

*These notes refer to the Consumers, Estate Agents and Redress Bill [HL]  
as introduced in the House of Lords on 16th November 2006 [HL Bill 2]*

# **CONSUMERS, ESTATE AGENTS AND REDRESS BILL [HL]**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Consumers, Estate Agents and Redress Bill [HL] as introduced in the House of Lords on 16th November 2006. 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")<sup>1</sup> and the Consumer Council for Postal Services ("Postwatch")<sup>2</sup>. The Bill also contains a power to dissolve the Consumer Council for Water<sup>3</sup> and transfer its functions to the new body established by the Bill.

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<sup>1</sup> Established by section 2 of the Utilities Act 2000 (c.27)

<sup>2</sup> Established by section 2 of the Postal Services Act 2000 (c.26)

<sup>3</sup> Established by section 27A Water Industry Act 1991 (c.56)

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- to enable the Secretary of State to require service providers in the electricity and gas (GB-wide), postal services (UK-wide) and water (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 GB (and UK 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 and allowing trading standards officers to inspect those records and expanding the circumstances in which 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 21st 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.”

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 new provision for 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

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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 Act 1985. The Bill also contains a power to dissolve the Consumer Council for Water<sup>4</sup> 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. The Bill provides for a system of cross-appointments to ensure a joined-up approach between the panels and the new National Consumer 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 following sectors: gas and electricity (Great Britain), postal services (United Kingdom) and water (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 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

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<sup>4</sup> Established by section 27A Water Industry Act 1991

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Consumer Council for Water. This will 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.

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

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- d) expand the circumstances in which the OFT can consider the fitness of an estate agent to practice 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.

### **PART 4: MISCELLANEOUS AND GENERAL**

20. The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987<sup>5</sup> ('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.

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

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## **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 suppliers (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 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 1999<sup>6</sup>. The creation of the new National Consumer Council will also affect devolved matters. Certain of the functions of the new National Consumer Council may impact on devolved matters, for example where the new National Consumer 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

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

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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 only covers consumer protection in relation to postal services. The regulation of postal services is a reserved matter. The new National Consumer 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.

## **COMMENTARY ON CLAUSES**

### **Part 1: The National Consumer Council**

#### **Clause 1: The National Consumers Council and its 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 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 32, licensees in the water sector may also be required to contribute towards the cost of the Council. Part 5 of Schedule 1 and clause 32 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 Clause 1 (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 clause 2(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)* defines the 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

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functions to the extent that they affect the relevant area; and such other purposes as the Council may determine.

29. *Subsection (5)* introduces *Schedule 1*, which makes further provision about the Council, 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: “Consumer” and “consumer matters”**

30. *Clause 2* 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 40*). 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 3: “Designated consumers”**

31. *Clause 3* defines who are “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 4* below). Other provisions in *clause 4* (below) 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.

32. *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 4: Forward work programmes**

33. The Council is required by *clause 4* 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



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State, Scottish Ministers, Welsh Ministers, the Office of Fair Trading, and regulatory bodies that the Council considers might have an interest.

34. 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 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 5: General provision about functions**

35. *Clause 5* sets out requirements imposed on the Council in exercising its functions.

36. *Subsection (2)* requires the Council to have regard to the Forward Work Programme when exercising its functions.

37. *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.

38. *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.

39. *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 6: Annual Report**

40. *Clause 6* 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 21 (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 a copy before Parliament); to the Scottish and Welsh Ministers (subsection (3)); and arrange for the report to be published.

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## **The core functions**

41. *Clauses 7, 8 and 9* set out the three core functions of the Council. These are to act as a consumer advocate (the representative function); to obtain and keep under review information about consumer matters (the research function); and to facilitate the provision of information to consumers (the information function).

### **Clause 7: The representative function**

42. *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 is defined in clause 2.

43. *Subsection (2)* list 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 8: The research function**

44. *Clause 8* establishes the second of the Council's core functions: to carry out research into consumer matters.

### **Clause 9: The information function**

45. *Clause 9* 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 issues. The Secretary of State has a power by order to add other matters in respect of which the Council is to exercise this function.

46. *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 19 (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")<sup>7</sup> and by the Financial Services Authority ("the Financial Services Consumer Panel")<sup>8</sup>. Such arrangements include those made to secure the coordination of activities relating to the provision of advice or information to consumers (see clause 19(2)).

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<sup>7</sup> 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.

<sup>8</sup> 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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## **Investigation Powers**

### **Clause 10: General powers of investigation**

47. *Clause 5(9)* provides that the Council is not required to act for individual consumers (except in cases from vulnerable consumers in designated markets – see clause 11 - or in respect of disconnections – see clause 12). However, clause 10 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 11: Investigation of complaints by vulnerable designated consumers**

48. *Clause 11* 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 12: Investigation of complaints relating to disconnection of gas or electricity**

49. *Clause 12* provides that where a gas consumer's premises are disconnected or cut-off by a gas transporters or gas supplier or where the gas transporter or supplier refuses to reconnect the consumer's premises, the consumer may complain to the Council. Similarly, an electricity consumer may complain to the Council where his premises are disconnected by an electricity distributor, supplier or transmission licence holder or where the supplier etc refuses to reconnect the consumer's premises. The Council must investigate any complaint made by the consumer, and must, if it thinks it appropriate, provide advice or make representations to the supplier, distributor, transporter or transmission licence holder on behalf of the consumer.

50. The Council may refuse to investigate a complaint in certain circumstances (specified in subsections (5) and (6)).

### **Clause 13: Reference of matters to the Gas and Electricity Markets Authority**

51. *Clause 13* requires the Council to refer a complaint which it has the power to investigate under clause 10(1)(a) (complaints which raise general issues or affect consumers generally) or clause 11 (vulnerable consumers) or the duty to investigate under clause 12 (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

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and Electricity Markets Authority under the Gas Act 1986 (c.44) or the Electricity Act 1989 (c.29) (subsection (4)).

#### **Clause 14: Reference of matters to the Postal Services Commission**

52. Clause 14 requires the Council to refer a complaint which it has the power to investigate under clause 10(1)(a) (complaints which raise general issues or affect consumers generally) or clause 11 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 15: Investigations relating to public post offices**

53. The Council is specifically enabled by clause 15 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**

##### **Clauses 16-22**

54. *Clauses 16-22* set out the other functions of the Council.

#### **Clause 16: Reports by the Council**

55. *Clause 16* enables the Council to prepare and publish reports on any matter within the scope of its functions.

#### **Clause 17: Secretary of State's power to require reports**

56. *Clause 17* 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 18: Advice, information and guidance**

57. *Clause 18 (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.

58. *Subsection (2)* enables the Council to publish advice and information about consumer issues if it thinks publication will promote the interests of consumers.

#### **Clause 19: Duty to enter into co-operation arrangements**

59. *Clause 19* requires the Council to enter into a co-operation arrangement 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

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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.

60. *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 Secretary of State must lay any cooperation arrangement received by him before Parliament.

61. In addition to cooperation arrangements, clauses 38, 39 and Schedule 1 paragraph 1(4) make provision about these 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 20: Power to co-operate and give assistance**

62. *Clause 20* 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 21: Voluntary activities**

63. *Clause 21* 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).

64. The Council is also given the power to establish a company or acquire an interest in one to exercise its functions under this clause (subsection (4)).

#### **Clause 22: Supplementary powers etc**

65. *Clause 22* 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 34. Clause 34 gives the Secretary of State the power, in winding up the Gas and Electricity and Postal Services Consumer Councils and the existing National Consumer Council, to transfer their property to the Council or another person.

#### **Clauses 23-27: Powers to obtain information**

66. *Clauses 23-27* give the Council rights to obtain information it needs to carry out its functions from the Office of Fair Trading and certain other regulators and from suppliers of goods and services. The power to require information is backed up by various mechanisms to enable the Council to enforce a request for information. In particular, the Council may require the Office of Fair Trading (“the OFT”) or other regulator to provide reasons for any failure to

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comply with an information request and may publish those reasons. Where a regulated supplier (as defined in clause 24(3)) in the gas, electricity, water or postal services sector fails to provide information, the Council may refer the matter to a person prescribed for that purpose by the Secretary of State (or otherwise, the relevant sectoral regulator) who can require the supplier to comply with the Council's request. In other cases, the Council may apply to the courts to enforce a request for information. The three mechanisms above are mutually exclusive. Clause 27 enables the Secretary of State to make regulations to prescribe circumstances in which a person may refuse to provide information requested under clauses 23 or 26 and descriptions of information that a person may refuse to supply in response to a request under clauses 23 or 26. Finally, this clause enables the Secretary of State to prescribe persons from whom the Council may not request information under clause 23.

### **Clause 23: Provision of information to the Council**

67. *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 Office of Fair Trading, 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 to on whom, the notice is served (subsection (5)).

68. *Subsection (6)* means that, if the Council requests information from the Office of Fair Trading ("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 24: Enforcement by regulator of section 23 notice**

69. *Clause 24* provides that where a regulated supplier in the electricity, gas, postal services or water sectors fails to comply with a notice served by the Council under clause 23, the Council may refer the matter to a person prescribed by the Secretary of State or to the sectoral regulator if not 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 supplier and must determine whether the supplier was entitled to refuse to provide the information requested by the Council (subsection (4)). If the designated investigator determines that the supplier was not entitled to refuse, then he must direct the supplier to provide the information. Such directions are enforceable by the sectoral regulator (see subsection (7), (8) and Schedule 2).

*These notes refer to the Consumers, Estate Agents and Redress Bill [HL]  
as introduced in the House of Lords on 16th November 2006 [HL Bill 2]*

### **Clause 25: Enforcement by court of section 23 notice**

70. *Clause 25* provides that where a supplier of goods and services (or a person to whom clause 25 applies by virtue of a provision made under clause 23(7)(b)) refuses to comply with a request for information served by the Council under clause 23, the Council may apply to the court for an order requiring the person served with the notice to comply with that notice. This does not apply where the procedure in clause 24 applies in relation to the Council's request for information.

### **Clause 26: Provision of information by the Council**

71. *Clause 26* allows the Office of Fair Trading, 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.

72. *Subsections (6) and (7)* means 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 27: Exemptions from requirements to provide information**

73. *Clause 27* enables the Secretary of State to prescribe exemptions from the requirement to provide information to the Council. The power to prescribe exemptions also applies to the Council's duty to provide information to regulators on request.

74. *Subsection (2)* means that no person may be required to provide information under clauses 23 or 26 or under a court order under clause 25 to provide any information or document which he could not be compelled to provide in legal proceedings. This is intended to ensure that the information gathering powers under the Bill do not apply to information that is subject to legal professional privilege.

### **Clause 28: Disclosure of information**

75. *Clause 28(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.

76. *Clause 28(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.

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77. *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.

78. *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 44 of the Bill or publication of statistical information about the performance of gas and electricity suppliers.

### **Clause 29: Abolition of “Energywatch” and “Postwatch”**

79. *Subsection (1)* abolishes the Gas and Electricity Consumer Council (energywatch).

80. *Subsection (2)* abolishes the Consumer Council for Postal Services (Postwatch).

81. *Subsection (3)* transfers the functions of energywatch and Postwatch to the Council.

82. *Subsection (4)* provides that certain references to energywatch and Postwatch in existing legislation shall be replaced with references to the Council. 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 Consumer Council is a company limited by guarantee there is no need to dissolve this under the Bill. Instead, it will be dissolved under the Companies Acts.

### **Clauses 30 to 32: Power to abolish the Consumer Council for Water**

83. *Clauses 30-32* set out a procedure for dissolving the Consumer Council for Water. Under this procedure, the Secretary of State must first make an order to designate the Consumer Council for Water for abolition and he must consult on that designation. The designation order is subject to the affirmative procedure. Once the designation order has been made the Secretary of State may make an order to abolish the Consumer Council for Water (abolition order) and an order to transfer its functions to the Council (transfer order).



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as introduced in the House of Lords on 16th November 2006 [HL Bill 2]*

### **Clause 30: Designation of the Consumer Council for Water for abolition**

84. *Clause 30* 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 31 may take effect. Before making an order under clause 30 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 can only be made under this clause 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 both Houses.

### **Clause 31: Transfer orders and abolition orders**

85. *Clause 31(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 30. A transfer order or abolition order in respect of the Consumer Council for Water may only be made with the consent of Welsh Ministers.

### **Clause 32: 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 32 may only be exercised if the Consumer Council for Water has been designated for abolition under clause 30 (subsection (1)).

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.

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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 when the Consumer Council for Water is abolished.

**Clause 33: Compensation for loss of office**

90. *Clause 33* allows the Secretary of State with the approval of the Treasury, to pay compensation 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 34: Transfer of property etc**

91. *Clause 34* and *Schedule 4* allow 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).

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 himself 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 34(2)(b)* as such transfers are not made by way of a transfer scheme.

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as introduced in the House of Lords on 16th November 2006 [HL Bill 2]*

98. The existing National Consumer Council is a Cross-Border Public Authority under section 88 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 35: Directions**

99. *Subsections (1) to (3)* allow the Secretary of State to require information from energywatch, Post watch, 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 36: Extension of the Council's functions: Great Britain**

102. *Clause 36* 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 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. 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.

103. The Secretary of State may not make any provision under this clause which is within the legislative competence of the Scottish Parliament.

### **Clause 37: Removal of the Council's functions in relation to Northern Ireland**

104. *Clause 37* 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.

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as introduced in the House of Lords on 16th November 2006 [HL Bill 2]*

### **Clause 38: The Financial Services Consumer Panel**

105. *Clause 38* inserts new subsections (5A) to (5C) into section 10 of the Financial Services and Markets Act 2000 (c.8). These allow the Secretary of State to direct the Financial Services Authority to appoint a non-executive member of the National Consumer 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 of the National Consumer Council.

### **Clause 39: The OFCOM Consumer Panel**

107. *Clause 39* 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 National Consumer 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 of the National Consumer Council.

### **Clause 40: 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**

### **Clauses 41-51**

111. *Clauses 41 to 51* set out the arrangements being introduced for the handling of complaints made by consumers to suppliers 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 suppliers” (as defined in clause 41) in the electricity, gas and postal services sectors (see clause 42). This Part also enables the Secretary of State to make orders to require “regulated suppliers” (as defined in clause 41) in the electricity, gas, postal services and water sectors to belong to an approved redress scheme (see clause 46).

### **Clause 41: Interpretation of Part 2**

112. *Clause 41* defines the key terms used in Part 2. In particular, this clause defines the suppliers and consumers in relation to whom the powers under Part 2 may be exercised (“regulated supplier” and “relevant consumer”). This clause also specifies the regulators who

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may exercise the powers under this part (“relevant regulator”). The definitions in relation to the water sector are only relevant to the power to require water suppliers, water or sewerage undertakers to belong to a redress scheme since 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 42: Standards for handling complaints**

113. *Clause 42* 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 suppliers. Such regulations will prescribe standards in relation to the way in which suppliers 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 only be made with the consent of the Secretary of State (subsection (4)).

#### **Clause 43: Requirements for making regulations under clause 42**

114. *Clause 43* 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 consult people likely to be affected, consider any representations made and publish a notice of its proposals.

#### **Clause 44: Information with respect to compliance with complaints handling standards**

115. *Clause 44* requires the Council to publish statistical information in relation to regulated suppliers' levels of performance in complying with any complaint handling standards prescribed under clause 42 by the Gas and Electricity Markets Authority and the Postal Services Commission.

116. *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 42 of the Bill. The above regulators are given the power to direct licensees to provide them with the above.

#### **Clause 45: Supply of information to consumers**

117. *Clause 45* enables the Gas and Electricity Markets Authority and the Postal Services Commission to make regulations to require regulated suppliers to provide consumers with information about any complaint handling standards prescribed by the regulator and about the regulated supplier's levels of compliance with those standards.

118. *Subsection (2)* provides for the regulator to specify the form, manner and frequency that this information is to be given.

#### **Clause 46: Membership of redress scheme**

119. *Clause 46* enables the Secretary of State to make orders to require regulated suppliers to belong to a redress scheme (as defined in clause 47(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 46(7)).

120. “Redress scheme” is defined in clause 47 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 supplier against whom the complaint is made and independent of the relevant regulator in respect of that supplier (clause 47(2)).

121. 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)-(3)). Before making an order to require regulated suppliers 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)).

122. *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.

123. *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 supplier 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 suppliers to belong to a redress scheme in circumstances where the suppliers subject to the order are unable to join a scheme since none exists.

124. *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 47: Membership of redress schemes: supplementary**

125. *Clause 47* defines the key terms in relation to redress schemes.

126. *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.

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127. *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 48: Approval of redress schemes**

128. *Clause 48* sets out the matters to be taken into account by the regulator in giving approval for a redress scheme.

129. *Subsection (1)* specifies various matters which the relevant regulator must have regard to when deciding whether to approve a scheme. These might include for example, generally accepted principles of good practice in relation to redress schemes, such as those provided by the British and Irish Ombudsman Association ([www.bioa.org.uk](http://www.bioa.org.uk)).

130. *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.

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

#### **Clause 49: Approval of redress schemes: supplementary**

132. *Clause 49* makes further provision in relation to the approval of redress schemes.

#### **Clause 50: Procedure for refusing or withdrawing approval**

133. *Clause 50* sets out the procedure that the relevant regulator must follow when 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 withdraw approval. The notice must give the reasons why the regulator proposes to 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.

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as introduced in the House of Lords on 16th November 2006 [HL Bill 2]*

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 46(1)(b) and decides to revoke that appointment.

### **Clause 51: Enforcement of requirements imposed under Part 2**

140. *Clause 51* 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). Subsections (1)-(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 for breach of the above requirements. The supplier 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 supplier 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.

141. *Subsections (1)-(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 supplier 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 supplier 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 52: Membership of redress schemes**

142. *Clause 52* provides that *Schedule 6* (which contains provisions enabling the Secretary of State, by order, to require persons engaged in estate agency work to join a redress scheme) has effect. In addition, the clause amends section 3 of the 1979 Act by providing that engaging in estate agency work when in breach of a duty imposed by an order made by the Secretary of State to belong to a redress scheme shall be added to the list of grounds on which the OFT may determine whether a person is unfit to carry on estate agency work.

143. The clause also amends section 3 of the 1979 Act which allows the OFT to make orders prohibiting unfit persons from engaging in estate agency work. The OFT may do so



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only on certain grounds set out in section 3(1). The amendment adds engaging in estate agency work in relation to residential property in breach of the duty to belong to a redress scheme to the list of grounds.

### **Schedule 6: Estate Agents' redress schemes**

144. This Schedule introduces *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, including being able to limit 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 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.

150. This clause also provides for a new Schedule 3 to be inserted into the 1979 Act.

#### **New section 23B: Enforcement**

151. New section 23B allows an enforcement officer other than the OFT (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 clause 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

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breach, the last day of it being committed). Subsection (4) requires that a Trading Standards Officer must inform the OFT if he/she 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 23 A, so that the OFT can take regulatory action. Section 23B provides for the new Schedule 4 of the Estate Agents Act 1979 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, unless the Secretary of State makes his own scheme, which would not have to be approved by the OFT.

154. *Paragraphs 2, 4 and 5* set out minimum requirements for a scheme. *Paragraph 3* specifies that the OFT must have regard to whether the scheme will be in the interests both of scheme members and of potential complainants and to whether the scheme follows generally accepted principles of good practice in the provision of redress schemes – this might include, for example, the guidelines provided by the British and Irish Ombudsman Association ([www.bioa.org.uk](http://www.bioa.org.uk)).

155. *Paragraph 3 (2)* permits the OFT to have regard to the number of other approved redress schemes in deciding whether to approve a scheme.

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

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so and indicating that the recipient of the notice may make representations about the proposal. Paragraph 11 (c) 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 operates his own scheme 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 maximum penalty charge will be £500, which again follows the maximum level under the Housing Act 2004.

#### **Clause 53: 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 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

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six years is the period for which accounting records under the Estate Agents (Accounts) Regulations 1981<sup>9</sup> 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 54: 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 the 1979 Act 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 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, if an individual who is subject to a prohibition order on the basis that he has committed an offence has been convicted of that offence but the conviction becomes spent, he will have to apply to the OFT to have the prohibition order revoked. 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 an 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.

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<sup>9</sup> 1981 No. 1520 The Estate Agents (Accounts) Regulations

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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 55: Grounds for warning orders**

171. In the same way that clause 54 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 56: 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 that the specified breach or undesirable practice has occurred.

174. New *subsection (1A)* explains sets out the power which are for the enforcement officer to be able to enter premises and to be able to request anyone connected with the business to provide him/her with any books or documents (including requesting documents held on a computer related to the business to be produced in a legible form) and to be able 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

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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 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 be satisfied for a warrant to be granted.

#### **Clause 57: Failure to produce information**

177. This clause provides that if 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, then the OFT or the enforcement officer can apply for a court order to 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 58: 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 unsolicited<sup>10</sup>. 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 consumers’ 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 59: Orders and Regulations**

179. *Clause 59* 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.

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

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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 Acts of the Scottish Parliament and a Measure or Act of the National Assembly for Wales.

*Subsection (7)* provides that clause 59 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 59 may be made in relation to devolved matters. Subsection (7) does not prevent an order under the Bill amending ASPs for reserved purposes.

**Clause 60: Directions**

182. *Clause 60* makes provision in relation to the form of any directions given under the Bill.

**Clause 61: Parliamentary control of orders and regulation**

183. This clause make provision in relation to the Parliamentary procedure which applies to orders and regulations made by the Secretary of State under the Bill.

184. Regulations made by the Gas and Electricity Markets Authority or the Postal Services Commission under clauses 42 and 45 are not subject to any Parliament procedure however regulations under clause 42 are subject to the consent of the Secretary of State by virtue of clause 42(4)).

**Clause 62: Minor, consequential and transitional provision**

185. This clause provides a further 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 (4)).

**Clause 63: Repeals**

186. *Clause 63* gives effect to Schedule 8 which repeals certain provisions in existing legislation.

**Clause 64: Extent**

187. Clause 64 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.

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## **Schedule 1: The National Consumer Council**

188. 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**

189. *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 (i.e. Council members who are appointed from the staff of the Council) of the Council are appointed by the Secretary of State on the nomination of the Council chairman. The Secretary of State is permitted to 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.

190. *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 terms and conditions of their appointment.

191. *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.

192. *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.

193. *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.

194. *Paragraph 6* enables the Council to pay compensation to members who leave office early.



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## **Part 2: Staff of the Council**

195. *Paragraph 7* requires the Council to employ a Chief Executive, the first such appointment is to be made by the Secretary of State on terms and conditions which 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.

196. *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.

197. *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.

198. *Paragraph 10* allows the Council to arrange for other parties to provide it with assistance, and to pay fees to such parties.

## **Part 3: Territorial, Regional and Other Committees**

199. *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.

200. *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.

201. *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.

202. *Paragraph 14* enables the Council to establish other committees.

203. *Paragraphs 15, 16 and 17* make further provision about committees.

204. *Paragraph 18* limits the term of a non-executive appointment to a territorial or regional committee as a fixed period not exceeding five years, and permits re-appointment for one further period of up to five years.

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205. *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.

206. *Paragraph 20* enables the Council to pay compensation to members of territorial or regional committees where they leave office early.

#### **Part 4: Procedure etc.**

207. *Paragraph 21* enables the Council to regulate its own procedure and that of its committees and sub-committees, including the quorum in each case.

208. *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.

209. *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.

210. *Paragraph 24 to 26* make provision in relation to the authentication of Council's seal and the execution of documents by the Council.

211. *Paragraph 27* requires the Council to maintain an office in each of England, Scotland, 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**

212. *Part 5* sets out how the Council will be funded, and the requirements to be placed on the Council in relation to its accounts.

213. *Paragraph 29* inserts additional provisions in the Utilities Act 2000 requiring licensed electricity and gas suppliers 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;

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- c) any transfer schemes made under section 34(2)(a) or (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 Office of Fair Trading 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.

214. 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. 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.

215. *Paragraph 30* inserts a new provision into the Postal Services Act 2000 requiring licensed suppliers of postal services 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 34(2)(a) or (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,
- e) the costs of the Office of Fair Trading 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.

216. 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.

217. *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 years accounts before Parliament.

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## **Part 6: Status etc.**

218. *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.

219. *Paragraphs 34-37* These provisions ensure that the Council is subject to the requirements of the Parliamentary Commissioner Act 1967 relating to departments subject to investigation; the House of Commons Disqualification Act 1975 and similar provisions barring members of the Council from being members of the House of Commons, or the Northern Ireland Assembly. It also subjects the Council to the provisions of the Public Records Act 1958 and the Freedom of Information Act 2000.

220. *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 and 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.

## **Schedule 2: Enforcement of information requirements**

221. *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.

222. 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 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, sectoral legislation permits the regulator to impose a financial penalty for breach of the above requirements.

## **Schedule 3: Abolition of consumer bodies: transitional provision**

223. This Schedule sets out the transitional arrangements that will apply when energywatch and Postwatch are abolished and the new Council is set up.

224. *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.

225. *Paragraph 3* makes transitional provision in relation to energywatch's final annual report.

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226. *Paragraph 4* make 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.

227. *Paragraph 5* makes transitional provision in relation to Postwatch's final annual report.

#### **Schedule 4: Transfer of property etc to Council**

228. This Schedule makes further provision about transfer schemes made by the Secretary of State under clause 34(7) or by energywatch, Postwatch, the Consumer Council for Water or the existing National Consumer Council under clause 34(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 there exist other provisions that might prevent or restrict their transfer.

229. *Paragraph 6* means that, anything done by the body from whom 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.

230. *Paragraphs 7 and 8* apply the Transfer of Undertakings (Protection of Employment) Regulations 2006 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.

231. *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**

232. 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 42 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**

233. This is explained above.

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as introduced in the House of Lords on 16th November 2006 [HL Bill 2]*

### **Schedule 7: Minor and Consequential Amendments**

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

### **Schedule 8: Repeals**

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

## **FINANCIAL EFFECTS OF THE BILL**

236. 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).

237. The remaining on-going funding requirement of the Council will come from the energy and postal services industry initially, again through licence fees. The Bill will also confer a power to require suppliers in the gas, electricity and postal services sectors to contribute towards the costs of establishing and running the Council. The power to require suppliers 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, suppliers in the water sector cannot be required to contribute towards the Council's establishment costs. Suppliers in the above sectors will also contribute towards the costs of expanding and 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 suppliers 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.

238. 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 (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.

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## **EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER**

239. The Consumer Voice provisions 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. In terms of manpower, we are not prescribing on the face of the Bill the number of staff from the existing consumer bodies that will no longer be required by the new National Consumer Council. Rather, 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**

240. 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**

241. Having consulted widely the Government is of the view that these provisions 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**

242. It is expected that redress scheme membership costs for estate agents to be broadly similar to existing voluntary schemes (£130pa) resulting in additional costs to those estate agents currently outside of schemes of about £600,000pa.

243. 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.

244. The changes proposed in terms of the duty to make and keep records will be minimal.

### **Doorstep Selling**

245. We expect 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.

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as introduced in the House of Lords on 16th November 2006 [HL Bill 2]*

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

246. 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 13th November the Lord Truscott made the following statement:

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

### **General**

247. This section of these Notes comments on those provisions in the Bill which may engage Convention rights. Our 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**

248. As explained in above Clauses 23 to 27 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**

249. Clause 34 provides that the Secretary of State may direct any of the Gas and Electricity Consumer Council, the Consumer Council for Postal Services 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.

250. 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**

251. 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 or estate agent's right of access to courts will be restricted when a complaint is the subject of a



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determination under a redress scheme. However, the schemes are to be approved by the regulators or administered by the Secretary of State (or on his behalf). Section 6(1) of the Human Rights Act 1998 requires a regulator or the Secretary of State to act compatibly with the Convention Rights specified in the Human Rights Act 1998.

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

252. Clause 56 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 not 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.

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

253. Clause 54 amend 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 the 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.

### **Modification of licence conditions**

254. Clause 32 and Part 5 of Schedule 1 each give the relevant regulator the power to amend licence conditions to fund expenses of the Council and other related matters. 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 will 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**

255. Sections 59 to 61, 64 and 66 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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