

Summary: Intervention & Options

Department /Agency:

Department for Business,
Innovation and Skills

Title:

Impact Assessment of draft Estate Agents (Record
Keeping) Regulations

Stage: Final - draft

Version: 2

Date: 18 June 2009

Related Publications: Estate agents consultation on powers in CEARA 07 and other changes to secondary legislation, and the part 2 response to the consultation

Available to view or download at:

<http://www.berr.gov.uk/files/file35347.pdf> and <http://www.berr.gov.uk/files/file42348>.

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What is the problem under consideration? Why is government intervention necessary?

The Government wants to improve the regulation of estate agents by making the existing enforcement regime more effective. The lack of formal record keeping requirements for estate agents means that enforcers sometimes find it difficult to prove that misconduct has occurred and take appropriate enforcement action. Requiring estate agent to keep prescribed records of their transactions with consumers will provide enforcers with audit trails, making it easier to obtain evidence to prove misconduct and take enforcement action.

What are the policy objectives and the intended effects?

To require estate agents to keep comprehensive records of their dealings with consumers, enabling enforcers to more effectively enforce the Estate Agents Act 1979 (EAA 79). More incidents of misconduct will be uncovered and dealt with, enabling the removal of rogue agents from the market. Standards of service will improve together with confidence in the house buying process.

What policy options have been considered? Please justify any preferred option.

We have considered (1) doing nothing and relying on existing record keeping provisions in EAA 79 (2) introducing record keeping regulations and (3) encouraging estate agents to voluntarily comply with the requirements in the regulations. Option 2 is the preferred option, as it will ensure estate agents keep comprehensive records of their dealings with consumers and that records are kept in a manner and at place or places that enable enforcers to the fully utilise the records to prove misconduct and take enforcement action.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The regulations will be reviewed by means of a post implementation review within a maximum of five years to ensure they have been effective and have reduced detriment in the market.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Not required at draft stage.

.....Date:

Summary: Analysis & Evidence

Policy Option: 1	Description: Do nothing ie relying on existing record keeping provisions in EAA 79
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition) Yrs		
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0	Total Cost (PV)	£ 0
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'	
	One-off Yrs		
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0	Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks Under this option estate agents would only be required to keep records of information given to clients about their prospective liabilities and declarations given to clients about their personal interest in a transaction. There would no requirements setting out the manner or place or places records that should be kept.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	2010				
Which organisation(s) will enforce the policy?	OFT and TSDs				
What is the total annual cost of enforcement for these organisations?	£				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ 0				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro 0</td> <td style="width: 25%; text-align: center;">Small 0</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table>	Micro 0	Small 0	Medium	Large
Micro 0	Small 0	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 0	Decrease of £ 0	Net Impact £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2

Description: Implement the record keeping regulations

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' To estate agents in increased recording, filing, storage and system costs.
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0.4m - £1m	Total Cost (PV)	£ 3.3m - £8.3m
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' To consumers in reduced detriment from increased availability of evidence.
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 0.9m to £1.4m	Total Benefit (PV)	£ 7.5m to £11.6m
Other key non-monetised benefits by 'main affected groups' Consumers and enforcers will benefit from more effective enforcement activity – grounds for complaint are expected to fall by 40% and successful outcomes increase to 88% (resulting from all changes in CEARA 07).			

Key Assumptions/Sensitivities/Risks Consumers and enforcers will benefit from more effective enforcement activity – grounds for complaint are expected to fall by 40% and the success rate for complaints increase to 88% (resulting from all changes in CEARA 07).

Price Base Year 2006	Time Period Years 10	Net Benefit Range (NPV) £ - 0.8 to £8.3m	NET BENEFIT (NPV Best estimate) £ 3.8m
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What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			2010	
Which organisation(s) will enforce the policy?			OFT and TSDS	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro TBC	Small TBC	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0.4m - £1m	Decrease of	£ 0	Net Impact	£ 0.4m - £1m

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 3

Description: Encourage estate agents to comply voluntarily with the proposed requirements in the record keeping regulations

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' To estate agents in increased recording, filing, storage and system costs.
	One-off (Transition)	Yrs	
	Average Annual Cost (excluding one-off)		
	Total Cost (PV)		
	£ 0		£ 0 - £3.3m
	£ 0 - £0.4m		
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' To consumers in reduced detriment from increased availability of evidence.
	One-off	Yrs	
	Average Annual Benefit (excluding one-off)		
	Total Benefit (PV)		
	£ 0		£ 3.3 - £5m
	£ 0.4 - £0.6m		
Other key non-monetised benefits by 'main affected groups' Consumers and enforcers will benefit from more effective enforcement activity, but by a smaller amount than if the regulations were implemented.			

Key Assumptions/Sensitivities/Risks Estate agents that do not already comply with the requirements in the regulations would be encouraged to do so, but on a voluntary basis.

Price Base Year 2006	Time Period Years 10	Net Benefit Range (NPV) £ 0 - £5m	NET BENEFIT (NPV Best estimate) £ 2.5m
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What is the geographic coverage of the policy/option?			UK	
On what date will the policy be implemented?			2010	
Which organisation(s) will enforce the policy?			OFT and TSDs	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£ 0	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro TBC	Small TBC	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0 - £0.4m	Decrease of	£ 0	Net Impact	£ 0 - £0.4m

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Introduction

This IA considers the costs and benefits of implementing powers in the Consumers, Estate Agents and Redress Act 2007 (CEARA 07) prescribing record keeping requirements for estate agents. These powers enable the Secretary of State by means of regulations to require persons engaged in estate agency work in the UK to keep permanent records of prescribed information, actions or events, and set out the manner and the place or places records are to be kept. The record keeping provisions in CEARA 07 are the last part of the Act relating to estate agents to be implemented.

Executive summary

This IA recommends that the Government implements record keeping regulations for estate agents as set out in the draft Estate Agents (Record Keeping) Regulations (option 2). The regulations will ensure that estate agents keep comprehensive records of their dealings with consumers and that enforcers can make proper use of evidence and deal effectively with misconduct by agents. Benefits to consumers in terms of reduced detriment from increased availability of evidence are estimated at £0.9m – £1.4m pa. Costs to estate agents in terms of recording, filing, storage and system costs are estimated at £0.4m – £1m pa.

Background

Existing regulatory regime

Estate agents in the UK are primarily regulated by EAA 79, which:

- regulates the conduct of estate agents in the course of estate agency work, but does not cover the letting of properties;
- lays down the duties that agents owe to clients (such as the passing on of offers, handling money and giving details of charges) and to third parties (such as disclosure of personal interest); and
- gives the Office of Fair Trading (OFT) the power to issue warning or prohibition notices against those persons they consider to be unfit to carry on estate agency work.

Consumers, Estate Agents and Redress Act 2007

The estate agents provisions in CEARA 07 take forward recommendations made by the Office of Fair Trading in its 2004 study on the market for estate agency services in England and Wales. The OFT concluded that whilst the estate agency market works well in many respects there was significant consumer dissatisfaction with the services provided. Furthermore, the processes were not transparent and it was difficult for enforcers and consumers to substantiate that abuse had occurred in order that it might be dealt with. The OFT recommended among other things, a number of improvements to EAA 79 to improve the regulatory regime and called for estate agents to be encouraged to join an ombudsman scheme. The Government endorsed the OFT proposals in its response to the OFT report in July 2004, but said that it wished to require all estate agents to belong to an ombudsman scheme.

CEARA 07 amends EAA 79 and introduces measures to:

- require estate agents engaged in residential estate agency work to belong to an independent approved redress scheme which will determine disputes between estate agents and buyers or sellers of residential property in the United Kingdom;
- require estate agents to keep adequate records of their dealing with consumers for a period of six years;
- increase the OFT and Trading Standards Officers powers to enter estate agents' premises and inspect files on a transaction; and
- give the OFT more scope to consider the fitness of an estate agent and issue warning and prohibition orders banning them from carrying out estate agency work.

Measures requiring estate agents to join an approved redress scheme and changes to the enforcement and entry and inspection parts of EAA 79 came into force on 1 October 2008.

Duty to keep permanent records

CEARA 07 introduces a new requirement on estate agents engaged in estate agency work to keep records of transactions for a period of up to 6 years ("permanent records"). Estate agents are already required to forward promptly and "in writing" details of offers from prospective buyers to sellers and information about an estate agent's personal interest in a transaction. Failure to do so is classified as an undesirable practice, which is a trigger enabling the OFT to consider an estate agents fitness to operate. Until now there has not been a requirement to keep records of offer letters and other communications after sending them. A formal duty to keep records will provide enforcers with audit trails, making it easier to obtain evidence to prove misconduct and take enforcement action.

Record keeping provisions

When new section 21A of EAA 79 is commenced, estate agents will be required to keep permanent records of:

- information given to clients about their prospective liabilities to the estate agent, such as the fees and charges they will have to pay and the circumstances in which they are payable, as required by sections 18(1) and (3) of EAA 79; and
- declarations about their personal interest in a transaction as required by sections 21(1) and (2) of EAA 79.

This IA does not consider the above record keeping requirements as they were included in the Consumers, Estate Agents and Redress Bill IA.

Record keeping regulations

Section 21A also contains order making powers enabling the Secretary of State to require the keeping of further records by means of regulations:

- A power to require the keeping of additional information relating to a client's prospective liabilities to an estate agent (ie fees and charges)
- A power to require the keeping of additional information relating to the disclosure of an estate agent's personal interest in a transaction
- A power to require the keeping of records relating to offers of a prescribed description and information and actions relating to such offers
- A power to require the keeping of a record of any other information or event of a prescribed description

Section 21A also contains regulation-making powers regarding the keeping of records:

- A power to specify the manner in which permanent records are to be kept
- A power to specify the place or places at which permanent records are to be kept

The Government does not propose to enact all of the record keeping powers in EAA 79. Some of the record keeping powers are reserve powers. The Government considers that there is no current need to require the keeping of additional information relating to a client's prospective liabilities to an estate agent and an estate agent's personal interest in a transaction. Consequently we do not propose to enact the powers at bullets 1 and 2 above.

The Government does intend to require the keeping of records in relation to offers and other information or events (bullets 3 and 4 above). We also intend to specify the manner and place or places permanent records are to be kept (bullets 5 and 6 above). This IA considers the costs and benefits of enacting these record keeping powers.

Rationale for Government Intervention

The aim of the record keeping requirements in CEARA 07 is to provide audit trails and make it easier for the OFT and TSDs to obtain evidence of misconduct and take enforcement action. The regulations will also go a long way to improve transparency in the offer making process and consumer confidence in the integrity of property transactions.

Although CEARA 07 contains requirements for keeping records of information given to clients about their prospective liabilities to an agent and declarations given to clients about their personal interest in a transaction, there is significant value to enforcers and to consumers in requiring the keeping of records in relation to offers and records of other information or events. In relation to offers, the definition of an offer (for the purposes of the regulations) must be set out in the regulations.

There is also significant value in setting out the manner and location in which records are to be kept, in terms of ensuring the records are of satisfactory standard that they can be used to prove misconduct and ensuring ease of access for enforcers and in turn speedy redress for consumers.

In practice many estate agents are already keeping the prescribed records and in the manner/location required. But those agents that do not comply with the requirements have little incentive to do so, in that adopting them would impose additional costs on their businesses.

Objectives of Intervention

The objective of the intervention is to exercise powers contained in EAA 79, as amended by CEARA 07 in order to reduce consumer detriment in the estate agency sector.

The intervention will have succeeded if estate agents keep comprehensive records of their dealings with clients, and that enforcers are able to easily use such records to prove misconduct and take enforcement action.

Options

This IA considers the costs and benefits of implementing the record keeping powers in CEARA 07. The powers are not mutually dependent and can be implemented individually (hence the individual costings later on in the IA). For convenience they have been grouped together and considered collectively as follows:

Option 1: Do nothing.

Under this option estate agents would only be required to keep records of information given to clients about their prospective liabilities and declarations about their personal interest in a transaction. There would be no regulations specifying the manner or place or places records should be kept.

Option 2: Implement the record keeping regulations (as set out in the accompanying draft regulations).

This would result in agents also keeping records in relation to offers and records of other information or events. Estate agents would also have to keep records in the manner and place or places specified in the regulations.

Option 3: Encourage estate agents to comply voluntarily with the proposed requirements in the record keeping regulations.

Estate agents that do not already comply with the requirements in the regulations would be encouraged to do so, but on a voluntary basis.

The Government proposes to proceed on the basis of option 2. This will ensure that estate agents keep comprehensive records of their dealings with consumers and that enforcers can make proper use of evidence and deal effectively with misconduct by agents.

Business sectors affected

The main impact of costs resulting from legislative changes will fall on estate agents. In July 2008 we estimated that there were about 13,000 estate agency offices in the UK¹. Since then the housing market has continued to deteriorate and the number of estate agency offices is now significantly lower. We estimate that there are now around 11,500 offices, which includes all places of business where estate agents operate including those working from home and internet only operations. This estimate is based on the number of sales offices belonging to The Property Ombudsman (TPO) redress scheme on 1 April 2009, and the TPO's estimate that 95% of all offices belong to the scheme². The overall figure is likely to be less than this as the TPO often learns about closures and members leaving at the time of renewal. Some of these offices are members of large chains or groups of independent estate agents, but the majority are small businesses, typically employing around 5 people³. It is estimated that around 60% of estate agents are small independent firms⁴.

Devolution

Estate agency is a reserved matter in Scotland, so changes to legislation will impact upon agents practising in Scotland, as well as England and Wales. Estate agency in Northern Ireland is a devolved matter, but it has been agreed that Northern Ireland will be included in the proposed UK wide regulations.

Assumptions

¹ The Estate Agents (Redress Scheme) Order 2008 and Estate Agents (Redress Scheme) (Penalty Charge) Regulations 2008 Impact Assessment: <http://www.berr.gov.uk/files/file46891.pdf>.

² 10,985 members * 100/95 = 11,563.

³ OFT report – page 30, paragraph 3.46

⁴ Council of Mortgage Lenders research quoted on page 121 of Annex C of the OFT report

The costs and benefits build on those contained in the Partial IA that accompanied the estate agents consultation⁵ that considered proposals for exercising powers in CEARA 07, and also the CEAR Bill Regulatory IA⁶.

Option 1 – do nothing

Not exercising any of the record keeping powers in CEARA 07 would leave estate agents subject to the record keeping provisions in the Act.

Estate agents would be required to keep records of information given to clients about their prospective liabilities and declarations about their personal interest in a transaction. They would not be required to keep other records including details of offers passed to sellers. There would also be no regulations setting out the manner and place or places that records should be kept.

Not exercising the powers would have a number of effects. It would result in fewer records being recorded and kept, in particular around the sensitive area of offers. Consequently enforcers would have less evidence to prove misconduct, leaving more rogue agents carrying out estate agency work to the detriment of consumers.

Not specifying the manner in which records should be kept, would result in some records being kept that could not be used to prove misconduct – the records may not be ‘true copies’ or show the date of the transaction. This would reduce still further the amount of evidence available.

Not specifying the place or places that records should be kept, would result in some records being unavailable for inspection at the local branch or place of business associated with the transaction. Where agents choose to keep records at central offices and not make them easily available for inspection at local branches, enforcers would have to travel possibly large distances to inspect them, which they may be reluctant to do. Giving agents a notice period in which to provide records would give unscrupulous agents the opportunity to tamper with or destroy documents, or create false documents related to the transaction.

Summarised costs and benefits:

None.

Option 2 – Implement the record keeping regulations (as set out in the draft regulations)

Exercising option 2 would result in estate agents being subject to record keeping regulations in addition to record keeping requirements in EAA 79.

The record keeping regulations will require estate agents to record and keep:

- Notices and information sent to clients and third parties (or, in the last case referred to below, to the estate agent):
 - Notifications to clients about offers received to purchase a property
 - Declarations to clients about a beneficial interest in land or the proceeds of sale of land
 - Declarations to clients about the agent’s services a prospective buyer has applied to use
 - Declarations to agents by clients as to the type of offer they don’t want to be notified about and agents are not required to pass on

⁵ Estate Agents: A consultation on proposals for exercising powers in the Consumers, Estate Agents and Redress Act 2007 and other changes to secondary legislation relating to estate agents: <http://www.berr.gov.uk/files/file42348.pdf>

⁶ Consumers, Estate Agents and Redress Bill Regulatory Impact Assessment: <http://www.berr.gov.uk/files/file35347.pdf>

- Specified information and actions in respect of each offer received (including details of offers not passed on to clients at their request)
- Contacts and variations of contracts between estate agents and their clients

The record keeping regulations will also specify the manner and place or places the records should be kept. Estate agents will be required to keep original documents in paper or electronic form or 'true copies' of original documents, including photocopies, printed e-mails and electronic scans such as pdfs. They will also be required to keep such records at the local branch or place of business most closely connected with the information or action to which the record relates or, if kept off site in electronic form, be easily accessible at the local branch/place of business. Regulations relating to manner and place or places would also apply to the record keeping requirements in EAA 79.

The offer making process is the source of many disputes between estate agents and buyers and sellers. Requiring agents to keep notifications to sellers about offers and additional information in respect of each offer received, will provide enforcers with further evidence enabling them to take more effective enforcement action. Together with improved entry and inspection rights under EAA 79, this will increase consumer confidence in the offer making process. Requiring agents to keep the contracts and the other documents specified will also provide enforcers with further evidence.

Specifying the manner in which records should be kept will result in more records of an acceptable quality being kept that can be used to prove misconduct. Not exercising the power will result in estate agents deciding how records should be kept, which may not be to the standard expected by enforcers.

Specifying the place or places that records should be kept will benefit enforcers in the time they take to travel to inspect documents. Not enacting this power will enable estate agents to keep records where they choose. Some estate agents may choose to keep records at central offices and not make them available for inspection at local branches, resulting in enforcers having to travel possibly large distances to inspect them.

In drawing up the record keeping regulations the Government has been careful to balance the needs of consumers and businesses and consider each proposal on its merits. We have rejected proposals for more comprehensive requirements, which while useful to have, would be unnecessarily burdensome on agents. We have also tried to make the regulations as flexible as possible, for example in allowing the keeping of electronic documents and not specifying the types of systems to be used to store them.

The CEARA Bill RIA highlighted the costs and benefits of five possible options⁷ to improve regulation in the estate agency sector. The Bill RIA ultimately adopted option 4: to implement enforcement changes, including improved record keeping, and require estate agents to belong to approved redress schemes. All of the elements of option 4 have been implemented except improved record keeping. Hence in order to calculate the benefits of improved record keeping, one must determine to what extent option 4 benefits would change if the record keeping elements were not included.

A good guide is to look at the differences between option 2 of the Bill RIA, which looked at costs and benefits of improved record keeping plus some enforcement elements, and option 4 which built on option 2 by including redress measures. Under option 2 it was assumed that transactions with grounds for complaint would be reduced by 10%, while the percentage with

⁷ Do nothing (1), implement enforcement changes recommended by OFT, but take no action on redress (2), implement the enforcement changes and encourage estate agents to belong to voluntary redress schemes (3), implement the enforcement changes and require estate agents to belong to approved redress schemes (4) and introduce a positive licensing regime (5).

grounds for complaint that actually complained was 63% and the success rate was 25%. Under option 4 it was assumed the grounds for complaint would be reduced by 40%, while the percentage with grounds for complaint that actually complained was 82% and the success rate was 88%.

As already argued above enforcement activity will be more effective if record keeping arrangements are improved as the available audit trail will make it easier to prove the veracity of complaints. Hence, a certain proportion of the improved success rate under option 4 is attributable to improved record keeping. There is no available evidence on the extent to which improved record keeping increases the success rate of enforcement and redress measures in option 4. We conservatively assume that the improved record keeping accounts for 5-10 percentage points of the option 4 success rate. Therefore, option 4 would have a success rate of 78-83% if improved record keeping measures were not implemented.

Further, a reduced success rate will impair the overall deterrent effect of the option 4 measures and hence would impact on the percentage of transactions upon which there are grounds for complaint. As option 2 reduces grounds for complaint by 10% and option 4 reduces grounds for complaint by 40%, a fair assumption for option 4 without improved record keeping could be 30% (40%-10%). However, part of the deterrent effect of option 2 can be attributed to the enforcement measures as well as improved record keeping. Hence we assume that option 4, without improved record keeping from the record keeping regulations, would reduce grounds for complaint by 35%.

The benefit of option 4 over the base case was found to be £15.3m. Running the figures above through the same calculations conducted for the Bill RIA, the benefit of option 4 less the improved record keeping measures would be in the range £13.9 – £14.4m. Therefore the extra benefit of the improved record keeping measures is in the range £0.9 – £1.4m.

Requiring estate agents to keep permanent records of specified documents and record information and actions in respect of each offer received, will add to estate agents' costs, but much of these requirements are being met already.

It is in the interest of estate agents to keep comprehensive records of their dealings with clients. For example agents will keep contracts to claim commission and details of offers received in order to contact other potential buyers when an offer is withdrawn.

A large majority of estate agents are already complying with some or all of the record keeping requirements. The TPO code of practice for residential estate agents, to which about 93%⁸ of agents have signed up, requires agents to keep clear and full written records of all transactions and keep a written or computerised record of all offers received. Estate agents are already required to keep records under the Estate Agents (Accounts) Regulations 1981 in relation to the keeping of clients' money and are also required to keep records to show compliance with the Money Laundering Regulations 2007.

Many of the regulations relate to existing legislative requirements. Estate agents are already required to send in writing to clients details of offers received and declarations when a prospective buyer applies to use an agent's services, so it will not be difficult for them to record and keep such documents. Indeed the Bill RIA (see paragraph 3.54-3.55) considered that the number of estate agents not making and keeping records to be very small, perhaps 5%, which based on the 2004 level of property transactions, would incur extra costs of £22k per annum to meet record keeping requirements.

⁸ TPO membership data 1 April 2009: of 10,985 sales offices, 10,738 are full members. The other 247 sales offices belong to the TPO's redress only scheme, about 2% of offices overall.

Specifying the manner or place or places in which records must be kept may add to estate agents costs especially if they are not properly recording and keeping documents already. But arguably advising estate agents how and where they should keep records enables them to carry out the record keeping duty as intended in CEARA 07, therefore adding no net costs to estate agents over and above those identified in the Bill RIA. Enabling estate agents to keep documents in electronic form will reduce agents' storage costs.

Specifying the place or places that records must be kept will benefit enforcers in the time they take to travel to inspect documents. Specifying that records must be kept at the local branch or place of business responsible for the transaction or, if kept centrally, made easily accessible at the local branch/place of business will save enforcers the time taken to travel to central offices not located near local branches.

Local Trading Standards Departments (TSDs) do not collect data on inspections of estate agents' premises; however, complaints are made about estate agents to Consumer Direct and costs to Trading Standards from having to travel to central depots to inspect records can be extrapolated from these. In 2006, Consumer Direct referred 1602 complaints to TSDs about estate agents which concerned possible civil or criminal breaches. Of these, TSDs agreed that they would or may take action in 1059 cases⁹.

We assume that 20% of these cases required site inspections and 10% of those inspections required travel to a central location rather than a local branch (so, $20\% \times 10\% \times 1059 = 22$ visits). Further, we assume that a visit to a central location involves an additional hour's travel to and from the inspection site (ie 2 hours in total). We therefore have an additional 44 hours in travel time for Trading Standards Officers (TSO). The Local Authorities Coordinating Office on Regulatory Services (LACORS) estimates that the average hourly cost for a full time TSO is £35. Additional travelling costs therefore come to about £1500 per year ($44 \times £35 = £1540$). Specifying that certain records must be kept or made available locally is assumed to save, therefore, £1500 per year to TS in travel time. This cost does not include, however, the cost of petrol and is thus likely to be an underestimate of the potential savings. It also ignores the benefits that result from visits to inspect premises when enforcers suspect that misconduct has occurred.

Requiring those estate agents who keep records centrally to make them available locally upon request, may impose system costs where networks allowing this do not exist. But the Government does not propose to specify the type of electronic equipment to be used to store or access electronic records. In practice we think the costs on agents will be negligible as most estate agents keep records locally at the branches responsible for the transaction.

The average gross hourly pay for estate agents in 2008 is reported as £13.12¹⁰. We assume, more conservatively than the Bill RIA that 10% - 25% of estate agents (so, $11,500 \times 10\%$ and $11,500 \times 25\% = 1150 - 2875$ agents) will have to expend additional effort to comply with the record keeping requirements. Assuming the additional effort per estate agency branch requires thirty minutes per week of extra work, the total additional (time) costs per year are £0.4m – £1m¹¹.

Summarised benefits:

We expect benefits to consumers in terms of reduced detriment from increased availability of evidence to be £0.9m – £1.4m pa.

⁹ Source: Local Authorities Coordinating Office on Regulatory Services (LACORS)

¹⁰ Source: ONS Annual Survey of Hours and Earnings (2008) Table 14.5a

¹¹ $(£13.12 / 2) \times 1150 \times 52 = £392288$ or £0.4m lower bound and $(£13.12 / 2) \times 2875 \times 52 = £980720$ or £1m upper bound.

We expect benefits to enforcers in terms of saved time in not having to travel to central offices to inspect documents to be £1.5k pa for the whole of the UK. This additional benefit is negligible and is not included in the overall cost-benefit calculations at the end of this document.

Summarised costs:

We expect costs to estate agents in terms of recording, filing, storage and system costs to be £0.4m – £1m pa.

Option 3 – Encourage estate agents to comply voluntarily with the proposed requirements in the record keeping regulations

Relying on estate agents to voluntarily comply with the proposed requirements may lead to some agents adopting them. However, in view of the large numbers of agents who have signed up to TPO sales code of practice for residential estate agents, which contains substantial record keeping requirements, it seems unlikely many of the remaining 7% of agents would be persuaded by voluntary means to do so.

Not all of the record keeping requirements are covered by the TPO code of practice, for example the requirement to keep records for six years. But if they were adopted by the TPO for its code of practice and recognised by industry bodies as being best practice, in theory 93% of estate agents could be expected to comply with them. Their scope would be widened to non-members by the ability of redress schemes under EAA 79 to consider complaints about non-compliance with the provisions of a code of practice or other document.

While a voluntary approach may have superficial attractions – it could be quickly disseminated – it ignores the practical difficulties which are the basis for having record keeping regulations. It would not address the cost pressures and other disincentives which disincline some estate agents from keeping records already.

The offer making process is a source of many disputes between estate agents and buyers and sellers. Relying on voluntary compliance to keep additional information and actions in relation to offers and details of offers not passed on to clients, will result in many records not being kept than would have been case if made compulsory.

Relying on voluntary compliance to properly record and keep records will increase the number of records correctly kept, but many records will not be processed properly and be lost or go unrecorded.

Relying on estate agents to voluntarily make records available at the local branch or place of business associated with the transaction will also increase the availability of records held locally. But it is likely that some estate agents will continue to store records centrally and not make them easily available at local branches, requiring enforcers to make long journeys to inspect them.

In all these cases detriment will be reduced but not by the level that would be the case if the regulations were compulsory.

The costs and benefits for option 3 are as per option 2, but less than would have been the case if the regulations were exercised by secondary legislation.

Summarised benefits:

We would expect the availability of evidence to be lower, reducing the success rate of option 4 of the Bill RIA, but not as low as it would be reduced if there were no efforts to improve record keeping at all (i.e. the 'do nothing' option). A system of voluntary compliance would generate a

small improvement of the success rate above that which would prevail if there were no improved record keeping. We assume option 4 of the Bill RIA would have a success rate of 83 – 86.5% if estate agents were encouraged to comply voluntarily. We also assume that the percentage of transactions with grounds for complaint would be reduced by 35% (the same as was assumed under option 2). This translates to a benefit in the range £0.4 – £0.6m.

Summarised costs:

We would also expect fewer additional agents to choose to comply with the requirements resulting in less time devoted to their compliance. We assume 0 – 10% of estate agents would expend additional effort to comply voluntarily with the record keeping requirement which would result in additional costs of £0 – £0.4m pa¹².

Small firms impact test

It is estimated that 60% of estate agencies are small businesses. The additional record keeping requirements might impact on smaller firms more heavily than larger firms, as the former may have smaller revenues, but the additional cost is not large enough to warrant serious reconsideration of the preferred option 2. Enabling estate agents to keep documents in electronic form will especially help small firms, which are more likely to have limited space in which to store documents.

Competition Assessment

All firms engaged in estate agency work will be required to keep permanent records. The large majority of estate agents should be carrying out the bulk of the record keeping requirements already, as 93% of agents have signed up to the TPO code of practice for residential estate agents, which imposes comprehensive record keeping requirements on its members. By imposing record keeping requirements on all estate agents, the regulations will help to create a level playing field. The regulations will also go a long way to improve consumer confidence in the integrity of property transactions. We would expect this to attract consumers to the market and therefore provide opportunities for estate agents to compete.

Other tests

We do not believe that there will be any impacts in the areas of legal aid, sustainable development, carbon use, health, race equality, disability, equality, gender equality, human rights and rural affairs.

In terms of any impact on the environment, we expect the regulations to be minimal. The large majority of estate agents already keep comprehensive records of their dealings with clients and the ability to keep electronic documents will help to reduce their impact.

Compensatory simplification measures

None. The record keeping regulations are the last part of a complimentary package of reforms designed to improve the regulation of estate agents. Changes introduced on 1 October 2008 gave enforcers wider powers to enter estate agents' premises and demand the on-site production of records, and expanded the circumstances in which the OFT can consider the fitness of agents to operate and issue warning and prohibition orders banning them from carrying out estate agency work. Providing enforcers with audit trails and evidence of misconduct will enable them to make the most of the earlier reforms.

¹² Lower bound (0% increase): $(£13.12 / 2) \times (0 \times 11,500) \times 52 = £0$. Upper bound (10% increase): $(£13.12 / 2) \times (10\% \times 11,500) \times 52 = £392288$ or £0.4m.

Enforcement and sanctions

The record keeping regulations will be enforced by the OFT and local Trading Standards Departments. Trading Standards Officers are now able to enter premises and require the production of books or documents where they have reasonable cause to suspect an offence under EAA 79 has been committed, a person has failed to comply with certain provisions in the Act or engaged in a practice deemed undesirable by the Secretary of State. We expect that the ability to inspect prescribed records will lead to more enforcement action, but targeted at agents who breach the law.

Failure to keep permanent records will be a trigger enabling the OFT to consider the fitness of estate agents to operate. Failure to provide information requested by the OFT under section 9(1) and an authorised (enforcement) officer under section 11(1A)(b) of EAA 79, are also triggers enabling consideration of fitness. Agents that fail to keep records and provide them to enforcers will ultimately be banned from carrying out estate agency work.

Ensuring that records are made available at the local branch or place of business associated with a transaction will reduce the time taken by Trading Standards Officers to travel to inspect documents.

Compliance and monitoring

We expect compliance to be high as record keeping is well established in the industry (via the TPO code of practice) and failure to keep records will ultimately result in a prohibition order. It is a criminal offence for estate agents to continue to practice once they have been banned from carrying out estate agency work.

Consultation

The OFT consulted widely with stakeholders in putting together its report of the estate agency market in England and Wales (2004) which recommended that estate agents should be subject to formal record keeping requirements. The record keeping powers were the subject of a public consultation.

We are seeking views on the draft record keeping regulations and guidance to the regulations prior to implementation. Comments on the draft regulations and guidance should be sent to the address below by 10 September 2009.

Post implementation review

As with all the estate agents provisions in CEARA 07 the record keeping powers will be reviewed by means of a post implementation review within a maximum of 5 years of their introduction to ensure that the changes have been effective and reduce detriment in the estate agency market.

Summarised costs and benefits

	Costs	Benefits	Net total
Option 1	None	None	0
Option 2	£0.4m to £1m pa	£0.9m to £1.4m pa	-£0.1m to £1m
Option 3	£0 to £0.4m pa	£0.4 to £0.6m pa	£0 to £0.6m

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Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

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