

## Draft estate agents record keeping regulations

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### DRAFT STATUTORY INSTRUMENTS

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2009 No. 0000

## ESTATE AGENTS

### Estate Agents (Record Keeping) Regulations 2009

<i>Made</i>	- - - -	[ ]
<i>Laid before Parliament</i>		[ ]
<i>Coming into force</i>	- -	[ ]

The Secretary of State in exercise of powers conferred on him by section 21A(4), (6) and (7) [and section 30(3)] of the Estate Agents Act 1979<sup>(1)</sup> makes the following Regulations.

In accordance with section 30(1) and (2) of that Act<sup>(2)</sup>, before making these Regulations, the Secretary of State has consulted the OFT<sup>(3)</sup>, such bodies representative of persons carrying on estate agency work, such bodies representative of consumers and such other persons as he thought fit.

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Estate Agents (Record Keeping) Regulations 2009 and shall come into force on [—].

(2) In these Regulations—

“the Act” means the Estate Agents Act 1979;

“the 1991 Order” means the Estate Agents (Undesirable Practices) (No. 2) Order 1991<sup>(4)</sup>;

“client” means a person on whose behalf a person engaged in estate agency work<sup>(5)</sup> acts;

“interest in land” means any of the interests in land referred to in section 2 of the Act;

“offer” means any offer, including a conditional offer, to acquire an interest in land for an amount specified in the offer (whether or not that offer is of a description which the client has

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<sup>(1)</sup> 1979 c.38; section 21A was inserted by the Consumers, Estate Agents and Redress Act 2007 (c.17), section 54(1).

<sup>(2)</sup> Section 30(1) of the Estate Agents Act 1979 was amended by the Enterprise Act 2002 (c.40), section 278(1), Schedule 25, paragraph 9(1), (14)(b) and section 30(2) of the Estate Agents Act 1979 was amended by the Consumers, Estate Agents and Redress Act 2007, section 63(1), Schedule 7, paragraph 3.

<sup>(3)</sup> “OFT” is defined as meaning the Office of Fair Trading by section 33(1) of the Estate Agents Act 1979, as amended by the Enterprise Act 2002, section 278(1), Schedule 25, paragraph 9(1), (15), Schedule 26.

<sup>(4)</sup> S.I. 1991/1032.

<sup>(5)</sup> “estate agency work” is defined in section 1(1) of the Estate Agents Act 1979.

indicated to the person engaged in estate agency work he does not wish to have forwarded to him);

“offeror” means a person making an offer.

### **Information relating to offers**

2. In relation to each offer received by a person engaged in estate agency work, the following information shall be included in the permanent records kept by that person or his employer—

- (a) the amount of the offer;
- (b) any conditions attached to the offer;
- (c) the name of the offeror and of any person acting on behalf of the offeror;
- (d) the name of the individual who receives the offer;
- (e) the date on which and approximate time at which the offer is received; and
- (f) the means of communication by which the offer is received.

### **Information relating to actions in respect of offers**

3. In relation to each offer which a person engaged in estate agency work receives and which is required to be forwarded in writing to the client in accordance with article 2(c) and paragraph 2 of Schedule 3 of the 1991 Order, the following information shall be included in the permanent records kept by that person or his employer—

- (a) the name of the individual who forwards the offer to the client;
- (b) the name of the individual to whom the offer is forwarded;
- (c) the date on which and approximate time at which the offer is forwarded;
- (d) a copy of the letter or other written communication by which the offer is forwarded; and
- (e) any instructions received from the client in relation to that offer.

### **Additional information to be kept in the permanent records**

4. The following information shall be included in the permanent records kept by a person engaged in estate agency work or his employer—

- (a) the terms of any contract under which that person will engage in estate agency work on behalf of a client and the terms of any variation of such a contract;
- (b) any information required to be disclosed by that person to a client in accordance with paragraph 2 of Schedule 1 of the 1991 Order;
- (c) any list of services required to be forwarded by that person to a client in accordance with article 2(b) and paragraph 2 of Schedule 2 of the 1991 Order; and
- (d) any indication in writing by a client, as referred to in Schedule 3 of the 1991 Order, that offers of a specified description need not be forwarded to the client.

### **Manner in which permanent records to be kept**

5.—(1) The permanent records shall—

- (a) be kept on paper or in electronic form or a combination of both;
- (b) be visible and legible or, in the case of records kept in electronic form, be able to be readily produced in a visible and legible form;
- (c) be able to be taken away and able to be copied or, where kept in electronic form, be able to be readily produced in a form in which they are able to be taken away and able to be copied; and

(d) show the date on which and, in the case of information referred to in sub-paragraph (e) of regulation 2 and sub-paragraph (c) of regulation 3, the approximate time at which the relevant information was received or the relevant action was taken.

(2) Where the relevant information is originally comprised in a form which meets the requirements of paragraph (1), that original form (or a true and accurate copy of it) shall be included in the permanent records.

(3) Where the relevant information is not originally comprised in a form which meets the requirements of paragraph (1), the person concerned shall ensure that the information is recorded in a form which meets those requirements and is included in the permanent records as soon as reasonably practicable.

(4) Permanent records shall not be edited or amended during the period of six years referred to in section 21A(1)(b) of the Act.

(5) In this regulation “relevant information” means any information required to be included in the permanent records by any of section 21A(4) of the Act and regulations 2, 3 and 4.

### **Places at which permanent records to be kept**

**6.—**(1) Subject to paragraph (2), the permanent records shall be kept or, in the case of records kept in electronic form, be able to be readily produced, at the place of relevant business most closely connected with the transaction or proposed transaction to which the record relates (the “original place of business”).

(2) If the relevant business is no longer conducted at the original place of business but continues to be conducted at some other place (whether or not by the same person and whether or not as part of another business), the permanent records shall be kept or, in the case of records kept in electronic form, be able to be readily produced, at the nearest practicable place of business to the original place of business.

(3) In this regulation “relevant business” means the business of estate agency work as part of which the information to which the record relates is created.

[Date]

Department for Business, Innovation and Skills

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 21A of the Estate Agents Act 1979 (c.38) ("the Act"), as inserted by section 54(1) of the Consumers, Estate Agents and Redress Act 2007 (c.17), requires persons engaged in estate agency work to keep records ("permanent records") for a period of at least six years beginning with the day on which anything required to be included in the permanent records is included.

Section 21A(3) of the Act requires that a person engaged in estate agency work shall ensure that a record of any information or event to which that subsection applies is included in the permanent records kept by that person or his employer.

Section 21A(4) of the Act, as well as specifying certain information to which subsection (3) applies, empowers the Secretary of State to prescribe other information which will be required to be included in the permanent records.

Regulation 1 provides, among other things, that "offer" means any offer, including a conditional offer, to acquire an interest in land for an amount specified in the offer. This includes an offer which the client has indicated he does not wish to have forwarded to him and which the person concerned is therefore not required to forward to the client under the Estate Agents (Undesirable Practices) (No. 2) Order 1991 (S.I. 1991/1032) (the "1991 Order"). Regulation 2 prescribes the information to be included in the permanent records in relation to each such offer.

Regulation 3 prescribes the information to be included in the permanent records in relation only to offers which are required to be forwarded to the client in accordance with the 1991 Order. This includes any instructions received from the client in relation to such an offer.

Regulation 4 prescribes additional information to be included in the permanent records. This comprises: the terms of any contract under which the person concerned will engage in estate agency work on behalf of a client and any variation of that contract; any information relating to personal interests in land or proceeds of sale required to be disclosed by the person concerned to a client in accordance with paragraph 2 of Schedule 1 of the 1991 Order; any list of services to be provided to a prospective purchaser and required to be forwarded to a client by the person concerned in accordance with article 2(b) and paragraph 2 of Schedule 2 of the 1991 Order; and any indication in writing by a client that offers of a specified description need not be forwarded to the client.

Regulation 5 provides for the manner in which the permanent records (whether required to be kept by section 21A of the Act or by these Regulations) are to be kept. Regulation 5(1) sets out certain requirements, such as that the records are visible and legible or, in the case of records kept in electronic form, able to be readily produced in visible and legible form. Where the relevant information is originally comprised in a form which meets those requirements, that original form (or a true copy of it) must be included in the permanent records. In other cases, the person concerned must ensure that the information is recorded in a form which meets those requirements.

Regulation 6 provides that the permanent records (whether required to be kept by section 21A of the Act or by these Regulations) must be kept at the place of estate agency business most closely connected with the transaction or proposed transaction to which the record relates. If the relevant business continues but is no longer conducted at that place, the permanent records must be kept at the nearest practicable place of business.

[An impact assessment has been prepared in relation to these Regulations and is available from the Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London SW1H 0ET.]