agent is and then lists various exemptions. These exemptions require some minor clarification:-

- the OFT, or a local authority in connection with the exercise of its functions as such are exempt; but a Government Department or Statutory Board are missing from the list and should be added; and
- a shop or newspaper which carries advertising is exempt from being treated as operating an estate agency but someone providing web-based advertising is missing from the list and should be added.

The latter proposal would not provide exemption for online estate agencies. The exemption would be limited to the provision of advertising only – online estate agents provide other services to both buyers and sellers.

It is also proposed to clarify the law to remove any potential doubt that a person who develops a property, sells it as a buy to let and then manages the lease on behalf the new owner is acting as an estate agent. The OFT believes that it is important that there is no gap in consumer protection and that consumers dealing with property rental from a buy to let developer, deserve the same protection as if they were dealing with an estate agent.

Question 5

Do you agree that consumers renting a property from a buy to let developer should have that same protection as if they were dealing with an estate agent?

If not please explain why?

1.5 Hearing and Determination of Disciplinary Cases

Schedule 1 of the 1975 Act deals with the hearing of disciplinary cases by the Estate Agents Tribunal.

The OFT is proposing to make two changes: -

- (a) In addition to the existing range of penalties, the Tribunal would be permitted to make a complaint to the professional body of which the person is a member; and

- (b) In order to enhance transparency, where the Tribunal finds an allegation proved, it would publish details of its decision; albeit anonymised to protect the identity of the consumer.

Question 6

Do you agree the Estate Agents Tribunal should be permitted to make a complaint to the professional body of which the person is a member?

Question 7

Where the Estate Agents Tribunal finds an allegation proved, do you agree that its decision should be published?

2. Orders under Section 62A of Consumer Protection Act 1991

In order to complete the proposed new regulatory and consumer protection framework around property transactions, the OFT is proposing to make Orders under section 62A applying UK legislation to the Isle of Man, with necessary modifications.

2.1 Estate Agents (Redress Scheme) 2008 (UK)

The OFT proposes to make an Order under section 62A(1)(b), applying the Estate Agents (Redress Scheme) 2008 (SI2008 no 1712) to the Isle of Man with modifications. A copy of the UK Order is contained in [Appendix 1](#).

This would require all estate agents who engage in work relating to residential property, to be members of an approved redress scheme. Although the term, consumer protection, does not appear in the title, it is plainly “concerning matters relating to consumer protection” – it has no purpose other than to protect consumers involved in residential transactions.

The OFT believes that providing consumers with a means of redress in the event of failings by an estate agent represents a more effective way of protecting their interests than the current bond arrangements which limit the total value of any award to the bond value.

In applying the Order to the Isle of Man, a definition of “approved” would be added so that an estate agent would have to be a member of a redress scheme either:

- (a) Approved pursuant to Schedule 3 to the Estate Agents Act 1975 (of Parliament); or
- (b) Approved by the OFT.

This would mean that a local estate agent could join a UK scheme or the profession could,

if it wished, create a bespoke local scheme which would be approved by the OFT.

The Order would make consequential amendments to the Estate Agents Act 1975: -

- In sections 8(2) and 8(3) add *'having been subject of adverse finding by a Redress Scheme as grounds for disciplinary action'*
- Repeal section 10 which deals with Compensation for Dishonesty. The Redress Scheme is an alternative method of achieving consumer protection.

Question 8

Do you agree that all estate agents who engage in work relating to residential property should be members of an approved redress scheme?

Question 9

Do you agree that local estate agents should have the option of joining an approved UK redress scheme or setting up a separate local scheme?

2.2 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 (UK)

Differences between UK and Manx legislation mean that in order to complete the consumer protection framework the OFT would also make an Order under section 62A(1)(b), applying the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014 (SI 2014 No 2359) to the Isle of Man with modifications. A copy of the UK Order is in [Appendix 2](#). Again there would be modifications to adapt the Order to the Island.

This would require all letting agents and property management agents to be members of an approved redress scheme. Once again, although the terms, consumer protection, does not appear in the title, it is plainly "concerning matters relating to consumer protection" – it has no purpose other than to protect consumers involved in residential transactions.

In applying the Order to the Isle of Man, a definition of "approved" would be added so that a local business would have to be a member of a redress scheme either: -

- (a) In relation to a letting agent approved or designated pursuant to Part 2 of the UK Order; or
- (b) In relation to a Person undertaking property management work approved or designated pursuant to Part 3 of the UK Order; or

(c) In either case approved by the OFT.

This would mean that a local business could join a UK scheme or the sectors could, if they wished, create a bespoke local schemes which would be approved by the OFT.

Question 10

Do you agree that all letting agents and property management agents should be members of an approved redress scheme?

Question 11

Do you agree that local letting agents and property management agents should have the option of joining an approved UK redress scheme or setting up a separate local scheme?

CONSULTATION PROCESS

The OFT would welcome your views and any comments you wish to make on the content of this consultation. In addition should you suggest any amendments, additions or deletions to the proposals, please give reasons for your suggestions.

Comments should be submitted by:

- Completing the online Response Form available at:
<https://survey02.gov.im/snapwebhost/s.asp?k=148905896461>
- Or completing a hard copy of the Response Form available from the following link, or from the OFT (contact details below):
<https://www.gov.im/oft/consultations.gov>
- Or responding by other means (email, letter etc.) referring to the questions as posed.

Responses should be submitted to arrive no later than 5 pm on Friday 21st April 2017 to:

John Peet
Chief Inspector of Trading Standards
Isle of Man Office of Fair Trading
The Slieau Whallian
Foxdale Road
St. John's
IM4 3AS
Tel: (01624) 686520
Fax: (01624) 686504
Email: iomfairtrading@gov.im

Additional copies of this document can be obtained from the OFT by telephoning (01624) 686526. Electronic copies of this document are also available at: <https://www.gov.im/oft/consultations.gov>

When submitting your views please indicate if you are responding on behalf of an organisation. A list of Direct Consultees can be found at [Appendix 3](#) of this document. If there is anyone not on the list who you think should be consulted please contact the officer named above.

To ensure that the process is open and honest and in line with the Government's Code of Conduct on Consultation, as attached at [Appendix 4](#), responses can only be accepted if you provide your name with your response.

Confidentiality

The information you send may be published in full or in a summary of responses.

All information in responses, including personal information, may be subject to publication or

disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2002). If you would like your response to remain confidential, you should explain why confidentiality is necessary and your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

Confidential responses will be included in any statistical summary and numbers of comments received.

A summary of responses will be published within three months of the closing date for this consultation and will be made available on the OFT website (<https://www.gov.im/oft/consultations.gov>) or by contacting the above named officer.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to make an informed decision on the proposed estate agents legislation. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

APPENDIX 1

STATUTORY INSTRUMENTS

2008 No. 1712

ESTATE AGENTS

The Estate Agents (Redress Scheme) Order 2008

<i>Made</i> - - - -	<i>28th June 2008</i>
<i>Laid before Parliament</i>	<i>1st July 2008</i>
<i>Coming into force</i> - -	<i>1st October 2008</i>

The Office of Fair Trading has approved a redress scheme pursuant to Schedule 3 to the Estate Agents Act 1979(a) and the Secretary of State makes the following Order in exercise of the powers conferred by section 23A of that Act.

Citation and Commencement

1. This Order may be cited as the Estate Agents (Redress Scheme) Order 2008 and shall come into force on 1st October 2008.

Requirement to belong to an approved redress scheme

2. Every person who engages in relevant estate agency work shall be required to be a member of an approved redress scheme.

28th June 2008

Gareth Thomas
Parliamentary Under Secretary of State for Trade and Consumer Affairs
Department for Business, Enterprise & Regulatory Reform

(a) 1979 c.38. Section 23A and Schedule 3 were added by Schedule 6 to the Consumers, Estate Agents and Redress Act 2007 c. 17.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order requires every person who engages in estate agency work in the United Kingdom in relation to residential property to be a member of an approved redress scheme for the purpose of dealing with complaints relating to that work. Before such an Order can be made the Office of Fair Trading must have approved one or more redress schemes pursuant to Schedule 3 to the Estate Agents Act 1979, and details of every approved scheme are available on the Office of Fair Trading website (www.oftr.gov.uk). "Estate agency work" is defined in section 1 of that Act and "residential property" is defined in section 23C.

An Impact Assessment in respect of this Order is available and a copy can be obtained from the Department for Business, Enterprise & Regulatory Reform or from its website at www.berr.gov.uk

APPENDIX 2

STATUTORY INSTRUMENTS

2014 No. 2359

HOUSING, ENGLAND

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Made - - - - 3rd September 2014

Coming into force in accordance with article 1(1)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 83(1), (5), and (9)(b), 84(1) and (7)(b), 85(1)(a), (2)(a), (3) and (4) and 88(1) of the Enterprise and Regulatory Reform Act 2013(a).

The Secretary of State is satisfied, in accordance with sections 83(6) and 84(5) of that Act, that all persons who are to be subject to a duty under this Order to belong to a redress scheme are eligible to join such a scheme.

In accordance with section 88(3)(a)(i) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement and application

1.—(1) This Order may be cited as the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 and comes into force on the twenty-eighth day after the day on which it is made.

(2) This Order applies in relation to England only.

Interpretation

2. In this Order—

“the Act” means the Enterprise and Regulatory Reform Act 2013;

“enforcement authority” means a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, or the Council of Isles of Scilly.

(a) 2013 c.24

PART 2

Lettings agency work

Requirement to belong to a redress scheme: lettings agency work

3.—(1) A person who engages in lettings agency work must be a member of a redress scheme for dealing with complaints in connection with that work.

(2) The redress scheme must be one that is—

- (a) approved by the Secretary of State; or
- (b) designated by the Secretary of State as a government administered redress scheme.

(3) For the purposes of this article a “complaint” is a complaint made by a person who is or has been a prospective landlord or a prospective tenant.

Exclusions: lettings agency work

4.—(1) For the purposes of section 83 of the Act, “lettings agency work” does not include the things described in this article.

(2) “Lettings agency work” does not include things done by—

- (a) the employer, where the prospective tenant is an employee;
- (b) the person for whom the prospective tenant provides work or services, where the prospective tenant is a worker;
- (c) the person for whom the prospective tenant provides work or services, where the prospective tenant is —
 - (i) an employee who provides work or services under the contract of employment to a person who is not the prospective tenant’s employer; or
 - (ii) a worker who provides work or services under the worker’s contract to a person who is not a party to that contract;
- (d) the hirer, where the prospective tenant is an agency worker;
- (e) the person for whom the prospective tenant provides services under a contract for services.

(3) “Lettings agency work” does not include things done by—

- (a) an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992(a);
- (b) an authorised person within the meaning of section 18 of the Legal Services Act 2007(b).

(4) In this article the following have the same meaning as the Agency Workers Regulations 2010(c) —

“agency worker”
“contract of employment”
“employee”
“employer”
“hirer”
“worker”.

(a) 1992 c.14
(b) 2007 c.29
(c) S.I. 2010/93; amended by SI 2011/1941.

PART 3

Property management work

Requirement to belong to a redress scheme: property management work

5.—(1) A person who engages in property management work must be a member of a redress scheme for dealing with complaints in connection with that work.

(2) The redress scheme must be one that is—

- (a) approved by the Secretary of State; or
- (b) designated by the Secretary of State as a government administered redress scheme.

Exclusions: property management work

6.—(1) For the purposes of section 84 of the Act, “property management work” does not include the things described in this article.

(2) “Property management work” does not include things done in relation to premises which consist of or include more than one dwelling-house where the land is registered as commonhold land (whether or not there is a relevant tenancy in relation to any of the commonhold units).

(3) “Property management work” does not include things done in relation to premises which are used wholly or mainly for the accommodation of students where a condition in paragraphs (4) to (6) is met.

(4) The first condition is that the premises are owned or managed by —

- (a) an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992; or
- (b) a body established for charitable purposes only.

(5) The second condition is that the premises are a hall of residence.

(6) The third condition is that the students have been nominated to occupy the premises by an institution or body of the kind mentioned in paragraph (4).

(7) “Property management work” does not include things done in relation to a dwelling-house occupied by students who have been nominated to occupy the dwelling-house by an institution or body of the kind mentioned in paragraph (4).

(8) “Property management work” does not include things done in relation to premises where the conditions in paragraphs (9) and (10) are met.

(9) The first condition is that either of the following applies to the premises —

- (a) it is not operated on a commercial basis and its costs of operation are provided wholly or in part by a government department or agency, by a local authority or by a parish council;
- (b) it is managed by a voluntary organisation or charity.

(10) The second condition is that the premises are used wholly or mainly for providing accommodation to persons who have been subject to any incident, or pattern of incidents, of —

- (a) controlling, coercive or threatening behaviour;
- (b) physical violence;
- (c) abuse of any other description (whether physical or mental in nature); or
- (d) threats of any such violence or abuse.

(11) “Property management work” does not include things done by a person (“A”) in the course of a business—

- (a) where the premises are subject to a mortgage and A is the receiver of the income of it; or

(b) where A is—

- (i) an authority to which Part 3 of the Local Government Act 1974(a) applies;
- (ii) a RTM company exercising the right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002(b);
- (iii) an authorised person within the meaning of section 18 of the Legal Services Act 2007.

(12) “Property management work” does not include things done by a person (“A”) in the course of a business in response to instructions received from—

- (a) an authority to which Part 3 of the Local Government Act 1974 applies;
- (b) a social landlord for the purposes of Schedule 2 to the Housing Act 1996(c).

(13) For the purposes of this article—

“commonhold land” has the same meaning as in section 1 of the Commonhold and Leasehold Reform Act 2002(d);

“commonhold unit” has the same meaning as in section 11 of the Commonhold and Leasehold Reform Act 2002;

“government department” includes any body or authority exercising statutory functions on behalf of the Crown;

“RTM company” has the same meaning as in sections 71(1) and 73 of the Commonhold and Leasehold Reform Act 2002(e);

“student” has the same meaning as in paragraph 4 of Schedule 1 to the Local Government Finance Act 1992.

“voluntary organisation” means a body, other than a public or local authority, whose activities are not carried on for profit.

PART 4

Enforcement

Enforcement authority

7.—(1) It shall be the duty of every enforcement authority to enforce this Order.

(2) The duty referred to in paragraph (1) applies to the enforcement of the Order within the authority’s area.

Penalty for breach of the requirement to belong to a redress scheme

8.—(1) Where an enforcement authority is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme under article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work), the authority may by notice require the person to pay the authority a monetary penalty (a “monetary penalty”) of such amount as the authority may determine.

(2) The amount of the monetary penalty must not exceed £5,000.

(3) The Schedule provides for the procedure relating to the imposition of a monetary penalty.

(a) 1974 c.7

(b) 2002 c.15

(c) 1996 c.52

(d) Section 1(1)(b) was amended by S.I. 2009/1941 Schedule 1 paragraph 194(1) and (2).

(e) Section 73 (2)(b) was amended by S.I. 2009/1941 Schedule 1 paragraph 194(1) and (15).

Appeals

9.—(1) A person who is served with a notice imposing a monetary penalty under paragraph 3 of the Schedule (a “final notice”) may appeal to the First-tier Tribunal against that notice.

(2) The grounds for appeal are that—

- (a) the decision to impose a monetary penalty was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the amount of the monetary penalty is unreasonable;
- (d) the decision was unreasonable for any other reason.

(3) Where a person has appealed to the First-tier Tribunal under paragraph (1), the final notice is suspended until the appeal is finally determined or withdrawn.

(4) The Tribunal may —

- (a) quash the final notice;
- (b) confirm the final notice;
- (c) vary the final notice.

Recovery of monetary penalty

10.—(1) The enforcement authority may recover the monetary penalty on the order of a court, as if payable under a court order.

(2) In proceedings for the recovery of the amount due, a certificate which is—

- (a) signed by the enforcement authority’s chief finance officer (within the meaning of section 5 of the Local Government and Housing Act 1989(a)); and
- (b) states that the amount due has not been received by a date specified in that certificate,

is conclusive evidence of that fact, and a certificate to that effect and purporting to be signed is to be treated as being signed, unless the contrary is proved.

(3) Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions.

Signed by authority of the Secretary of State

Brandon Lewis
Minister of State

3rd September 2014

Department for Communities and Local Government

SCHEDULE

Article 8

Procedure for the imposition of a monetary penalty

Notice of intent

1.—(1) Where an enforcement authority proposes to impose a monetary penalty on a person, the authority must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must be served within 6 months of the date on which the enforcement authority is first satisfied that the person has failed to comply with article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work).

(a) 1989 c.42; amendments have been made to section 5 but they are not relevant to this Order.

(3) The notice of intent must include—

- (a) the reasons for imposing the monetary penalty;
- (b) the amount of the penalty;
- (c) information as to the right to make representations and objections within 28 days beginning with the day after the date on which the notice of intent was sent.

Making representations and objections

2. A person on whom a notice of intent is served may within 28 days beginning with the day after the date on which the notice was sent make written representations and objections to the enforcement authority in relation to the proposed imposition of a monetary penalty.

Final notice

3.—(1) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose the monetary penalty, with or without modifications.

(2) Where an enforcement authority decides to impose a monetary penalty on a person, the authority must serve on that person a final notice imposing that penalty.

(3) The final notice must include—

- (a) the reasons for imposing the monetary penalty;
- (b) information about the amount to be paid;
- (c) information about how payment may be paid;
- (d) information about the period in which the payment must be made, which must not be less than 28 days;
- (e) information about rights of appeal; and
- (f) information about the consequences of failing to comply with the notice.

Withdrawing or amending a notice

4. The enforcement authority may at any time by giving notice in writing —

- (a) withdraw a notice of intent or final notice;
- (b) reduce the amount specified in the notice of intent or final notice.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order requires persons who engage in lettings agency work and persons who engage in property management work to belong to a redress scheme for dealing with complaints in connection with that work. The Order also makes provision for enforcement of that requirement.

Article 3 imposes the requirement to belong to a redress scheme on persons who engage in lettings agency work.

Lettings agency work is defined in section 83(7), (8) and (9)(a) of the Enterprise and Regulatory Reform Act 2013 (2013 c.24). Section 83(9)(b) provides that lettings agency work does not include things of a description or things done by a person of a description specified in an Order. Article 4 prescribes those things that are not lettings agency work for the purposes of section 83.

Article 5 imposes the requirement to belong to a redress scheme on persons who engage in property management work.

Property management work is defined in section 84(6) and (7)(a) of the Enterprise and Regulatory Reform Act 2013. Section 84(7)(b) provides that property management work does not include

things of a description or things done by a person of a description specified in an Order. Article 6 prescribes those things that are not property management work for the purposes of section 84.

Article 7 imposes a duty on enforcement authorities to enforce the Order.

Article 8 provides for the monetary penalty that may be imposed by the enforcement authority where a person has failed to comply with the requirement to belong to a redress scheme. The Schedule provides for the procedure to be followed where the enforcement authority intends to impose a monetary penalty.

Article 9 provides for rights of appeal against a monetary penalty.

Article 10 provides for the enforcement of a monetary penalty.

A regulatory impact assessment has been prepared in relation to the Order and will be placed in the Library of each House of Parliament and made available on www.gov.uk. Copies may be obtained from the Department for Communities and Local Government, 2 Marsham Street, London, SW1P 4DF

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

APPENDIX 3

LIST OF DIRECT CONSULTEES

- **Tynwald Members**
- **Attorney General**
- **Local Authorities**
- **Chief Officers of Government Departments, Boards and Offices**
- **Isle of Man Chamber of Commerce**
- **Isle of Man Law Society**
- **Isle of Man Trade Union Council**
- **Chairman and Members of the Estate Agents Tribunal**
- **Registered Estate Agents, Letting and Property Management Agents**
- **UK Redress Schemes**

APPENDIX 4

Code of Practice on Consultation

This consultation follows the Code of Practice on Consultation the criteria for which are set out below.

The Six Consultation Criteria:

- 1.** Consult widely throughout the process, allowing a minimum of six weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
- 2.** Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- 3.** Ensure your consultation is clear, concise and widely accessible.
- 4.** Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5.** Monitor your Department's effectiveness at consultation.
- 6.** Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

The full Code of Practice is available at [Isle of Man Government Code of Practice](#)