

Consumers, Estate Agents and Redress Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Trade and Industry, are published separately as Bill 61 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Darling has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Consumers, Estate Agents and Redress Bill [HL] are compatible with the Convention rights.

Consumers, Estate Agents and Redress Bill [HL]

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[NOTE: The words marked in bold type were inserted
by the Lords to avoid questions of privilege.]

A

B I L L

TO

Make provision for the establishment of the National Consumer Council and its functions; to make provision for the abolition of other consumer bodies; to make provision about the handling of consumer complaints by certain providers; to make provision requiring certain providers to be members of redress schemes in respect of consumer complaints; to amend the Estate Agents Act 1979; to make provision about the cancellation of certain contracts concluded away from business premises; and for connected purposes.

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:—

PART 1

THE NATIONAL CONSUMER COUNCIL

The National Consumer Council and territorial committees

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|----------|--|----|
| 1 | Establishment of the National Consumer Council and its territorial committees | 5 |
| (1) | There is to be a body corporate called the National Consumer Council or, in Welsh, Cyngor Defnyddwyr Cenedlaethol (“the Council”). | |
| (2) | The Council must establish and maintain— | |
| | (a) a committee for Scotland to be known as the Scottish Consumer Council; | 10 |
| | (b) a committee for Wales to be known as the Welsh Consumer Council or, in Welsh, Cyngor Defnyddwyr Cymru; | |
| | (c) a committee for Northern Ireland to be known as the Northern Ireland Postal Services Committee. | |
| (3) | In this Part references to a “territorial committee” are to a committee established under subsection (2). | 15 |

- (4) Schedule 1 is about the Council and its territorial committees.

2 The territorial committees

- (1) The territorial committees may exercise, on behalf of the Council, the following functions –
- (a) in the case of the Scottish Consumer Council, the Council’s functions under sections 8 to 17, 19 and 21 to 26, so far as they are exercisable in relation to Scotland; 5
 - (b) in the case of the Welsh Consumer Council, the Council’s functions under those sections, so far as they are exercisable in relation to Wales;
 - (c) in the case of the Northern Ireland Postal Services Committee – 10
 - (i) the Council’s functions under sections 8 to 12, 15 to 17, 19, 21 and 23 to 26 so far as they are exercisable in relation to Northern Ireland, and
 - (ii) the Council’s functions under section 22 so far as they are exercisable in relation to consumer matters which relate to relevant postal services in relation to Northern Ireland. 15
- (2) For the purpose of facilitating or improving co-ordination in relation to the carrying out of its functions, the Council may from time to time –
- (a) impose restrictions or conditions on the exercise by a territorial committee of a function by virtue of subsection (1); 20
 - (b) give a territorial committee general or specific directions relating to the exercise of a function by virtue of that subsection.
- (3) Nothing in subsection (1) prevents the Council from exercising any of its functions referred to in that subsection.
- (4) A territorial committee also has the following purposes – 25
- (a) the provision of advice and information to the Council about consumer matters affecting the area for which the committee is established,
 - (b) the provision of advice to the Council about the exercise of the Council’s functions in so far as they affect that area, and
 - (c) such other purposes as the Council may determine (including the exercise of any functions delegated to the committee under paragraph 23 of Schedule 1). 30

"Consumer", "consumer matters" and "designated consumers"

3 “Consumer” and “consumer matters”

- (1) In this Part “consumer” and “consumer matters” have the meaning given by this section. 35
- (2) “Consumer” means –
- (a) a person who purchases, uses or receives, in Great Britain, goods or services which are supplied in the course of a business carried on by the person supplying or seeking to supply them, or 40
 - (b) a person who purchases, uses or receives relevant postal services in Northern Ireland.
- (3) “Consumer” includes both an existing consumer and a future consumer.

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- (4) For the purposes of subsection (2)–
- (a) a person who uses services includes, in relation to relevant postal services, an addressee;
 - (b) “goods” includes land or an interest in land;
 - (c) “business” includes a profession and the activities of any government department, local or public authority or other public body. 5
- (5) “Consumer matters” means –
- (a) the interests of consumers, and
 - (b) any matter connected with those interests.
- 4 “Designated consumers” 10**
- (1) In this Part “designated consumers” means –
- (a) consumers in relation to gas conveyed through pipes or electricity conveyed by distribution systems or transmission systems, and
 - (b) consumers in relation to relevant postal services.
- (2) The Secretary of State may, by order, amend subsection (1) so as – 15
- (a) to make any description of consumers within subsection (3) “designated consumers” for the purposes of this Part;
 - (b) to provide for any description of consumers to cease to be “designated consumers” for those purposes.
- (3) The consumers within this subsection are consumers in England and Wales in relation to services provided by a water undertaker, a sewerage undertaker or a licensed water supplier, in its capacity as such. 20
- (4) Before making an order under subsection (2), the Secretary of State must consult –
- (a) the Council, 25
 - (b) in the case of a relevant order, the Scottish Ministers,
 - (c) the Welsh Ministers, and
 - (d) such other persons as the Secretary of State considers appropriate.
- (5) For this purpose a “relevant order” is an order which relates to any description of – 30
- (a) consumers in relation to gas conveyed through pipes or electricity conveyed by distribution systems or transmission systems, or
 - (b) consumers in relation to relevant postal services.
- Determining priorities*
- 5 Forward work programmes 35**
- (1) The Council must before each financial year publish a document (the “forward work programme”) containing –
- (a) a statement of any priorities of the Council for the year in relation to designated consumers generally or any description of designated consumers; 40
 - (b) a general description of the main activities (including any projects) which it plans to undertake during the year in relation to designated consumers generally or any description of designated consumers;

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- (c) a statement of any other priorities of the Council for the year;
 - (d) a general description of any other projects which it plans to undertake during the year (other than those comprising routine activities in the exercise of its functions).
- (2) The description of a project under subsection (1)(b) or (d) must include the objectives of the project. 5
- (3) The forward work programme for any year must also include—
- (a) an estimate of the overall expenditure which the Council expects to incur during the year in the exercise of its functions, and
 - (b) an estimate of the expenditure (if any) which the Council expects to incur during the year in the exercise of its functions in relation to designated consumers. 10
- (4) An estimate under subsection (3)(b) must identify the expenditure (if any) which the Council expects to incur in the exercise of its functions in relation to each of the following— 15
- (a) consumers in relation to gas conveyed through pipes or electricity conveyed by distribution systems or transmission systems;
 - (b) consumers in relation to relevant postal services;
 - (c) consumers who are designated consumers by virtue of an order under section 4(2)(a). 20
- (5) Before publishing the forward work programme for any year, the Council must publish a notice—
- (a) containing a draft of the forward work programme, and
 - (b) specifying the period within which representations about the proposals contained in it may be made, 25
- and must consider any representations which are duly made and not withdrawn.
- (6) The notice under subsection (5) must be published by the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in the notice to the attention of persons likely to have an interest in them. 30
- (7) The Council must send a copy of any notice given by it under subsection (5) to—
- (a) the Secretary of State,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers,
 - (d) the Office of Fair Trading, and
 - (e) any regulatory body which the Council considers might have an interest in the content of the notice. 35
- 6 General provision about functions 40**
- (1) In exercising its functions the Council must comply with the requirements of this section.
- (2) The Council must have regard to the forward work programme published under section 5.
- (3) The Council must have regard to the interests of consumers in different areas. 45

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- (4) The Council must have regard to the interests of consumers that are one or more of the following –
- (a) disabled or chronically sick individuals;
 - (b) individuals of pensionable age;
 - (c) individuals with low incomes; 5
 - (d) individuals residing in rural areas.
- (5) But nothing in subsection (4) is to be taken as implying that regard may not be had to the interests of other descriptions of consumers.
- (6) The Council must have regard to the need to use its resources in the most efficient and economic way. 10
- (7) In discharging the duty imposed by subsection (6), the Council must take account of the existence of any other public bodies with the same functions as, or similar functions to, those of the Council and the activities carried on by such bodies.
- (8) The Council must exercise its functions in the manner which it considers is best calculated to contribute to the achievement of sustainable development. 15
- (9) Subject to section 13 (investigation of complaints relating to disconnection of gas or electricity), nothing in this Part imposes on the Council a duty to exercise any of its functions on behalf of or at the request of a particular consumer.
- (10) A person is of pensionable age for the purposes of this section if – 20
- (a) the person has attained pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 (c. 26)), or
 - (b) in the case of a man born before 6 April 1955, he is the same age as a woman who has attained pensionable age (within the meaning so given). 25

Annual report

7 Annual report

- (1) The Council must prepare a report for each financial year on its activities during the year (“the annual report”). 30
- (2) The annual report must –
- (a) contain a report on the progress of the projects described in the Council’s forward work programme for that year published under section 5,
 - (b) contain details of any activities undertaken in that year under section 22 (voluntary activities), and 35
 - (c) deal with such other matters as the Secretary of State may from time to time direct.
- (3) As soon as reasonably practicable after the end of each financial year, the Council must send a copy of the annual report prepared for that year to – 40
- (a) the Secretary of State,
 - (b) the Scottish Ministers, and
 - (c) the Welsh Ministers.

- (4) The Secretary of State must lay a copy of the annual report before Parliament.
- (5) The Council must arrange for the annual report to be published.

The core functions

8 The representative function

- (1) The Council may – 5
- (a) provide advice and information to persons within subsection (2) about consumer matters,
 - (b) make proposals to such persons about consumer matters, and
 - (c) represent the views of consumers on consumer matters to such persons.
- (2) Those persons are – 10
- (a) any Minister of the Crown or government department;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers;
 - (d) any regulatory body established by or under an enactment;
 - (e) the European Commission or any other international organisation; 15
 - (f) any other person whom the Council considers might have an interest in the matter in question.
- (3) In this section “enactment” means –
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament, 20
 - (c) a Measure or Act of the National Assembly for Wales, or
 - (d) Northern Ireland legislation,
- whenever passed or made.

9 The research function

- The Council may obtain and keep under review – 25
- (a) information about consumer matters,
 - (b) information about the views of consumers on consumer matters, and
 - (c) information of such other description as may be prescribed by the Secretary of State by order.

10 The information function 30

- (1) The Council may facilitate the dissemination to consumers of advice and information –
- (a) about the Council and its functions,
 - (b) about consumer matters, and
 - (c) about such other matters as may be prescribed by the Secretary of State by order. 35
- (2) In exercising the power conferred by subsection (1) the Council may (among other things) –
- (a) publish or otherwise make available information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; 40

- (b) support (financially or otherwise), facilitate or co-ordinate the activities of other persons.

Powers of investigation

11 General powers of investigation

- (1) The Council may investigate – 5
 - (a) a complaint made by or on behalf of a consumer which appears to the Council to raise one or more issues of general relevance;
 - (b) any matter which appears to the Council to be, or to be related to, a problem which affects or may affect consumers generally or consumers of a particular description. 10
- (2) For this purpose, a complaint raises an issue of general relevance if it raises –
 - (a) a novel issue which affects or may affect consumers generally or consumers of a particular description, or
 - (b) any other issue which has or may have an important effect on consumers generally or consumers of a particular description. 15

12 Investigation of complaints made by vulnerable designated consumers

- (1) Subsection (3) applies to a complaint which is made –
 - (a) by or on behalf of a vulnerable person in that person’s capacity as a designated consumer (“the designated consumer”),
 - (b) against a person (“the supplier”) who in the course of a business carried on by the supplier supplies or seeks to supply, or refuses to supply, goods or services to the designated consumer, and 20
 - (c) in respect of a matter connected with the supply of goods or services by the supplier to the designated consumer or a refusal by the supplier to supply goods or services to the designated consumer. 25
- (2) For this purpose a person is “vulnerable” if the Council is satisfied that it is not reasonable to expect that person to pursue the complaint on that person’s own behalf.
- (3) Where a complaint to which this subsection applies is referred to the Council by or on behalf of the designated consumer, the Council may investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (4). 30
- (4) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council may –
 - (a) provide advice to the designated consumer or, if the complaint was made by another person on the designated consumer’s behalf, that person; 35
 - (b) make representations on behalf of the designated consumer to the supplier about anything to which the complaint relates. 40

13 Investigation of complaints relating to disconnection of gas or electricity

- (1) This section applies to –

-
- (a) a complaint by a gas consumer against a gas transporter, in respect of the disconnection of, or a threat to disconnect, the consumer’s premises by the gas transporter;
- (b) a complaint by a gas consumer against a gas transporter, following such a disconnection, in respect of a refusal by the gas transporter to reconnect the premises; 5
- (c) a complaint by a gas consumer against a gas supplier, in respect of the cutting off of, or a threat to cut off, a supply of gas to the consumer’s premises by the gas supplier;
- (d) a complaint by a gas consumer against a gas supplier, following such a cutting off, in respect of a refusal by the gas supplier to restore the supply to the premises; 10
- (e) a complaint by a gas consumer against a gas supplier, in respect of the failure of a prepayment system;
- (f) a complaint by an electricity consumer against an electricity supplier, an electricity distributor or a transmission licence holder, in respect of the disconnection of, or a threat to disconnect, the consumer’s premises by the electricity supplier, electricity distributor or licence holder; 15
- (g) a complaint by an electricity consumer against an electricity supplier, electricity distributor or transmission licence holder, following such a disconnection by the supplier, distributor or licence holder, in respect of a refusal by the supplier, distributor or licence holder to reconnect the premises; 20
- (h) a complaint by an electricity consumer against an electricity supplier, in respect of the failure of a prepayment system. 25
- (2) Where a complaint to which this section applies is referred to the Council by or on behalf of the complainant, the Council must investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (3).
- (3) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council must— 30
- (a) provide advice to the complainant, or
- (b) make representations on behalf of the complainant to the person against whom the complaint is made about anything to which the complaint relates. 35
- (4) The Council may refuse to investigate a complaint, or part of a complaint, if—
- (a) the complaint or part appears to the Council to be frivolous or vexatious;
- (b) the complaint or part falls within a class of matter which a regulatory body is under a duty (whether imposed by or under an enactment or otherwise) to investigate; 40
- (c) the complaint or part is being dealt with, or the Council is satisfied that it would be better dealt with, under an ombudsman scheme or any other redress scheme or in legal proceedings; 45
- (d) the Council considers that there has been undue delay in the making of the complaint or part, or the provision of evidence to support it;
- (e) the Council considers that there are other compelling reasons why it is inappropriate for the complaint or part to be investigated by the Council. 50

- (5) The Council may refuse to investigate a complaint until the complainant has taken such steps as appear to the Council to be reasonable for the purpose of giving the person against whom the complaint is made a reasonable opportunity to deal with it.
- (6) In subsection (1) – 5
- (a) in paragraphs (a) and (b) “disconnection” in relation to any premises, means disconnection from a main of a gas transporter or the discontinuation of the conveyance of gas to the premises;
 - (b) in paragraphs (b), (d) and (g), the references to a gas consumer or electricity consumer are references to a person who was such a consumer at the time the disconnection of, or cutting off of the supply to, the premises occurred; 10
 - (c) in paragraphs (e) and (h), references to the failure of a prepayment system are references to –
 - (i) a failure in the facilities for payment for the supply of gas or electricity which results in a consumer with a prepayment meter being unable to make a payment for the supply of gas or electricity, or 15
 - (ii) where a payment has been made for the supply of gas or electricity through a prepayment meter, a case where the supply is not given through the prepayment meter because of a defect in the meter or in the facilities for payment. 20
- (7) In this section –
- “electricity consumer” means an individual who is a consumer in relation to electricity supplied by an authorised supplier; 25
 - “enactment” means –
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament, or
 - (c) a Measure or Act of the National Assembly for Wales, whenever passed or made; 30
 - “gas consumer” means an individual who is a consumer in relation to gas supplied by an authorised supplier;
 - “the consumer’s premises” –
 - (a) in relation to an electricity consumer, means the premises to which the electricity supplied to the consumer by the authorised supplier is supplied; 35
 - (b) in relation to a gas consumer, means the premises to which the gas supplied to the consumer is conveyed by the gas transporter;
 - “redress scheme” means a scheme under which complaints may be made to, and investigated and determined by, an independent person. 40

14 Reference of matters to the Gas and Electricity Markets Authority

- (1) In this section references to a complaint are to a complaint within section 11(1)(a) or to which section 12(3) or 13 applies.
- (2) Where it appears to the Council that a complaint relates to a matter in respect of which any of the Authority’s enforcement functions may be exercisable, the Council must refer the complaint to the Authority unless it is satisfied that the Authority is already aware of the matter. 45

- (3) Where a complaint to which section 13 applies is referred to the Authority under subsection (2), the Council is not required to investigate the complaint under subsection (2) of that section until the Authority has had a reasonable opportunity to exercise its enforcement functions in relation to the matter to which the complaint relates. 5
- (4) On investigating a complaint, the Council must inform the complainant if it considers that the complaint relates to a matter of a kind which can be referred by the complainant to the Authority under any provision of the Gas Act 1986 (c. 44) or the Electricity Act 1989 (c. 29).
- (5) In this section – 10
 “the Authority” means the Gas and Electricity Markets Authority;
 “enforcement function”, in relation to the Authority, means any of its functions under section 28 or 30A of the Gas Act 1986 or section 25 or 27A of the Electricity Act 1989.
- 15 Reference of matters to the Postal Services Commission 15**
- (1) The Council must refer any complaint within section 11(1)(a), or to which section 12(3) applies, to the Postal Services Commission (“the Commission”) if the Council considers that –
 (a) the subject matter of the complaint indicates that a condition of a licence under Part 2 of the Postal Services Act 2000 (c. 26) has been contravened, 20
 (b) the subject matter of the complaint is a referable matter, or
 (c) it is appropriate to do so.
- (2) The Council and the Commission must, from time to time, agree the descriptions of matters which are to be referred to the Commission and, for the purposes of subsection (1)(b), a matter is a “referable matter” if it is of a description for the time being so agreed. 25
- 16 Investigations relating to public post offices**
- (1) Without prejudice to the generality of section 11, the Council may investigate any matter relating to – 30
 (a) the number and location of public post offices in England and Wales and Scotland;
 (b) the number and location of public post offices in Northern Ireland.
- (2) In this section “public post office” has the same meaning as in the Postal Services Act 2000 (see section 42(3) of that Act). 35
- Other functions of the Council*
- 17 Reports by the Council**
- (1) The Council may prepare a report in relation to any matter falling within the scope of its functions.
- (2) The Council may publish any report prepared under this section. 40

18 Secretary of State’s power to require reports

- (1) The Secretary of State may direct the Council to prepare, and submit to the Secretary of State within a specified period, a report in respect of any matter specified in the direction which relates to consumer matters.
- (2) The Secretary of State may publish any report submitted under this section. 5

19 Advice, information and guidance

- (1) The Council may issue advice or guidance to any person with a view to improving standards of service and promoting best practice in connection with the handling of complaints made by consumers or any other matter affecting the interests of consumers. 10
- (2) The Council may publish advice or information about consumer matters if it appears to the Council that its publication would promote the interests of consumers.
- (3) For this purpose “information about consumer matters” includes information about the views of consumers on consumer matters. 15

20 Duty to enter into co-operation arrangements

- (1) It is the duty of the Council and each designated body to enter into co-operation arrangements under this section.
- (2) In this section—
 - “co-operation arrangements” means arrangements made by the Council and a designated body with a view to securing co-operation between them, including—
 - (a) the exchange of information between them,
 - (b) the co-ordination of any activities they carry on in connection with their functions relating to the provision of advice or information to consumers, and 25
 - (c) consistent treatment of matters which affect both of them;
 - “designated body” means—
 - (a) the Office of Fair Trading;
 - (b) the Consumer Panel established by the Financial Services Authority under the Financial Services and Markets Act 2000 (c. 8) (“the Financial Services Consumer Panel”);
 - (c) the Consumer Panel established by the Office of Communications under the Communications Act 2003 (c. 21) (“the OFCOM Consumer Panel”); 30
 - (d) a person designated by the Secretary of State by order for the purposes of this section. 35
- (3) The co-operation arrangements must set out—
 - (a) in the case of the Financial Services Consumer Panel, the procedure for consulting and making nominations for the purposes of paragraph 1(4)(a) of Schedule 1 to this Act and section 10(5A) of the Financial Services and Markets Act 2000; 40
 - (b) in the case of the OFCOM Consumer Panel, the procedure for consulting and making nominations for the purposes of paragraph

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|-----------|---|-----------|
| | 1(4)(b) of Schedule 1 to this Act and section 17(4A) of the Communications Act 2003. | |
| (4) | As soon as practicable after agreement is reached between the Council and a designated body on co-operation arrangements, the Council and the body must prepare a memorandum setting them out and send a copy of it to the Secretary of State. | 5 |
| (5) | The Council and a designated body must keep under review any co-operation arrangements entered into by them under this section. | |
| (6) | As soon as practicable after agreement is reached on any changes to co-operation arrangements, the Council and the designated body to which they relate must revise their memorandum and send a copy of the revised memorandum to the Secretary of State. | 10 |
| (7) | The Secretary of State must lay a copy of any document received under this section before each House of Parliament. | |
| 21 | Power to co-operate and give assistance | 15 |
| | The Council may make arrangements to co-operate with and give assistance to any person if it considers that to do so would facilitate or be conducive to the exercise of its own functions. | |
| 22 | Voluntary activities | |
| (1) | The Council may provide for any person advice or assistance, including research or other services, as respects any matter in which the Council has skill, experience or expertise. | 20 |
| (2) | The Council may make such charges as it thinks fit in respect of anything done in exercise of its powers under this section. | |
| (3) | The Council may spend such sums as it considers reasonable in the exploitation of commercial opportunities arising from the activities it carries on in the exercise of its functions. | 25 |
| (4) | The Council may – | |
| | (a) establish one or more bodies corporate to exercise on behalf of the Council such of its functions under this section, in such circumstances, as the Council may determine; | 30 |
| | (b) acquire an interest in an existing body corporate with a view to it exercising on behalf of the Council such of its functions under this section, in such circumstances, as the Council may determine. | |
| (5) | The Council may acquire an interest in a body corporate under subsection (4)(b) only with the consent of the Secretary of State. | 35 |
| 23 | Supplementary powers etc | |
| (1) | The Council may do anything (other than borrow money) which is calculated to facilitate, or is incidental or conducive to, the exercise of any of its functions. | |
| (2) | The Council must not acquire or dispose of any interest in land, except with the approval of the Secretary of State. | 40 |

- (3) Subsection (2) does not apply to an acquisition of an interest in land under a transfer scheme (within the meaning of section 35).

Information

24 Provision of information to the Council

- (1) The Council may, by notice, require a person within subsection (3) to supply it with such information as is specified or described in the notice within such reasonable period as is so specified. 5
- (2) The information specified or described in a notice under subsection (1) must be information the Council requires for the purpose of exercising its functions.
- (3) The persons referred to in subsection (1) are – 10
- (a) the Office of Fair Trading;
 - (b) a designated regulator;
 - (c) any person who supplies goods or services in the course of a business carried on by that person;
 - (d) any other person specified or of a description specified by the Secretary of State by order for the purposes of this subsection. 15
- (4) A notice under subsection (1) may specify the manner and form in which any information is to be provided.
- (5) Before giving a notice under subsection (1), or specifying the manner or form in which any information is to be provided, the Council must have regard to the desirability of minimising the costs, or any other detriment, to the person to whom the notice is to be given. 20
- (6) If a person within subsection (3)(a) or (b) fails to comply with a notice under subsection (1), the person must, if so required by the Council, give notice to the Council of the reasons for the failure. 25
- (7) An order under subsection (3)(d) may provide either –
- (a) that subsection (6) is to apply in relation to a person specified or of a description specified by the order as it applies to a person within subsection (3)(a) or (b), or
 - (b) that section 26 is to apply in relation to such a person. 30
- (8) The Council may publish any notice received under subsection (6).
- (9) In this section –
- “designated regulator” means –
 - (a) the Gas and Electricity Markets Authority;
 - (b) the Postal Services Commission;
 - (c) the Water Services Regulation Authority;
 - (d) any other person prescribed by the Secretary of State by order for the purposes of this subsection; - “goods” includes land or an interest in land. 35

25 Enforcement by regulator of section 24 notice

40

- (1) Where a regulated provider fails to comply with a notice under section 24(1), the Council may refer the failure to –

- (a) a person prescribed by the Secretary of State by order for the purposes of this section, or
- (b) if no person has been so prescribed, the relevant regulator.
- (2) Subsection (1) applies only to the extent that the notice relates to information which is held or may be obtained by the regulated provider in its capacity as a regulated provider. 5
- (3) For the purposes of this section –
- “designated investigator”, in relation to a failure to comply with a notice under section 24(1), means the person to whom the failure is referred under subsection (1); 10
- “regulated provider” means a person listed in the first column of the following table;
- “relevant regulator”, in relation to a regulated provider, means the body listed in relation to the regulated provider in the second column of that table. 15

Table

| <i>Regulated provider</i> | <i>Relevant regulator</i> |
|--|--|
| A person holding a licence under section 7, 7ZA or 7A of the Gas Act 1986. | The Gas and Electricity Markets Authority. |
| A person holding a licence under section 6 of the Electricity Act 1989. | The Gas and Electricity Markets Authority. |
| A person holding a licence under Part 2 of the Postal Services Act 2000. | The Postal Services Commission. |
| A water undertaker, sewerage undertaker or licensed water supplier. | The Water Services Regulation Authority. |

- (4) Where a failure is referred under subsection (1), the designated investigator must – 30
- (a) consider any representations made by the Council or the regulated provider, and
- (b) determine whether the regulated provider is entitled to refuse to comply with the notice by virtue of provision made under section 28 (exemptions from requirements to provide information). 35
- (5) If the designated investigator determines that the regulated provider is not entitled to refuse to comply with the notice, the designated investigator must direct the regulated provider to comply with it.
- (6) The designated investigator must give the Council and the regulated provider notice of – 40
- (a) a determination under subsection (4)(b) and the reasons for it, and
- (b) any direction under subsection (5).

- (7) An obligation imposed by virtue of subsection (5) on a water undertaker, sewerage undertaker or licensed water supplier is enforceable by the Water Services Regulation Authority under section 18 of the Water Industry Act 1991 (c. 56) (orders for securing compliance).
- (8) Schedule 2 makes provision about the enforcement of obligations imposed by virtue of subsection (5) on other regulated providers. 5

26 Enforcement by court of section 24 notice

- (1) This section applies where a person (“the defaulter”) refuses, or otherwise fails, to comply with a notice given to the defaulter under section 24(1) and the defaulter is – 10
 - (a) within section 24(3)(c), or
 - (b) a person in relation to whom this section applies by virtue of provision made under section 24(7)(b).
- (2) But this section does not apply in relation to a notice if, or to the extent that, section 25(1) applies in relation to the notice. 15
- (3) The Council may apply to the court for an order requiring the defaulter to comply with the notice or with such directions for the like purpose as may be contained in the order.
- (4) An order under this section may, in particular, provide that all the costs or expenses of and incidental to the application are to be borne – 20
 - (a) by the defaulter, or
 - (b) if officers of a company or other association are responsible for the failure to comply with the notice, by those officers.
- (5) In this section “the court” – 25
 - (a) in relation to England and Wales or Northern Ireland, means the High Court, and
 - (b) in relation to Scotland, means the Court of Session.

27 Provision of information by the Council

- (1) An authorised person may, by notice, require the Council to supply it with such information as is specified or described in the notice within such reasonable period as is so specified. 30
- (2) The information specified or described in a notice under subsection (1) must be information the authorised person requires for the purpose of exercising its functions.
- (3) “Authorised person” means – 35
 - (a) the Office of Fair Trading;
 - (b) a designated regulator (within the meaning of section 24(9));
 - (c) any person specified or of a description specified by the Secretary of State by order.
- (4) A notice under subsection (1) may specify the manner and form in which any information is to be provided. 40
- (5) Before giving a notice under subsection (1) or specifying the manner or form in which any information is to be provided, an authorised person must have

regard to the desirability of minimising the costs, or any other detriment, to the Council.

- (6) If the Council fails to comply with a notice under subsection (1), it must, if so required by the authorised person which gave that notice, give notice to the authorised person of the reasons for the failure. 5
- (7) An authorised person may publish any notice received by it under subsection (6).

28 Exemptions from requirements to provide information

- (1) The Secretary of State may make regulations prescribing –
- (a) descriptions of persons to whom the Council may not give a notice under section 24(1); 10
 - (b) descriptions of information which a person may refuse to supply in accordance with a notice under section 24(1) or 27(1);
 - (c) circumstances in which a person may refuse to comply with such a notice. 15
- (2) No person may be required by a notice under section 24(1) or 27(1) or a court order under section 26 –
- (a) to provide any information which that person could not be compelled to supply in evidence in civil proceedings before the High Court or the Court of Session, or 20
 - (b) to produce any document which that person could not be compelled to produce in such proceedings.

29 Disclosure of information

- (1) In Schedule 14 to the Enterprise Act 2002 (c. 40) (restrictions on disclosure: list of enactments under or by virtue of which information is obtained), at the appropriate place in the list insert – 25
- “Consumers, Estate Agents and Redress Act 2007.”
- (2) In Schedule 15 to that Act (enactments in relation to which disclosure may be made), at the appropriate place in the list insert – 30
- “Consumers, Estate Agents and Redress Act 2007.”
- (3) For the purposes of Part 9 of the Enterprise Act 2002 (information) the following information is to be regarded as “specified information” within the meaning of that Part –
- (a) information obtained by the Council under or by virtue of Part 1 of the the Gas Act 1986 (c. 44), Part 1 of the Electricity Act 1989 (c. 29) or the Utilities Act 2000 (c. 27); 35
 - (b) information obtained by the Council under or by virtue of the Postal Services Act 2000 (c. 26).
- (4) Part 9 of the Enterprise Act 2002 (which among other things restricts the disclosure of certain information) does not limit the information which may be – 40
- (a) made available by the Council under section 8 or 10,
 - (b) included in, or made public as part of, a report of the Council under any provision of this Part,
 - (c) published by the Council under section 19(2) or 24(8), 45

- (d) published by an authorised person under section 27(7),
 - (e) published by the Council under section 45, or
 - (f) published by the Council under section 33DA of the Gas Act 1986 (c. 44) or section 42AA of the Electricity Act 1989 (c. 29).
- (5) Before disclosing any specified information by virtue of subsection (4) (other than by publishing it as mentioned in subsection (4)(e) or (f)), the Council or authorised person must consult – 5
- (a) if the information relates to the affairs of an individual, that individual, and
 - (b) if the information relates to the business of an undertaking, the person for the time being carrying on the business. 10
- (6) Before disclosing any specified information by virtue of subsection (4) (other than by publishing it as mentioned in subsection (4)(e) or (f)), the Council or authorised person must also have regard to the considerations set out in subsections (2) to (4) of section 244 of the Enterprise Act 2002. 15
- For this purpose, references to “the authority” in those subsections are to be read as references to the Council or the authorised person, as appropriate.
- (7) In this section –
- “authorised person” has the same meaning as in section 27;
 - “specified information” has the meaning given by section 238(1) of the Enterprise Act 2002 (c. 40). 20

Abolition of consumer bodies

30 Abolition of “Energywatch” and “Postwatch”

- (1) The Gas and Electricity Consumer Council is abolished.
- (2) The Consumer Council for Postal Services is abolished. 25
- (3) Subject to any modifications made by this Act –
- (a) the functions of the Gas and Electricity Consumer Council under the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000 (c. 27), and
 - (b) the functions of the Consumer Council for Postal Services under the Postal Services Act 2000 (c. 26), 30
- are transferred by this section to the Council.
- (4) Accordingly –
- (a) in section 66 of the Gas Act 1986 (general interpretation), for the definition of “the Council” substitute – 35
 - ““the Council” means the National Consumer Council;”
 - (b) in section 111(1) of the Electricity Act 1989 (general interpretation), for the definition of “the Council” substitute –
 - ““the Council” means the National Consumer Council;”
 - (c) in section 125(1) of the Postal Services Act 2000 (interpretation), after the definition of “correspondent” insert – 40
 - ““the Council” means the National Consumer Council;”
 - and
 - (d) in section 106(1) of the Utilities Act 2000 (interpretation), for the

definition of “Council” substitute –
 ““Council” means the National Consumer Council;”.

- (5) Schedule 3 contains transitional provisions.

31 Designation of the Consumer Council for Water for abolition

- (1) The Secretary of State may by order designate the Consumer Council for Water for abolition. 5
- (2) An order under this section must specify the earliest date on which a transfer order or an abolition order under section 32 may take effect in respect of the Consumer Council for Water.
- (3) Before making an order under this section the Secretary of State must consult – 10
- (a) the Consumer Council for Water,
 - (b) the Council, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (4) An order under this section may only be made with the consent of the Welsh Ministers. 15

32 Transfer orders and abolition orders

- (1) Where the Consumer Council for Water is designated for abolition under section 31, the Secretary of State may make in respect of it – 20
- (a) one or more transfer orders;
 - (b) an abolition order.
- (2) A transfer order is an order which provides for the transfer to the Council of any function of the Consumer Council for Water.
- (3) An abolition order is an order which provides for the abolition of the Consumer Council for Water.
- (4) No provision of an order under this section may take effect before the date specified under section 31(2). 25
- (5) A transfer order or abolition order may be made only with the consent of the Welsh Ministers.

33 Supplementary provision about transfer and abolition orders

- (1) This section applies where the Consumer Council for Water has been designated for abolition under section 31. 30
- (2) In this section “payment conditions” means – 35
- (a) in the case of an appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56), conditions included in the appointment by virtue of section 11(1)(c) of that Act, and
 - (b) in the case of a water supply licence under Chapter 1A of that Part, conditions included in the licence by virtue of section 17G(1)(b) of that Act.
- (3) The payment conditions of such an appointment or licence may (without prejudice to the generality of sections 11(1)(c) and 17G(1)(b) of that Act) require 40

- the payment by the company holding the appointment or licence of sums relating to any of the expenses mentioned in subsection (4).
- (4) Those expenses are –
- (a) the appropriate proportion of the expenses of the Council (other than those expenses within paragraph (b) and any expenses relating to the establishment of the Council); 5
 - (b) any expenses of the Council, the Secretary of State or the Consumer Council for Water which relate to a transfer scheme made in respect of the Consumer Council for Water under section 35(2)(a) or (7);
 - (c) the expenses of the Secretary of State which relate to the abolition of the Consumer Council for Water; 10
 - (d) the expenses of expanding an OFT scheme to enable it to cater for water consumers;
 - (e) the appropriate proportion of the expenses of the Office of Fair Trading on, or in connection with, the support of any OFT scheme. 15
- (5) The “appropriate proportion” of any relevant expenses means such proportion of the expenses as the Secretary of State considers is reasonable having regard to –
- (a) in the case of expenses within subsection (4)(a), the functions exercisable by the Council in relation to water consumers; 20
 - (b) in the case of expenses within subsection (4)(e), the functions under the OFT scheme which are exercisable in relation to water consumers.
- (6) The Authority may, in accordance with this section, modify any payment conditions where it considers it necessary or expedient to do so in consequence of, or of preparations for – 25
- (a) the abolition of the Consumer Council for Water, or
 - (b) a transfer order or abolition order under section 32.
- (7) The Authority may, in accordance with this section, make such incidental or consequential modifications of the other conditions which are included in – 30
- (a) an appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56), or
 - (b) a water supply licence under Chapter 1A of that Part,
- as it considers necessary or expedient in consequence of, or of preparations for, an event mentioned in subsection (6)(a) or (b).
- (8) Before modifying under subsection (6) or (7) the conditions included in an appointment or licence, the Authority must consult the company holding the appointment or licence. 35
- (9) The Secretary of State may, after consulting the Welsh Ministers, give directions to the Authority for the purpose of securing that sums relating to any of the expenses mentioned in subsection (4) are included in the sums payable by virtue of payment conditions; and the Authority must comply with any such direction. 40
- (10) In this section –
- “the Authority” means the Water Services Regulation Authority;
 - “OFT scheme” means any public consumer advice scheme supported by the Office of Fair Trading; 45

“water consumers” means consumers in relation to services provided by a water undertaker, a sewerage undertaker or a licensed water supplier, in its capacity as such.

Abolition: supplementary provision

- 34 Compensation for loss of office** 5
- (1) The Secretary of State may pay such sums as the Secretary of State may, with the approval of the Treasury, determine by way of compensation to any person who –
- (a) ceases to be a member of the Consumer Council for Postal Services, the Gas and Electricity Consumer Council, or the Consumer Council for Water by virtue of the abolition of the body in question by or under this Part, or 10
- (b) ceases to be a member of the company called the National Consumer Council (a company limited by guarantee and registered under the Companies Acts) by virtue of its dissolution. 15
- (2) The compensation is payable in respect of loss of office, or loss or diminution of pension rights.
- 35 Transfer of property etc**
- (1) This section applies to –
- (a) the Consumer Council for Postal Services; 20
- (b) the Gas and Electricity Consumer Council;
- (c) if a transfer order has been made under section 32 (whether or not it has taken effect), the Consumer Council for Water;
- (d) the company called the National Consumer Council (a company limited by guarantee and registered under the Companies Acts). 25
- (2) The Secretary of State may direct a body to which this section applies –
- (a) to make a scheme or schemes for the transfer of its property, rights and liabilities to the Council;
- (b) to transfer such property, rights or obligations as are specified in the direction to a person (other than the Council) so specified (“the specified transferee”). 30
- (3) Before giving, varying or revoking a direction under subsection (2), the Secretary of State must consult –
- (a) the body to which the direction is to be or has been given,
- (b) the Council, and 35
- (c) in the case of a direction under subsection (2)(b), the specified transferee.
- (4) A body given a direction under subsection (2)(a) must consult the Council before making a transfer scheme.
- (5) A transfer scheme made pursuant to a direction under subsection (2)(a) has effect – 40
- (a) only if approved by the Secretary of State, and
- (b) subject to any modifications made by the Secretary of State.

- (6) Before making any modifications the Secretary of State must consult the body to which the direction was given.
- (7) The Secretary of State may make a scheme or schemes for the transfer to the Council of the property, rights and liabilities of a body to which this section applies. 5
- (8) Schedule 4 makes further provision about transfer schemes.
- (9) In this section “transfer scheme” means a scheme made under or by virtue of subsection (2)(a) or (7).

36 Directions

- (1) The Secretary of State may direct a body to which section 35 applies to supply to the Secretary of State such information specified or described in the direction as the Secretary of State may require in relation to – 10
 - (a) the body’s property, rights or liabilities, or
 - (b) the exercise by the body of its functions.
- (2) A direction under subsection (1) – 15
 - (a) must specify the period within which the information is to be provided, and
 - (b) may require the information to be supplied in a specified form.
- (3) A body given a direction under subsection (1) must comply with it within the specified period. 20
- (4) The Secretary of State may direct a body to which section 35 applies not to take any action of a specified kind, or in specified circumstances.
- (5) Before giving, varying or revoking a direction under this section, the Secretary of State must consult – 25
 - (a) the body to which the direction is to be or has been given, and
 - (b) the Council.
- (6) In this section “specified” means specified in the direction given by the Secretary of State.

Alteration of the Council’s functions

37 Extension of the Council’s functions: Great Britain 30

- (1) The Secretary of State may, by order, confer on the Council any other function or functions if the Secretary of State considers that it is in the interests of consumers generally, or consumers of a particular description, to do so.
- (2) The Secretary of State may only confer a function on the Council under this section if the function appears to the Secretary of State to be connected (directly or indirectly) to an existing or former function of the Council. 35
- (3) Before making an order under subsection (1), the Secretary of State must consult –
 - (a) the Council,
 - (b) if it appears to the Secretary of State that the exercise of any function conferred by the order might affect Wales in relation to any matter as 40

- respects which functions are exercisable by the Welsh Ministers, those Ministers, and
- (c) such other persons as the Secretary of State considers appropriate.
- (4) An order under this section may not make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament. 5
- (5) An order under this section which makes provision which would be within the legislative competence of the National Assembly for Wales if it were contained in a Measure of the Assembly (or, if the order is made after the Assembly Act provisions come into force, an Act of the Assembly) may only be made with the consent of the Assembly. 10
- (6) In subsection (5) “the Assembly Act provisions” has the meaning given by section 103(8) of the Government of Wales Act 2006 (c. 32).
- 38 Removal of the Council’s functions in relation to Northern Ireland**
- (1) This section applies where the Secretary of State is satisfied that satisfactory arrangements are in place for a body (other than the Council) to exercise functions corresponding to the functions exercisable by the Council in relation to Northern Ireland. 15
- (2) The Secretary of State may by order repeal—
- (a) section 1(2)(c) (requirement to establish and maintain the Northern Ireland Postal Services Committee); 20
- (b) section 2(1)(c) (functions which the Northern Ireland Postal Services Committee is authorised to exercise);
- (c) section 3(2)(b) (Northern Ireland consumers of relevant postal services); 25
- (d) section 16(1)(b) (investigations relating to public post offices in Northern Ireland);
- (e) any other provision of this Part, so far as it extends to Northern Ireland.
- (3) Before making an order under this section, the Secretary of State must consult— 30
- (a) the Council, and
- (b) such other persons as the Secretary of State considers appropriate.

Representation on other consumer panels

39 The Financial Services Consumer Panel

In section 10 of the Financial Services and Markets Act 2000 (c. 8) (the Consumer Panel), after subsection (5) insert— 35

- “(5A) The Secretary of State may direct the Authority to appoint as a member of the Consumer Panel a person specified by the Secretary of State who—
- (a) is a non-executive member of the National Consumer Council, and 40
- (b) is nominated for the purposes of this subsection by the National Consumer Council after consultation with the Authority.

- (5B) Only one person may, at any time, be a member of the Consumer Panel appointed in accordance with a direction under subsection (5A); but that does not prevent the Authority appointing as a member of the Consumer Panel any person who is also a member of the National Consumer Council. 5
- (5C) A person appointed in accordance with a direction under subsection (5A) ceases to be a member of the Panel on ceasing to be a non-executive member of the National Consumer Council.”

40 The OFCOM Consumer Panel

In section 17 of the Communications Act 2003 (c. 21) (membership etc of the Consumer Panel) – 10

(a) after subsection (4) insert –

“(4A) The Secretary of State may direct OFCOM to appoint as a member of the Consumer Panel a person specified by the Secretary of State who – 15

(a) is a non-executive member of the National Consumer Council, and

(b) is nominated for the purposes of this subsection by the National Consumer Council after consultation with OFCOM. 20

(4B) Only one person may, at any time, be a member of the Consumer Panel appointed in accordance with a direction under subsection (4A); but that does not prevent OFCOM appointing as a member of the Consumer Panel any person who is also a member of the National Consumer Council. 25

(4C) A person appointed in accordance with a direction under subsection (4A) ceases to be a member of the Panel on ceasing to be a non-executive member of the National Consumer Council.”, and

(b) in subsection (5) for “subsection (3) or (4)” substitute “subsections (3) to (4A)”. 30

Interpretation

41 Interpretation of Part 1

(1) In this Part –

“distribution system” has the meaning given by section 4(4) of the Electricity Act 1989 (c. 29); 35

“financial year” (except in Schedule 3) means –

(a) the period beginning with the day on which the Council is established and ending with the next following 31 March, and

(b) each successive period of 12 months; 40

“functions” includes powers and duties;

“gas” has the meaning given by section 48(1) of the Gas Act 1986 (c. 44);

“licensed water supplier” means a company holding a water supply licence under Chapter 1A of Part 2 of the Water Industry Act 1991 (c. 56); 45

“modify” includes amend, add to, revoke or repeal (and references to “modification” are to be read accordingly);

“postal services” has the same meaning as in the Postal Services Act 2000 (c. 26) (see section 125(1) of that Act);

“regulatory body” means a person who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with particular standards of conduct (whether statutory or non-statutory) by those persons; 5

“relevant postal services” means any postal services provided in connection with the provision of a universal postal service (within the meaning of the Postal Services Act 2000) and any other postal services which are provided, or authorised or required to be provided, by a licence holder under Part 2 of that Act in accordance with a licence under that Part. 10

(2) In this Part— 15

(a) expressions used, as regards matters relating to gas, which are defined in section 48 of the Gas Act 1986 (c. 44) have the same meaning as in Part 1 of that Act, and

(b) expressions used, as regards matters relating to electricity, which are defined in section 64 of the Electricity Act 1989 (c. 29), have the same meaning as in Part 1 of that Act. 20

PART 2

COMPLAINTS HANDLING AND REDRESS SCHEMES

Introductory

42 Interpretation of Part 2 25

(1) In this Part—

“regulated provider” means a person within an entry in column 1 of the table;

“relevant consumer”, in relation to a regulated provider, means a person within the corresponding entry in column 2 of the table; 30

“relevant regulator”, in relation to a regulated provider, means the body specified in the corresponding entry in column 3 of the table.

Table

| <i>Regulated provider</i> | <i>Relevant consumer</i> | <i>Relevant regulator</i> | |
|--|--|---|----|
| A person holding a licence under section 7A(1) of the Gas Act 1986 (supply licences). | A person who is a consumer in relation to gas supplied by a gas supplier (within the meaning of Part 1 of that Act). | The Gas and Electricity Markets Authority | 35 |
| A person holding a licence under section 7(2) of the Gas Act 1986 (transportation licences). | A person (other than a gas licensee) who is a consumer in relation to services provided by a gas transporter (within the meaning of Part 1 of that Act). | The Gas and Electricity Markets Authority | 40 |

Table

| <i>Regulated provider</i> | <i>Relevant consumer</i> | <i>Relevant regulator</i> | |
|---|--|---|----|
| A person holding a licence under section 6(1)(d) of the Electricity Act 1989 (c. 29) (supply licences). | A person who is a consumer in relation to electricity supplied by an electricity supplier (within the meaning of Part 1 of that Act). | The Gas and Electricity Markets Authority | 5 |
| A person holding a licence under section 6(1)(c) of the Electricity Act 1989 (distribution licences). | A person (other than an electricity licensee) who is a consumer in relation to services provided by an electricity distributor (within the meaning of Part 1 of that Act). | The Gas and Electricity Markets Authority | 10 |
| A person holding a licence under Part 2 of the Postal Services Act 2000 (c. 26). | A person who is a consumer in relation to relevant postal services (within the meaning of section 41). | The Postal Services Commission | 15 |
| A water undertaker, sewerage undertaker or licensed water supplier. | A person who is a consumer in relation to services provided by a water undertaker, sewerage undertaker or licensed water supplier in its capacity as such. | The Water Services Regulation Authority | 20 |

(2) In this Part—

- “consumer” has the same meaning as in Part 1;
- “consumer complaint” means a complaint which is made against a regulated provider by or on behalf of a person in that person’s capacity as a relevant consumer in relation to the regulated provider; 25
- “licensed water supplier” has the same meaning as in Part 1;
- “regulator” means a body listed in column 3 of the table.

(3) In this Part references to a regulator’s regulated providers are to the regulated providers in relation to which the regulator is the relevant regulator. 30

(4) In this section—

- “electricity licensee” means—
 - (a) an electricity supplier (within the meaning of Part 1 of the Electricity Act 1989); 35
 - (b) an electricity distributor (within the meaning of that Part);
 - (c) the holder of a licence under section 6(1)(a), (b) or (e) of that Act (generation licences, transmission licences and interconnector licences), except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence; 40

- “gas licensee” means—
 - (a) a gas supplier (within the meaning of Part 1 of the Gas Act 1986 (c. 44));
 - (b) a gas transporter (within the meaning of that Part); 45
 - (c) a gas shipper (within the meaning of that Part);
 - (d) the holder of a licence under section 7ZA of that Act (licences for operation of gas interconnectors), except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence. 50

*Standards for handling complaints***43 Standards for handling complaints**

- (1) A regulator may make regulations prescribing standards for the handling by its regulated providers of consumer complaints made to them.
- (2) The regulations may prescribe standards in relation to all consumer complaints, or consumer complaints of a kind specified in the regulations. 5
- (3) In particular, the regulations may specify a kind of consumer complaint by reference to the subject-matter of a complaint, or the description of person making a complaint.
- (4) Regulations under this section may be made only with the consent of the Secretary of State. 10
- (5) A regulator must make arrangements for securing that regulations made by it under this section are available to the public, by whatever means it considers appropriate.
- (6) This section does not apply to the Water Services Regulation Authority. 15

44 Requirements for making regulations under section 43

- (1) Before making regulations under section 43 a regulator must –
 - (a) arrange for such research as it considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected, and consider the results, 20
 - (b) publish a notice of its proposals (a “proposals notice”) in such manner as the regulator considers appropriate for bringing it to the attention of those likely to be affected by the proposals,
 - (c) consider any representations duly made, and
 - (d) consult persons or bodies appearing to it to be representative of persons likely to be affected by the proposals. 25
- (2) The proposals notice must –
 - (a) state that the regulator proposes to make regulations under section 43, and set out the standards proposed,
 - (b) give the reasons why the regulator proposes to prescribe those standards, 30
 - (c) explain how the standards will be enforced, and
 - (d) specify a time (not being earlier than the end of the period of 30 days beginning with the day on which the notice is published) before which representations may be made. 35

45 Information with respect to compliance with complaints handling standards

- (1) This section applies where standards are prescribed by a regulator by regulations under section 43 in relation to its regulated providers (or some of them).
- (2) The Council must publish such statistical information as it considers appropriate relating to the levels of compliance with the standards which those regulated providers have achieved. 40

- (3) That information must be published in such form and manner, and with such frequency, as the Council thinks appropriate.
- (4) Schedule 5 makes further provision with respect to information about compliance with complaints handling standards.

46 Supply of information to consumers 5

- (1) A regulator may make regulations requiring each of its regulated providers in relation to which standards are prescribed under section 43 to give to the provider's relevant consumers such information as may be specified or described in the regulations about—
 - (a) the standards, and 10
 - (b) the levels of compliance with those standards achieved by the provider.
- (2) Regulations under this section may include provision specifying the form and manner in which, and the frequency with which, information is to be given.

Requirements relating to redress schemes

47 Membership of redress scheme 15

- (1) The Secretary of State may by order require regulated providers to be members of a redress scheme which is—
 - (a) approved by their relevant regulator in accordance with section 49, or
 - (b) administered by the Secretary of State (or a person appointed by the Secretary of State) and designated by the Secretary of State as an appropriate redress scheme in relation to them. 20
- (2) The order may provide that the requirement applies only in relation to consumer complaints of a kind specified in the order.
- (3) In particular, the order may specify a kind of consumer complaint by reference to the subject-matter of a complaint, or the description of person making a complaint. 25
- (4) Before making an order under this section the Secretary of State must consult—
 - (a) each relevant regulator (in relation to regulated providers to which the order will apply), and
 - (b) other persons appearing to the Secretary of State to be representative of persons who have an interest in the matter. 30
- (5) An order under this section which applies to a water undertaker or sewerage undertaker for an area which is wholly or mainly in Wales may be made only with the consent of the Welsh Ministers.
- (6) The Secretary of State may not make an order under this section unless satisfied, in relation to each regulated provider to which the order will apply, that—
 - (a) there is at least one qualifying redress scheme which the provider is eligible to join and membership of which will satisfy the requirement imposed by the order, or 40
 - (b) there will be such a scheme when the order comes into force.
- (7) The Secretary of State may not designate a scheme in relation to regulated providers under subsection (1)(b) unless the Secretary of State is satisfied that

the scheme is one which could be approved by their relevant regulator in accordance with section 49.

- (8) The Secretary of State may establish or administer a scheme for the purposes of subsection (1)(b), or provide financial assistance to a person who establishes or administers such a scheme; and such a scheme may provide for fees to be payable by members of the scheme. 5

48 Membership of redress schemes: supplementary

- (1) In this Part –
 “qualifying redress scheme” means a redress scheme within paragraph (a) or (b) of section 47(1); 10
 “redress scheme” means a scheme under which consumer complaints may be made to, and investigated and determined by, an independent person (“the independent person”);
 “scheme administrator”, in relation to a redress scheme, means the person who administers the scheme, 15
 and references to approval of a redress scheme are to approval of the scheme for the purposes of section 47(1)(a).
- (2) In the definition of “redress scheme”, “independent”, in relation to a consumer complaint, means independent of – 20
 (a) the regulated provider against whom the complaint is made, and
 (b) the regulator who is the relevant regulator in relation to the regulated provider.
- (3) Nothing in this Part prevents a qualifying redress scheme providing – 25
 (a) for membership to be open to persons who are not subject to any duty to belong to a qualifying redress scheme;
 (b) for the investigation and determination of complaints other than those in relation to which such a duty applies, made against members who have voluntarily accepted the jurisdiction of the scheme over such complaints.
- (4) For the purposes of the law relating to defamation, proceedings under a qualifying redress scheme (in relation to a consumer complaint and a regulated provider to which an order under section 47 applies) are to be treated in the same way as proceedings before a court. 30

49 Approval of redress schemes

- (1) In deciding whether to approve a redress scheme, a regulator must have regard to – 35
 (a) the provisions of the scheme;
 (b) the manner in which the scheme will be operated (so far as that can be judged from the facts known to the regulator);
 (c) the interests of relevant consumers (in relation to the regulator’s regulated providers); 40
 (d) such principles as –
 (i) in the opinion of the regulator constitute generally accepted principles of best practice in relation to schemes for providing redress to consumers, and 45
 (ii) it is reasonable to regard as applicable to the scheme.

- (2) In considering the interests of relevant consumers under subsection (1)(c), the regulator must in particular have regard to the number of other redress schemes applying to its regulated providers which are (or are likely to become) qualifying redress schemes.
- (3) A regulator must not approve a redress scheme unless – 5
- (a) membership of the scheme is open to all the regulator’s regulated providers, and those regulated providers may not be expelled from membership of the scheme,
 - (b) if, at the time the approval is given, any of the regulator’s regulated providers are required under section 47 to be a member of a redress scheme (or would be so required but for the fact that an order which has been made under that section is not yet in force), the scheme covers all the consumer complaints to which the requirement applies, 10
 - (c) the independent person may require regulated providers to provide complainants with the types of redress listed in subsection (6) (whether or not other types of redress are available), and 15
 - (d) the regulator considers that the scheme makes satisfactory provision about the matters listed in subsection (7).
- (4) Subsection (3)(a) does not prevent the Gas and Electricity Markets Authority approving – 20
- (a) a scheme which is open to all regulated gas providers, but not regulated electricity providers,
 - (b) a scheme which is open to all regulated electricity providers, but not regulated gas providers,
- and, in the case of such a scheme, subsection (3)(b) applies as if the reference to the regulator’s regulated providers were to the regulated gas providers or, as the case may be, regulated electricity providers. 25
- (5) For this purpose –
- “regulated electricity provider” means a person holding a licence under section 6(1)(c) or (d) of the Electricity Act 1989 (c. 29); 30
 - “regulated gas provider” means a person holding a licence under section 7(2) or 7A(1) of the Gas Act 1986 (c. 44).
- (6) The types of redress mentioned in subsection (3)(c) are –
- (a) providing an apology or explanation,
 - (b) paying compensation, and 35
 - (c) taking such other action in the interests of the complainant as the independent person may specify.
- (7) The matters mentioned in subsection (3)(d) are –
- (a) the matters about which complaints may be made (which may include non-compliance with a code of practice or other document); 40
 - (b) the independent person’s duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint);
 - (c) the enforcement of any requirement to provide redress imposed on a regulated provider in accordance with the scheme; 45
 - (d) the provision of information by the independent person to the regulator and to persons within subsection (8);
 - (e) the provision of information by the independent person –

-
- (i) to the Office of Fair Trading, for the purposes of any public consumer advice scheme supported by it, and
 - (ii) to persons who operate a public consumer advice scheme supported by the Office of Fair Trading, for the purposes of that scheme; 5
 - (f) the acceptance and handling of complaints transferred from redress schemes which have their approval withdrawn under section 51.
 - (8) The persons within this subsection are –
 - (a) any other body having regulatory functions in relation to the regulated providers to which the scheme applies; 10
 - (b) persons exercising functions under other redress schemes which apply to the regulator’s regulated providers;
 - (c) the Council;
 - (d) the Secretary of State.
- 50 Approval of redress schemes: supplementary 15**
- (1) An application for approval of a redress scheme must be made in such manner, and accompanied by such information, as the regulator to which the application is made may determine.
 - (2) Section 51 applies if the regulator is minded to refuse an application for approval. 20
 - (3) The scheme administrator of a redress scheme approved by a regulator must notify the regulator of any change to the scheme before the end of the period of 14 days beginning with the day on which the change is made.
 - (4) A regulator may, in accordance with section 51, withdraw its approval of a redress scheme, and may do so generally or in relation to consumer complaints of a description specified by the regulator. 25
 - (5) In particular, a regulator may withdraw its approval in relation to consumer complaints made on or after a date specified by the regulator.
- 51 Procedure for refusing or withdrawing approval**
- (1) Before refusing or withdrawing its approval of a redress scheme, the regulator must give the scheme administrator a notice – 30
 - (a) stating that the regulator proposes to refuse or withdraw its approval,
 - (b) giving the reasons for the proposed refusal or withdrawal, and
 - (c) specifying a time (not being earlier than the end of the period of 30 days beginning with the day on which the notice is given to the scheme administrator) before which representations about the proposed refusal or withdrawal may be made. 35
 - (2) The regulator must give notice to the scheme administrator of –
 - (a) the regulator’s decision on a proposal to refuse or withdraw approval, and 40
 - (b) the reasons for its decision.
 - (3) In the case of a decision to withdraw approval, the regulator must also give notice of its decision and the reasons for it to the Secretary of State.

- (4) The scheme administrator must give a copy of the notice under subsection (2) to each member of the scheme.
- (5) If the regulator decides to withdraw approval, the withdrawal has effect in accordance with, and from the date specified in, the notice under subsection (2). 5
- (6) Where a redress scheme designated under section 47(1)(b) is administered by a person appointed by the Secretary of State, this section (other than subsection (3)) applies in relation to a revocation by the Secretary of State of that person’s appointment as it applies in relation to a withdrawal by a regulator of the approval of a redress scheme. 10

Enforcement

52 Enforcement of requirements imposed under Part 2

- (1) In section 28 of the Gas Act 1986 (c. 44) (orders for securing compliance), in subsection (8), in the definition of “relevant requirement”, after “that Act)” (as inserted by paragraph 1 of Schedule 2) insert “, or section 43, 46 or 47 of that Act (complaints).” 15
- (2) In section 25 of the Electricity Act 1989 (c. 29) (orders for securing compliance), in subsection (8), in the definition of “relevant requirement”, after “that Act)” (as inserted by paragraph 2 of Schedule 2) insert “, or section 43, 46 or 47 of that Act (complaints).” 20
- (3) A requirement imposed under section 47 on a water undertaker, sewerage undertaker or licensed water supplier is enforceable by the Water Services Regulation Authority under section 18 of the Water Industry Act 1991 (c. 56) (orders for securing compliance).
- (4) In section 22 of the Postal Services Act 2000 (c. 26) (final orders), in the definition of “relevant requirement” in subsection (5) (as substituted by paragraph 3(2) of Schedule 2 and amended by Schedule 5), after paragraph (b) insert “, or
(c) an obligation imposed under section 43, 46 or 47 of that Act (complaints).” 25 30

PART 3

AMENDMENT OF THE ESTATE AGENTS ACT 1979

Estate agents’ duties

53 Membership of redress schemes

- (1) Schedule 6 (which amends the Estate Agents Act 1979 (c. 38) to make provision for redress schemes dealing with complaints about estate agents) has effect. 35
- (2) In section 3(1) of the Estate Agents Act 1979 (grounds for making prohibition orders), after paragraph (c) insert –
“(ca) has engaged in estate agency work in relation to residential property in breach of the duty imposed by an order under section 23A(1) below; or” 40

- (3) Sections 172 to 174 of the Housing Act 2004 (c. 34) (redress schemes dealing with complaints about the activities of estate agents in relation to home information packs) are omitted.

54 Duty to keep records

- (1) After section 21 of the Estate Agents Act 1979 (c. 38) (transactions in which an estate agent has a personal interest) insert – 5

“21A Duty to keep permanent records

- (1) A person engaged in estate agency work shall –
- (a) keep records for the purposes of this section (“the permanent records”); and 10
 - (b) ensure that anything required by subsection (3) to be included in the permanent records is kept for a period of at least six years beginning with the day on which it is included.
- (2) In the case of a person engaged in estate agency work in the course of employment the duties under subsection (1) are duties of the employer (and not the employee). 15
- (3) A person engaged in estate agency work shall ensure that a record of any information or event to which this subsection applies is included in the permanent records kept by that person or his employer (as the case may be). 20
- (4) Subsection (3) applies to –
- (a) information the person concerned is required to give by section 18(1) or (3) and any prescribed information relating to the giving of that information;
 - (b) information the person concerned is required to disclose by section 21(1) or (2) and any prescribed information relating to the disclosure of that information; 25
 - (c) any offer of a prescribed description received by the person concerned and any prescribed information relating to the making of the offer; 30
 - (d) any action of a prescribed description taken by the person concerned in relation to such an offer and any prescribed information relating to that action; and
 - (e) any other information or event of a prescribed description.
- (5) If the person concerned is acting in the course of employment, it is also the duty of the employer to ensure that the record of the information or event is included in the permanent records; but the employer is not to be regarded as having breached his duty if he shows that he took such steps as were reasonably practicable to ensure that the duty under subsection (3) was complied with by his employees. 35 40
- (6) The Secretary of State may by regulations make provision as to –
- (a) the manner in which the permanent records are to be kept;
 - (b) the place or places at which they are to be kept.
- (7) In this section “prescribed” means prescribed by regulations made by the Secretary of State. 45

- (8) Any 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.”
- (2) In section 3(1) of that Act (grounds for making prohibition orders), in paragraph (c), for “21” substitute “21A”. 5

Prohibition and warning orders

55 Grounds for prohibition orders

- (1) Section 3(1) of the Estate Agents Act 1979 (c. 38) (grounds for making prohibition orders) is amended as follows.
- (2) In paragraph (a), for “has been convicted of” substitute “has committed”. 10
- (3) After paragraph (b) insert –
- “(ba) has failed to comply with an undertaking accepted from him under section 217, 218 or 219 of the Enterprise Act 2002 and given in relation to estate agency work; or
- (bb) has failed to comply with an enforcement order under section 217 of the Enterprise Act 2002 which was made against him in relation to estate agency work; or”.
- (4) Section 5(4) of that Act (which provides for section 3 orders based on a person’s conviction to cease to have effect when the conviction is spent) is omitted.
- (5) For paragraph 1 of Schedule 1 to that Act substitute – 20
- “1 A person is not to be treated for the purposes of section 3(1)(a) of this Act as having committed an offence if he has been convicted of that offence and that conviction 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.” 25

56 Grounds for warning orders

- (1) Section 4 of the Estate Agents Act 1979 (warning orders) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) If the OFT is satisfied that any of subsections (1A), (1B) or (1C) apply in relation to a person it may by order notify that person that it is satisfied of the matters mentioned in that subsection. 30
- (1A) This subsection applies in relation to a person if –
- (a) in the course of estate agency work, he has engaged in conduct falling within paragraph (a), (b), (c), (ca) or (cb) of section 3(1); and 35
- (b) were he to engage again in any conduct falling within that paragraph, the OFT would consider him unfit and proceed to make a prohibition order.
- (1B) This subsection applies in relation to a person if –
- (a) in the course of estate agency work, he has engaged in conduct constituting a failure to comply with – 40
- (i) an undertaking mentioned in section 3(1)(ba); or

- (ii) an enforcement order mentioned in section 3(1)(bb); and
- (b) were he to fail again to comply with that undertaking or order by engaging in the same or similar conduct, the OFT would consider him unfit and proceed to make a prohibition order.
- (1C) This subsection applies in relation to a person if – 5
- (a) in the course of estate agency work, he has engaged in a practice mentioned in section 3(1)(d); and
- (b) were he to engage again in that practice, the OFT would consider him unfit and proceed to make a prohibition order.”
- (3) In subsection (2) for the words from “a further” to “order” (in the second place it appears) substitute “further conduct as mentioned in subsection (1A)(b) or (1B)(b) or engaging again in the practice specified in the order, as the case may be,”. 10
- (4) In subsection (3) for the words from “fails to comply” to “order” (in the second place it appears) substitute “engages in further conduct as mentioned in subsection (1A)(b) or (1B)(b) or engages again in the practice specified in the order, as the case may be,”. 15
- (5) After subsection (3) insert –
- “(4) In this section “unfit” means unfit as mentioned in subsection (2) of section 3 and “prohibition order” means an order under that section.” 20

Investigatory powers

57 Powers of entry and inspection

- (1) Section 11 of the Estate Agents Act 1979 (c. 38) (powers of entry and inspection) is amended as follows.
- (2) For subsection (1) substitute – 25
- “(1) If a duly authorised officer of an enforcement authority (“an officer”) has reasonable cause to suspect –
- (a) that an offence has been committed under this Act;
- (b) that a person has failed to comply with an obligation imposed on him under any of sections 15 and 18 to 21A; or 30
- (c) that a person has engaged in a practice mentioned in section 3(1)(d);
- he may, in order to ascertain whether the offence has been committed, whether the person has failed to comply with the obligation or whether the person has engaged in the practice (as the case may be), exercise any power specified in subsection (1A). 35
- (1A) The powers are –
- (a) to enter any premises (other than premises used only as a dwelling);
- (b) to require – 40
- (i) any person carrying on, or employed in connection with, a business to produce any books or document relating to it, or

- (ii) any person having control of any information relating to a business which is stored in any electronic form to produce the information in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form); 5
 - (c) to take copies of, or of any entry in, any books or documents produced or provided in pursuance of a requirement imposed under paragraph (b).
 - (1B) An officer may seize and detain any books or documents which he has reason to believe may be required as evidence – 10
 - (a) in proceedings for an offence under this Act; or
 - (b) in proceedings under any of sections 3, 4, 6 or 7 relating to an allegation –
 - (i) that an offence has been committed under this Act; 15
 - (ii) that a person has failed to comply with an obligation imposed on him under any of sections 15 and 18 to 21A; or
 - (iii) that a person has engaged in a practice mentioned in section 3(1)(d). 20
 - (1C) If it is not reasonably practicable to exercise any power under subsection (1A)(c) to take a copy of, or of any entry in, a book or document, an officer may seize and detain the book or document for the purpose of inspecting it (or any entry in it).
 - (1D) A book or document which is seized in exercise of the power under subsection (1C) must be returned to the person from whom it was seized unless an officer has reason to believe that the book or document may be required as evidence in any proceedings mentioned in subsection (1B). 25
 - (1E) Any power conferred by subsection (1) to (1C) may be exercised at all reasonable hours. 30
 - (1F) An officer exercising any such power must, if required, produce his credentials.”
- (3) For subsection (4) substitute –
 - “(4) An appropriate judicial officer may, by warrant under his hand, authorise an officer of an enforcement authority to enter any premises, by force if need be, if on sworn information in writing or, in Scotland, on evidence on oath the appropriate judicial officer – 35
 - (a) is satisfied that there is reasonable ground to believe that either of the conditions in subsection (4A) applies; and 40
 - (b) is also satisfied that at least one of the conditions in subsection (4B) applies.
 - (4A) The conditions in this subsection are –
 - (a) that any books or documents which a duly authorised officer has power to inspect under this section are on the premises and their inspection is likely to disclose evidence – 45
 - (i) that an offence has been committed under this Act;

- (ii) that a person has failed to comply with an obligation imposed on him under any of sections 15 and 18 to 21A; or
- (iii) that a person has engaged in a practice mentioned in section 3(1)(d); 5
- (b) that an offence under this Act has been, is being or is about to be committed on the premises.
- (4B) The conditions in this subsection are –
 - (a) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under subsection (4) has been given to the occupier; 10
 - (b) that an application for admission, or the giving of such a notice of intention, would defeat the object of the entry;
 - (c) that the premises are unoccupied;
 - (d) that the occupier is temporarily absent and it might defeat the object of the entry to wait for his return. 15
- (4C) A warrant issued under subsection (4) shall continue in force for a period of one month.
- (4D) In subsection (4) “appropriate judicial officer” means –
 - (a) in England and Wales, a justice of the peace; 20
 - (b) in Scotland, the sheriff or a justice of the peace;
 - (c) in Northern Ireland, a lay magistrate.”

58 Failure to produce information

- (1) After section 11 of the Estate Agents Act 1979 (c. 38) (powers of entry and inspection) insert – 25
 - “11A Failure to produce information
 - (1) If on an application made by a duly authorised officer of an enforcement authority it appears to the court that a person (“the defaulter”) has failed to do something that he is required to do by virtue of section 9(1) or 11(1A)(b) the court may make an order under this section. 30
 - (2) An order under this section may require the defaulter –
 - (a) to do the thing that it appears he failed to do within such period as may be specified in the order;
 - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified. 35
 - (3) If the defaulter is a body corporate, a partnership or an unincorporated association, the order may require any officer who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order. 40
 - (4) In this section –
 - “court” means –
 - (a) in England and Wales and Northern Ireland, the High Court or a county court;
 - (b) in Scotland, the Court of Session or the sheriff; 45

- “officer” means—
- (a) in relation to a body corporate, a person holding a position of director, manager or secretary of the body or any similar position;
 - (b) in relation to a partnership or an unincorporated association, a member of the partnership or association. 5
- (5) In subsection (4) “director” means, in relation to a body corporate whose affairs are managed by its members, a member of the body.”
- (2) In section 3(1) of that Act (grounds for making prohibition orders), after paragraph (ca) (inserted by section 53(2)) insert— 10
- “(cb) has failed to comply with any requirement imposed on him under section 9(1) or 11(1A)(b) below; or”.
- (3) In section 9 of that Act (information for the OFT), in subsection (4)—
- (a) omit paragraph (a); and
 - (b) in paragraph (b) for “such a notice” substitute “a notice under this section”. 15
- (4) In section 27 of that Act (obstruction and personation of authorised officers)—
- (a) in subsection (1)—
 - (i) omit paragraph (b); and
 - (ii) in paragraph (c) for “other” substitute “any”; and 20
 - (b) after subsection (1) insert—
- “(1A) A failure to give assistance or information shall not constitute an offence under subsection (1)(c) if it is also a failure in relation to which an authorised officer may apply for an order under section 11A above.” 25

PART 4

MISCELLANEOUS AND GENERAL

Contracts concluded away from business premises

- 59 Contracts concluded away from business premises**
- (1) The Secretary of State may make regulations entitling a consumer who is a party to a protected contract to cancel the contract. 30
 - (2) A protected contract is a contract between a consumer and a trader which is for the supply of goods or services to the consumer by a trader and is made—
 - (a) during a solicited visit by a trader to the consumer’s home or place of work, or to the home of another individual, or 35
 - (b) after an offer made by the consumer during such a visit.
 - (3) A visit is solicited if it is made at the express request of the consumer.
 - (4) Regulations made under this section may make any provision which may be made by regulations under section 2(2) of the European Communities Act 1972 (c. 68) (by virtue of section 2(4) of that Act). 40
 - (5) The regulations may in particular make provision—

- (a) as to the circumstances in which the consumer may cancel the contract and the effect of such a cancellation;
 - (b) requiring the trader to inform the consumer of the matters within paragraph (a);
 - (c) for the enforcement of any requirement imposed by virtue of paragraph (b). 5
- (6) For the purposes of this section, “consumer” and “trader” in relation to a contract have the same meaning as they have for the purposes of the relevant Directive in relation to transactions within that Directive.
- (7) “The relevant Directive” means – 10
- (a) Council Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises, as it has effect from time to time, or
 - (b) if that Directive is repealed and re-enacted (with or without modification), that Directive as re-enacted. 15

Subordinate legislation

60 Orders and regulations

- (1) An order or regulations under this Act must be made by statutory instrument.
- (2) The Statutory Instruments Act 1946 (c. 36) is to apply in relation to any power of a regulator to make regulations under section 43 or 46 as if the regulator were a Minister of the Crown. 20
- (3) Any order or regulations under this Act may –
- (a) make provision generally or subject to exceptions or in relation to specified cases or descriptions of case;
 - (b) make different provision for different cases or circumstances or for different purposes; 25
 - (c) provide for a person to exercise a discretion in dealing with any matter;
 - (d) make incidental, supplementary, consequential, transitory and transitional provision and savings.
- (4) A provision of this Act which permits regulations or orders to make provision of a specified kind is without prejudice to the generality of subsection (3). 30
- (5) In the case of an order or regulations made by the Secretary of State, the provision which may be made by virtue of subsection (3)(d) includes provision modifying any provision made by or under any enactment.
- (6) For this purpose – 35
- “enactment” means –
- (a) an Act of Parliament (including, in the case of an order under section 32, this Act),
 - (b) an Act of the Scottish Parliament,
 - (c) a Measure or Act of the National Assembly for Wales, or 40
 - (d) Northern Ireland legislation,
- whenever passed or made;
- “modify” has the same meaning as in Part 1.

-
- (7) Nothing in this section authorises an order or regulations under this Act to make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.
- (8) The Documentary Evidence Act 1868 (c. 37) (proof of order and regulations etc) has effect as if— 5
- (a) the regulators were included in column 1 of the Schedule to that Act, and
 - (b) the entry in column 2 of that Schedule corresponding to each regulator mentioned the regulator and persons authorised to act on the regulator’s behalf. 10
- (9) Nothing in this section applies in relation to a court order under section 26.
- (10) In this section “regulator” means—
- (a) the Gas and Electricity Markets Authority, or
 - (b) the Postal Services Commission.
- 61 Directions 15**
- (1) A requirement or power under this Act to give a notice (or to notify) is a requirement or power to give notice in writing.
- (2) A requirement or power under this Act to give a direction (or to direct) is a requirement or power to give a direction in writing.
- (3) Any power conferred by this Act to give a direction includes power to vary or revoke the direction. 20
- 62 Parliamentary control of orders and regulations**
- (1) Any instrument to which this subsection applies is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) applies to any order or regulations made by the Secretary of State under any provision of this Act except— 25
- (a) an order or regulations to which subsection (3) applies, or
 - (b) an order under section 66 (commencement).
- (3) An order or regulations containing (whether alone or with other provision) provision made under or by virtue of any of the following provisions may not be made unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament— 30
- (a) section 4 (“designated consumers”);
 - (b) section 24(3)(d) (power to specify persons from whom Council may require information); 35
 - (c) section 31 (designation of the Consumer Council for Water for abolition);
 - (d) section 37(1) (conferral of additional functions on the Council);
 - (e) section 38 (removal of Council’s functions in relation to Northern Ireland); 40
 - (f) section 59 (contracts concluded away from business premises), so far as it enables provision to be made modifying an Act of Parliament;
 - (g) section 60(5) (consequential provision etc), so far as it enables such provision to be made;

- (h) section 63(2) (consequential provision etc), so far as it enables such provision to be made.
- (4) In subsection (3), “modify” has the same meaning as in Part 1.

Amendments, transitional provision and repeals

- 63 Minor, consequential and transitional provision** 5
- (1) Schedule 7 contains minor and consequential amendments.
- (2) The Secretary of State may by order make such consequential, supplementary, incidental, transitory or transitional provision or savings (including provision modifying any provision made by or under an enactment) as the Secretary of State considers necessary or expedient in connection with the coming into force of any provision made by or under this Act. 10
- (3) An order under this section may make such adaptations of provisions of this Act brought into force as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.
- (4) In this section – 15
 “enactment” means –
 (a) an Act of Parliament,
 (b) an Act of the Scottish Parliament,
 (c) a Measure or Act of the National Assembly for Wales, or
 (d) Northern Ireland legislation, 20
 whenever passed or made;
 “modify” has the same meaning as in Part 1.
- (5) An order under this section may not make provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament. 25

64 Repeals

Schedule 8 contains repeals (including repeals of spent provisions).

General

65 Extent

- (1) Subject to subsections (2) to (6), this Act extends to England and Wales, Scotland and Northern Ireland. 30
- (2) The following provisions extend to England and Wales and Scotland only –
 (a) section 13 (investigation of complaints relating to disconnection of gas or electricity);
 (b) section 14 (reference of disputes to Gas and Electricity Markets Authority); 35
 (c) section 37 (extension of the Council’s functions: Great Britain).
- (3) Sections 31 to 33 (abolition of Consumer Council for Water) extend to England and Wales only.

- (4) Section 43 (standards for handling complaints) extends to Northern Ireland, but only to the extent that it applies to the Postal Services Commission.
- (5) Section 47 (membership of redress scheme) extends to Northern Ireland, but only to the extent that it applies in relation to regulated providers (within the meaning of Part 2) holding a licence under section 2 of the Postal Services Act 2000 (c. 26). 5
- (6) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates.
- (7) This section is subject to any provision made under section 38 (removal of the Council's functions in relation to Northern Ireland). 10

66 Commencement

- (1) This section and sections 60 to 62, 65 and 67 come into force on the day this Act is passed.
- (2) Subject to that, the provisions of this Act come into force on such day as may be appointed by order of the Secretary of State. 15

67 Short title

- (1) This Act may be cited as the Consumers, Estate Agents and Redress Act 2007.
- (2) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.** 20

SCHEDULES

SCHEDULE 1

Section 1

THE NATIONAL CONSUMER COUNCIL

PART 1

MEMBERS OF THE COUNCIL

5

Membership

- 1 (1) The Council is to consist of the following members –
 - (a) a chairman (“the Council Chairman”) appointed by the Secretary of State,
 - (b) the chairman of each territorial committee, and 10
 - (c) such other members as may be appointed by the Secretary of State.
- (2) In this Schedule –
 - (a) references to executive members of the Council are to the members of the Council appointed from the staff of the Council, and
 - (b) references to non-executive members of the Council are to the members of the Council who are not executive members. 15
- (3) The Council Chairman must be a non-executive member of the Council.
- (4) The persons appointed under sub-paragraph (1)(c) may include one or both of the following –
 - (a) a member of the Consumer Panel established by the Financial Services Authority under the Financial Services and Markets Act 2000 (c. 8) nominated for the appointment by that Panel after consultation with the Council Chairman and the Financial Services Authority; 20
 - (b) a member of the Consumer Panel established by the Office of Communications under the Communications Act 2003 (c. 21) nominated for the appointment by that Panel after consultation with the Council Chairman and the Office of Communications. 25
- (5) Nothing in sub-paragraph (4) prevents the Secretary of State from appointing under sub-paragraph (1)(c) a person who is a member of either Panel but is not the subject of a nomination for the purposes of sub-paragraph (4). 30
- (6) A person may be appointed under sub-paragraph (1)(c) only if –
 - (a) in the case of an appointment of a non-executive member, the Secretary of State has consulted the Council Chairman about the appointment; 35

- (b) in the case of an appointment of an executive member, the person has been nominated by the Council Chairman for appointment to the Council.
- (7) In making appointments to the Council under sub-paragraph (1)(c) the Secretary of State must secure that a majority of the members of the Council are non-executive members. 5
- (8) In making appointments to the Council, the Secretary of State must have regard to the desirability of including among the members of the Council one or more persons with experience of work among, and the special needs of, disabled persons. 10

Terms of appointment and tenure of members

- 2 Subject to this Schedule, a member of the Council –
 - (a) is to hold and vacate office in accordance with the terms and conditions of the member’s appointment, and
 - (b) may resign or be removed from office in accordance with those terms and conditions. 15
- 3 (1) The Council may pay, or make provision for paying –
 - (a) its non-executive members such remuneration as the Secretary of State may determine, and
 - (b) any of its members such travelling and other allowances as the Secretary of State may determine. 20
 - (2) The Council may –
 - (a) pay to or in respect of any person who is or has been a non-executive member such pension, allowances or gratuities as the Secretary of State may determine, or
 - (b) make such payments as the Secretary of State may determine towards provision for the payment of a pension, allowance or gratuity to or in respect of such a person. 25
- 4 (1) A non-executive member must be appointed for a fixed period.
 - (2) The period for which a non-executive member is appointed must not exceed 5 years. 30
 - (3) A person who has held office as a non-executive member may be re-appointed as a non-executive member, once only, for a further period (whether consecutive or not) not exceeding 5 years.
- 5 (1) A person ceases to be a member of the Council if – 35
 - (a) in the case of the Council Chairman, the person ceases to hold that office or becomes a member of the staff of the Council;
 - (b) in the case of a member within paragraph 1(1)(b), the person ceases to be the chairman of a territorial committee;
 - (c) in the case of any other non-executive member, the person becomes a member of the staff of the Council; 40
 - (d) in the case of an executive member, the person ceases to be a member of the staff of the Council;
 - (e) in the case of a non-executive member appointed by virtue of a nomination within paragraph 1(4), the person ceases to be a member of the Panel which made the nomination. 45

- (2) The Secretary of State may remove any person from office as chairman or another member of the Council on the grounds that the person is unable, unfit or unwilling to discharge the functions of the office.

6 Where –

- (a) a non-executive member ceases to be a member otherwise than on the expiry of the member’s term of office, and 5
- (b) it appears to the Secretary of State that there are circumstances which make it right for that person to receive compensation, the Council may make a payment to that person of such amount as the Secretary of State may determine. 10

PART 2

STAFF OF THE COUNCIL

The Chief Executive

- 7 (1) The Council is to employ a person as its Chief Executive.
- (2) The first appointment of a Chief Executive – 15
- (a) is to be made by the Secretary of State, and
- (b) is to be on such terms and conditions as are determined by the Secretary of State.
- (3) Subsequent appointments of a Chief Executive –
- (a) are to be made by the Council with the approval of the Secretary of State, and 20
- (b) are to be on such terms and conditions as are determined by the Council with the approval of the Secretary of State.

Other staff

- 8 (1) The Council may appoint such other staff, on such terms and conditions, as it considers appropriate. 25
- (2) The approval of the Secretary of State as to numbers and as to terms and conditions of staff is required for the exercise by the Council of its powers under sub-paragraph (1).

The Superannuation Act 1972 30

- 9 (1) The persons to whom section 1 of the Superannuation Act 1972 (c. 11) (persons to or in respect of whom benefits may be provided by schemes under that section) applies are to include the Chief Executive and the other employees of the Council.
- (2) Accordingly, in Schedule 1 to that Act (employment to which superannuation schemes may extend), in the list of other bodies, at the appropriate place insert – 35
- “The National Consumer Council established under the Consumers, Estate Agents and Redress Act 2007.”
- (3) The Council must pay to the Minister for the Civil Service, at such times as that Minister may direct, such sums as that Minister may determine in 40

respect of the increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under that Act.

Arrangements for assistance

- 10 (1) The Council may make arrangements with such persons as it considers appropriate for assistance to be provided to it. 5
- (2) Arrangements may include the paying of fees to such persons.

PART 3

TERRITORIAL, REGIONAL AND OTHER COMMITTEES

Constitution of territorial committees

- 11 (1) A territorial committee is to consist of a chairman, and such other members, as the Secretary of State may appoint. 10
- (2) In this Schedule –
- (a) references to executive members of a territorial committee are to the members of the committee appointed from the staff of the Council, and 15
 - (b) references to non-executive members of a territorial committee are to the members who are not executive members of the committee.
- (3) The chairman of a territorial committee must be a non-executive member of the committee.
- (4) In appointing persons to a territorial committee the Secretary of State must secure that a majority of the members of the committee are non-executive members. 20
- (5) Before appointing a person as a non-executive member of a territorial committee the Secretary of State must consult –
- (a) the Council Chairman, 25
 - (b) except where the appointment is as chairman, the chairman of the territorial committee,
 - (c) in the case of the Scottish Consumer Council, the Scottish Ministers, and
 - (d) in the case of the Welsh Consumer Council, the Welsh Ministers, 30
- about the appointment.
- (6) A person may be appointed as an executive member of a territorial committee only if the person has been nominated for the appointment by the Council Chairman, after consultation with the chairman of the territorial committee. 35
- (7) In making appointments to a territorial committee, the Secretary of State must have regard to the desirability of including among the members of the committee one or more persons with experience of work among, and the special needs of, disabled persons.

Regional committees

- 12 (1) The Council may, with the approval of the Secretary of State, establish one or more committees for areas within the United Kingdom.
- (2) In this Schedule references to a “regional committee” are to a committee established under sub-paragraph (1). 5
- (3) The purposes of a regional committee are –
- (a) the provision of advice and information to the Council about such consumer matters affecting the area for which the committee is established as may be specified by the Council, and
- (b) such other purposes as the Council may determine. 10
- (4) The Council may not abolish a regional committee, or alter the area for which a regional committee is established, except with the approval of the Secretary of State.
- (5) If the Council proposes to do anything mentioned in sub-paragraph (1) or (4), it must, after consulting the Secretary of State, give notice – 15
- (a) describing its proposals, and
- (b) specifying the period (not being less than 2 months) starting with the date of the notice within which representations may be made with respect to the proposals,
- and consider any representations that are duly made and not withdrawn. 20
- (6) A notice under sub-paragraph (5) must be given by publishing it in such manner as the Council considers appropriate for bringing the proposals to the attention of those likely to be affected by them.
- (7) The Secretary of State may not give his approval under sub-paragraph (4) until after the period specified in the notice under sub-paragraph (5). 25

Constitution of regional committees

- 13 (1) A regional committee is to consist of a chairman, and such other members, as the Council may appoint.
- (2) In this Schedule –
- (a) references to executive members of a regional committee are to the members of the committee appointed from the staff of the Council, and 30
- (b) references to non-executive members of a regional committee are to the members who are not executive members of the committee.
- (3) The chairman of a regional committee must be a non-executive member of the committee. 35
- (4) In appointing persons to a regional committee the Council must secure that a majority of the members of the committee are non-executive members.
- (5) In making appointments to a regional committee, the Council must have regard to the desirability of including among the members of the committee one or more persons with experience of work among, and the special needs of, disabled persons. 40

Other committees

- 14 The Council may establish such other committees as it considers appropriate.

General provision about committees

- 15 (1) In this paragraph and paragraphs 16 and 17 “committee” means – 5
- (a) a territorial committee,
 - (b) a regional committee, or
 - (c) a committee established under paragraph 14.
- (2) A committee may establish sub-committees.
- (3) The members of a committee or sub-committee may include persons who are not members of the Council. 10
- (4) The members of a sub-committee established by a committee may include persons who are not members of the committee.

Terms of appointment etc

- 16 Subject to this Schedule, a member of a committee – 15
- (a) is to hold and vacate office in accordance with the terms and conditions of the member’s appointment, and
 - (b) may resign or be removed from office in accordance with those terms and conditions.
- 17 (1) The Council may – 20
- (a) pay to any non-executive member of a committee or sub-committee, such remuneration as the Secretary of State may determine;
 - (b) pay to any member of a committee or sub-committee, such travelling and other allowances as the Secretary of State may determine.
- (2) For the purposes of sub-paragraph (1), the non-executive members of a committee established under paragraph 14 or a sub-committee are such of its members as are not also members of the staff of the Council. 25
- (3) The Council may –
- (a) pay to or in respect of any person who is or has been a non-executive member of a territorial committee such pension, allowances or gratuities as the Secretary of State may determine, or 30
 - (b) make such payments as the Secretary of State may determine towards provision for the payment of a pension, allowance or gratuity to or in respect of such a person.
- 18 (1) A non-executive member of a territorial or regional committee must be appointed for a fixed period. 35
- (2) The period for which a non-executive member of a territorial or regional committee is appointed must not exceed 5 years.
- (3) A person who has held office as a non-executive member of a territorial or regional committee may be re-appointed as a non-executive member of that committee, once only, for a further period (whether consecutive or not) not exceeding 5 years. 40

- 19 (1) A person ceases to be a member of a territorial or regional committee where—
- (a) in the case of the chairman of the committee, the person ceases to hold that office or becomes a member of the staff of the Council;
 - (b) in the case of any other non-executive member, the person becomes a member of the staff of the Council; 5
 - (c) in the case of an executive member, the person ceases to be a member of the staff of the Council.
- (2) The Secretary of State may remove any person from office as chairman or another member of a territorial committee on the grounds that the person is unable, unfit or unwilling to discharge the functions of the office. 10
- 20 Where—
- (a) a non-executive member of a territorial committee ceases to be a member of the committee otherwise than on the expiry of the member's term of office, and 15
 - (b) it appears to the Secretary of State that there are circumstances which make it right for that person to receive compensation,
- the Council may make a payment to that person of such amount as the Secretary of State may determine.

PART 4 20

PROCEDURE ETC

Procedure

- 21 The Council may regulate—
- (a) its own procedure (including quorum), and
 - (b) the procedure (including quorum) of its committees and sub-committees. 25
- 22 The validity of any act of the Council is not affected by—
- (a) any vacancy among the members of the Council or of any of its committees or sub-committees, or
 - (b) any defect in the appointment of any member of the Council or of any of its committees or sub-committees, or any disqualification of a person as chairman or another member of the Council. 30

Delegation

- 23 (1) The Council may authorise—
- (a) the Council Chairman or any other member of the Council, 35
 - (b) any of its committees or sub-committees, or
 - (c) the Chief Executive or any other member of staff,
- to exercise, on behalf of the Council, such of its functions, in such circumstances, as the Council may determine.
- (2) Any committee established by the Council may delegate functions (including functions delegated to the committee) to— 40
- (a) the Council Chairman or any other member of the Council,
 - (b) any member of the committee,
 - (c) a sub-committee of the committee, or

- (d) the Chief Executive or any other member of staff.

Application of seal and proof of instruments

- 24 The application of the seal of the Council is to be authenticated by the signature of—
- (a) any member of the Council, 5
 - (b) the Chief Executive of the Council, or
 - (c) any person who has been authorised (whether generally or specifically) by the Council for the purpose.
- 25 Any contract or instrument which, if entered into or executed by an individual, would not need to be under seal may be entered into or executed on behalf of the Council by any person who has been authorised (whether generally or specifically) by the Council for the purpose. 10
- 26 A document purporting to be duly executed under the seal of the Council, or signed on its behalf—
- (a) is to be received in evidence, and 15
 - (b) is to be taken to be executed or signed in that way, unless the contrary is proved.

Offices

- 27 (1) The Council must maintain an office in each of England, Northern Ireland, Scotland and Wales. 20
- (2) The Council may, with the approval of the Secretary of State, establish additional offices in the United Kingdom.

PART 5

FUNDING AND ACCOUNTS

Funding 25

- 28 The Secretary of State may pay the Council out of money provided by Parliament such sums as the Secretary of State may determine towards the Council's expenses.
- 29 (1) Section 8 of the Utilities Act 2000 (c. 27) (payments by licence holders relating to new arrangements) is amended as follows. 30
- (2) In subsection (2) after “subsection (3)” insert “or (3A)”.
- (3) In subsection (3)—
- (a) for “Those expenses” substitute “The expenses within this subsection”,
 - (b) in paragraph (a) for “Council” substitute “Gas and Electricity Consumer Council”, and 35
 - (c) omit paragraph (b) and the “and” immediately preceding it.
- (4) After that subsection insert—
- “(3A) The expenses within this subsection are—

-
- (a) the appropriate proportion of the expenses of the Council (including expenses which relate to its establishment but not expenses within paragraph (c));
- (b) the appropriate proportion of the expenses of the Secretary of State which relate to the establishment of the Council; 5
- (c) any expenses of the Council, the Secretary of State or the Gas and Electricity Consumer Council which relate to a transfer scheme made in respect of the Gas and Electricity Consumer Council under section 35(2)(a) or (7) of the Consumers, Estate Agents and Redress Act 2007; 10
- (d) the expenses of the Secretary of State which relate to the abolition of the Gas and Electricity Consumer Council;
- (e) the expenses of the Office of Fair Trading which relate to the expansion of an OFT scheme to enable it to cater for gas and electricity consumers; 15
- (f) the appropriate proportion of the expenses of the Office of Fair Trading on, or in connection with, the support of any OFT scheme.
- (3B) The “appropriate proportion” of any expenses means such proportion of the expenses as the Secretary of State considers is reasonable having regard to— 20
- (a) in the case of expenses within subsection (3A)(a) or (b), the functions exercisable by the Council in relation to gas and electricity consumers, and
- (b) in the case of expenses within subsection (3A)(f), the functions under the OFT scheme which are exercisable in relation to gas and electricity consumers.” 25
- (5) In subsection (4) for paragraphs (a) and (b) substitute—
- “(a) the establishment of the Council, or
- (b) the abolition of the Gas and Electricity Consumer Council.” 30
- (6) For subsection (5) substitute—
- “(5) The Authority may, in accordance with this section, make such incidental or consequential modifications of—
- (a) the other conditions of a gas licence or an electricity licence, or
- (b) any code or agreement relevant to the conditions of such a licence,
- as it considers necessary or expedient in consequence of, or of preparations for, an event mentioned in subsection (4)(a) or (b).” 35
- (7) In subsection (6) after “licence” insert “or any code or agreement”. 40
- (8) Omit subsection (7).
- (9) For subsection (8) substitute—
- “(8) The powers of the Authority under subsection (4) (as amended by paragraph 29 of Schedule 1 to the Consumers, Estate Agents and Redress Act 2007), and subsection (5) as it applies in relation to that subsection, may not be exercised after the end of the period of 2 years beginning with the commencement of that paragraph.” 45

- (10) In subsection (9) after “(3)” insert “or (3A)”.
- (11) After that subsection insert –
- “(10) For the purposes of this section –
- “consumer” has the same meaning as in Part 1 of the
 Consumers, Estate Agents and Redress Act 2007 (see section 5
 3 of that Act);
- “gas and electricity consumers” means consumers in relation to
 gas conveyed through pipes or electricity conveyed by
 distribution systems or transmission systems;
- “OFT scheme” means any public consumer advice scheme 10
 supported by the Office of Fair Trading.”
- 30 In section 39 of the Postal Services Act 2000 (c. 26) (recovery of costs of the
Council etc) –
- (a) for “the Council”, in the first place, substitute “the Consumer Council
 for Postal Services”, and 15
- (b) omit “or of the Secretary of State in relation to the establishment of
 the Council”.
- 31 (1) After section 39 of that Act insert –
- “39A Licences and the new arrangements**
- (1) The conditions of a licence may require the payment by the licence 20
 holder of sums relating to any of the expenses mentioned in
 subsection (2).
- (2) The expenses within this subsection are –
- (a) the appropriate proportion of the expenses of the Council 25
 (including expenses which relate to its establishment but not
 expenses within paragraph (c));
- (b) the appropriate proportion of the expenses of the Secretary of
 State which relate to the establishment of the Council;
- (c) any expenses of the Council, the Secretary of State or the 30
 Consumer Council for Postal Services which relate to a
 transfer scheme made in respect of the Consumer Council for
 Postal Services under section 35(2)(a) or (7) of the Consumers,
 Estate Agents and Redress Act 2007;
- (d) the expenses of the Secretary of State which relate to the
 abolition of the Consumer Council for Postal Services; 35
- (e) the expenses of the Office of Fair Trading which relate to the
 expansion of an OFT scheme to enable it to cater for postal
 services consumers;
- (f) the appropriate proportion of the expenses of the Office of
 Fair Trading on, or in connection with, the support of any 40
 OFT scheme.
- (3) The “appropriate proportion” of any expenses means such
 proportion of the expenses as the Secretary of State considers is
 reasonable having regard to –
- (a) in the case of expenses within subsection (2)(a) or (b), the 45
 functions exercisable by the Council in relation to postal
 services consumers, and

- (b) in the case of expenses within subsection (2)(f), the functions under the OFT scheme which are exercisable in relation to those consumers.
- (4) The Commission may, in accordance with this section, modify any condition included in a licence by virtue of section 39 where the Commission considers it necessary or expedient to do so in consequence of, or of preparations for – 5
- (a) the establishment of the Council, or
- (b) the abolition of the Consumer Council for Postal Services.
- (5) The Commission may, in accordance with this section, make such incidental or consequential modifications of the other conditions of a licence, as it considers necessary or expedient in consequence of, or of preparations for, an event mentioned in subsection (4)(a) or (b). 10
- (6) Before modifying the conditions of a licence under subsection (4) or (5) the Commission must consult the licence holder. 15
- (7) The powers of the Commission under subsection (4) or (5) may not be exercised after the end of the period of 2 years beginning with the commencement of those subsections.
- (8) The Secretary of State may give directions to the Commission for the purpose of securing that sums relating to any of the expenses mentioned in subsection (2) are included in the sums payable by virtue of conditions in licences and the Commission must comply with any such direction. 20
- (9) In this section – 25
- “consumer” has the same meaning as in Part 1 of the Consumers, Estate Agents and Redress Act 2007 (see section 3 of that Act);
- “postal services consumers” means consumers in relation to relevant postal services (within the meaning of section 41);
- “OFT scheme” means any public consumer advice scheme supported by the Office of Fair Trading.” 30

Accounts

- 32 (1) The Council must –
- (a) keep proper accounts and proper records in relation to the accounts, and 35
- (b) prepare in respect of each financial year a statement of accounts.
- (2) Each statement of accounts must comply with any directions given by the Secretary of State, with the approval of the Treasury, as to –
- (a) the information to be contained in it and the manner in which it is to be presented; 40
- (b) the methods and principles according to which the statement is to be prepared;
- (c) the additional information (if any) which is to be provided for the information of Parliament.
- (3) The Council must give a copy of each statement of accounts – 45
- (a) to the Secretary of State, and

(b) to the Comptroller and Auditor General,
before the end of the month of August next following the financial year to
which the statement relates.

- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on each statement of accounts which is received under sub-paragraph (3), and 5
 - (b) lay a copy of each statement and of the report before Parliament.

PART 6

STATUS ETC

Status 10

- 33 (1) The Council is not to be regarded –
- (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) Accordingly, the Council’s property is not to be regarded as property of or held on behalf of the Crown. 15

Disqualification

- 34 (1) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified) at the appropriate place insert –
- “The National Consumer Council.” 20
- (2) In Part 3 of that Schedule (other disqualifying offices) at the appropriate place insert –
- “A member of a committee of the National Consumer Council established under section 1 of, or paragraph 12 of Schedule 1 to, the Consumers, Estate Agents and Redress Act 2007 (territorial and regional committees).” 25
- (3) In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (bodies of which all members are disqualified) at the appropriate place insert –
- “The National Consumer Council.” 30
- (4) In Part 3 of that Schedule (other disqualifying offices) at the appropriate place insert –
- “A member of a committee of the National Consumer Council established under section 1 of, or paragraph 12 of Schedule 1 to, the Consumers, Estate Agents and Redress Act 2007 (territorial and regional committees).” 35

Freedom of information

- 35 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (other public bodies and offices which are public authorities) at the appropriate place insert –
- “The National Consumer Council.” 40

Public records

- 36 (1) In Schedule 1 to the Public Records Act 1958 (c. 51) (definition of public records) at the appropriate place in Part 2 of the Table at the end of paragraph 3 insert—
- “The National Consumer Council.” 5
- (2) The records of the Council are to include—
- (a) on and after commencement of section 30(1), the records of the Gas and Electricity Consumer Council, and
- (b) on and after commencement of section 30(2), the records of the Consumer Council for Postal Services, 10
- and those records are to be dealt with accordingly under the Public Records Act 1958.

Parliamentary Commissioner Act 1967

- 37 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments and authorities subject to investigation) at the appropriate place insert— 15
- “The National Consumer Council.”

Exemption from liability in damages

- 38 (1) This paragraph applies to— 20
- (a) the Council;
- (b) a member of the Council;
- (c) a member of any territorial committee, regional committee or other committee or sub-committee of the Council;
- (d) the Chief Executive or any other member of the Council’s staff.
- (2) A person to whom this paragraph applies is not liable in damages for anything done or omitted in the exercise or purported exercise of the functions of the Council conferred by or by virtue of this or any other enactment. 25
- (3) But sub-paragraph (2) does not apply— 30
- (a) if it is shown that the act or omission was in bad faith, or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42).
- (4) In this paragraph “enactment” means— 35
- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) a Measure or Act of the National Assembly for Wales, or
- (d) Northern Ireland legislation,
- whenever passed or made.

SCHEDULE 2

Section 25

ENFORCEMENT OF INFORMATION REQUIREMENTS

Gas Act 1986 (c. 44)

- 1 In section 28 of the Gas Act 1986 (orders for securing compliance with certain provisions), in subsection (8), in the definition of “relevant requirement” for “or section 27(4)(b) of the Utilities Act 2000 (order to comply with a direction under section 24 of that Act)” substitute “or section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (directions to comply with requirements under section 24 of that Act)”. 5

Electricity Act 1989 (c. 29) 10

- 2 In section 25 of the Electricity Act 1989 (orders for securing compliance), in subsection (8), in the definition of “relevant requirement” for “or section 27(4)(b) of the Utilities Act 2000 (order to comply with a direction under section 24 of that Act)” substitute “or section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (directions to comply with requirements under section 24 of that Act)”. 15

Postal Services Act 2000 (c. 26)

- 3 (1) The Postal Services Act 2000 is amended as follows.
- (2) In section 22 (final orders) –
- (a) in subsection (1) – 20
- (i) in paragraph (a) for “any condition of his licence” substitute “any relevant requirement”,
- (ii) in paragraph (b) for “condition” substitute “requirement”, and
- (iii) for “the condition” substitute “the requirement”, and 25
- (b) for subsection (5) substitute –
- “(5) In this Act –
- “final order” means an order under this section;
- “relevant requirement”, in relation to a licence holder, means – 30
- (a) a condition of the licence holder’s licence, or
- (b) an obligation imposed on the licence holder by virtue of section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (directions to comply with requirements to provide information under section 24 of that Act).” 35
- (3) In section 23 (provisional orders) –
- (a) in subsection (1) –
- (i) in paragraph (a), for “any condition of his licence or is likely to contravene any such condition” substitute “any relevant requirement or is likely to contravene any such requirement”, and 40

- (ii) for “the licence condition” substitute “the relevant requirement”,
- (b) for subsection (2)(a) substitute –
- “(a) that the licence holder is contravening any relevant requirement or is likely to contravene any such requirement, and”, and 5
- (c) in subsection (3) for “licence condition” substitute “relevant requirement”.
- (4) In section 24 (confirmation of provisional orders), in subsection (1) –
- (a) for paragraph (a) substitute – 10
- “(a) it is satisfied that the licence holder is contravening any relevant requirement or is likely to contravene any such requirement, and”, and
- (b) in paragraph (b) for “condition” substitute “requirement”.
- (5) In section 25 (exceptions from duty to make or confirm enforcement orders), in paragraph (b) for “condition” substitute “relevant requirement”. 15
- (6) In section 26 (enforcement orders: main procedural requirements), in subsection (2) –
- (a) in paragraph (c) for “condition” substitute “relevant requirement”, and 20
- (b) in paragraph (d) for “condition” substitute “relevant requirement”.
- (7) In section 30 (financial penalties) –
- (a) in subsection (1) –
- (i) in paragraph (a) for “condition of his licence” substitute “relevant requirement”, and 25
- (ii) in paragraph (b) for “condition” substitute “requirement”, and
- (b) in subsection (3) for “condition” substitute “relevant requirement”.
- (8) In section 32 (imposition of financial penalties: main procedural requirements) – 30
- (a) in subsection (2)(c), for “condition” substitute “relevant requirement”, and
- (b) in subsection (4)(c), for “condition” substitute “relevant requirement”.
- (9) In section 34 (time-limit on the imposition of penalties) – 35
- (a) in subsection (1) for “licence condition” substitute “relevant requirement”, and
- (b) in subsection (2) for “licence condition” substitute “relevant requirement”.
- (10) In section 126 (index of defined expressions) at the appropriate place in the table insert – 40

| | |
|-----------------------|----------------|
| “Relevant requirement | Section 22(5)” |
|-----------------------|----------------|

SCHEDULE 3

Section 30

ABOLITION OF CONSUMER BODIES: TRANSITIONAL PROVISION

Complaints and investigations functions of Gas and Electricity Consumer Council

- 1 (1) This paragraph applies to –
 - (a) any complaint to which section 32(1) of the Gas Act 1986 (c. 44) applies which is referred to the Gas and Electricity Consumer Council before the appointed day; 5
 - (b) any matter under investigation by the Gas and Electricity Consumer Council under section 33 of that Act immediately before the appointed day. 10
 - (2) The functions of the Gas and Electricity Consumer Council under section 32 or 33 of the Gas Act 1986 are exercisable by the Council in relation to the complaint or matter, but as if in section 32(8) of that Act the reference to the Utilities Act 2000 (c. 27) or the Gas Act 1986 included a reference to this Act and to Part 9 of the Enterprise Act 2002 (c. 40). 15
 - (3) Sub-paragraph (2) applies –
 - (a) notwithstanding the repeal of sections 32 and 33 of the Gas Act 1986 by this Act, and
 - (b) whether or not the complaint is within section 11, 12 or 13, or the matter is within section 11. 20
 - (4) “The appointed day” is the day on which section 30(1) comes into force.
- 2 (1) This paragraph applies to –
 - (a) any complaint to which section 46(1) of the Electricity Act 1989 (c. 29) applies which is referred to the Gas and Electricity Consumer Council before the appointed day; 25
 - (b) any matter under investigation by the Gas and Electricity Consumer Council under section 46A of that Act immediately before the appointed day.
 - (2) The functions of the Gas and Electricity Consumer Council under section 46 or 46A of the Electricity Act 1989 are exercisable by the Council in relation to the complaint or matter, but as if in section 46(8) of that Act the reference to the Utilities Act 2000 or the Electricity Act 1989 included a reference to this Act and Part 9 of the Enterprise Act 2002. 30
 - (3) Sub-paragraph (2) applies –
 - (a) notwithstanding the repeal of sections 46 and 46A of the Electricity Act 1989 by this Act, and
 - (b) whether or not the complaint is within section 11, 12 or 13, or the matter is within section 11. 35
 - (4) “The appointed day” is the day on which section 30(1) comes into force.

Annual reports of the Gas and Electricity Consumer Council 40

- 3 (1) After the abolition of the Gas and Electricity Consumer Council under section 30(1), any duty of the Gas and Electricity Consumer Council to make an annual report, in relation to any financial year for which such a report has not been made, is to be discharged by the Council.

- (2) The period between the abolition of the Gas and Electricity Consumer Council and the end of the preceding financial year (if less than 12 months) is to be treated as its financial year for which the last annual report is required.
- (3) If that period is 9 months or longer the Council must make the last annual report as soon as practicable after the end of that period. 5
- (4) If that period is shorter than 9 months the last annual report must be made no later than the first report of the Council under section 7.
- (5) In this paragraph –
 “annual report” means a report required by paragraph 6 of Schedule 2 to the Utilities Act 2000 (c. 27); 10
 “financial year” means a year ending with 31 March.

Complaints and investigations functions of Consumer Council for Postal Services

- 4 (1) This paragraph applies to any matter which, immediately before the appointed day, is under investigation by the Consumer Council for Postal Services under – 15
 (a) section 56(1) of the Postal Services Act 2000 (c. 26) (complaints referred to the Consumer Council for Postal Services), or
 (b) section 57 of that Act (power of that Council to investigate other matters). 20
- (2) The functions of the Consumer Council for Postal Services under section 56 or 57 of the Postal Services Act 2000 are exercisable by the Council in relation to the matter, and any agreement between the Consumer Council for Postal Services and the Commission under section 56(3) of that Act has effect as if agreed between the Council and the Commission. 25
- (3) Sub-paragraph (2) applies –
 (a) notwithstanding the repeal of sections 56 and 57 of the Postal Services Act 2000 by this Act;
 (b) whether or not the matter is within section 11 or 16.
- (4) “The appointed day” is the day on which section 30(2) comes into force. 30

Annual reports of the Consumer Council for Postal Services

- 5 (1) After the abolition of the Consumer Council for Postal Services under section 30(2), any duty of the Consumer Council for Postal Services to make an annual report, in relation to any financial year for which such a report has not been made, is to be discharged by the Council. 35
- (2) The period between the abolition of the Consumer Council for Postal Services and the end of the preceding financial year (if less than 12 months) is to be treated as the financial year for which the last annual report is required.
- (3) If that period is 9 months or longer the Council must make the last annual report as soon as practicable after the end of that period. 40
- (4) If that period is shorter than 9 months the last annual report must be made no later than the first report of the Council under section 7.

- (5) In this paragraph—
“annual report” means a report required by section 55(1) of the Postal Services Act 2000 (c. 26);
“financial year” means a year ending with 31 March.

SCHEDULE 4

Section 35

5

TRANSFER OF PROPERTY ETC TO COUNCIL

Preliminary

- 1 In this Schedule—
“transfer scheme” has the meaning given by section 35;
“transferor” means the body to which section 35 applies and to which the transfer scheme relates. 10

Contents of transfer schemes

- 2 (1) The property, rights and liabilities that may be transferred by a transfer scheme include property, rights and liabilities that would not otherwise be capable of being transferred or assigned. 15
(2) The transfers authorised by sub-paragraph (1) include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—
(a) no such requirement to obtain a person’s consent or concurrence,
(b) no such liability in respect of a contravention of any other requirement, and 20
(c) no such interference with any interest or right,
as there would otherwise be by reason of a provision within sub-paragraph (3).
(3) A provision is within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates. 25
- 3 A transfer scheme may define the property, rights and liabilities to be transferred by specifying them or describing them. 30
- 4 A transfer scheme may contain supplementary, incidental, transitional and consequential provision.

Effect of transfers

- 5 (1) On the day appointed by a transfer scheme the property, rights and liabilities which are the subject of the scheme are transferred to the Council in accordance with the provisions of the scheme. 35
(2) Sub-paragraph (1) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by virtue of that subsection. 40

- 6 (1) So far as is appropriate in consequence of the transfer, anything done by the transferor for the purposes of or in connection with anything transferred which is in effect immediately before it is transferred is to be treated as if done by the Council.
- (2) A transfer does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect. 5
- (3) There may be continued by or in relation to the Council anything (including legal proceedings) relating to anything transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred. 10
- (4) So far as is appropriate in consequence of the transfer, the Council is substituted for the transferor in any agreement, instrument or other document relating to anything transferred.

Staff

- 7 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to a transfer which relates to rights or liabilities under a contract of employment whether or not the transfer would, apart from this sub-paragraph, be a relevant transfer for the purposes of those regulations. 15
- 8 Where an employee of the transferor becomes an employee of the Council by virtue of a transfer scheme – 20
- (a) a period of employment with the transferor is to be treated as a period of employment with the Council, and
- (b) the transfer to the Council is not to be treated as a break in service.

Chargeable gains: asset to be treated as disposed of without a gain or loss

- 9 For the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12), a transfer of an asset by a transfer scheme is to be treated as a disposal of that asset to the Council for a consideration of such amount as would secure that, on the disposal, neither a gain nor a loss accrues to the transferor. 25

Continuity in relation to transfer of intangible assets

- 10 (1) For the purposes of Schedule 29 to the Finance Act 2002 (c. 23) – 30
- (a) a transfer by a transfer scheme of a chargeable intangible asset of the transferor is to be treated as a tax-neutral transfer, and
- (b) an intangible fixed asset which is an existing asset of the transferor at the time of the transfer is to be treated, on and after the transfer, as an existing asset in the hands of the Council. 35
- (2) Expressions used in this paragraph and in that Schedule have the same meanings in this paragraph as in that Schedule.

Corporation Tax Acts

- 11 So far as it relates to corporation tax, this Schedule is to be construed as one with the Corporation Tax Acts. 40

Modification of transfer schemes after appointed day

- 12 (1) If, after the day appointed by a transfer scheme, the transferor and the Council so agree in writing, the scheme shall for all purposes be deemed to have come into force on that day with such modifications as may be agreed.
- (2) An agreement under this paragraph may, in connection with giving effect to modifications to the scheme, include supplementary, incidental, transitional and consequential provision. 5

SCHEDULE 5

Section 45

INFORMATION RELATING TO COMPLIANCE WITH COMPLAINTS HANDLING STANDARDS

- 1 (1) The Gas Act 1986 (c. 44) is amended as follows. 10
- (2) In section 28 (orders for securing compliance with certain provisions), in the definition of “relevant requirement” in subsection (8), after “33D” insert “, 33DB”.
- (3) After section 33DA insert—
- “33DB Information relating to complaints handling standards 15**
- (1) This section applies where standards are prescribed by the Authority by regulations under section 43 of the Consumers, Estate Agents and Redress Act 2007 (standards for complaints handling) in relation to licence holders (or some of them).
- (2) The Authority must from time to time collect information with respect to the levels of compliance with the standards which those licence holders have achieved. 20
- (3) At such times as the Authority may direct, each of those licence holders must give the Authority such information as the Authority may direct with respect to the levels of compliance with the standards which the licence holder has achieved.” 25
- 2 (1) The Electricity Act 1989 (c. 29) is amended as follows.
- (2) In section 25 (orders for securing compliance), in the definition of “relevant requirement” in subsection (8), after “42A” insert “, 42AB”.
- (3) After section 42AA insert— 30
- “42AB Information relating to complaints handling standards**
- (1) This section applies where standards are prescribed by the Authority by regulations under section 43 of the Consumers, Estate Agents and Redress Act 2007 (standards for complaints handling) in relation to licence holders (or some of them). 35
- (2) The Authority must from time to time collect information with respect to the levels of compliance with the standards which those licence holders have achieved.
- (3) At such times as the Authority may direct, each of those licence holders must give the Authority such information as the Authority 40

may direct with respect to the levels of compliance with the standards which the licence holder has achieved.”

- 3 (1) The Postal Services Act 2000 (c. 26) is amended as follows.
- (2) In section 22 (final orders), in the definition of “relevant requirement” in subsection (5) (as substituted by paragraph 3(2) of Schedule 2 and amended by section 52), after “or” at the end of paragraph (a) insert – 5
“(aa) an obligation imposed under section 61A, or”.
- (3) After section 61 insert –

“Information

61A Information relating to complaints handling standards 10

- (1) This section applies where standards are prescribed by the Commission by regulations under section 43 of the Consumers, Estate Agents and Redress Act 2007 (standards for complaints handling) in relation to licence holders under Part 2 (or some of them). 15
- (2) The Commission must from time to time collect information with respect to the levels of compliance with the standards which those licence holders have achieved.
- (3) At such times as the Commission may direct, each of those licence holders must give the Commission such information as the Commission may direct with respect to the levels of compliance with the standards which the licence holder has achieved.” 20

SCHEDULE 6

Section 53

ESTATE AGENTS’ REDRESS SCHEMES

- 1 The Estate Agents Act 1979 (c. 38) is amended as follows. 25
- 2 After section 23 insert –

“Redress schemes

23A Redress schemes

- (1) The Secretary of State may by order require persons who engage in estate agency work in relation to residential property (“relevant estate agency work”) to be members of an approved redress scheme for dealing with complaints in connection with that work. 30
- (2) An order may provide for the duty to apply – 35
- (a) only to specified descriptions of persons who engage in estate agency work; and
- (b) in relation to any relevant estate agency work carried out by a person to whom the duty applies or only in relation to specified descriptions of work (which may be framed by reference to descriptions of residential property).

- (3) An order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).
- (4) In subsections (1) and (2)(a), the reference to persons who engage in estate agency work does not include a reference to persons who engage in that work in the course of their employment. 5
- (5) The power to make an order shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Before making an order the Secretary of State must be satisfied that all persons who are to be subject to the duty will be eligible to join a suitable approved redress scheme before the duty applies to them. 10
For this purpose the Secretary of State may disregard persons who cannot lawfully engage in the relevant estate agency work to which the duty applies. 15
- (7) Nothing in this section prevents an approved redress scheme from providing –
- (a) for membership to be open to persons who are not subject to the duty;
 - (b) for the investigation and determination of any complaints in relation to which the duty does not apply, where the members concerned have voluntarily accepted the jurisdiction of the scheme over those complaints; 20
 - (c) for the exclusion from investigation and determination under the scheme of any complaint in such cases or circumstances as may be specified in or determined under the scheme. 25
- (8) For the purposes of this section –
- (a) a “redress scheme” is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person (“the ombudsman”); 30
 - (b) a redress scheme is “approved” if –
 - (i) it is for the time being approved by the OFT under Schedule 3; or
 - (ii) it is administered by or on behalf of the Secretary of State and designated by him as an approved redress scheme for the purposes of this section; 35
 - (c) a “complaint” is a complaint made by a person by virtue of his being or having been a seller or buyer of residential property; 40
 - (d) “seller”, in relation to residential property, means a person who claims that he is or may become interested in disposing of an interest in land in respect of that property (and includes a person who disposes of such an interest);
 - (e) “buyer”, in relation to residential property, means a person who claims that he is or may become interested in acquiring an interest in land in respect of that property (and includes a person who acquires such an interest). 45

- (9) The Secretary of State may not designate a scheme as an approved redress scheme for the purposes of this section unless the Secretary of State is satisfied that the scheme is one which could be approved by the OFT in accordance with paragraphs 2 to 5 of Schedule 3.
- (10) Schedule 3 (which makes further provision in connection with the approval of redress schemes etc.) shall have effect. 5
- (11) In this section –
 “order” means an order under subsection (1);
 “the duty” means the requirement under an order to be a member of an approved redress scheme. 10

23B Enforcement

- (1) If a duly authorised officer of an enforcement authority other than the OFT believes that a person has engaged (or is engaging) in estate agency work in relation to residential property in breach of the duty imposed by an order under section 23A(1) he may give a penalty charge notice to that person. 15
- (2) A penalty charge notice may not be given after the end of the period of six months beginning with the day (or in the case of a continuing breach the last day) on which the breach of duty was committed.
- (3) Schedule 4 (which makes further provision in connection with penalty charge notices) shall have effect. 20
- (4) An enforcement authority other than the OFT must notify the OFT if it believes that a person has engaged (or is engaging) in estate agency work in relation to residential property in breach of the duty imposed by an order under section 23A(1). 25

23C Meaning of residential property

- (1) For the purposes of sections 23A and 23B “residential property” –
 (a) has the meaning given by subsection (2); but
 (b) does not include land of a description specified in an order made by the Secretary of State for the purposes of this section. 30
- (2) “Residential property” means any land that consists of or includes a building or part of a building –
 (a) the whole or part of which is used as a dwelling or as more than one dwelling; or
 (b) that is (or is to be) offered for sale on the basis that the whole or part of it is suitable for such use or is intended to be so suitable by the time the seller disposes of his interest in it. 35
- (3) In subsection (2), the reference to a building or part of a building (so far as relating to paragraph (b) of that subsection) includes a reference to a building or part that is being or is to be constructed. 40
- (4) A description of land specified by order under subsection (1)(b) may be framed by reference to the purpose or purposes for which the land (or part of it) is or is intended to be used.
- (5) The power to make an order under subsection (1)(b) shall be exercisable by statutory instrument which shall be subject to 45

annulment in pursuance of a resolution of either House of Parliament.”

3 After Schedule 2 insert –

“SCHEDULE 3

Section 23A(10)

REDRESS SCHEMES

5

Approval of redress schemes

- 1 A redress scheme may be approved for the purposes of section 23A by the OFT acting in accordance with paragraphs 2 to 8.
- 2 (1) A scheme may not be approved unless the OFT considers that – 10
- (a) the provisions of the scheme; and
 - (b) the manner in which it will be operated (so far as can be judged from facts known to the authority);
- are satisfactory for the purposes of section 23A.
- (2) Without prejudice to the generality of sub-paragraph (1), a scheme must not be approved unless the OFT considers that it makes satisfactory provision about – 15
- (a) the complaints which may be made under the scheme (which may include complaints about non-compliance with the provisions of a code of practice or other document); 20
 - (b) the ombudsman’s duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a particular complaint);
 - (c) the redress which the ombudsman may require members to provide to complainants, which must include the types of redress specified in sub-paragraph (3); 25
 - (d) the enforcement of any requirement to provide redress imposed on a member in accordance with the scheme.
- (3) The types of redress mentioned in sub-paragraph (2)(c) are – 30
- (a) providing an apology or explanation;
 - (b) paying compensation; and
 - (c) taking such other actions in the interests of the complainant as the ombudsman may specify.
- 3 (1) In determining whether a scheme, or any provisions mentioned in paragraph 2(2), are satisfactory the OFT must have regard to – 35
- (a) the interests of members of the scheme and of sellers and buyers of residential properties; and
 - (b) such principles as – 40
 - (i) in the opinion of the OFT constitute generally accepted principles of best practice in relation to consumer redress schemes, and
 - (ii) it is reasonable to regard as applicable to the scheme.

- (2) In considering the interests mentioned in sub-paragraph (1)(a), the OFT may have regard to the number of other redress schemes which are (or are likely to become) approved redress schemes.
- 4 The OFT must not approve a scheme unless it considers that the scheme makes satisfactory provision about the provision of information by the ombudsman or the scheme administrator to— 5
- (a) persons exercising functions under other approved schemes;
 - (b) persons exercising functions under other consumer redress schemes; and 10
 - (c) the OFT or any other person exercising regulatory functions in relation to the activities of persons engaging in estate agency work.
- 5 The OFT must not approve a scheme if it considers that the scheme provides for membership to be revoked on any unfair grounds. 15

Applications for approval to the OFT

- 6 An application for approval by the OFT of a redress scheme must—
- (a) be made in such manner as the OFT may determine; and
 - (b) be accompanied by such information as the OFT may require. 20
- 7 Where the OFT is proposing to refuse an application for approval it must give the applicant a notice stating—
- (a) that it is proposing to refuse the application;
 - (b) the grounds for the proposed refusal; and 25
 - (c) that representations about the proposed refusal may be made within such period of not less than 30 days as is specified in the notice.
- 8 If the OFT decides to refuse an application for approval, it must give the applicant a notice stating— 30
- (a) the OFT's decision to refuse the application; and
 - (b) the reasons for the decision.

Notification of changes to an approved scheme

- 9 The scheme administrator of a redress scheme which is approved by the OFT must notify the OFT of any change to the scheme before the end of the period of 14 days beginning with the day on which the change is made. 35

Withdrawal of approval by the OFT

- 10 The OFT may withdraw approval of a redress scheme which is for the time being approved by it. 40
- 11 Before withdrawing approval of a scheme, the OFT must give the scheme administrator a notice stating—
- (a) that it proposes to withdraw its approval;
 - (b) the grounds for the proposed withdrawal of approval; and

- (c) that representations about the proposed withdrawal may be made within such period of not less than 30 days as is specified in the notice.
- 12 The OFT must give the scheme administrator a notice stating –
 - (a) its decision on a proposal to withdraw approval; and 5
 - (b) the reasons for its decision.
- 13 If the OFT decides to withdraw approval of a scheme –
 - (a) the withdrawal has effect from such date as may be specified in the notice under paragraph 12;
 - (b) the scheme administrator must give a copy of a notice under paragraph 12 to every member of the scheme. 10

Revocation of designation by the Secretary of State

- 14 If the Secretary of State decides to revoke his designation of a scheme for the purposes of section 23A, he must give every member of the scheme a notice stating – 15
 - (a) that he has decided to revoke the designation;
 - (b) the reasons for his decision; and
 - (c) the date from which the revocation has effect.

Defamation proceedings

- 15 For the purposes of the law relating to defamation, proceedings under an approved redress scheme in relation to the investigation and determination of a complaint are to be treated in the same way as proceedings before a court. 20

Interpretation

- 16 In this Schedule – 25
 - “redress scheme” has the meaning given in section 23A(8)(a);
 - “approved redress scheme” has the meaning given in section 23A(8)(b);
 - “buyer”, in relation to residential property, has the meaning given in section 23A(8)(e); 30
 - “complaint” has the meaning given in section 23A(8)(c);
 - “ombudsman” means the independent person mentioned in section 23A(8)(a);
 - “residential property” has the meaning given in section 23C;
 - “scheme administrator”, in relation to a redress scheme, means the person who administers the scheme; 35
 - “seller”, in relation to residential property, has the meaning given by section 23A(8)(d).”

4 After Schedule 3 (as inserted by paragraph (3)) insert—

“SCHEDULE 4

Section 23B(3)

PENALTY NOTICES UNDER SECTION 23B(1)

- 1 A penalty charge notice given to a person under section 23B(1) by a duly authorised officer of an enforcement authority other than the OFT must— 5
- (a) state the officer’s belief that that person has committed a breach of the duty imposed by an order under section 23A(1);
 - (b) give such other particulars of the circumstances as may be necessary to give reasonable notice of the breach of duty; 10
 - (c) require that person, within a period specified in the notice—
 - (i) to pay a penalty charge specified in the notice; or
 - (ii) to give notice to the enforcement authority that he wishes to review the notice; 15
 - (d) state the effect of paragraph 8;
 - (e) specify the person to whom and the address at which the penalty charge may be paid and the method or methods by which payment may be made; and 20
 - (f) specify the person to whom and the address at which a notice requesting a review may be sent (and to which any representations relating to the review may be addressed).
- 2 The penalty charge specified in the notice shall be of such amount (not exceeding £1,000) as may be prescribed for the time being by regulations made by the Secretary of State. 25
- 3 (1) The period specified under paragraph 1(c) must not be less than 28 days beginning with the day after that on which the penalty charge notice was given.
- (2) The enforcement authority may extend the period for complying with the requirement mentioned in paragraph 1(c) in any particular case if they consider it appropriate to do so. 30
- 4 The enforcement authority may, if they consider that the penalty charge notice ought not to have been given, give the recipient a notice withdrawing the penalty charge notice. 35
- 5 (1) If, within the period specified under paragraph 1(c) (or that period as extended under paragraph 3(2)), the recipient of the penalty charge notice gives notice to the enforcement authority requesting a review, the authority shall—
- (a) consider any representations made by the recipient and all other circumstances of the case; 40
 - (b) decide whether to confirm or withdraw the notice; and
 - (c) give notice of their decision to the recipient.
- (2) A notice under sub-paragraph (1)(c) confirming the penalty charge notice must also state the effect of paragraphs 6(1) to (3) and 8(1) and (3). 45

-
- (3) If the authority are not satisfied –
- (a) that the recipient committed the breach of duty specified in the notice;
 - (b) that the notice was given within the time allowed by section 23B(2) and complies with the other requirements imposed by or under this Schedule; and
 - (c) that in the circumstances of the case it was appropriate for a penalty charge notice to be given to the recipient,
- they shall withdraw the penalty charge notice. 5
- 6 (1) If after a review the penalty charge notice is confirmed by the enforcement authority, the recipient may, within the period of 28 days beginning with the day after that on which the notice under paragraph 5(1)(c) is given, appeal to a county court or, in Scotland, to the sheriff against the penalty charge notice. 10
- (2) The county court or the sheriff may extend the period for appealing against the notice. 15
- (3) Such an appeal must be on one (or more) of the following grounds –
- (a) that the recipient did not commit the breach of duty specified in the penalty charge notice; 20
 - (b) that the notice was not given within the time allowed by section 23B(2) or does not comply with any other requirement imposed by or under this Schedule; or
 - (c) that in the circumstances of the case it was inappropriate for the notice to be given to the recipient. 25
- (4) An appeal against a penalty charge notice shall be by way of a rehearing; and the county court or sheriff shall either uphold the notice or quash it.
- 7 If the penalty charge notice is withdrawn or quashed, the authority shall repay any amount previously paid as a penalty charge in pursuance of the notice. 30
- 8 (1) The amount of the penalty charge is recoverable from the recipient of the penalty charge notice as a debt owed to the authority unless –
- (a) the notice has been withdrawn or quashed; or 35
 - (b) the charge has been paid.
- (2) Proceedings for the recovery of the penalty charge may not be commenced before the end of the period mentioned in paragraph 5(1).
- (3) And if within that period the recipient of the penalty charge notice gives notice to the authority that he wishes the authority to review the penalty charge notice, such proceedings may not be commenced –
- (a) before the end of the period mentioned in paragraph 6(1); and 40
 - (b) where the recipient appeals against the penalty charge notice, before the end of the period of 28 days beginning 45

- with the day on which the appeal is withdrawn or determined.
- 9 In proceedings for the recovery of the penalty charge, a certificate which –
- (a) purports to be signed by or on behalf of the person having responsibility for the financial affairs of the enforcement authority; and 5
 - (b) states that payment of the penalty charge was or was not received by a date specified in the certificate; 10
- is evidence of the facts stated.
- 10 Section 29 (service of notices etc.) applies in relation to –
- (a) any penalty charge notice which is to be given under section 23B(1) by a duly authorised officer of an enforcement authority other than the OFT; and
 - (b) any notice which is to be given under paragraph 5(1)(c) of this Schedule by such an enforcement authority; 15
- as it applies in relation to any notice which under this Act is to be given to any person by the OFT.
- 11 The Secretary of State may by regulations make provision supplementary or incidental to the provisions of this Schedule, including in particular provision prescribing –
- (a) the form of penalty charge notices or of any other notice mentioned in this Schedule;
 - (b) circumstances in which penalty charge notices may not be given; 25
 - (c) the method or methods by which penalty charges may be paid.
- 12 Any power to make regulations under this Schedule shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.” 30

SCHEDULE 7

Section 63

MINOR AND CONSEQUENTIAL AMENDMENTS

Estate Agents Act 1979 (c. 38)

- 1 In section 3 of the Estate Agents Act 1979 (prohibition orders), in subsection (3) for “paragraphs (c) and (d)” substitute “paragraphs (ba) to (d)”. 35
- 2 In section 6 of that Act (revocation and variation of orders) –
- (a) in subsection (4) in paragraph (b), for the words from “again fail to comply” to the end of the paragraph substitute “engage in further conduct as mentioned in subsection (1A)(b) or (1B)(b) of that section or engage again in the practice specified in the order, as the case may be.”; and
 - (b) omit subsection (7). 40

- 3 In section 30(2) of that Act (orders and regulations to which duty to consult applies), after “19” insert “, 21A”.

Gas Act 1986 (c. 44)

- 4 The Gas Act 1986 is amended as follows.
- 5 In section 4AB (guidance on social and environmental matters), for subsection (3)(b) substitute— 5
“(b) the Council;”.
- 6 In section 28 (orders for securing compliance with certain provisions), in subsection (6) for first “and” substitute “or”.

Electricity Act 1989 (c. 29) 10

- 7 The Electricity Act 1989 is amended as follows.
- 8 In section 3B (guidance on social and environmental matters), for subsection (3)(b) substitute—
“(b) the Council;”.
- 9 In section 25 (orders for securing compliance), in subsection (6) for first “and” substitute “or”. 15

Water Industry Act 1991 (c. 56)

- 10 In Schedule 15 to the Water Industry Act 1991 (disclosure of information)—
- (a) in Part 1 (persons in respect of whose functions disclosure may be made), at the end insert— 20
“The National Consumer Council.”, and
- (b) in Part 2 (enactments etc in respect of which disclosure may be made), after the entry for the Railways Act 2005 insert—
“The Consumers, Estate Agents and Redress Act 2007.”

Taxation of Chargeable Gains Act 1992 (c. 12) 25

- 11 In section 35(3)(d) of the Taxation of Chargeable Gains Act 1992 (no gain no loss disposals), after sub-paragraph (xvi) insert—
“(xvii) paragraph 9 of Schedule 4 to the Consumers, Estate Agents and Redress Act 2007.”

Postal Services Act 2000 (c. 26) 30

- 12 The Postal Services Act 2000 is amended as follows.
- 13 In section 44 (review and information), in subsection (5) for “section 58(1)” substitute “section 24(1) of the Consumers, Estate Agents and Redress Act 2007”.
- 14 In section 61 (forward work programme)— 35
(a) in subsection (1) omit—
(i) “and the Council”, and
(ii) “each” (in the second place),
(b) in subsection (2)(b) omit “or the Council”,

- (c) in subsection (3) omit “or the Council”, and
 (d) in subsection (5) –
 (i) in paragraph (a) omit “or (as the case may be) the Commission”, and
 (ii) in paragraph (b) omit “or (as the case may be) the Council”. 5
- 15 In section 126 (index of defined expressions), in the entry for “The Council”, in the second column for “Section 2(1)” substitute “Section 125(1)”.
- 16 (1) Schedule 7 (disclosure of information) is amended as follows.
 (2) In paragraph 1, after sub-paragraph (1)(b) insert “, and
 (c) it is not information within section 29(3) of the Consumers, Estate Agents and Redress Act 2007 (application of disclosure regime in Part 9 of the Enterprise Act 2002 to information obtained by the Council).” 10
- (3) In paragraph 3 –
 (a) for sub-paragraph (2)(u) substitute – 15
 “(u) the National Consumer Council.”, and
 (b) at the end of sub-paragraph (3) of that paragraph insert –
 “(rr) the Consumers, Estate Agents and Redress Act 2007.”
- (4) In paragraph 5(1) – 20
 (a) after paragraph (b) insert “or”, and
 (b) omit paragraph (d) and the “or” immediately preceding it.
- 17 In Schedule 8 (amendments of enactments), in paragraph 10 for “that Schedule to that Act” substitute “Schedule 2 to the Parliamentary Commissioner Act 1967”. 25

Utilities Act 2000 (c. 27)

- 18 The Utilities Act 2000 is amended as follows.
- 19 In section 4 (forward work programmes) –
 (a) in subsection (1) omit –
 (i) “and the Council”, and 30
 (ii) “each” (in the second place),
 (b) in subsection (3) omit “or the Council”,
 (c) in subsection (4) omit “or the Council”,
 (d) in subsection (5) omit “or the Council”, and
 (e) omit subsection (7). 35
- 20 In section 105 (general restrictions on disclosure of information) –
 (a) in subsection (5) omit “and” immediately preceding paragraph (l) and after that paragraph insert “, and
 (m) the National Consumer Council.”,
 (b) in subsection (6), at the end insert – 40
 “(v) the Consumers, Estate Agents and Redress Act 2007.”,
 (c) in subsection (8) omit –
 (i) in paragraph (a) “33DA or”, and “42AA or”, and

- (ii) in paragraph (c) “, the Council”, and
- (d) after subsection (11) insert –

“(11A) Nothing in this section applies to information within section 29(3) of the Consumers, Estate Agents and Redress Act 2007 (application of disclosure regime in Part 9 of the Enterprise Act 2002 to information obtained by the Council).” 5

Warm Homes and Energy Conservation Act 2000 (c. 31)

- 21 In section 2 (strategy relating to fuel poverty) in subsection (4)(c) for “Gas and Electricity Consumer Council” substitute “National Consumer Council”. 10

Criminal Justice and Police Act 2001 (c. 16)

- 22 In the Criminal Justice and Police Act 2001 –
 - (a) in section 66 (general interpretation of Part 2), in subsection (4)(e) for “section 11(1) of the Estate Agents Act 1979” substitute “section 11(1) to (1C) of the Estate Agents Act 1979”, and 15
 - (b) in Part 1 of Schedule 1 (powers of seizure to which section 50 applies), in paragraph 24 for “section 11(1)(c) of the Estate Agents Act 1979” substitute “section 11(1B) of the Estate Agents Act 1979”.

Housing Act 2004 (c. 34)

- 23 (1) The Housing Act 2004 is amended as follows. 20
 - (2) In section 166 (enforcement authorities), in subsection (2) for the words from “to enforce” to the end of the subsection substitute “to enforce the duties under sections 155 to 159 and 167(4) in their area.”
 - (3) In section 168 (penalty charge notices), in subsection (1) for the words from “a breach of” to the end of the subsection substitute “a breach of any duty under sections 155 to 159 and 167(4), give a penalty charge notice to that person.” 25

SCHEDULE 8

Section 64

REPEALS

| <i>Short title and chapter</i> | <i>Extent of repeal</i> | |
|---|---|----|
| Public Records Act 1958 (c. 51) | In Schedule 1, in the Table at the end of paragraph 3, the entries relating to the Consumer Council for Postal Services and the Gas and Electricity Consumer Council. | 30 |
| Parliamentary Commissioner Act 1967 (c. 13) | In Schedule 2 the entries relating to the Consumer Council for Postal Services, the Gas and Electricity Consumer Council and the National Consumer Council. | 35 |

| <i>Short title and chapter</i> | <i>Extent of repeal</i> | |
|--|---|----|
| House of Commons Disqualification Act 1975 (c. 24) | In Schedule 1 – (a) in Part 2 the entries relating to the Consumer Council for Postal Services and the Gas and Electricity Consumer Council, and (b) in Part 3 the entries relating to the Chairman and Deputy Chairman of the National Consumer Council. | 5 |
| Race Relations Act 1976 (c. 74) | In Schedule 1A, in Part 2, the entries for the Consumer Council for Postal Services (“Postwatch”), the Gas and Electricity Consumer Council (Energywatch) and the National Consumer Council. | 10 |
| Estate Agents Act 1979 (c. 38) | Section 5(4). Section 6(7). Section 9(4)(a). Section 27(1)(b). | 15 |
| Gas Act 1986 (c. 44) | Sections 32 and 33. | |
| Electricity Act 1989 (c. 29) | Sections 46 and 46A. | 20 |
| Postal Services Act 2000 (c. 26) | Section 2. In section 39 “or of the Secretary of State in relation to the establishment of the Council”. Sections 51 to 59. In section 61 – | 25 |
| | (a) in subsection (1) “and the Council” and “each” (in the second place), (b) in subsection (2)(b) “or the Council”, (c) in subsection (3) “or the Council”, (d) in subsection (5)(a) “or (as the case may be) the Commission”, and (e) in subsection (5)(b) “or (as the case may be) the Council”. | 30 |
| | Schedule 2. In Schedule 7, paragraph 5(1)(d) and the “or” immediately preceding it. In Schedule 8, paragraphs 9 and 14(2). | 35 |
| Utilities Act 2000 (c. 27) | Section 2. Section 3(6). In section 4 – | 40 |
| | (a) in subsection (1) “and the Council” and “each” (in the second place), (b) in subsection (3) “or the Council”, (c) in subsection (4) “or the Council”, (d) in subsection (5) “or the Council”, and (e) subsection (7). | 45 |
| | In section 8 – (a) subsection (3)(b) and the “and” immediately preceding it, and (b) subsection (7). | 50 |

| <i>Short title and chapter</i> | <i>Extent of repeal</i> | |
|---|---|----|
| Utilities Act 2000 (c. 27) – <i>cont.</i> | Sections 17, 18(1) to (4) and (7), 19, 20(1) to (4), 21 to 27. In section 105 – | |
| | (a) in subsection (5) “and” immediately preceding paragraph (l), | 5 |
| | (b) in subsection (8)(a) “33DA or” and “42AA or”, and | |
| | (c) in subsection (8)(c) “, the Council”. | |
| | Schedule 2. In Schedule 6, paragraphs 12(f) (and the “and” immediately preceding it), 22(b), 40(b) and 42. | 10 |
| | In Schedule 7 – | |
| | (a) paragraphs 24 and 25, | 15 |
| | (b) in paragraph 26(1), “or the Council”, | |
| | (c) paragraphs 28 and 30, | |
| | (d) in paragraphs 31 and 32. | |
| Freedom of Information Act 2000 (c. 36) | In Schedule 1, in Part 6, the entries for the Consumer Council for Postal Services, the Gas and Electricity Consumer Council and the National Consumer Council. | 20 |
| Warm Homes and Energy Conservation Act 2000 (c. 31) | Section 2(9). | |
| Enterprise Act 2002 (c. 40) | In Schedule 25, paragraphs 15(7), 20(8) and 42(6). | 25 |
| Energy Act 2004 (c. 20) | Section 179(3)(b) and (e). | |
| Housing Act 2004 (c. 34) | Sections 172 to 174. | |

Consumers, Estate Agents and Redress Bill [HL]

A

B I L L

To make provision for the establishment of the National Consumer Council and its functions; to make provision for the abolition of other consumer bodies; to make provision about the handling of consumer complaints by certain providers; to make provision requiring certain providers to be members of redress schemes in respect of consumer complaints; to amend the Estate Agents Act 1979; to make provision about the cancellation of certain contracts concluded away from business premises; and for connected purposes.

Brought from the Lords, 7th February 2007.

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Bill 61

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