

**EXPLANATORY MEMORANDUM TO
THE PROPERTY MISDESCRIPTIONS ACT 1991 (REPEAL) ORDER**

2013 No. 1575

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order repeals the Property Misdescriptions Act 1991 (PMA) and will remove the duplication that exists with the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277) (CPRs) that provide largely similar protections for consumers. It further amends other legislation by removing the redundant references to the PMA.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Property Misdescriptions Act 1991 makes it an offence to make false or misleading statements in the course of an estate agency or property development business about property offered for sale. In 2008, the CPRs came into force implementing the EU Unfair Commercial Practices Directive in the UK. These regulations apply in all sectors and provide broadly similar protections for consumers to the PMA, however they do so within a wider set of safeguards. Their introduction meant that consumers were protected by two broadly equivalent pieces of legislation, which is considered burdensome and confusing.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister for Employment Relations and Consumer Affairs at the Department for Business Innovation & Skills - Jo Swinson - has made the following statement regarding Human Rights:

In my view the provisions of the Property Misdescriptions Act 1991 (Repeal) Order 2013 are compatible with the Convention rights

7. Policy background

What is being done and why

7.1 In response to Government's Red Tape Challenge and commitment to remove any unnecessary legislation, BIS published a consultation on 11 January 2011 setting out the Government's view that there were significant overlap between the CPRs and the PMA that imposed duplication of regulation and increased the burden on business. It noted that the scope of the CPRs was potentially wider than that of the PMA and it was therefore possible that the CPRs gave a wider range of protection. Based on an analysis of enforcement cases taken under the PMA the consultation suggested that in the majority of cases it was likely that an offence under the PMA would also be an offence under the CPRs and the Government therefore considered that the CPRs provide a broadly equivalent level of protection to the PMA. The consultation closed on 5 April 2011.

7.2 Responses were received from 23 organisations and individuals. Opponents of repealing the PMA were united by the clarity they felt the PMA provided for the industry. They argued that it was well understood by estate agents, enforcers and consumers alike. They expressed concern about the applicability of the CPRs to property matters and concerns about the lack of case law and that the CPRs had had insufficient time to bed down.

7.3 Supporters of repeal thought it sensible to remove duplicate regulations and simplify matters for businesses and enforcement agencies. They thought repeal would put an end to problems of conflict between the prescriptive approach of the PMA and the principles-based approach of the CPRs. The CPRs were regarded as being more powerful in that they included the prohibition of misleading omissions, not covered by the PMA.

8. Consultation outcome

8.1 On 13 September 2012, the Government published its decision that it remained of the view that the CPRs provide broadly similar protection to the PMA. Government understood the views of opponents to repealing the PMA and their preference for the prescriptive nature of the PMA. The Government believes however that the conflict between the PMA and CPRs will continue so long as the PMA remains in place and that repealing the PMA would not significantly reduce levels of consumer protection. This is disputed by some stakeholders but not others and the Government does not find the arguments for a loss of consumer protection convincing. The Government's view was that repeal should not negatively impact on consumer protection in the property sector and it should not significantly affect enforcement. As proposed in the consultation further guidance was published by the OFT on the application of the CPRs to the home buying and selling sector. This was published alongside the response on 13 September. The guidance set out how the CPRs might apply to the sale of property and will help bridge the gap until case law develops in this area.

9. Guidance

9.1 The Department, together with the Office of Fair Trading, already publish substantive guidance to business on complying with the CPRs. This guidance can be accessed at www.offt.gov.uk/business-advice/treating-customers-fairly/protection.

9.2. The Office of Fair Trading has further published guidance on complying with the CPRs specifically aimed at property sales businesses. This guidance can be accessed at www.offt.gov.uk/OFTwork/estate-agents/guidance-overview/.

10. Impact

10.1 This Order is part of the wider Estate Agents Market regulatory reform, which also includes amendments to the Estate Agents Act 1979. These reforms will deliver a more proportionate and targeted regulation of the estate agency sector which will remove uncertainty and unnecessary regulatory burdens.

10.2 An Impact Assessment has been prepared for the reform package, covering both this Order and the amendments to the Estate Agents Act 1979, and is attached to this memorandum. It will be published alongside the Explanatory Memorandum on www.legislation.gov.uk and may also be viewed at:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/34614/12-1154-estate-agents-market-regulatory-reform-impact.pdf

11. Regulating small business

11.1 This Order applies to small business to the extent that it will affect the regulatory framework for those that operate within the estate agency sector, however it will not impose any new or increased burden upon small businesses.

12. Monitoring and review

12.1 As this Order will only repeal legislation which is now largely surplus to requirements the Department does not intend to undertake any future reviews of the Order itself, however the Consumer Protection from Unfair Trading Regulations 2008 will remain subject to regular reviews to ensure it is operating efficiently and providing consumers with appropriate safeguards.

13. Contact

Marcelle Janssis at the Department for Business Innovation and Skills tel:- 0207 215 8164 or email marcelle.janssis@bis.gsi.gov.uk can answer any queries regarding this instrument.