
STATUTORY INSTRUMENTS

1981 No. 1520

The Estate Agents (Accounts) Regulations 1981

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Estate Agents (Accounts) Regulations 1981 and shall come into operation on 3rd May 1982.

(2) In these Regulations—

“accounting period” means a period of not more than 12 months in respect of which accounts required to be kept under Regulation 6 below are drawn up: Provided that an accounting period may end on a date not more than seven days after the end of a period of twelve months;

“the Act” means the Estate Agents Act 1979;

“deposit account” at a building society means an account in which deposits are received in accordance with the rules of the society and the provisions of Part III of the Building Societies Act 1962 or the Building Societies Act (Northern Ireland) 1967;

“employee” means a person engaged in estate agency work under a contract of employment, and “employer” means his employer under that contract.

Authorised Institutions

2. The institutions authorised for the purposes of section 14 of the Act for the keeping of client accounts shall be those listed in the Schedule to these Regulations.

Exempt Persons

3. The obligation imposed by section 14(1) of the Act shall not apply to the persons listed in the Schedule to these Regulations or to an employee of any such person.

Client Accounts

4.—(1) Money other than clients' money may be paid into a client account—

- (a) if it is the minimum required for the purpose of opening or maintaining the account;
- (b) to restore in whole or part any money paid out of the account in contravention of these Regulations,

and in no other circumstances.

(2) Where—

- (a) part of a contract deposit paid by a purchaser is not, or is not intended to form part of, the consideration for acquiring an interest in land in the United Kingdom or for a connected contract, or

(b) part of a pre-contract deposit—

- (i) is not paid as an earnest of the payer's intention to acquire an interest in land in the United Kingdom, or

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(ii) is not paid towards meeting any liability of the payer in respect of the consideration for the acquisition of such an interest which will arise if he acquires or enters into an enforceable contract to acquire the interest,

and the money is received in cash or in any other form which it is practicable and lawful to split, then the part of the contract deposit referred to in sub-paragraph (a) or any of the part of the pre-contract deposit referred to in subparagraph (b) not paid in respect of a connected contract shall not be paid into a client account.

5. The occasions on which, and the persons to whom, money held in a client account may be paid out are as follows—

- (a) in the case of money paid into the account by virtue of subparagraph (a) of Regulation 4(1) above, where it is no longer required for the purpose referred to in that subparagraph and is paid to the person entitled to it;
- (b) in the case of money paid into the account in contravention of Regulation 4 above, where it is paid to the person entitled to it;
- (c) in the case of clients' money—
 - (i) where it is paid to the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him;
 - (ii) in payment of any remuneration for, or in reimbursement of money expended in, carrying out estate agency work to which the person in question is entitled, with the agreement of the person for whom the money is held;
 - (iii) in the exercise of any lien on the money, which is entitled to be exercised;
 - (iv) where it is transferred to another client account maintained by the person who received the money or by his employer.

Accounts and Records Relating to Client's Money

6.—(1) Subject to paragraphs (2) and (6) below, it shall be the duty of any person who receives clients' money in the course of estate agency work and of the employer in the case of money received by his employee to keep such accounts and records relating to clients' money received, held or paid out as are sufficient to show that he has discharged the duty imposed on him by section 14(1) of the Act, and to show and explain readily at any time all dealings with that money, including the title of the client account into which it is paid, the date of such payment and the identity of the institution with which that account is held, any payments out (other than those mentioned in the exception to paragraph (3)(e) below) and all dealings with any other money which may have been dealt with through that account.

(2) The obligations imposed by paragraph (1) above shall not apply—

- (a) to the persons listed in the Schedule to these Regulations or to an employee of any such person;
- (b) to an employee who pays clients' money received by him without delay into a client account maintained by his employer.

(3) Without prejudice to the generality of paragraph (1) above, the accounts and records referred to therein shall—

- (a) in the case of clients' money received, be such as to show
 - (i) the amount;
 - (ii) the name and address of the payer;

- (iii) whether the sum paid is a contract or a pre-contract deposit and, in either case, whether it is or includes any sum in respect of a connected contract;
 - (iv) if the sum paid includes any such money as is referred to in Regulation 4(2) above, for what purpose and in what form it is received;
 - (v) the interest in land to which the money relates;
 - (vi) the person wishing to dispose of such an interest;
 - (vii) the capacity in which the money is received and (where known by the person upon whom the duty is imposed by paragraph (1) above) is from time to time held (whether as agent, bailee, stakeholder or in any other capacity);
 - (viii) the identity of the person for whom the money has been received and (where known) is from time to time held; and
 - (ix) the date of its receipt;
- (b) be kept in such manner as to show separately all clients' money held by reference to the interest in land to which it relates;
 - (c) in the case of any payment out of a client account, be such as to show the amount, the identity of the payee, the date of the payment, any interest in land to which the money relates and such other information as may be necessary to show the corresponding payment into the account, the occasion on which the payment is made and, where the payment is made in accordance with Regulation 5(c)(ii) or (iii) above, such particulars as may be necessary to enable any information (and changes therein) required to be given to clients under section 18 of the Act and any Regulations made thereunder to be identified;
 - (d) include counterfoils kept or duplicate copies of all receipts issued in respect of clients' money received which shall contain the particulars required to be shown in the accounts and records under subparagraph (a)(i) to (v) and (ix) above;
 - (e) in the case of any sum transferred from one client account to another, be such as to show the occasion for the transfer and to enable the corresponding payment into the account from which the transfer is made to be identified, except sums transferred between a specified client current account and a specified client deposit account in both of which clients' money is kept generally.
- (4) The accounts and records kept under paragraph (1) above shall be retained for six years after the end of the accounting period to which they relate.
- (5) Where, under this Regulation, accounts and records are required to be kept so as to show the interest in land to which any clients' money relates, or by reference to such an interest, the requirement shall be taken to be complied with only if the land as well as the nature of the interest therein are identified.
- (6) Where a person ceases to be engaged in the estate agency work in which he has been engaged and the accounts and records relating to clients' money received by him are handed over to another person, the latter shall be required to keep the accounts and records required to be kept under paragraph (1) above in place of the former.

Interest on Clients' Money

7.—(1) A person engaged in estate agency work who has received after the date of coming into operation of these Regulations any clients' money and does not hold it as stakeholder on trust for the person who may become entitled to it on the occurrence of the event against which it is held shall account, in the cases prescribed by this Regulation, to any other person who is for the time being entitled to the money—

- (a) where the money is or has been held for him in a client account which is a separate deposit account, for the interest earned on it;
- (b) where the money is or has been held for him in a client account which is not a separate deposit account, for the interest which could have been earned on it for him if it had been kept in a separate deposit account at the institution concerned;
- (c) where, under the Act and these Regulations, the money is required to be held in a client account but is not so held, for the interest which could have been earned on it for him if it had been kept in a separate deposit account at whichever of the institutions listed in the Schedule to these Regulations in which a current or deposit account is held by the person on whom the duty under this paragraph is imposed was, on the day when it could first have been put in such an account, offering the highest rate of interest offered by any of those institutions on money kept in such an account, or if no such account is so held, at whichever of the said institutions was on the day in question offering the highest rate of interest offered by any of those institutions on money kept in such an account;
- (d) where the person who has received any clients' money is an institution listed in the Schedule to these Regulations or an employee of such an institution, and accordingly under Regulation 3 above that person does not pay it into a client account, for the interest which could have been earned on it for him if it had been kept in a separate deposit account at that institution.

(2) The obligation imposed by subparagraphs (a) to (c) of paragraph (1) above shall arise in any case where the amount of the sum held exceeds £500 and the interest which is, or, as the case may be, could have been, earned on the money for the person in question during the period for which it is held for him by keeping it in a separate deposit account at the institution concerned is at least £10.

(3) The obligation imposed by subparagraph (d) of paragraph (1) above shall arise in any case in which interest is not credited to the person for the time being entitled to the money in the normal course of business and the amount of the sum held exceeds £500 and the interest which could have been earned on the money during the period for which it is held for him if it had been kept in a separate deposit account at the institution is at least £10.

Audit

8.—(1) Any person who is required to keep accounts under Regulation 6 above shall draw them up in respect of consecutive accounting periods and have them audited by a qualified auditor within six months after the end of each accounting period.

(2) Where an employee is required to keep accounts under Regulation 6 above, he shall adopt the same accounting period in respect of those accounts as his employer.

(3) The auditor shall report to the persons who are required to keep accounts under Regulation 6 above whether in his opinion the requirements of the Act as to the manner in which clients' money is to be dealt with and of these Regulations have been complied with or have been substantially complied with.

(4) The auditor may report that the said requirements have been substantially complied with if in his opinion they have been complied with except so far as concerns certain trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery, and none of which in his opinion resulted in any loss to any person entitled to the clients' money.

(5) If the auditor reports that in his opinion the said requirements have not been complied with or substantially complied with, he shall specify in his report the matters in respect of which it appears to him that the said requirements have not been complied with or substantially complied with.

(6) If the auditor is unable to form an opinion as to whether or not the said requirements have been complied with or substantially complied with, he shall specify in his report the matters in respect of which he has been unable to satisfy himself and the reasons therefor.

(7) For the purpose of making his report under paragraph (3) above, the auditor shall—

- (a) ascertain from the person to whom he is reporting under that paragraph particulars of all bank accounts kept, maintained or operated by him or his employee in the course of estate agency work at any time during the accounting period to which the report relates, and
- (b) subject to paragraph (8) below, so examine the accounts and records of that person as to enable him to verify whether they comply with the requirements of Regulation 6 above, for which purpose he may ask for such further information and explanations as he may consider necessary.

(8) Nothing in paragraph (7) above shall require the auditor—

- (a) to extend his enquiries beyond the information contained in the relevant documents produced to him, supplemented by such information and explanations as he may obtain from the person to whom he is making his report; or
- (b) to consider whether the accounts and records have been properly kept in accordance with Regulation 6 above at any time other than the time at which his examination of those accounts and records takes place.

(9) A person who maintains a client account shall produce on demand to a duly authorised officer of an enforcement authority the latest auditor's report relating to the account.

26th October 1981

Sally Oppenheim
Minister of State
Department of Trade