

**ENCOURAGING NEW BUSINESS
MODELS**

Proposal to amend the Estate
Agents Act 1979

JUNE 2012

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Encouraging new business models: proposal to amend the Estate Agents Act 1979

Summary

Government is committed to reducing the regulatory burdens on business in order to help economic growth. The “Red Tape Challenge” process¹ is scrutinising UK legislation to see where there may be scope for amendments or repeals to reduce regulatory burdens. As part of this exercise there has been a proposal to amend the Estate Agents Act (EAA) 1979. Interested parties are being asked for views on the proposal and questions by **10 August 2012**.

Detail

This consultation seeks views from stakeholders on a proposal to amend the estate agency legislation. The aim is to help businesses to innovate and grow and allow new business models to emerge while ensuring that consumer protection is not unduly compromised.

In this context there has been a proposal for an amendment to the Estate Agents Act (EAA) 1979. It responds to a recommendation in the OFT’s 2010 Home Buying and Selling Market Study² to amend the scope of the EAA and therefore who will be subject to the legislation. The current definition of “estate agency work” in the EAA is broad and can capture a wide range of business models in the current home buying and selling market (an extract from the Act is appended to this letter). The OFT’s market study noted that the definition of “estate agency work” was framed before the internet existed and recommended that the Government review whether it may now be inappropriate and overly burdensome in the case of some business models and may be hindering innovation.

The proposal is that businesses, such as online sites, that act simply as “passive intermediaries” offering a limited, low-risk service to buyers and sellers, whether or not they charge a fee, should be outside the scope of the EAA. Passive intermediary businesses in this context are those that, for example, allow for exchange of information about properties for sale between sellers and prospective buyers, provide a means for the seller and prospective buyer to communicate with one another or provide information such as the sale price of recent sales. It is not the intention to remove any important consumer protection afforded by the current legislation. Therefore if such businesses offer personalised advice to buyers or sellers or handle money belonging to clients, they should remain within the scope of the EAA.

The intention of the proposal is to open up the market to new business models and, if it goes ahead, Section 1 of the EAA would be amended, probably via a clause in the

¹ <http://www.redtapechallenge.cabinetoffice.gov.uk/all-themes/>

² http://www.of.gov.uk/shared_of/reports/property/OFT1186.pdf

Enterprise and Regulatory Reform Bill currently undergoing its passage through Parliament.

Interested parties are asked to submit views on the following questions by **10 August 2012**:

Questions

Question 1. Is being within the scope of the existing Act i. a burden on existing businesses in the home buying and selling market or ii. a barrier to new business models?

Question 2. Does the way “estate agency work” is defined in S1 of the EAA cause uncertainty about the scope of the Act and thereby create a significant barrier to businesses wishing to set up new business models, such as online estate agencies or matching sites?

Question 3. Are there any significant barriers to entry to the home buying and selling market caused by other legislation?

Question 4. The proposal is that businesses, such as online sites, that act simply as “passive intermediaries” offering a limited, low-risk service to buyers and sellers, whether or not they charge a fee, should be outside the scope of the EAA. What do you think the benefits and disadvantages of amending the scope of the EAA in this way would be?

Question 5. If the EAA was amended as proposed what activities should result in a business ceasing to be a “passive intermediary” and coming within the scope of the EAA?

Question 6. What do you estimate the likely effects of the proposed change to be on the operational costs and profitability of individual firms or the industry as a whole?

Question 7. Would the purpose of the proposed change be best served by amending the definition of “estate agency work” ie the activities within the scope of the EAA (S1.1) or by amending the set of activities which are exceptions to the EAA (S1.2, 1.3 and 1.4)?

Question 8. What, if any, beneficial or detrimental effects might the proposed change have on consumers?

Question 9. Could there be unintended consequences of the proposed change and if so, what?

Question 10. Would there be particular issues about implementing the proposal in Scotland, Wales or Northern Ireland?

Question 11. Are there any other points you wish to make about this proposed change?

How to respond /Help with Queries

Marcelle Janssis
Assistant Director
Department for Business, Innovation and Skills
Consumer and Competition Policy Directorate . De-regulation team CCP1
3rd Floor
1 Victoria Street
LONDON SW1H 0ET

marcelle.janssis@bis.gsi.gov.uk

Telephone : 020 7215 8164

Annex A - Extract from the Estate Agents Act 1979 S1. Estate agency work.

(1) This Act applies, subject to subsections (2) to (4) below to things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as “the client”) who wishes to dispose of or acquire an interest in land -

(a) for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to acquire or, as the case may be, dispose of such an interest; and

(b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or, as the case may be, the acquisition of that interest; and in this Act the expression “estate agency work” refers to things done as mentioned above to which this Act applies.

(2) This Act does not apply to things done -

(a) in the course of his profession by a practising solicitor or a person employed by him [or by an incorporated practice (within the meaning of the Solicitors (Scotland) Act 1980) or a person employed by it]; or

(b) in the course of credit brokerage, within the meaning of the Consumer Credit Act 1974; or

[(c).]

(d) in the course of carrying out any survey or valuation pursuant to a contract which is distinct from that under which other things falling within subsection (1) above are done; or

(e) in connection with applications and other matters arising under [the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990] or [the Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997] or the Planning (Northern Ireland) [Order 1991].

(3) This Act does not apply to things done by any person -

(a) pursuant to instructions received by him in the course of his employment in relation to an interest in land if his employer is the person who, on his own behalf, wishes to dispose of or acquire that interest; or

(b) in relation to any interest in any property if the property is subject to a mortgage and he is the receiver of the income of it; or

(c) in relation to a present, prospective or former employee of his or of any person by whom he also is employed if the things are done by reason of the employment (whether past, present or future).

(4) This Act does not apply to the publication of advertisements or the dissemination of information by a person who does no other acts which fall within subsection (1) above.

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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