

These notes refer to the Consumers, Estate Agents and Redress Bill [HL] as brought from the House of Lords on 7th February 2007 [Bill 61]

CONSUMERS, ESTATE AGENTS AND REDRESS BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Consumers, Estate Agents and Redress Bill as brought from the House of Lords on 7th February 2007. They have been prepared by the Department of Trade and Industry. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Bill's main provisions are as follows:
- to create a new statutory National Consumer Council to replace the existing National Consumer Council (a company limited by guarantee), the Gas and Electricity Consumers Council ("energywatch")¹ and the Consumer Council for Postal Services ("Postwatch")². The Bill also contains a power to dissolve the Consumer Council for Water³ and transfer its functions to the new body established by the Bill.
 - to enable the Secretary of State to require service providers in the electricity and gas (in Great Britain), postal services (in the United Kingdom) and water (in England and Wales) sectors to belong to redress schemes to ensure resolution of complaints in those sectors and to award compensation where warranted. The energy and postal services regulators (the Gas and Electricity Markets Authority and the Postal Services Commission respectively) will be given the power to prescribe complaint handling standards which will be binding on suppliers in Great Britain (and the United Kingdom in relation to postal services).
 - to enable the Secretary of State to require estate agents to join an ombudsman scheme and strengthen the regulation of estate agents through measures such as: requiring estate agents to keep records, allowing trading standards officers to inspect those records, and expanding the circumstances in which the Office of Fair Trading ("OFT") can take regulatory action against estate agents.
 - to enable the Secretary of State to make regulations giving individuals similar rights to cancel contracts for goods or services made during a solicited sales visit to their home or office as they have in relation to an unsolicited visit.

BACKGROUND

PARTS 1 AND 2

4. The Department of Trade and Industry published the Government's Consumer Strategy on 21 June 2005, and responded to the earlier consultation on the draft strategy as follows:

"Strengthen and streamline consumer advocacy.

As we set out in our consultation document "Extending Competitive Markets: Empowered Consumers, Successful Business" the Government sees benefits in moving consumer representation in the regulated industries towards a single "National Utilities Consumer Council" model. This remains our view, and we will bring forward further details of possible plans and timetable later this year."

¹ Established by section 2 of the Utilities Act 2000 (c.27)

² Established by section 2 of the Postal Services Act 2000 (c.26)

³ Established by section 27A Water Industry Act 1991 (c.56)

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A second consultation was undertaken from January to April 2006, in which options were set out to achieve the objective of strengthening and streamlining consumer advocacy. The Government's response to this second consultation was published on 17 October 2006, together with a Regulatory Impact assessment."

5. The Bill makes provision for new consumer representation as follows:

The (new) National Consumer Council

6. The Bill establishes a "new" National Consumer Council ("the Council"). The Council will initially replace energywatch, Postwatch and the existing National Consumer Council. The Bill provides for the abolition of energywatch and Postwatch and enables their assets and liabilities, and those of the existing National Consumer Council, to be transferred to the Council. The existing National Consumer Council will be dissolved under the Companies Acts. The Bill also contains a power to dissolve the Consumer Council for Water⁴ and transfer its functions, assets and liabilities to the new body established by the Bill. The Government has announced that the position of the water sector will be reviewed in 2008.
7. The Financial Services Consumer Panel and the OFCOM Consumer Panel will be left unchanged, reflecting their particular "regulator-facing" role (i.e. provision of advice to regulators on the consumer interest). The Bill provides for a system of cross-appointments to seek to ensure a joined-up approach between the panels and the Council.
8. This Council will have three core functions:
- the representative function – representing the views of consumers to Ministers, the European Commission, regulatory bodies etc.
 - the research function – to keep under review information about consumer matters and the views of consumers, and
 - the information function – facilitating the dissemination of advice and information to consumers.

Redress Schemes and Complaint Handling

9. The Bill enables regulators in the gas and electricity sector (in Great Britain), the postal services sector (in the United Kingdom) and the water sector (in England and Wales) to require companies to belong to redress schemes providing resolution and redress for their consumers. Redress schemes already exist in the financial services and telecommunications sectors and the power in the Bill does not relate to those sectors. There is also an existing redress scheme in respect of billing and transfer disputes in the gas and electricity sectors. The Bill gives the energy and

⁴ Established by section 27A Water Industry Act 1991

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postal services regulators (the Gas and Electricity Markets Authority and the Postal Services Commission respectively) new powers to make regulations to prescribe standards for complaints handling by service providers in the gas, electricity and postal services sectors.

Consumer Direct

10. The Bill provides a power to require licensees in the electricity and gas (Great Britain), postal services (United Kingdom) and water (England and Wales) sectors to contribute towards the costs of expanding Consumer Direct to enable it to operate in relation to those sectors. Consumer Direct is a telephone and on-line consumer advice service, supported by the Office of Fair Trading. The service will be extended to replace the existing consumer information and advice lines provided by energywatch and Postwatch. It may also be extended to replace the existing consumer information and advice lines provided by the Consumer Council for Water. This is intended to give consumers a single, simple, and understandable way to obtain advice on consumer issues.

PART 3: ESTATE AGENTS

11. The work of estate agents is primarily governed by the Estate Agents Act 1979 (c.38) (the 1979 Act), the Property Misdescriptions Act 1991 (c.29), and Part 5 of the Housing Act 2004 (c.34) (the 2004 Act). All of these extend to the whole of the UK save for the 2004 Act which applies to England and Wales.
12. The system for buying and selling a property in Scotland is quite different from the rest of the UK. For example, a significant proportion of transactions make use of the sealed bid system, and houses are often sold through solicitors. These differences are accommodated by the 1979 Act. Housing in Scotland is a devolved matter, and the Scottish equivalent of the Housing Act 2004 is the Housing (Scotland) Act 2006 (asp1), which contains provisions for Purchaser Information Packs (PIPs) and single surveys.
13. Section 1 of the 1979 Act provides a definition of “estate agency work” rather than defining an “estate agent”. The definition of estate agency work has been utilised for the purposes of this Bill.
14. Estate agents are subject to a “negative licensing” system under the 1979 Act. This means that anyone can set up as an estate agent, but the Office of Fair Trading (OFT) can ban estate agents they consider to be unfit to practise.
15. The legislation mentioned above is enforced by the OFT and trading standards officers (TSOs) in Great Britain, and in Northern Ireland by the Northern Ireland Trading Standards Service, which is part of the Department of Enterprise, Trade and Investment.

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16. The OFT published a report on the Estate Agency Market in March 2004. The Government published its response to the report in July 2004. The measures in this Bill stem from the OFT's report and the Government's response.
17. In summary the Bill seeks to:
 - a) require estate agents to belong to a redress scheme for the purposes of all complaints relating to estate agency work carried out in relation to residential property;
 - b) require estate agents to make and keep records, including records of offer letters, for a period of six years;
 - c) give the OFT and TSOs additional powers to require access to premises and to demand on-site production of records when they have reasonable grounds to suspect that an agent has not complied with the 1979 Act; and
 - d) expand the circumstances in which the OFT can consider the fitness of an estate agent to practise and consequently to take regulatory action against them under sections 3 and 4 of the 1979 Act.

Amendments of the Estate Agents Act 1979

18. At present membership of a redress scheme for estate agents is voluntary. The Government stated in its response to the OFT report that it hoped to amend the Housing Bill during its passage to provide a power to require all estate agents to belong to a redress scheme. This proved not to be possible due to the scope of the Housing Bill. Therefore the 2004 Act includes provision for the Secretary of State to make an order to require an estate agent to be a member of an approved redress scheme but only for the purposes of complaints relating to Home Information Packs. This Bill gives the Secretary of State the power to require all estate agents to belong to a redress scheme for the purposes of all complaints against estate agents by buyers and sellers of residential property. This requirement will be UK wide (the 2004 Act extends only to England and Wales).
19. The OFT's 2004 report on the estate agents market made some recommendations to improve the regulation of estate agents. The Government supported a number of these recommendations in its response. The other clauses in this Bill relating to estate agents implement the recommendations from the OFT report set out at points (b) to (d) above.

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PART 4: MISCELLANEOUS AND GENERAL

20. The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987⁵ ('Doorstep Selling Regulations') implement Council Directive 85/577/EEC, to protect the consumer in respect of contracts negotiated away from business premises. These Regulations give consumers the right to cancel contracts entered into at home or at a consumer's workplace where the trader visited the home or workplace other than at the express request of the consumer.
21. In 2004 the Government publicly consulted on recommendations put forward by the Office of Fair Trading to improve the protection of consumers when buying in the home. The Government response to the public consultation was published in September 2006. This Bill gives the Secretary of State the power to make provision for consumers to have the right to cancel contracts entered into following solicited visits to the consumer's home or workplace. These rights are expected to be similar to those consumers currently have for unsolicited visits, under the Doorstep Selling Regulations.

TERRITORIAL EXTENT AND TERRITORIAL APPLICATION

22. This Bill extends to England and Wales, Scotland and Northern Ireland except in that:
 - Clauses 12, and 13 (which relate to the gas and electricity sectors) and clause 36 extend to England and Wales and Scotland only;
 - Clauses 30 to 32 (which relate to the water sector) extend to England and Wales only;
 - Clause 42 extends to Northern Ireland only to the extent that it applies to the Postal Services Commission and clause 46 only to the extent that it relates to regulated providers (within the meaning of Part 2) holding licences under section 2 of the Postal Services Act 2000.

Scotland

23. The consumer protection reservation in Section C7 of Schedule 5 of the Scotland Act 1998 (c.46) reserves the regulation of specified areas for the purposes of consumer protection, including the sale and supply of goods and services to consumers. It also reserves the subject matter of a number of specific pieces of consumer law. The existing National Consumer Council exercises both reserved

⁵ 1987 No 2117. The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987

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and devolved functions, and it was designated as a cross-border public authority under section 88 of the Scotland Act by the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999⁶. The creation of the new Council will also affect devolved matters. Certain of the functions of the new Council may impact on devolved matters, for example where the new Council exercises its functions in the area of food safety. Further, the power to make transfer schemes in relation to the existing National Consumer Council may affect devolved matters. Therefore certain aspects of the provisions in the Bill will fall within the devolved competence of the Scottish Parliament, and the consent of the Scottish Parliament will be sought with regard to this Bill in so far as its provisions fall outside the consumer protection reservation.

Wales

24. Certain functions in relation to water are currently exercisable by the National Assembly for Wales. In particular, the National Assembly for Wales has certain functions in relation to the Consumer Council for Water, which may be abolished under the Bill. It also has certain functions in relation to water and sewerage undertakers. The Government of Wales Act 2006 (c.32) will transfer these functions to Welsh Ministers. Therefore so far as the future abolition of the Consumer Council for Water is concerned, the Bill may affect devolved matters in Wales. Equally, the power to require water and sewerage undertakers in Wales to belong to a redress scheme may affect devolved matters in Wales. The Bill provides that both powers are subject to the consent of Welsh Ministers. Welsh Assembly Government officials have confirmed that their Ministers are content with the provisions in the Bill.

Northern Ireland

25. So far as Northern Ireland is concerned, the Bill covers consumer protection in relation to postal services. The regulation of postal services is a reserved matter. The new Council will therefore represent consumers across all sectors in England, Wales and Scotland, and postal services consumers only in Northern Ireland. Northern Ireland Ministers have confirmed that they are content with the provisions in the Bill.

Part 1: The National Consumer Council

Clause 1: The National Consumers Council and territorial committees

26. *Subsection (1)* establishes the new National Consumer Council as a body corporate. The Council will be a Non-Departmental Public Body (NDPB). It will be funded by the Secretary of State who will recover some of the Council's costs

⁶ SI 1999 No.1319 The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999

from payments made by licensees in the electricity, gas, and postal services sectors. Such costs will be collected from licensees by sectoral regulators. After the Consumer Council for Water has been abolished under clause 31, licensees in the water sector may also be required to contribute towards the cost of the Council. Part 5 of Schedule 1 and clause 33 make provision in relation to funding.

27. *Subsection (2)* requires the Council to establish and maintain a committee in Scotland, to be known as the Scottish Consumer Council; a committee for Wales to be known as the Welsh Consumer Council; and a committee for Northern Ireland, to be known as the Northern Ireland Postal Services Committee. These three committees are called “territorial committees” in (*subsection (3)*). The Council’s functions extend to Northern Ireland only to the extent that it represents the interests of consumers of postal services (see the definition of consumer in Northern Ireland, in clause 3(2)(b)). This is because the existing General Consumer Council for Northern Ireland already has the function of representing the interests of consumers in Northern Ireland in respect of other matters and will continue to perform that function once the Council has been established.
28. *Subsection (4)* introduces *Schedule 1*, which makes further provision about the Council and its territorial committees, and sets out its membership, terms of appointment, procedure, funding and requirements as to its accounts (there is a more detailed explanation of the contents of Schedule 1 at the end of these Explanatory Notes).

Clause 2: The territorial committees

29. *Subsection (1)* permits the Scottish Consumer Council, the Welsh Consumer Council, and the Northern Ireland Postal Services Committee (“the territorial committees”) to exercise certain key functions of the Council, on behalf of the Council, within their territories;
30. *Subsection (2)* provides that – for the purposes of facilitating or improving co-ordination in the delivery of the Council’s functions – the Council may impose restrictions or conditions on the way in which the territorial committees exercise their functions, or may give general or specific directions to the territorial committees in relation to the exercise of their functions.
31. *Subsection (3)* provides that notwithstanding the powers granted to the territorial committees under subsection (1) the Council may concurrently exercise any of its functions specified in that subsection.
32. *Subsection (4)* sets out additional purposes of a territorial committee, which are to provide advice and information to the Council about consumer matters in the relevant area for which the committee is established; the provision of advice to the Council about the exercise of its functions to the extent that they affect the relevant area; and such other purposes as the Council may determine.

Clause 3: “Consumer” and “consumer matters”

33. *Clause 3* defines “consumer” and “consumer matters” for the purposes of Part 1. For Great Britain the definition covers everyone who purchases uses or receives goods or services supplied in the course of a business. A “consumer” includes an existing and a future one (*subsection (3)*); “goods” includes interests in land (*subsection (4)(b)*) and “business” includes a profession and the activities of a government department and public bodies (*subsection (4)(c)*). For Northern Ireland, the definition is limited to persons who purchase, use or receive “relevant postal services” (as defined in *clause 41(1)*). This is because the Council’s functions in Northern Ireland will be limited to the postal services sector. The General Consumer Council for Northern Ireland will represent the interests of consumers in other sectors (as it does now).

Clause 4: “Designated consumers”

34. *Clause 4* defines “designated consumers”. The concept of “designated consumers” reflects the proposal to merge sectoral consumer bodies with a specific remit (gas, electricity, postal services and, in future, water), into the Council, and the desire to maintain a specific focus on these merged sectors. “Designated consumers” comprise those consumers in specific sectors previously served by a sectoral consumer body. The focus on designated consumers is retained by the requirement on the new Council to set out its priorities in respect of designated consumers in a forward work plan (see *clause 5* below). Other provisions in *clause 5* provide for transparency in funding, because businesses in the sectors relevant to “designated consumers” (i.e. electricity, gas, postal services and in future, water) will partly fund the new Council.
35. *Subsections (2) and (3)* permit the Secretary of State to add, by order, consumers who are provided with water and sewerage services in England and Wales to the list of designated consumers. Before making an order to designate water consumers, the Secretary of State must consult the Council, Welsh Ministers, and other persons as he thinks appropriate. The Secretary of State can also make orders that classes of consumers shall cease to be designated. He must consult the Council, Scottish Ministers (except in relation to water consumers) and Welsh Ministers, and other persons as he thinks appropriate before making such an order.

Clause 5: Forward work programmes

36. The Council is required by *clause 5* to prepare, publish, and consult on a draft forward work programme for each financial year, and to consider any representations made in response to that consultation. Copies of the draft programme must be sent to the Secretary of State, Scottish Ministers, Welsh Ministers, the Office of Fair Trading, and regulatory bodies that the Council considers might have an interest.
37. This clause specifies that the forward work programme must include a statement of priorities in relation to designated consumers and the main activities and projects to

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be undertaken in respect of them (*subsection (1)(a) and (b)*). It requires the Council to describe other priorities, activities and projects that it proposes to undertake (*subsection (1)(c) and (d)*). The Council must provide an estimate of the overall expenditure in respect of the work programme, including an estimate of expenditure in relation to work in respect of designated consumers (*subsection (3)(a) and (b)*), with separate estimates for each designated sector (*subsection (4)*).

Clause 6: General provision about functions

38. *Clause 6* sets out requirements imposed on the Council in exercising its functions.
39. *Subsection (2)* requires the Council to have regard to the Forward Work Programme when exercising its functions.
40. *Subsections (4) and (5)* require the Council to consider the needs of specified groups of vulnerable consumers when exercising its functions, although consideration should not be limited to these groups.
41. *Subsections (6) and (7)* require the Council to use its resources efficiently, and when exercising its functions require the Council to consider whether there is another public body with similar functions to the Council. This is to avoid duplicating work.
42. *Subsection (8)* requires the Council to exercise its functions in the manner which it considers is best calculated to contribute to the achievement of sustainable development. Functions are defined in clause 41 as including the Council's powers and duties.
43. *Subsection (9)* provides that the Council is not under an obligation to act for an individual consumer, other than when it is approached by a consumer who is facing disconnection from his or her energy supply. This is because the main role of the Council is to act on behalf of all consumers, as opposed to dealing with individual complaints, which is the proper role of Consumer Direct (the consumer advice service supported by the Office of Fair Trading) and the redress schemes (either those already in existence, or those created under the powers in this Bill).

Clause 7: Annual Report

44. *Clause 7* requires the Council to produce and publish an annual report on its activities for each financial year. The report must include details of the progress of projects described in the forward work programme; any activities undertaken under clause 22 (voluntary activities); and any other matters which the Secretary of State directs the Council to include (*subsection (2)*). The Council must send copies of the annual report to the Secretary of State (who must lay copies before Parliament) and to the Scottish and Welsh Ministers (*subsection (3)*); and arrange for the report to be published (*subsection 5*).

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Clause 8: The representative function

45. *Subsection (1)* provides for the first of the Council's three core functions: to provide advice and information, to make proposals about consumer matters and to represent the views of consumers to the people set out in subsection (2). Consumer matters are defined in clause 3.
46. *Subsection (2)* lists the persons to whom the Council may make representations. These include Ministers, regulators, the European Commission and anyone else the Council considers might have an interest.

Clause 9: The research function

47. *Clause 9* establishes the second of the Council's core functions: to carry out research into consumer matters.

Clause 10: The information function

48. *Clause 10* sets out the third of the Council's core functions: to facilitate the dissemination of advice and information to consumers about the Council itself and its functions, and about consumer matters. The Secretary of State has power by order to add other matters in respect of which the Council is to exercise this function.
49. *Subsection (2)* gives the Council the power to make available that advice and information in any way it thinks suitable to bring it to the attention of anyone it thinks will have an interest, and also to work with other organisations to make the information available. Under clause 20 (described below) the Council is also required to enter into cooperation arrangements with other bodies, including the Office of Fair Trading and the Consumer Panels established by the Office of Communications ("the OFCOM Consumer Panel")⁷ and by the Financial Services Authority ("the Financial Services Consumer Panel")⁸. Such arrangements include those made to secure the coordination of activities relating to the provision of advice or information to consumers (see clause 20(2)).

Powers of investigation

Clause 11: General powers of investigation

50. Clause 6(9) provides that the Council is not required to act for individual consumers (except in respect of disconnections – see clause 13). The Council is able to investigate complaints made by vulnerable consumers (clause 12). *Clause*

⁷ i.e. the Consumer Panel which the Office of Communications ("OFCOM") is required to establish and maintain under section 16 of the Communications Act 2003.

⁸ i.e. the Consumer Panel which the Financial Services Authority ("the FSA") is required to establish and maintain under section 10 of the Financial Services and Markets Act 2000.

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11 enables the Council to investigate a complaint by a consumer where the Council considers that the subject matter is of general relevance or may affect consumers generally or those of a particular kind.

Clause 12: Investigation of complaints by vulnerable designated consumers

51. *Clause 12* provides that the Council may investigate a complaint made by a vulnerable consumer against a supplier. Subsection (2) defines a vulnerable consumer as an individual whom the Council is satisfied it is not reasonable to expect to pursue the complaint on his or her own behalf. This might apply to persons who are unable to pursue a complaint by reason of a mental or physical disability, a lack of basic skills (such as literacy) or due to their personal circumstances (such as a recent bereavement). If the Council thinks it is appropriate in order to help resolve the complaint, it may provide advice to the individual, or may make representations to the relevant supplier (subsection (4)).

Clause 13: Investigation of complaints relating to disconnection of gas or electricity

52. *Clause 13* provides that a gas consumer may complain to the Council where the consumer's premises are disconnected or cut off by a gas transporter or gas supplier or where such action is threatened; or where the gas transporter or supplier refuses to reconnect the consumer's premises; or where there is a failure of a prepayment system. Similarly, an electricity consumer may complain to the Council where his premises are disconnected or threatened with disconnection by an electricity distributor, supplier or transmission licence holder or where the supplier etc refuses to reconnect the consumer's premises, or where there is a failure of a prepayment system. The Council must investigate any complaint made by the consumer, and must, if it thinks it appropriate, provide advice to the consumer or make representations to the supplier, distributor, transporter or transmission licence holder on behalf of the consumer.
53. The Council may refuse to investigate a complaint in certain circumstances (specified in *subsections (4) and (5)*).

Clause 14: Reference of matters to the Gas and Electricity Markets Authority

54. *Clause 14* requires the Council to refer a complaint which it has the power to investigate under clause 11(1)(a) (complaints which raise general issues or affect consumers generally) or clause 12 (vulnerable consumers) or the duty to investigate under clause 13 (complaints about disconnections) to the Gas and Electricity Markets Authority if it considers that the Authority's enforcement powers may be exercisable in relation to the complaint. Having referred a complaint to the Authority, the Council is not obliged to investigate further until the Authority has had a reasonable opportunity to exercise its enforcement functions (*subsection (3)*). The Council is also obliged to inform a complainant if it considers that a complaint which has been referred to it relates to a matter which can be referred to the Gas and Electricity Markets Authority under the

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Gas Act 1986 (c.44) or the Electricity Act 1989 (c.29) (*subsection (4)*).

Clause 15: Reference of matters to the Postal Services Commission

55. Clause 15 requires the Council to refer a complaint which it has the power to investigate under clause 11(1)(a) (complaints which raise general issues or affect consumers generally) or clause 12 (complaints by vulnerable consumers) to the Postal Services Commission in certain circumstances, including where the Council considers that the complaint relates to the contravention of a licence condition.

Clause 16: Investigations relating to public post offices

56. The Council is specifically enabled by clause 16 to investigate any matter relating to the number and location of public post offices in any part of the United Kingdom.

Other functions of the Council

Clause 17: Reports by the Council

57. *Clause 17* enables the Council to prepare and publish reports on any matter within the scope of its functions.

Clause 18: Secretary of State's power to require reports

58. *Clause 18* enables the Secretary of State to direct the Council to prepare a report in respect of any matter that relates to consumer matters. The Secretary of State may publish these reports.

Clause 19: Advice, information and guidance

59. *Clause 19(1)* enables the Council to issue advice, information and guidance to improve standards of service to consumers and promote best practice in relation to complaint handling, or on any other matters related to the interest of consumers.
60. *Subsection (2)* enables the Council to publish advice and information about consumer issues if it thinks publication will promote the interests of consumers.

Clause 20: Duty to enter into co-operation arrangements

61. *Clause 20* requires the Council to enter into co-operation arrangements with various bodies ("designated bodies"). The designated bodies are: the Office of Fair Trading, the Financial Services Consumer Panel, the OFCOM Consumer Panel and any other person designated by the Secretary of State by order. *Subsection (2)* sets out the matters which such arrangements should deal with. These agreements are intended to enable the Council and the designated regulators to work together in exercising their functions in relation to the provision of advice or information to consumers in areas where these functions overlap.
62. *Subsections (4) and (5)* provide that memoranda setting out each co-operation arrangement and any revisions must be sent to the Secretary of State. The

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Secretary of State must lay any memoranda detailing the cooperation arrangement received by him before Parliament (*subsection (7)*).

63. In addition to these cooperation arrangements, clauses 39, 40 and Schedule 1 paragraph 1(4) make provision about cross-appointments between the Council and the OFCOM Consumer Panel and the Financial Services Consumer Panel. This is also to ensure that the Panels and the Council work closely together.

Clause 21: Power to co-operate and give assistance

64. *Clause 21* allows the Council to co-operate with or give assistance to any person if it thinks that doing so would contribute towards carrying out its own functions.

Clause 22: Voluntary activities

65. *Clause 22* enables the Council to undertake other activities in addition to the functions described above. In particular, it has the power to give advice or assistance to others, including research or other services, in respect of any matters in which the Council has skill, experience or expertise. It may charge for services provided under this clause. This clause is intended to enable the Council to undertake paid work or other work for other persons (for instance research projects).

66. The Council is also given the power to establish a company or, subject to the approval of the Secretary of State to acquire an interest in one to exercise its functions under this clause (*subsections (4) and (5)*).

Clause 23: Supplementary powers etc

67. *Clause 23* makes provision for the Council to do whatever it sees fit, apart from borrowing money, in the interests of performing its functions. However, the Council may not acquire or dispose of interests in land without approval from the Secretary of State except under a transfer of property scheme provided for in clause 35. Clause 35 gives the Secretary of State the power, in winding up the Gas and Electricity and Postal Services Consumer Councils, the existing National Consumer Council and the Consumer Council for Water, to transfer their property to the Council or another person.

Clause 24: Provision of information to the Council

68. *Subsections (1) to (5)* give the Council the power to serve a notice to require information from the persons specified in subsection (3), namely the OFT, a “designated regulator”, any person who supplies goods or services in the course of business and any person or description of person specified by the Secretary of State. Designated regulator means the Gas and Electricity Markets Authority, the Postal Services Commission, the Water Services Regulation Authority and any other person prescribed by the Secretary of State (see *subsection (9)*). The Council may only request information that it needs for the purpose of exercising its

functions (subsection (2)). In making a request for information, the Council must consider the desirability of minimising the costs or any other detriment the request might cause for the person on whom the notice is served (subsection (5)).

69. *Subsection (6)* means that, if the Council requests information from the OFT or a designated regulator and they fail to provide the information requested, the Council may require the OFT or the designated regulator to provide a notice setting out the reasons for its failure to provide the information requested. The Council may publish that notice.

Clause 25: Enforcement by regulator of section 24 notice

70. *Clause 25* provides that where a regulated provider in the electricity, gas, postal services or water sectors fails to comply with a notice served by the Council under clause 24, the Council may refer the matter to a person prescribed by the Secretary of State or to the sectoral regulator if no person has been prescribed by the Secretary of State (in both cases the “designated investigator”). The designated investigator must consider any representations made by the Council or by the regulated provider and must determine whether the provider was entitled to refuse to provide the information requested by the Council (*subsection (4)*). If the designated investigator determines that the provider was not entitled to refuse, then he must direct the provider to provide the information. Such directions are enforceable by the sectoral regulator (see *subsections (7), (8)* and *Schedule 2*).

Clause 26: Enforcement by court of section 24 notice

71. *Clause 26* provides that where a supplier of goods and services (or a person to whom clause 26 applies by virtue of a provision made under clause 24(7)(b)) refuses to comply with a request for information served by the Council under clause 24, the Council may apply to the court for an order requiring the person served with a notice to comply with that notice. This does not apply where the procedure in clause 25 applies in relation to the Council’s request for information.

Clause 27: Provision of information by the Council

72. *Clause 27* allows the OFT, a designated regulator or a person specified by the Secretary of State to require information from the Council that is necessary for the purpose of exercising its functions. In doing so, they must consider the impact (including the cost) that complying with the request will have on the Council.
73. *Subsections (6) and (7)* mean that, if the Council fails to provide the information requested, it must give the person who requested the information a notice setting out the reasons for this failure, and the person requesting the information may publish the notice of reasons given by the Council.

Clause 28: Exemptions from requirements to provide information

74. *Clause 28* enables the Secretary of State to prescribe exemptions from the requirement to provide information to the Council. The power to prescribe

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exemptions also applies to the Council's duty to provide information on request to the OFT, to designated regulators, and to any person specified by the Secretary of State by Order.

75. *Subsection (2)* means that no person may be required under clauses 24 or 27 or under a court order under clause 26 to provide any information or document which he could not be compelled to provide in legal proceedings. This is to ensure that the information gathering powers under the Bill do not apply to information that is subject to legal professional privilege.

Clause 29: Disclosure of information

76. *Clause 29(1)* brings the Bill within the general regime that protects information from improper disclosure and use in Part 9 of the Enterprise Act 2002 (c.40). It does this by adding the Bill to Schedule 14 of the Enterprise Act. The effect is that information which the Council obtains under the Bill will be restricted and it will be an offence to disclose information about the business of a company or the affairs of an individual unless Part 9 of the Enterprise Act 2002 permits it.
77. *Subsection (2)* adds the Bill to Schedule 15 to the Enterprise Act 2002. The effect is that information that is restricted under the Enterprise Act 2002 obtained under legislation other than the Bill can be disclosed to the Council to help it carry out its functions under the Bill.
78. *Subsection (3)* makes information obtained by the Council under powers in legislation relating to the gas, electricity and postal services sectors subject to the disclosure regime in the Enterprise Act 2002. Without these provisions the information would be subject to the regime in the Utilities Act 2000 or the Postal Services Act 2000 (c.26) respectively.
79. *Subsection (4)* states that the Enterprise Act 2002 restrictions do not apply when the Council makes information available or publishes it under various powers in the Bill and in the Gas and Electricity Acts. In these cases *subsection (5)* requires the Council to consult the individual or business affected first; and *subsection (6)* requires the Council in these cases also to have regard to the considerations in section 244 of the Enterprise Act 2002 before disclosing or publishing it. These requirements do not apply to the Council publishing information about complaint handling under clause 45 of the Bill or publication of statistical information about the performance of gas and electricity suppliers.

Abolition of Consumer Bodies

Clause 30: Abolition of “energywatch” and “Postwatch”

80. *Subsection (1)* abolishes energywatch.
81. *Subsection (2)* abolishes Postwatch.

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82. *Subsection (3)* transfers the functions of energywatch and Postwatch to the Council.
83. *Subsection (4)* provides that certain references to energywatch and Postwatch in existing legislation shall be replaced with references to the Council established under the Bill. The existing consumer bodies have statutory functions under legislation (i.e. the Gas Act 1986, Electricity Act 1989, Utilities Act 2000 and Postal Services Act 2000) which the new Council will take over. In particular, there are a number of statutory requirements to consult energywatch and Postwatch on certain issues. In future, those requirements will relate instead to the Council. *Subsection (5)* introduces *Schedule 3*, which contains transitional provisions in respect of the abolition of energywatch and Postwatch. As the existing National Consumer Council is a company limited by guarantee, there is no need to dissolve this body under the Bill. Instead, it will be dissolved under the Companies Acts.

Clause 31: Designation of the Consumer Council for Water for abolition

84. *Clause 31* gives the Secretary of State the power to designate the Consumer Council for Water for abolition. The Consumer Council for Water is the statutory consumer body established by section 27A of the Water Industry Act 1991. The Consumer Council for Water looks after the interests of consumers of water and sewerage services in England and Wales. An order designating the Consumer Council for Water for abolition must give the earliest date on which a transfer order or an abolition order under clause 32 may take effect. Before making an order under clause 31 the Secretary of State must consult the Consumer Council for Water, the Council, and anyone else that the Secretary of State considers appropriate. An order under this clause can be made only with the consent of Welsh Ministers (*subsection (4)*) and the order may not be made unless a draft has been laid before Parliament and approved by resolution of each House.

Clause 32: Transfer orders and abolition orders

85. *Clause 32(1)* gives the Secretary of State the power to make transfer orders and an abolition order in respect of the Consumer Council for Water. A transfer order is an order that transfers the functions of the Consumer Council for Water to the Council. An abolition order is one that abolishes the Consumer Council for Water. These orders may not take effect before the date specified in the designation order under clause 31. A transfer order or abolition order in respect of the Consumer Council for Water may be made only with the consent of Welsh Ministers.

Clause 33: Supplementary provision about transfer and abolition orders

86. This clause enables the Water Services Regulation Authority (“Ofwat”) to modify water and sewerage undertakers’ conditions of appointment and water suppliers’ licences as a result of or in preparation for the abolition of the Consumer Council for Water or the transfer of its functions to the Council. The powers under clause 33 may only be exercised if the Consumer Council for Water has been designated for abolition under clause 31 (*subsection (1)*).

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87. *Subsections (2) to (6)* enable conditions in an appointment or a water supply licence to require the company holding the appointment or licence to pay sums towards various expenses described in subsections (4) and (5). These include the expenses incurred in abolishing the Consumer Council for Water and transferring its assets and liabilities to the Council; in expanding and operating an OFT scheme (described further below) to cater for water consumers; and a proportion of the expense of the Council having regard to its functions in respect of water consumers.
88. *Subsection (7)* enables Ofwat to make other consequential and incidental modifications to the above conditions. This power might be used to substitute references to the Council for references to the Consumer Council for Water in licence conditions.
89. The reference to an OFT Scheme is included to cover Consumer Direct. This is a telephone and internet based consumer advice service supported by the OFT that offers advice on consumer issues. The intention is to expand the activities of Consumer Direct to deal with individual consumer problems in relation to water and sewerage in England and Wales if the Consumer Council for Water is abolished after consultation.

Clause 34: Compensation for loss of office

90. *Clause 34* provide for the payment of compensation by the Secretary of State, with the approval of the Treasury, to members of energywatch, Postwatch, the Consumer Council for Water or the existing National Consumer Council who cease to be members of these consumer bodies because the bodies are abolished as a consequence of the measures in this Bill. Compensation may cover loss of office or loss or diminution of pension rights.

Clause 35: Transfer of property etc

91. *Clause 35* and *Schedule 4* provide for the Secretary of State or the existing consumer bodies to make transfer schemes to transfer property, rights and liabilities from energywatch, Postwatch, the Consumer Council for Water and the existing National Consumer Council to the Council.
92. *Subsection (1)* lists the bodies to which the section applies. *Subsection (2)* allows the Secretary of State to direct these bodies either to make a transfer scheme to transfer property, rights and liabilities to the Council, or to transfer specified property etc. to another specified person or organisation.
93. *Subsection (3)* provides that, before giving, varying or revoking a direction under subsection (2), the Secretary of State must consult both the consumer body from whom the property, rights and liabilities are being transferred, and the person to whom the property etc is being transferred (either the Council or another specified person).

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94. *Subsection (4)* requires a consumer body which is directed to make a scheme transferring property to the Council to consult the Council before doing so.
95. *Subsections (5) and (6)* state that a transfer scheme must be approved by the Secretary of State before it has effect and can be modified by him, subject to consultation with the consumer body from whom the property etc is being transferred.
96. *Subsection (7)* allows the Secretary of State to make a transfer scheme from energywatch, Postwatch, the existing National Consumer Council or the Consumer Council for Water to the new Council.
97. *Schedule 4* makes further provision in relation to transfer schemes. This does not apply to transfers to third parties (that is, to persons other than the Council) under clause 35(2)(b) as such transfers are not made by way of a transfer scheme.
98. The existing National Consumer Council is a Cross-Border Public Authority under section 88 of the Scotland Act 1998. In view of this, the Secretary of State will be required by that section to consult Scottish Ministers before making a transfer scheme in relation to that body.

Clause 36: Directions

99. *Subsections (1) to (3)* allow the Secretary of State to require information from energywatch, Postwatch, the existing National Consumer Council and the Consumer Council for Water about their property, rights, liabilities and functions, and to set out requirements for receiving that information, such as timescale and form.
100. *Subsection (4)* means that the Secretary of State can direct energywatch, Postwatch, the existing National Consumer Council and the Consumer Council for Water not to take a specified action, or not to take a particular action in specified circumstances. For example, the Secretary of State may direct the existing consumer bodies not to sign up to additional property leases which extend beyond the date that the consumer body will be abolished. *Subsection (5)* requires the Secretary of State to consult both the consumer body to which the direction is being given and the Council before giving, changing or revoking a direction under this clause.
101. This clause is intended to facilitate the making of transfer schemes, in part by ensuring that the Secretary of State is able to obtain the information he needs to make such a scheme.

Clause 37: Extension of the Council's functions: Great Britain

102. *Clause 37* allows the Secretary of State to make an order giving the Council additional functions if he thinks this is in the interests of consumers. Such functions must appear to the Secretary of State to be connected with the Council's existing functions. Before making an order, the Secretary of State is required to

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undertake a consultation. If the exercise of the function to be conferred might affect Wales in relation to any matter in respect of which functions are exercisable by Welsh Ministers, then he must consult Welsh Ministers.

103. The Secretary of State may not make an order under this clause which makes provision which is within the competence of the National Assembly for Wales without the consent of that Assembly. Also the Secretary of State may not make any provision under this clause which is within the legislative competence of the Scottish Parliament.

Clause 38: Removal of the Council's functions in relation to Northern Ireland

104. *Clause 38* provides that if the Secretary of State is content that a body other than the Council is to exercise the Council's functions in relation to Northern Ireland, then he may repeal the relevant parts of this Bill that extend the functions of the Council to postal services matters in Northern Ireland. Before making an order under this clause the Secretary of State must consult the Council and anyone else he thinks appropriate.

Clause 39: The Financial Services Consumer Panel

105. *Clause 39* inserts new subsections (5A) to (5C) into section 10 of the Financial Services and Markets Act 2000. These allow the Secretary of State to direct the Financial Services Authority to appoint a non-executive member of the Council to the Financial Services Consumer Panel.
106. Paragraph 1(4)(a) of Schedule 1 to the Bill enables the Secretary of State to appoint a member of the Financial Services Consumer Panel to the Council.

Clause 40: The OFCOM Consumer Panel

107. *Clause 40* inserts new subsections (4A) to (4C) into section 17 of the Communications Act 2003. These allow the Secretary of State to direct the Office of Communications to appoint a non-executive member of the Council to the OFCOM Consumer Panel.
108. *Paragraph 1(4)(b)* of Schedule 1 to the Bill enables the Secretary of State to appoint a member of the OFCOM Consumer Panel to the Council.

Clause 41: Interpretation of Part 1

109. This clause contains interpretation provisions in relation to Part 1 of the Bill.
110. This clause does not define water or sewerage undertaker. The Interpretation Act 1978 provides that these terms should be construed in accordance with section 6 of the Water Industry Act 1991 which relates to the appointment of water and sewerage undertakers.

Part 2: Complaints Handling and Redress Schemes

Overview of Part 2

111. Clauses 42 to 52 set out the arrangements being introduced for the handling of complaints made by consumers to service providers in the electricity, gas, postal services and water sectors. In particular, this part will enable the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations to prescribe complaint handling standards that will be binding on persons who are “regulated providers” (as defined in clause 42) in the electricity, gas and postal services sectors (see clause 43). This Part also enables the Secretary of State to make orders to require “regulated providers” in the electricity, gas, postal services and water sectors to belong to an approved redress scheme (see clause 47).

Clause 42: Interpretation of Part 2

112. *Clause 42* defines the key terms used in Part 2. In particular, this clause defines the service providers and consumers in relation to whom the powers under Part 2 may be exercised (“regulated provider” and “relevant consumer”). This clause also specifies the regulators who may exercise the powers under this part (“relevant regulator”).

Clause 43: Standards for handling complaints

113. *Clause 43* gives the Gas and Electricity Markets Authority and the Postal Services Commission the power to make regulations prescribing complaint handling standards that are binding on service providers. Such regulations will prescribe standards in relation to the way in which service providers handle complaints received from consumers (e.g. they might prescribe maximum response times). Regulations made under this clause are not subject to any Parliamentary procedure; however, they may be made only with the consent of the Secretary of State (*subsection (4)*).
114. The power to prescribe complaint handling standards does not apply to the water sector. This is because existing legislation already provides for this in the water sector in England and Wales.

Clause 44: Requirements for making regulations under clause 43

115. *Clause 44* sets out the procedure that the Gas and Electricity Markets Authority and the Postal Services Commission must follow before making regulations to prescribe complaint handling standards. In particular, the regulator must publish a notice of its proposals, consult people likely to be affected and consider any representations made.

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Clause 45: Information with respect to compliance with complaints handling standards

116. *Clause 45* requires the Council to publish statistical information in relation to regulated providers' levels of performance in complying with any complaint handling standards prescribed under clause 43 by the Gas and Electricity Markets Authority and the Postal Services Commission.
117. *Subsection (4)* gives effect to *Schedule 5* which amends the Electricity Act 1989, Gas Act 1986 and Postal Services Act 2000 to require the Gas and Electricity Markets Authority and the Postal Services Commission to collect information from licence holders in respect of levels of compliance with any complaint handling standards prescribed by these regulators under clause 43 of the Bill. The above regulators are given the power to direct licensees to provide them with the above.

Clause 46: Supply of information to consumers

118. *Clause 46* enables the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations to require regulated providers to provide consumers with information about any complaint handling standards prescribed by the regulator and about the regulated provider's levels of compliance with those standards
119. *Subsection (2)* provides for the regulator to specify the form, manner and frequency that this information is to be given.

Clause 47: Membership of redress scheme

120. *Clause 47* enables the Secretary of State to make orders to require regulated providers to belong to a redress scheme (as defined in clause 48(1)) approved by the relevant regulator or to a scheme administered by the Secretary of State or by a person appointed by him and designated by the Secretary of State as an appropriate redress scheme (in which case the Secretary of State must be satisfied that it meets the criteria for approval by the relevant regulator – see clause 47(7)).
121. "Redress scheme" is defined in clause 48 as "a scheme under which consumer complaints may be made to, and investigated and determined by, an independent person ("the independent person")". For this purpose, the "independent person" must be independent of the provider against whom the complaint is made and independent of the relevant regulator in respect of that provider (clause 48(2)).
122. The Secretary of State may limit the requirement to belong to a redress scheme to schemes which deal with certain types of complaint. Hence, it would be possible to exclude complaints in relation to certain matters from the requirement to belong to a redress scheme (subsections (2) to (3)). Before making an order to require regulated providers to belong to a redress scheme, the Secretary of State must consult the relevant regulator and persons who appear to be representative of persons who have an interest in the matter (subsection (4)).

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123. *Subsection (5)* requires the Secretary of State to seek the consent of Welsh Ministers before making an order which relates to a water undertaker or sewerage undertaker for an area which is wholly or mainly in Wales.
124. *Subsection (6)* provides that the Secretary of State may not make an order under this clause unless he is satisfied that there is (or will be when the order comes into force) at least one redress scheme which each regulated provider to whom the order applies is able to join and which will satisfy the requirement imposed by the order. This is to ensure that the Secretary of State may not make an order requiring providers to belong to a redress scheme in circumstances where the providers subject to the order are unable to join a scheme since none exists.
125. *Subsection (8)* enables the Secretary of State to establish or administer a redress scheme. In practice, it is expected that suppliers or a trade association will establish their own redress scheme in respect of which approval will be sought for the purposes of any order under this clause. However, in the event that business does not establish a scheme itself, the Secretary of State has the power to establish one.

Clause 48: Membership of redress schemes: supplementary

126. *Clause 48* defines the key terms in relation to redress schemes.
127. *Subsection (3)* provides that an approved redress scheme may admit persons who are not required to belong to such a scheme and that it may investigate matters other than those to which the duty to belong to a redress scheme applies.
128. *Subsection (4)* provides that, for the purposes of the law of defamation, proceedings before a redress scheme will be treated in the same way as court proceedings. The effect of this is to allow the redress scheme to conduct investigations and determinations freely without the threat of defamation proceedings. Similar provision exists for most other statutory redress schemes.

Clause 49: Approval of redress schemes

129. *Clause 49* sets out the matters to be taken into account by the regulator in giving approval for a redress scheme.
130. *Subsection (1)* specifies various matters that the relevant regulator must have regard to when deciding whether to approve a scheme. These include any criteria that, in the opinion of the regulator, constitute generally accepted principles of best practice in relation to redress provision which could reasonably apply to the scheme. An example of such guidelines would be guidelines such as those provided by the British and Irish Ombudsman Association (www.bioa.org.uk).
131. *Subsection (2)* requires the regulator to have regard to the number of other redress schemes in relation to regulated suppliers when the regulator decides whether to approve a scheme. This is intended to avoid a proliferation of redress schemes as this could be confusing for consumers.

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132. *Subsections (3), (6) and (7)* set out various conditions that a redress scheme must satisfy in order to be approved by a relevant regulator.

Clause 51: Procedure for refusing or withdrawing approval

133. *Clause 51* sets out the procedure that the relevant regulator must follow when refusing approval for, or withdrawing approval from, an approved redress scheme.
134. *Subsection (1)* requires the relevant regulator to give the scheme administrator notice of the fact that it proposes to refuse or withdraw approval. The notice must give the reasons why the regulator proposes to refuse or withdraw approval and specify a time during which the scheme administrator may make representations to the regulator.
135. *Subsection (2)* provides that the regulator must notify the scheme administrator of its decision and the reasons for its decision.
136. *Subsection (3)* provides that the regulator must also notify the Secretary of State of its decision to withdraw approval from a redress scheme.
137. *Subsection (4)* provides that the regulator must also notify each member of the scheme of its decision to withdraw the scheme's approval.
138. *Subsection (5)* provides that withdrawal of approval of a redress scheme takes effect from the date specified in the notice withdrawing the approval (under subsection (2)).
139. *Subsection (6)* provides that the Secretary of State must follow the procedures set out in this clause (other than those in subsection (3)) if he has appointed a person to administer a scheme under clause 47(1)(b) and decides to revoke that appointment.

Clause 52: Enforcement of requirements imposed under Part 2

140. *Clause 52* makes provision in relation to the enforcement of complaint handling standards prescribed by a regulator under Part 2 of the Bill and in relation to any requirement to belong to a redress scheme which has been imposed by the Secretary of State by order under Part 2. These requirements will be enforced under the regulatory regimes in the electricity, gas, postal services and water sectors (where appropriate).
141. *Subsections (1) to (4)* make amendments to the relevant legislation to provide for this. The effect of the enforcement provisions is that the relevant regulator may impose an order to secure compliance with the above requirements. The service provider is obliged to comply with such an order and breach of the order can be enforced in the civil courts. Breach of such an order may also render the service provider liable to pay damages to any person who has suffered loss as the result of that breach. In addition to the above, sectoral legislation permits the regulator to impose a financial penalty for breach of the above requirements.

Part 3: Amendments of the Estate Agents Act 1979

Estate agents' duties

Clause 53: Membership of redress schemes

142. *Clause 53* introduces *Schedule 6* which amends the Estate Agents Act 1979 to enable the Secretary of State, by order, to require persons engaged in estate agency work to join a redress scheme dealing with complaints from buyers and sellers of residential property. In addition, the clause amends section 3 of the 1979 Act by adding engaging in estate agency work when in breach of the duty imposed by such an order to the list of grounds on which the OFT may determine whether a person is unfit to carry on estate agency work.
143. This clause also repeals sections 172 to 174 of the Housing Act 2004 (which give the Secretary of State the power to require estate agents to belong to a redress scheme in relation to complaints regarding Home Information Packs). The intention is to bring the repeal of sections 172 to 174 into force when an order made under the Estate Agents Act 1979 (as amended by Schedule 6) comes into force.

Schedule 6: Estate Agents' redress schemes

144. This Schedule inserts *new sections 23A, B and C* and *new Schedules 3 and 4* into the 1979 Act.

New section 23A: Redress Schemes

145. *Subsection (1)* of new section 23A gives the Secretary of State a power to make an order requiring persons who engage in estate agency work in relation to residential property to join an approved redress scheme. Such an order may apply to all who engage in estate agency work, or only to specified descriptions of them, and may exclude certain types of estate agency work. *Subsection (3)* provides for an order to limit the types of complaint that may be made under a redress scheme, doing so by reference to the types of people who can make a complaint. This order will be subject to the negative resolution procedure (*subsection (5)*).
146. New *subsection (4)* means that an order cannot require individual employees to join a scheme. The duty will be that of their employer (who may, for example, be a body corporate or a partnership).
147. New *subsection (6)* provides that before making an order the Secretary of State must be satisfied that everyone who will be required to join an approved scheme will be eligible to do so – but for this purpose he will not have to take account of people who are not permitted to carry out estate agency work, for example because they have been prohibited from acting as an estate agent by the OFT.
148. New *subsection (7)* clarifies that approved redress schemes may be open to people other than estate agents if they wish to join, may deal with a wider range of

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complaints than those to which the duty imposed by the order applies, and may exclude certain types of complaint e.g. complaints made after a long period of time.

149. New *subsection (8)* defines terms used in this clause. An approved redress scheme is a scheme which is approved by the OFT under Schedule 3 or a scheme administered by or on behalf of the Secretary of State and designated by him as an approved redress scheme for the purposes of the new section 23A.
150. This clause also introduces the new Schedule 3 to be inserted into the 1979 Act.

New section 23B: Enforcement

151. This new section confers powers on enforcement officers other than officers of the OFT. It allows such an officer (in practice, a Trading Standards Officer) to issue a penalty charge notice if he believes a person engaged in estate agency work in relation to residential property is not a member of an approved redress scheme, contrary to an order made under section 23A(1). A penalty charge can be issued within a six month period of the breach being committed (or, in the case of a continuing breach, of the last day of it being committed). Subsection (4) requires that a Trading Standards Officer must inform the OFT if he believes an estate agent is carrying out estate agency work without being a member of a redress scheme, and therefore breaching an order under section 23A, so that the OFT can take regulatory action. Section 23B also provides for the new Schedule 4 of the Estate Agents Act 1979 (dealing with penalty notices) to have effect.

New section 23C: Meaning of residential property

152. This new section defines “residential property” for the purposes of section 23A. The definition is broad but subsection (1)(b) provides for the Secretary of State to make an order to exclude specified property from the definition if required.

New Schedule 3: redress schemes

153. New *Schedule 3* makes further provision in connection with the approval of redress schemes. The Schedule indicates the minimum requirements which must be met before a redress scheme can be approved. The provisions are broadly similar to section 173 of the Housing Act 2004 except that they enable the OFT to approve redress schemes rather than the Secretary of State. (A scheme which is administered by or on behalf of the Secretary of State does not require approval by the OFT).
154. *Paragraphs 2, 4 and 5* set out minimum requirements for a scheme.
155. *Paragraph 3* requires the OFT, in determining whether a scheme is satisfactory, to have regard to the interests of both scheme members and potential complainants. The OFT must also have regard to whether the scheme complies with what the OFT regards as generally accepted principles of best practice, in relation to consumer redress schemes, which may be reasonably regarded as applicable to the

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estate agency sector. *Paragraph 3 (2)* also permits the OFT to have regard to the number of other approved redress schemes in deciding whether to approve a scheme. In other words, the OFT could refuse to approve a redress scheme, even if it met the approval criteria, if it did not feel a further scheme was in the interests of the industry and potential complainants.

156. *Paragraph 4* requires that a scheme must make provision for passing on information to the OFT, or any other relevant regulator, so that they can take regulatory action as a result of a complaint if necessary.
157. As it will be mandatory for estate agents to join a scheme once an order is made under section 23A, paragraph 5 of Schedule 3 requires the OFT to be satisfied that the scheme does not provide for membership to be revoked on unfair grounds, as otherwise the scheme could deprive an estate agent of his/her livelihood in an unfair way.
158. *Paragraphs 6, 7 and 8* deal with procedural matters relating to the OFT's decision to approve or refuse approval of a scheme.
159. *Paragraph 9* specifies a 14 day period for notifying changes to a scheme.
160. *Paragraphs 10 to 13* set out the process for withdrawing approval. This will require the giving of a notice of the proposal to withdraw approval, specifying the grounds for doing so and indicating that the recipient of the notice may make representations about the proposal. Paragraph 11(c) allows a minimum period of 30 days for representations after the withdrawal notice is issued and is in line with the provisions made for energy and postal redress schemes in Part 2 of the Bill.
161. *Paragraph 14* provides that in the case where the Secretary of State has designated a scheme administered by him or on his behalf he must give notice to scheme members if he no longer wishes that scheme to be designated an approved scheme, just as the scheme administrator would have to give notice to every member if the OFT was withdrawing approval from the scheme (paragraph 13 (b)).
162. *Paragraph 15* ensures that proceedings under approved schemes (in relation to the investigation and determination of complaints) are covered by the defence of absolute privilege for the purposes of any action for defamation. This means that words spoken, published or reported in the course of redress proceedings cannot be the subject of an action for defamation. This follows the corresponding provision in the Housing Act 2004.

New Schedule 4: Penalty notices under section 23B(1)

163. The new *Schedule 4* to the 1979 Act sets out detailed requirements relating to penalty charge notices. These are very similar to the provisions in Schedule 8 of the Housing Act 2004. The amount of the penalty charge will be set by regulations but cannot exceed £ 1,000.

Clause 54: Duty to keep records

164. At present, it is an undesirable practice under the 1979 Act for an estate agent to fail to pass on an offer to the seller promptly and in writing (except where the client has indicated that he does not want particular types of offer to be passed on), or to misrepresent an offer (see Articles 1 and 2 and Schedule 3 to the Estate Agents (Undesirable Practices) (No.2) Order 1991). An undesirable practice is one of the triggers for considering a person's fitness to engage in estate agency work under section 3(1) of the 1979 Act and hence can lead to a prohibition order. However estate agents are not currently required to maintain records of offers made and passed on.
165. The clause inserts a new section 21A in the 1979 Act. Subsection (1) of the new section introduces a requirement for persons engaged in estate agency work to keep records (referred to in the section as "the permanent records"). Subsection (3) requires persons engaged in estate agency work to ensure that records of certain information and events are included in those records. The details of what must be included are specified in subsection (4) (e.g. information to clients regarding their prospective liabilities to the person carrying on estate agency work, information about offers and other information of a description prescribed by the Secretary of State). The records must be kept for a period of six years. The period of six years is the period for which accounting records under the Estate Agents (Accounts) Regulations 1981⁹ have to be kept and is also the basic limitation period for most claims.
166. The new section makes special provision for persons who are engaged in estate agency work as employees. The duty under subsection (1) to keep records is that of the employer and not the employee (see subsection (2)). But the duty under subsection (3) does apply to employees so they must, for example, ensure that information about offers received by them is included in the records. Under subsection (5) employers, as well as employees, are also required to ensure that records are kept up to date in this way, but the employer is not in breach of the duty if he can show that he took such steps as were reasonably practicable to ensure that his employees complied with their duty. Regulatory action can be taken against the employer for failing to keep records or to keep them up to date (subject to the defence just mentioned) and against the employee for failing to keep the records up to date.

Clause 55: Grounds for prohibition orders

167. *Section 3(1)* of the 1979 Act lists the triggers which allow the OFT to consider the fitness of an estate agent. Subsection (2) of this clause amends section 3(1) so that the OFT can consider the fitness of estate agents where they have committed an offence even if the individual has not been convicted of the offence. For example, the individual may have accepted a police caution, or the OFT may have evidence

⁹ 1981 No. 1520 The Estate Agents (Accounts) Regulations

from Trading Standards Officers or the Financial Services Authority of an offence having been committed where these authorities do not wish to prosecute for some reason (e.g. the FSA may decide to revoke someone's authorisation instead).

168. In addition, *subsection (3)* further widens the circumstances in which the OFT can consider a person's fitness to engage in estate agency work to include circumstances where an estate agent has breached a statutory undertaking given to the OFT under section 217, 218 or 219 of the Enterprise Act 2002 or breached an enforcement order made against him under section 217 of that Act in relation to estate agency work.
169. *Subsection (4)* of the clause provides that section 5(4) of the 1979 Act is omitted. Section 5(4) provides for the automatic revocation of orders based on a conviction which becomes spent. Its repeal means that an individual who is subject to a prohibition order on the basis that he has committed an offence and who has been convicted of that offence will have to apply to the OFT to have the prohibition order revoked when the conviction becomes spent. The OFT would be expected to revoke the order in these circumstances. An individual who is subject to a prohibition order due to having committed an offence but who has not been convicted of the offence will also have to apply to the OFT to revoke the order, after a suitable period of time, should they wish to practise as an estate agent again.
170. *Subsection (5)* amends paragraph 1 of Schedule 1 to the 1979 Act. The amendment makes it clear that in determining whether to make a prohibition order on the ground set out in section 3(1)(a) (as amended) the OFT may not rely on convictions that have become spent.

Clause 56: Grounds for warning orders

171. In the same way that clause 55 widens the circumstances in which the OFT can consider whether a person is fit to engage in estate agency work, potentially leading to a prohibition order, this clause widens the circumstances in which the OFT can consider issuing a warning order to an estate agent under section 4(1) of the 1979 Act. Section 4(1) currently provides that a warning order may be issued where a person carrying on estate agency work has failed to comply with an obligation imposed on him under sections 15 or 18 to 21, or has engaged in an undesirable practice as mentioned in section 3(1)(d), and were he again to fail to comply with such an obligation or continue to engage in that practice the OFT would issue a prohibition order against him. Subsection (2) of the clause extends the circumstances in which warning orders may be issued to include engaging in estate agency work in breach of a duty to belong to a redress scheme, failure to comply with any requirement imposed under sections 9(1) or 11(1A)(b) and breach of a statutory undertaking or an enforcement order under the Enterprise Act 2002.
172. *Subsections (3) to (5)* contain consequential amendments to section 4 as a result of the inclusion of the new subsection (1).

Investigatory powers

Clause 57: Powers of entry and inspection

173. This clause widens the powers of entry under the 1979 Act. At present, under section 11 of the 1979 Act, enforcement officers have the power to enter premises when they have reasonable cause to suspect that an offence has been committed. This clause extends the power so that enforcement officers can enter premises not only when there is reasonable cause to suspect that an offence has been committed but also where the enforcement officer has reasonable cause to suspect that a breach of the obligations listed under subsection (1)(b) of section 11 (as amended), or an undesirable practice, has occurred. The power is to be used to establish whether the specified breach or undesirable practice has occurred.
174. New subsection (1A) sets out the powers which are for the enforcement officer to enter premises, to request anyone connected with the business to provide him/her with any books or documents (including requesting that documents held on a computer related to the business be produced in a legible form) and to make copies of any books, or documents provided. This re-enacts with minor amendments the provision currently made by section 11(1)(b).
175. New *subsection (1B)* allows an officer to seize and detain the originals of any books or documents provided they may be required as evidence for use in proceedings that might follow. This replaces the current power in section 11(1)(c) to seize and detain documents and widens the circumstances in which the power is exercisable. In addition, subsection (1C) allows an enforcement officer to seize and detain a book or document where it is not possible to take a copy of it or of an entry in it. These subsections are qualified by the new subsections (1D), (1E) and (1F), as well as subsections (2) and (3) of section 11.
176. *Subsection (3)* further amends section 11. Section 11(4), currently only allows a warrant to be issued when there are grounds to believe that an offence has been or is being or is about to be committed or that there is documentary evidence on the premises that is likely to reveal that an offence has been committed, and that admission to the premises has been or is likely to be refused or that giving notice would defeat the object of the entry. The new subsections (4), (4A) and (4B) are wider and, in addition to the existing circumstances under section 11, allow a warrant to be issued if there is reason to believe that an estate agent has breached any of the obligations under the Act specified in subsection (4A)(a), or has engaged in an undesirable practice. At least one of the conditions in subsection (4B) must also be satisfied for a warrant to be granted.

Clause 58: Failure to produce information

177. This clause provides a new power where a person has failed to provide to the OFT (under section 9 (1) of the 1979 Act) or to an enforcement officer (under section 11(1A)(b)) information, books or documents that have been required to be produced. The OFT or the enforcement officer can apply for a court order to

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require the “defaulter” to produce the information, books or documents asked for, or to take such other steps as may be specified in the order. This clause also makes consequential amendments to section 9 and section 27 of the 1979 Act

Part 4: Miscellaneous and General

Clause 59: Contracts concluded away from business premises

178. This clause enables the Secretary of State to make regulations which give consumers the right to cancel contracts concluded in their home or at their workplace with a trader whom they invited to visit them there. Consumers already have rights to cancel contracts where the trader’s visit was unsolicited¹⁰. This power is expected to be used to make a single set of new Regulations which incorporate the provisions in the existing Regulations and so cover all contracts concluded by consumers with traders in the consumer’s home or workplace. The Secretary of State will set out the criteria for the "solicited" contracts to which these rights will apply in the relevant statutory instrument.

Clause 60: Orders and Regulations

179. *Clause 60* makes provision in relation to orders and regulations made under the Act. Any power to make orders or regulations under the Act is exercisable by statutory instrument.
180. An order or regulations under the Bill may also include incidental, supplementary, consequential, transitory, transitional provisions and savings.
181. Such provisions may make amendments to legislation including Acts of the Scottish Parliament and a Measure or Act of the National Assembly for Wales. *Subsection (7)* provides that clause 60 does not authorise an order or regulations under the Bill to make any provision which is within the legislative competence of the Scottish Parliament. The effect of this is that no provision which is made by virtue of clause 60 may be made in relation to devolved matters. *Subsection (7)* does not prevent an order under the Bill amending ASPs for reserved purposes

Clause 62: Parliamentary control of orders and regulation

182. This clause makes provision in relation to the Parliamentary procedure which applies to orders and regulations made by the Secretary of State under the Bill.
183. Regulations made by the Gas and Electricity Markets Authority or the Postal Services Commission under clauses 43 and 46 are not subject to any Parliament procedure. However regulations under clause 43 are subject to the consent of the Secretary of State by virtue of clause 43(4).

¹⁰ 1987 No 2117 Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations.

Clause 63: Minor, consequential and transitional provision

184. This clause provides a power to make such incidental, supplementary, consequential, transitory, and transitional provisions and savings as the Secretary of State considers necessary or expedient in relation to the commencement of the provisions of the Bill. However, such a measure may not make any provision which is within the legislative competence of the Scottish Parliament (*subsection (5)*).

Clause 64: Repeals

185. *Clause 64* gives effect to Schedule 8 which repeals certain provisions in existing legislation.

Clause 65: Extent

186. Clause 65 provides that in general the Bill applies to England, Wales, Scotland and Northern Ireland. However, certain provisions apply only to certain parts of the UK.

Schedule 1: The National Consumer Council

187. This Schedule makes further provision in relation to appointments to the Council, its members, procedures, status and funding.

Part 1: Members of the Council

Membership

188. *Paragraph 1* provides for the Secretary of State to appoint the chairman of the Council, the chairmen of the territorial committees, and other members. The Council chairman is non-executive (i.e. not appointed from the staff of the Council), and must be consulted by the Secretary of State before the latter appoints other non-executive members to the Council. Executive members of the Council (i.e. Council members who are appointed from the staff of the Council) are appointed by the Secretary of State on the nomination of the Council chairman. The Secretary of State may appoint as non-executive members persons who are members of the OFCOM Consumer Panel and/or the Financial Services Consumer Panel where these persons have been nominated by the Panel in question following consultation with the Council Chairman. The Secretary of State is obliged to secure that a majority of members of the Council are non-executive. In making appointments to the Council, this paragraph provides that the Secretary of State must have regard to the desirability of appointing one or more members with experience of work among and the special needs of disabled persons.
189. *Paragraph 2*, subject to the other provisions of Schedule 1, establishes that members of the Council will be appointed to, and vacate, their office according to the terms and conditions of their appointment.

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190. *Paragraph 3* enables the Council to make payments in relation to non-executive members' remuneration, pensions, allowances or gratuities. The Council may also pay travelling and other allowances to any member.
191. *Paragraph 4* defines the term of a non-executive appointment as a fixed period not exceeding five years, and permits re-appointment for one further period of up to five years.
192. *Paragraph 5* describes circumstances where individuals will cease to be members of the Council. The Secretary of State is empowered to terminate the appointment of a chairman or other member who is unable, unfit, or unwilling to fulfil the functions of his or her appointment.
193. *Paragraph 6* enables the Council to pay compensation to members who leave office early.

Part 2: Staff of the Council

194. *Paragraph 7* requires the Council to employ a Chief Executive, and the first such appointment is to be made by the Secretary of State on such terms and conditions as he determines. Subsequent appointments of Chief Executives are to be made by the Council, with the approval of the Secretary of State being required for both the appointment and for the terms and conditions on which the appointment is made.
195. *Paragraph 8* enables the Council to employ other staff as it considers appropriate, with the numbers of staff and their terms and conditions subject to approval by the Secretary of State.
196. *Paragraph 9* makes provision to allow the Chief Executive and staff of the Council to join the Principal Civil Service Pension Scheme and for payments to be made by the Council in respect of this pension provision.
197. *Paragraph 10* provides that the Council may arrange for other parties to provide it with assistance, and to pay fees to such parties.

Part 3: Territorial, Regional and Other Committees

198. *Paragraph 11* sets out the arrangements for territorial committees, which the Council is required to establish by clause 1(2) for Scotland, Wales, and Northern Ireland. Each committee comprises executive and non-executive members appointed by the Secretary of State, with a majority of non-executive members. The Chairman of each committee must be a non-executive member. Before appointing a non-executive member (including a chairman), the Secretary of State must consult the Council chairman, and Scottish and Welsh Ministers as appropriate.

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199. *Paragraph 12* enables the Council, with the approval of the Secretary of State, to establish or abolish regional committees to provide advice and information to the Council about consumer matters affecting the relevant region, and for other purposes determined by the Council.
200. *Paragraph 13* specifies that the Council is able to appoint a chairman and members to a regional committee. The chairman and the majority of members must be non-executive. The Council must have regard to the desirability of appointing one or more members with experience of work among, and the special needs of, disabled persons.
201. *Paragraph 14* enables the Council to establish other committees.
202. *Paragraph 18* limits the term of a non-executive appointment to a territorial or regional committee to a fixed period not exceeding five years, and permits re-appointment for one further period of up to five years.
203. *Paragraph 19* makes provision in respect of the circumstances in which the chairmen of a territorial or regional committee shall cease to be a member of the committee. The Secretary of State is empowered to terminate the appointment of a chairman or other member of a territorial committee who is unable, unfit, or unwilling to fulfil the functions of his or her appointment.
204. *Paragraph 20* enables the Council to pay compensation to members of territorial committees when they leave office early.

Part 4: Procedure etc.

205. *Paragraph 21* enables the Council to regulate its own procedure and that of its committees and sub-committees, including the quorum in each case.
206. *Paragraph 22* determines that the validity of any act of the Council is not affected by any vacancy on the Council, its committees or sub-committees; any defect in the appointment of any members of the Council or its committees or sub-committees, or any disqualification of any person as chairman or other member of the Council.
207. *Paragraph 23(1)* enables the Council to delegate its functions to the Chairman or another member of the Council, any committee or sub-committee of the Council, or the Chief Executive or another member of staff. *Paragraph 23(2)* provides that any committee established by the Council has a similar power to delegate its functions.
208. *Paragraphs 24 to 26* make provision in relation to the authentication of Council's seal and the execution of documents by the Council.

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209. *Paragraph 27* requires the Council to maintain an office in each of England, Scotland, Wales and Northern Ireland, and authorises the Council to establish additional offices within the United Kingdom with the consent of the Secretary of State.

Part 5: Funding and accounts

210. *Part 5* sets out how the Council will be funded, and the requirements to be placed on the Council in relation to its accounts.
211. *Paragraph 29* inserts additional provisions in the Utilities Act 2000 which provide that licensed electricity and gas suppliers may be required to pay for:
- a) the appropriate proportion of the expenses of the Council (including a proportion of the establishment costs);
 - b) the appropriate proportion of the costs of the Secretary of State in relation to the establishment of the Council;
 - c) any transfer schemes made under section 35(2)(a) or 35(7) of the Bill in respect of energywatch to the Council;
 - d) the costs of the Secretary of State in relation to the abolition of energywatch,
 - e) the costs of the OFT in relation to the expansion of any public consumer advice scheme supported by the OFT (“OFT scheme”) to enable it to cater for enquiries from electricity and gas consumers;
 - f) the appropriate proportion of the costs of the Office of Fair Trading in relation to the operation of an OFT scheme.
212. In determining the “appropriate proportion” of the funding to come from energy licensees, the Secretary of State must have regard to the functions exercised by the Council or an OFT scheme in relation to electricity and gas consumers.
213. *Paragraph 30* inserts a new provision into the Postal Services Act 2000 which provides that licensed suppliers of postal services may be required to pay for:
- a) the appropriate proportion of the expenses of the Council (including a proportion of the establishment costs);
 - b) the appropriate proportion of the costs of the Secretary of State in relation to the establishment of the Council;
 - c) any transfer schemes made under section 35(2)(a) or 35(7) of the Bill in respect of Postwatch to the Council;
 - d) the costs of the Secretary of State in relation to the abolition of Postwatch;

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- e) the costs of the OFT in relation to the expansion of any public consumer advice scheme supported by the OFT (“OFT scheme”) to enable it to cater for enquiries from postal services consumers;
 - f) the appropriate proportion of the costs of the Office of Fair Trading in relation to the operation of an OFT scheme.
214. In determining the “appropriate proportion” of the funding to come from postal services licensees, the Secretary of State must have regard to the functions exercised by the Council or the OFT scheme in relation to postal services consumers.
215. *Paragraph 32* sets out the requirements on the Council in relation to its accounts, including the requirement for the Comptroller and Auditor General (the head of the National Audit Office) to audit the Council’s accounts annually, and to lay each year’s accounts before Parliament.

Part 6: Status etc.

216. *Paragraph 33* provides that the Council is not to be regarded as a servant or agent of the Crown; it does not enjoy any status, immunity of privilege of the Crown; and the Council’s property is not Crown property.
217. *Paragraphs 3 to 37* make the Council subject to the requirements of the Parliamentary Commissioner Act 1967 (c. 13) relating to departments subject to investigation; the House of Commons Disqualification Act 1975 (c. 24) and similar provisions barring members of the Council from being members of the House of Commons, or of the Northern Ireland Assembly. It also makes the Council subject to the provisions of the Public Records Act 1958 (c.51) and the Freedom of Information Act 2000 (c. 36).
218. *Paragraph 38* provides an exemption from liability for damages for anything done by the Council, any member of the Council or any of its committees or sub-committees, the Chief Executive or any member of the Council’s staff in the exercise (or purported exercise) of the Council’s functions. This exemption does not apply where the act or omission was in bad faith. Nor does it prevent an award of damages made in respect of an act or omission which is unlawful a result of section 6(1) of the Human Rights Act 1998 (c. 42).

Schedule 2: Enforcement of information requirements

219. *Schedule 2* amends the Gas Act 1986, the Electricity Act 1989 and the Postal Services Act 2000 in order to make provision in relation to the enforcement of the requirement on licensed suppliers to comply with a direction (under clause 24) by a “designated investigator” to provide information to the Council.
220. The enforcement provisions by virtue of this Schedule operate in the same way as those in respect of Part 2 of the Bill. Hence, the relevant regulator may impose an order for breach of the above requirements. The supplier is obliged to comply with

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such an order and breach of the order can be enforced in the civil courts. Breach of such an order may also render the supplier liable to pay damages to any person who has suffered loss as the result of that breach. In addition to the above, legislation concerning the relevant sector permits the regulator to impose a financial penalty for breach of the above requirements.

Schedule 3: Abolition of consumer bodies: transitional provision

- 221. This Schedule sets out the transitional arrangements that will apply when energywatch and Postwatch are abolished and the new Council is set up.
- 222. *Paragraphs 1 and 2* make provision to ensure that the Council is able to continue to investigate any complaint that energywatch is in the process of investigating at the time of its abolition.
- 223. *Paragraph 3* makes transitional provision in relation to energywatch's final annual report.
- 224. *Paragraph 4* makes provision to ensure that the Council is able to continue to investigate any complaint that Postwatch is in the process of investigating at the time of its abolition.
- 225. *Paragraph 5* makes transitional provision in relation to Postwatch's final annual report.

Schedule 4: Transfer of property etc to Council

- 226. This Schedule makes further provision about transfer schemes made by the Secretary of State under clause 35(7) or by energywatch, Postwatch, the Consumer Council for Water or the existing National Consumer Council under clause 35(2)(a). *Paragraph 5* means that all property, rights and liabilities included within a transfer scheme are transferred to the Council on the day appointed by the scheme, even if other provisions exist that might prevent or restrict their transfer.
- 227. *Paragraph 6* means that anything done by the body from who the property etc is being transferred (the "transferor") in connection with the property etc being transferred, shall be treated as if it were done by the Council. The Council may continue anything that the transferor was in the process of doing before the transfer, and should be substituted for the transferor in any document that relates to the property etc being transferred.
- 228. *Paragraphs 7 and 8* apply the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) to any transfer that relates to rights or liabilities under a contract of employment. Paragraph 8 ensures that there is no break in the continuity of employment of staff transferring to the Council from energywatch, Postwatch, the Consumer Council for Water or the existing National Consumer Council.

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229. *Paragraphs 9 to 11* make provision for corporation tax consequences of the transfer schemes. The effect is to remove tax consequences that would otherwise have arisen only because of the transfer and to provide continuity of tax treatment.

Schedule 5: Information relating to compliance with complaint handling standards

230. This Schedule amends the Electricity Act 1989, Gas Act 1986 and Postal Services Act 2000 to require the Gas and Electricity Markets Authority and the Postal Services Commission to collect information from licence holders in respect of levels of compliance with any complaint handling standards prescribed by these regulators under clause 43 of the Bill. The above regulators are given the power to direct licensees to provide them with the above information.

Schedule 6: Estate Agents' Redress Schemes

231. This is explained above.

Schedule 7: Minor and Consequential Amendments

232. This Schedule makes a number of consequential amendments to legislation.

Schedule 8: Repeals

233. *Schedule 8* lists the repeals made by the Act.

FINANCIAL EFFECTS OF THE BILL

234. The Bill is not expected to entail any additional net public expenditure. It is envisaged that the current level of Government funding from the Consolidated Fund to the existing National Consumer Council will be transferred on abolition to the new National Consumer Council. The new body will need to negotiate its annual funding requirement with the DTI, just as the National Consumer Council does currently. This funding will be to pay for the body's functions in relation to consumers in all sectors other than the energy and postal services sectors (or the water sector if the Consumer Council for Water is consolidated into the new body after consultation in 2008).
235. The remaining on-going funding requirement of the Council will come from the energy and postal services industries initially, again through licence fees. The Bill will also confer a power to require providers in the gas, electricity and postal services sectors to contribute towards the costs of establishing the Council. The power to require providers in the water sector to contribute towards the costs of the Council may only be exercised after the Consumer Council for Water has been designated for abolition. In view of this, providers in the water sector cannot be required to contribute towards the Council's establishment costs. Providers in the above sectors will also contribute towards the costs of expanding and

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running the consumer advice service supported by the OFT (Consumer Direct) in relation to their sectors. These funding requirements will be imposed via licence fees (and also conditions of establishment in the water sector) and collected from providers by the sectoral regulators who will pay the sums collected by them into the Consolidated Fund. The Council will then receive its funding from government as grant-in-aid.

236. The Bill will also enable the Secretary of State to establish redress schemes himself if industry has not already done so in the electricity, gas and postal services sectors (and potentially the water sector after consultation in 2008). This may require some public expenditure although any costs would be recouped from the members of the scheme through the schemes membership and case fees. Powers have been provided in the Bill to fund such schemes. However, it is expected that industry will establish its own redress schemes and it is therefore unlikely that the Secretary of State will need to exercise his power to establish a redress scheme.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

237. The Consumer Voice provisions in Part 1 include the consolidation of three Non Departmental Public Bodies, with the intention of creating a much stronger, more coherent body that can apply experience and best practice in one sector to other sectors as appropriate. This will also result in efficiency savings, resulting partly from the consolidation of staff and the removal of duplicated roles as the three bodies are merged into one. The number of staff at the new body will be determined in conjunction with the existing consumer bodies to ensure that the new body is fit for purpose and able to undertake its new functions effectively and efficiently. Provisions in the Bill relating to Estates Agents and Doorstep Selling have no effect on public service manpower.

SUMMARY OF REGULATORY APPRAISAL

238. A Regulatory Impact Assessment has been prepared to accompany the Bill and will be published alongside the Bill and these Notes. A copy of the Regulatory Impact Assessment may be seen at <http://www.dti.gov.uk/files/file35347.pdf>. Hard copies of the document are available from CCP 2F, Bay 419, Department of Trade and Industry, 1 Victoria Street, London, SW1H 0ET.

Consumer Voice

239. Having consulted widely the Government is of the view that these provisions in Parts 1 and 2 will have minimal effect on small firms, voluntary organisations and charities. They will also have minimal impact on competition in any of the sectors affected by the provisions.

Estate Agents

240. It is expected that redress scheme membership costs for estate agents will be broadly similar to existing voluntary schemes (£130pa) resulting in additional costs to those estate agents currently outside schemes of about £600,000pa.
241. Changes to the enforcement regime are not expected to result in any increased burden on enforcers. There will, however, be costs to business resulting from increased enforcement activity, but these will fall disproportionately on those agents who have complaints made against them.
242. The changes proposed in terms of the duty to make and keep records will be minimal.

Doorstep Selling

243. The Government expects that the measure will affect all businesses which make sales on the doorstep, including small firms in relevant sectors, without placing a disproportionate burden on business.

EUROPEAN CONVENTION ON HUMAN RIGHTS

244. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by Section 1 of that Act). On 6th February 2007 the Secretary of State for Trade and Industry made the following statement:

“In my view the provisions of the Consumers, Estate Agents and Redress Bill are compatible with the Convention Rights.”

General

245. This section of these Notes comments on those provisions in the Bill which may engage Convention rights. The Government’s conclusion in relation to these clauses is that there is no incompatibility with these rights. No specific reference is made in this section to clauses of the Bill, which it is believed do not engage Convention rights and do not therefore require further comment.

Provision of information to the Council

246. As explained above, Clauses 24 to 28 give the Council powers to require certain persons to provide information. These provisions are considered to be compliant with Article 8(1) and Article 6(1) of the Convention. In relation to Article 8(1) the information to be provided is limited to information required by the Council to undertake its functions and the Council is under a duty to minimise detriment. These are necessary and proportionate powers to enable the Council to undertake its functions.

Transfer of property

247. Clause 35 provides that the Secretary of State may direct any of energywatch, Postwatch and the Consumer Council for Water as well as the existing National Consumer Council to transfer its property, rights and liabilities to the Council. The Bill provides for consultation with all persons affected by the transfer.
248. This provision may engage Article 1 of Protocol 1. However, these bodies have been set up to provide assistance to the Government and regulators on consumer matters. It is proportionate to require these bodies to transfer their assets to the new non-departmental public body that will undertake these functions and so there is no conflict with Article 1 of Protocol 1.

Requirements relating to redress schemes

249. Part 2 of the Bill sets out provisions relating to redress schemes for gas, electricity, postal services and water industries and Part 3 sets out similar provisions in relation to estate agents. These provisions engage Article 6(1) because it is likely that the supplier's or estate agent's right of access to courts will be restricted when a complaint is the subject of a determination under a redress scheme. The schemes are to be approved by a regulator or OFT or administered by the Secretary of State (or on his behalf). In addition to safeguards in the Bill (e.g. as to the independence of the person determining a complaint) section 6(1) of the Human Rights Act 1998 requires a regulator, the OFT or the Secretary of State to act compatibly with the Convention rights specified in that Act.

Expansion of the circumstances which the OFT can take into account when considering the fitness of estate agents

250. Clause 55 amends the circumstances in which the OFT can consider making an order prohibiting persons from doing estate agency work. Decisions of the OFT must comply with Article 6 of the Convention. The OFT is not an independent and impartial tribunal, but an estate agent has a right of appeal to the Secretary of State and this is subject to a further appeal to the courts. This means that the requirements of Article 6(1) have been met.

Powers of entry and inspection – amendments to the Estate Agents Act 1979

251. Clause 57 extends the power to enter and inspect premises (contained in section 11 of the Estate Agents Act 1979 (the "1979 Act")) on reasonable suspicion that undesirable practices or breaches of the 1979 Act that do no amount to offences have occurred. Insofar as this power engages Article 8(1) of the Convention it is considered justified under Article 8(2) as an important element in the monitoring powers of enforcement authorities under the 1979 Act to enable them to carry out their functions of protecting consumers.

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Modification of licence conditions

252. Clause 33 and Part 5 of Schedule 1 each give a relevant regulator the power to amend licence conditions to recover the expenses of the Council and other related matters from licence holders. This engages Article 6(1) and Article 1 of Protocol 1. Article 6(1) may be engaged as a modification of licence condition may be a determination of a civil right. However, any such determination could be subject to judicial review and so the decision-making process is Article 6(1) compliant. Insofar as rights under a licence or instrument of appointment amount to “possessions” these provisions could be regarded as interfering with the right to peaceful enjoyment of possessions. However, such a control on use is in the general interest. Licence holders will be consulted on any changes. Therefore the power to change licence conditions may be exercised compatibly with Article 1 of Protocol 1.

COMMENCEMENT

253. Sections 60 to 62, 65 and 67 will come into force on the day that the Act is passed. All other provisions in the Act will come into force on the day specified by the Secretary of State in the relevant order. The orders may specify different dates of introduction for the different provisions in the Act, although it is intended that all provisions regarding Estate Agents and Doorstep Selling be in place by April 2008 with the remainder becoming effective by the summer of 2008.

CONSUMERS, ESTATE AGENTS AND REDRESS BILL [HL]

EXPLANATORY NOTES

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