

*These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004*

# HOUSING ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 - Home Information Packs**

#### *Section 175: Office of Fair Trading*

395. Subsection (1) provides that any breach of the home information pack duties by a person acting as estate agent may be notified to the Office of Fair Trading (OFT). Subsection (2) requires that the OFT must be notified where a penalty charge notice has either been given, confirmed or withdrawn and be notified of the outcome of any appeal against the confirmation of a notice. Under the Estate Agents Act 1979 (the 1979 Act), the OFT has powers to prohibit unfit persons from doing estate agency work and to issue warnings. In deciding whether to make a prohibition order, the OFT must be satisfied that one of the events specified in section 3(1) of the 1979 Act has occurred. These events include:
- the agent having been convicted of one of various specified offences;
  - discrimination in the course of estate agency work;
  - failure to comply with his obligations under the 1979 Act;
  - engaging in a practice which, in relation to estate agency work, has been declared undesirable by an order made under section 3(1)(d) of the 1979 Act.
396. If the OFT is satisfied that any person is unfit to undertake estate agency work generally or of a particular description, it may issue an order prohibiting that person from doing any estate agency work at all, or of a type specified.
397. Subsection (3) provides that a breach of any duty under this Part of this Act (such as failure to market property with a home information pack or failure to belong to a redress scheme) amounts to an “undesirable practice” for the purposes of section 3(1)(d) of the Estate Agents Act 1979. The OFT could therefore use evidence of such a failure as a trigger to take enforcement action under section 3(1)(d) of the 1979 Act which could ultimately lead to the agent being prohibited from working in the estate agency business.