
AUCTIONEERS AND ESTATE AGENTS ACT 1977

ANALYSIS

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| <ol style="list-style-type: none"> 1. Short title, citation, and commencement. 2. Interpretation. 3. Constitution. 4. Disqualification, &c., of members. 5. Contributions to the Council. 6. General fund and accounts of Council. 7. Real estate and general auctioneers' licences. 8. Prohibition of unlicensed auctions, &c. 9. Auctioneers' licences. 10. Probationary auctioneers' licences. 11. Auctioneers' temporary permits. 12. Auction permit. 13. Misrepresentations at auctions. 14. Bidding by owner, seller, &c. 15. Splitting lots of livestock or farm produce. 16. Records of auction sales of livestock or farm produce. 17. Publication at auctions of provisions of certain sections. 18. Times for auctions. 19. Prohibition on unauthorized persons acting as estate agents. 20. Temporary managers' permits. 21. Real estate salesmen. 22. Rules of practice. 23. Restriction on licensee, &c., purchasing property. | <ol style="list-style-type: none"> 24. Recovery of money due to estate agent. 25. False advertisements by estate agents. 26. Grant and form of licences. 27. Hearing of applications for licences. 28. Determination of applications in respect of general auctioneers' licences. 29. Determination of applications in respect of probationary auctioneers' licences. 30. Endorsements on auctioneers' licences. 31. Determination of applications in respect of estate agents' licences, real estate auctioneers' licences and managers' licences. 32. Qualifications of individuals to hold estate agents' licences, real estate auctioneers' licences, and managers' licences. 33. Qualifications of corporate bodies to hold estate agents' licences or real estate auctioneers' licences. 34. Exempt companies. 35. Real estate salesmen's licences. 36. Revocation of licence by Council on non-compliance with condition. <p style="margin-left: 20px;">Appeal against Council's refusal to grant or renew licence or endorse an auctioneer's licence.</p> |
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- Appeal against Council's decision to grant or renew a licence or endorse an auctioneer's licence.
37. Duration.
 38. Revocations.
 39. Alteration of addresses, &c., in licences.
 40. Fees.
 41. Prohibition on lending.
 42. Personal representative deemed to be holder of an estate agent's licence for certain period.
 43. Trust accounts.
 44. Record of transactions.
 45. Furnishing particulars of trust account, &c., to Minister or Council.
 46. Inspection of documents.
 47. Inspection of bank records, &c.
 48. Inspection of fidelity bonds.
 49. Publication of names of licensees.
 50. New Parts VIA and VIB.
 - Interpretation.
 - Auctioneers' and Estate Agents' Trust.
 - Term of office and removal of members of the Trust.
 - Proceedings of the Trust.
 - Officers of the Trust.
 - Trust deposit accounts, investment of moneys in those accounts and application of interest on those investments.
 - Trust to submit books of account, &c., for audit, and report to Council on certain matters.
 - Deposit of trust moneys.
 - Variation of deposit.
 - Non-compliance with section 54H.
 - Withdrawals by licensees.
 - Auctioneers' and Estate Agents' Guarantee Fund.
 - Inspection of accounts.
 - Exemptions.
 - Exemption from stamp duty.
 - Secrecy.
 - Rules.
 - Interpretation.
 - Claims under fidelity bonds.
 - Payment of moneys in trust account into fund in court.
 - Application of the fund in court.
 - Payments from Guarantee Fund to fund in court.
 - Assignment of debts of claimants.
 - Repayment to obligor out of fund in court.
 - Procedure in relation to claims against fund in court.
 - Powers of Council in relation to fund in court.
 - Powers of court exercisable by judge in chambers.
 51. Examinations.
 52. Exemptions.
 53. Consequential amendments.
 54. Transitional provisions.



AUCTIONEERS AND ESTATE AGENTS

No. 25 of 1977

AN ACT to amend the Auctioneers and Estate Agents Act 1959.
[19 May 1977]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Auctioneers and Estate Agents Act 1977*. Short title, citation, and commencement.

(2) The *Auctioneers and Estate Agents Act 1959**, as subsequently amended, is in this Act referred to as the Principal Act.

* No. 81 of 1959. For this Act as amended to 1968, see Part I of the Annual Volume of Statutes for 1968, Appendix A. Subsequently amended by No. 89 of 1968 and No. 97 of 1975.

(3) Each of the provisions of this Act commences on such day as may be fixed by proclamation in relation thereto.

Interpretation.

2 Section 3 of the Principal Act is amended—

(a) by inserting in subsection (1) after the definition of “ auction permit ” the following definition:—

“ ‘ auctioneer’s licence ’ means a real estate auctioneer’s licence or a general auctioneer’s licence;”;

(b) by inserting in that subsection after the definition of “ farm produce ” the following definition:—

“ ‘ Guarantee Fund ’ means the Auctioneers’ and Estate Agents’ Guarantee Fund established under section 54M;”;

(c) by inserting in that subsection in the definition of “ licence ” after the words “ a manager’s licence ” the words “ , a probationary auctioneer’s licence;”;

(d) by inserting in that subsection after the definition of “ statutory record ” the following definition:—

“ ‘ Trust ’ means the Auctioneers’ and Estate Agents’ Trust established under section 54B;”.

Constitution.

3 Section 4 of the Principal Act is amended by adding at the end of subsection (3) the words “ and shall be a legal practitioner ”.

Disqualification, &c., of members.

4 Section 6 of the Principal Act is amended by omitting from subsection (3) the words “ One hundred dollars ” and substituting therefor “ \$200 ”.

Contributions to the Council.

5 Section 11 of the Principal Act is repealed.

General fund and accounts of Council.

6 Section 12 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) All moneys received by the Council shall form part of the general fund of the Council.”.

7 After section 12 of the Principal Act the following section is inserted in Part III:—

Real estate and general auctioneers’ licences.

“ 12A—(1) A real estate auctioneer’s licence authorizes the holder thereof to carry on the business of selling property of any kind by auction.

“(2) A real estate auctioneer’s licence authorizes any person whose name is endorsed thereon to conduct auctions on behalf of, and while in the employment of, the licensee.

“(3) A general auctioneer’s licence authorizes the holder thereof to carry on the business of selling property other than land by auction.

“(4) A general auctioneer’s licence authorizes any person whose name is endorsed thereon to conduct auctions of property other than land on behalf of, and while in the employment of, the licensee.”.

8 Section 13 of the Principal Act is repealed and the following section is substituted therefor:—

“13—(1) No person shall conduct an auction unless he is authorized to conduct that auction by a real estate auctioneer’s licence or a general auctioneer’s licence. Prohibition of unlicensed auctions, &c.

Penalty: \$400.

“(2) No person, other than the holder of an auctioneer’s licence, shall—

(a) carry on, or hold himself out as carrying on, a business of selling any property by auction, whether alone or in combination with any other business; or

(b) hold himself out as willing to sell any property by auction, unless he is authorized to carry on the business of selling that property by auction.

Penalty: \$800 and a daily penalty of \$200.

“(3) No person holding a real estate auctioneer’s licence shall, in the course of business carried on by him, cause or allow any person to conduct an auction of property unless that person is authorized to do so by an endorsement on the licence or by an auctioneer’s temporary permit.

Penalty: \$400.

“(4) No person holding a general auctioneer’s licence shall, in the course of business carried on by him—

(a) cause or allow any person to conduct an auction of land; or

(b) cause or allow any person to conduct any auction unless that person is authorized to do so by an endorsement on the licence or by an auctioneer's temporary permit.

Penalty: \$400.

“(5) Subsection (1) does not apply to an auction conducted by the holder of an auctioneer's temporary permit or an auction permit.

“(6) Subsections (1), (3), and (4) do not apply to an auction conducted by the holder of a probationary auctioneer's licence under the supervision of a person who is himself authorized to conduct the auction otherwise than by virtue of an auctioneer's temporary permit or an auction permit and who is present at the auction.”.

Auctioneers'
licences.

9 Section 14 of the Principal Act is amended by omitting subsection (3).

10 After section 14 of the Principal Act the following section is inserted:—

Probationary
auctioneers'
licences.

“14A—(1) A probationary auctioneer's licence authorizes the holder thereof to conduct an auction of property under the supervision of a person who is himself authorized to conduct the auction otherwise than by virtue of an auctioneer's temporary permit or an auction permit and who is present at the auction.

“(2) A probationary auctioneer's licence may not be granted otherwise than to a single individual.

“(3) A probationary auctioneer's licence ceases to be in force at the expiration of 12 months from the date on which it was granted and may not be renewed.”.

Auctioneers'
temporary
permits.

11 Section 15 of the Principal Act is amended—

(a) by omitting from subsection (1) the words “him or them by a licensed auctioneer, a police magistrate or two justices” and substituting therefor the words “it by a licensed auctioneer, the Council”; and

(b) by omitting from subsection (3) the words “police magistrate or the justices granting the permit determine” and substituting therefor the words “Council determines”.

Auction permit.

12 Section 16 of the Principal Act is amended—

(a) by omitting from subsection (1) the words “him or them, a police magistrate or two justices,” and substituting therefor the words “it, the Council”;

(b) by omitting from subsection (3) (c) the words “ police magistrate or justices are ” and substituting therefor the words “ Council is ”; and

(c) by omitting from subsection (4) the words “ police magistrate or justices are ” and substituting therefor the words “ Council is ”.

13 Section 18 of the Principal Act is amended by omitting the words “ Two hundred dollars ” and substituting therefor “ \$400 ”. Misrepresentations at auctions.

14 Section 19 of the Principal Act is amended by omitting the words “ Two hundred dollars ” (wherever occurring) and substituting therefor “ \$400 ” in each case. Bidding by owner, seller, &c.

15 Section 20 of the Principal Act is amended by omitting from subsection (1) the words “ Two hundred dollars ” and substituting therefor “ \$400 ”. Splitting lots of livestock or farm produce.

16 Section 21 of the Principal Act is amended by omitting from subsection (1) the words “ Two hundred dollars ” and substituting therefor “ \$400 ”. Records of auction sales of livestock or farm produce.

17 Section 22 of the Principal Act is amended by omitting the words “ Two hundred dollars ” and substituting therefor “ \$400 ”. Publication at auctions of provisions of certain sections.

18 Section 24 of the Principal Act is amended by omitting from subsection (1) the words “ Forty dollars ” and substituting therefor “ \$100 ”. Times for auctions.

19 Section 25 of the Principal Act is amended—

(a) by omitting from subsection (1) the words “ Two hundred dollars ” and substituting therefor “ \$400 ”; and

(b) by omitting from subsection (3) the words “ Four hundred dollars ” and “ one hundred dollars ” and substituting therefor “ \$800 ” and “ \$200 ” respectively.

Prohibition on unauthorized persons acting as estate agents.

20 After section 27 of the Principal Act the following section is inserted:—

“ 27A—(1) On application by a licensed estate agent for the grant of a temporary manager’s permit to the person named in the application the Council may if it is satisfied that the person named in the application—

Temporary managers’ permits.

(a) is the holder of a real estate salesman’s licence;

(b) has for a period of at least two years, or for separate periods amounting in the aggregate to at least two years, been engaged in appropriate employment within the meaning of section 37B (7); and

(c) is a fit and proper person to hold the permit, grant to him a temporary manager's permit.

“(2) A temporary manager's permit granted to a person authorizes him, so long as his ordinary place of residence is within the State and he is in the employment of the licensed estate agent named in the permit, to be in charge of the place of business specified in the permit being a place at which that licensed estate agent is authorized to carry on business under this Act.

“(3) A temporary manager's permit shall not be granted otherwise than to a single individual.

“(4) A temporary manager's permit remains in force for such period not exceeding one month as is specified in the permit.”.

Real estate
salesmen.

21 Section 28 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “ Four hundred dollars ” and substituting therefor “ \$800 ”;
- (b) by omitting from subsection (2) the words “ Four hundred dollars ” and “ one hundred dollars ” and substituting therefor “ \$800 ” and “ \$200 ” respectively;
- (c) by omitting from subsection (3) the words “ Four hundred dollars ” and “ one hundred dollars ” and substituting therefor “ \$800 ” and “ \$200 ” respectively; and
- (d) by omitting from subsection (4) the words “ Four hundred dollars ” and “ one hundred dollars ” and substituting therefor “ \$800 ” and “ \$200 ” respectively.

Rules of
practice.

22 Section 29A of the Principal Act is amended—

- (a) by omitting the words “ governing the carrying on of the business of an estate agent ” and substituting therefor the words “ with respect to businesses of auctioneers and estate agents ”; and
- (b) by omitting the words “ one hundred dollars ” and substituting therefor “ \$200 ”.

23 After section 30 of the Principal Act the following section is inserted:—

“30A—(1) No licensee shall whether directly or indirectly or by himself or any partner or any person employed by him or acting on his behalf purchase or be in any way concerned or beneficially interested in the purchase of any property which he is commissioned by any principal to sell without having previously obtained the consent in writing of the principal to such a purchase. Restriction on licensee, &c., purchasing property.

Penalty: \$400.

“(2) Any person who is convicted of an offence against this section shall, in addition to any penalty imposed by the court, be ordered by the court to pay to the principal such sum as the court considers represents the profits resulting or likely to result from the purchase and any subsequent dealing with the property.

“(3) No employee of a licensee shall purchase or be in any way concerned or beneficially interested in the purchase of any property which the licensee is commissioned by any principal to sell without having previously obtained the consent in writing of the principal to the purchase.

Penalty: \$400.

“(4) Where a licensee or an employee of a licensee is convicted of an offence under this section in respect of the purchase of any property the licensee shall not be entitled to any commission and shall repay any commission received by him in respect of that purchase.

“(5) Without prejudice to the generality of the foregoing provisions of this section a person shall be deemed to be beneficially interested in the purchase of property if he or his spouse or any parent or child of his is the purchaser of the property.”

24 Section 31 of the Principal Act is repealed and the following section is substituted therefor:—

“31—(1) No person shall without the leave of the court in which the action is brought be entitled to recover any sum in respect of any act done or service performed as an estate agent unless his engagement or appointment to do the act or perform the service was in writing signed by the person from whom it is sought to recover the sum or by some person authorized in writing to sign on his behalf. Recovery of money due to estate agent.

“(2) No leave shall be given under this section unless the Court is satisfied that the person to be proceeded against has unreasonably refused to pay any sum.”

False advertisements by estate agents.

25 Section 32A of the Principal Act is amended by omitting from subsection (6) the words “ four hundred dollars ” and substituting therefor “ \$800 ”.

26 Section 33 of the Principal Act is repealed and the following section is substituted therefor:—

Grant and form of licences.

“ 33 Subject to this Act, a licence shall be granted or renewed by the Council, and shall be in such form and contain such particulars as may be prescribed.”.

Hearing of applications for licences.

27 Section 35A of the Principal Act is amended—

(a) by omitting the words “ real estate salesman’s ” wherever they occur; and

(b) by adding at the end of that section the following subsections:—

“(7) On the hearing of an application under this section the Council may, if it thinks it just, award costs to or against any party to the application, and may assess the amount of these costs.

“(8) Costs awarded to a person under subsection (7) may be recovered as a debt due to that person by any person against whom they are awarded.”.

Determination of applications in respect of general auctioneers’ licences.

28 Section 36 of the Principal Act is amended by omitting from subsection (1) the words “ an auctioneer’s ” and substituting therefor the words “ a general auctioneer’s ”.

29 After section 36 of the Principal Act the following section is inserted:—

Determination of applications in respect of probationary auctioneers’ licences.

“ 36A On the hearing of an application for the grant of a probationary auctioneer’s licence, the Council shall grant the licence if it considers the applicant is a fit and proper person to hold the licence.”.

Endorsements on auctioneers’ licences.

30 Section 37 of the Principal Act is amended—

(a) by omitting from subsection (1) the word “ clerk ” and substituting therefor the word “ Council ”;

(b) by omitting from subsection (2) the word “ thirty-five ” and substituting therefor “ 35A ”;

(c) by omitting from subsection (3) the words “ police magistrate ” (wherever occurring) and substituting therefor the word “ Council ” in each case;

(d) by inserting after subsection (3) the following subsections:—

“(3A) Without prejudice to the generality of subsection (3), the Council shall not endorse a real estate auctioneer’s licence in accordance with an application unless the person whose name is to be endorsed on the licence—

- (a) has previously held a real estate auctioneer’s licence or had his name endorsed on a real estate auctioneer’s licence; or
- (b) shows, on examination or inquiry made of him by or at the direction of the Council, that he has a knowledge of the business of auctioneering sufficient to enable him to commence to exercise the functions of a real estate auctioneer.

“(3B) Without prejudice to the generality of subsection (3), the Council shall not endorse a general auctioneer’s licence in accordance with an application unless the person whose name is to be endorsed on the licence—

- (a) has previously held an auctioneer’s licence or had his name endorsed on an auctioneer’s licence; or
- (b) shows, on examination or inquiry made of him by or at the direction of the Council, that he has a knowledge of the business of auctioneering sufficient to enable him to commence to exercise the functions of a general auctioneer.”; and

(e) by omitting from subsection (4) the word “clerk” (wherever occurring) and substituting therefor the word “Council” in each case.

31 Section 37A of the Principal Act is amended—

(a) by inserting in subsection (1) after the words “estate agent’s licence” the words “, a real estate auctioneer’s licence,”;

Determination of applications in respect of estate agents’ licences, real estate auctioneers’ licences, and managers’ licences.

- (b) by inserting after that subsection the following subsection:—
 “(1A) Notwithstanding subsection (1) the Council may grant an estate agent’s licence, a real estate auctioneer’s licence, or a manager’s licence to a person who is not qualified to hold such a licence on condition that within such time as the Council may determine that person obtains the necessary qualifications.”;
- (c) by inserting in subsection (2) after the words “ estate agent’s licence ” the words “, a real estate auctioneer’s licence,”;
- (d) by inserting in subsection (3) after the words “ estate agent’s licence ” the words “ or a real estate auctioneer’s licence ”;
- (e) by inserting in subsection (4) after the words “ estate agent’s licence ” (first occurring) the words “ or a real estate auctioneer’s licence ”;
- (f) by inserting in paragraph (a) of that subsection after the words “ estate agent’s licence ” the words “, a real estate auctioneer’s licence,”; and
- (g) by inserting in that paragraph after the words “ estate agent ” the words “ or a real estate auctioneer ”.

Qualifications
of individuals
to hold estate
agents’ licences,
real estate
auctioneers’
licences, and
managers’
licences.

32 Section 37B of the Principal Act is amended—

- (a) by inserting in subsection (1) after the words “ estate agent’s licence ” (first occurring) the words “, a real estate auctioneer’s licence,”;
- (b) by omitting from paragraph (a) of that subsection the word “ prescribed ” and substituting therefor the word “ approved ”;
- (c) by inserting in paragraph (b) of that subsection after the words “ estate agent’s licence,” the words “ a real estate auctioneer’s licence, not being a licence that has effect as a real estate auctioneer’s licence by virtue of section 54 (5) of the *Auctioneers and Estate Agents Act 1977*,”;
- (d) by inserting in subsection (2) after the words “ estate agent’s licence ” the words “, a real estate auctioneer’s licence,”;
- (e) by omitting from that subsection the words “ either of such licences ” and substituting therefor the words “ any of those licences, not being a licence that has effect as a real estate auctioneer’s licence by virtue of section 54 (5) of the *Auctioneers and Estate Agents Act 1977* ”;

- (f) by inserting in subsection (3) after the words “ estate agent’s licence ” the words “, a real estate auctioneer’s licence,”;
- (g) by omitting subsection (4);
- (h) by omitting subsection (5) and substituting therefor the following subsection:—
 - “(5) The Council may approve educational qualifications for the purposes of subsection (1) (a).”;
- (i) by omitting subsection (6) and substituting therefor the following subsection:—
 - “(6) Where the Council is satisfied that a person holds an educational qualification that can be properly regarded for the purposes of this section as an educational qualification equivalent to an educational qualification that has been approved under subsection (5), it may certify to that effect, and thereupon that person shall be regarded, for the purposes of this Act, as a person who holds the educational qualification so approved.”;
- (j) by inserting in subsection (7) after the words “ estate agent’s licence ” the words “, a real estate auctioneer’s licence,”; and
- (k) by omitting the word “ or ” at the end of paragraph (a) of that subsection and by inserting after that paragraph the following paragraph:—
 - “(ab) full-time employment as an auctioneer of land; or ”.

33 Section 37c of the Principal Act is amended—

- (a) by inserting in subsection (1) after the words “ estate agent’s licence ” the words “ or a real estate auctioneer’s licence ”;
- (b) by inserting in subsection (2) after the words “ estate agent’s licence ” (first occurring) the words “ or real estate auctioneer’s licence ”;
- (c) by inserting in paragraph (a) of that subsection after the words “ estate agent’s licence ” the words “, a real estate auctioneer’s licence, not being a licence that has effect as a real estate auctioneer’s licence by virtue of section 54 (5) of the *Auctioneers and Estate Agents Act 1977*,”;
- (d) by inserting in paragraph (b) of that subsection after the words “ estate agent’s licence ” the words “, a real estate auctioneer’s licence,”;

Qualifications
of corporate
bodies to hold
estate agents’
licences or real
estate
auctioneers’
licences.

- (e) by inserting in subsection (3) after the words "estate agent's licence" (first and third occurring) the words "or a real estate auctioneer's licence" in each case;
- (f) by inserting in that subsection after the words "estate agent's licence" (second occurring) the words "or real estate auctioneer's licence";
- (g) by inserting after subsection (4) the following subsection:—
 - "(4A) Where since the commencement of this subsection a body corporate has continuously held a real estate auctioneer's licence, and any person is, and continuously since that commencement has been, a director of that body, that person shall be deemed to have the necessary qualifications in relation to that licence.";
- (h) by inserting in subsections (5), (6), and (8), after the words "estate agent's licence" (wherever occurring) the words "or a real estate auctioneer's licence" in each case;
- (i) by omitting from subsection (10) the words "thirty-five" and substituting therefor "35A";
- (j) by inserting at the end of that subsection the words "or a real estate auctioneer's licence";
- (k) by inserting in subsection (11) after the words "estate agent's licence" the words "or a real estate auctioneer's licence";
- (l) by inserting in subsection (12) after the words "estate agent's licence" (first occurring) the words "or a real estate auctioneer's licence"; and
- (m) by inserting in that subsection after the words "estate agent's licence" (second occurring) the words ", a real estate auctioneer's licence,".

Exempt
companies.

34 Section 37D of the Principal Act is amended by inserting in subsection (1) after the words "estate agent" the words "or a real estate auctioneer".

Real estate
salesmen's
licences.

35 Section 37E of the Principal Act is amended by omitting subsections (3) to (7) inclusive.

36 After section 37E of the Principal Act the following sections are inserted:—

Revocation of
licence by
Council on non-
compliance
with condition.

"37F Where the Council is satisfied that the condition imposed under section 37A (1A) in respect of a licence has not been complied with it may revoke the licence.

“ 37G—(1) Where the Council refuses to grant or renew a licence or refuses to endorse the name of a person on an auctioneer’s licence the applicant may in the prescribed manner and within the prescribed time appeal to a magistrate against the refusal.

Appeal against Council’s refusal to grant or renew licence or endorse an auctioneer’s licence.

“(2) On the hearing of an appeal under this section, the magistrate, unless he dismisses the appeal, may direct the Council to grant or renew the licence or to endorse the name of the person on the auctioneer’s licence and the Council shall forthwith comply with that direction.

“(3) Regulations under this Act may prescribe the procedure for the hearing and determination of an appeal under subsection (2).

“(4) Upon the hearing of an appeal under this section, a magistrate may, if he thinks it just, award costs to or against the appellant, and may assess the amount of those costs.

“(5) Costs awarded to an appellant under subsection (4) may be recovered as a debt due to him by the Council, and costs awarded against him under that subsection may be recovered as a debt due to the Council by him.

“ 37H—(1) Where the Council grants or renews a licence or endorses the name of a person on an auctioneer’s licence, a person who made an objection referred to in section 35A (2) may in the prescribed manner and within the prescribed time appeal to a magistrate against the grant, renewal, or endorsement.

Appeal against Council’s decision to grant or renew a licence or endorse an auctioneer’s licence.

“(2) On the hearing of an appeal under this section the magistrate, unless he dismisses the appeal, may revoke the licence or cancel the endorsement of the name of the person on the auctioneer’s licence.

“(3) Regulations under this Act may prescribe the procedures for the hearing and determination of an appeal under subsection (2).

“(4) Upon the hearing of an appeal under this section, a magistrate may, if he thinks it just, award costs to or against any party to the appeal, and may assess the amount of those costs.

“(5) Costs awarded to a person under subsection (4) may be recovered as a debt due to that person by any person against whom they are awarded.”.

Duration.

37 Section 38 of the Principal Act is amended—

- (a) by inserting in subsection (1) after the word “ licence ” the words “ other than a probationary auctioneer’s licence ”; and
- (b) by inserting in subsections (2) and (3) after the words “ estate agent’s licence ” (wherever occurring) the words “ or a real estate auctioneer’s licence ” in each case.

Revocations.

38 Section 40 of the Principal Act is amended—

- (a) by omitting from subsections (1) and (4) the word “ police ” (wherever occurring); and
- (b) by omitting paragraphs (b) and (ba) of subsection (1) and substituting therefor the following paragraph:—
 - “(b) revoke any licence on any ground on which the Council might refuse to grant or renew the licence; or ”.

Alteration of addresses, &c., in licences.

39 Section 41 of the Principal Act is amended —

- (a) by inserting in subsection (2) after the word “ salesman ” the words “ or a licensed manager ”; and
- (b) by omitting from that subsection the words “ his licence ” and substituting therefor the words “ the licence of the real estate salesman or manager ”.

40 Section 43 of the Principal Act is repealed and the following section is substituted:—

Fees.

“ 43 No licence shall be granted, renewed, or altered, no endorsement shall be made or cancelled, and no auctioneers’ temporary permit or auction permit shall be granted, unless there have been paid to the Council such fees as may be prescribed in respect thereof.”.

Prohibition on lending.

41 Section 45 of the Principal Act is amended by omitting the words “ Two hundred dollars ” and substituting therefor “ \$400 ”.

42 After section 45 of the Principal Act the following section is inserted in Part V:—

Personal representative deemed to be holder of an estate agent's licence for certain period.

“ 45A The personal representative of a deceased estate agent shall be deemed to be the holder of the deceased estate agent's licence for a period of 3 months from the death of the estate agent or for such further period not exceeding 3 months as a magistrate may order.”.

43 Section 47 of the Principal Act is amended—

Trust accounts.

(a) by omitting from subsection (1) the words “ Two hundred dollars ” and substituting therefor “ \$400 ”;

(b) by omitting from subsection (7) the words “ Two hundred dollars ” and substituting therefor “ \$400 ”;

(c) by inserting after subsection (7) the following subsection:—

“(7A) A licensee shall within one month following 30th June and 30th December in each year furnish the Council with a report containing such particulars as may be prescribed with respect to his trust account.

Penalty: \$400.”;

(d) by omitting from subsection (8) the words “ Two hundred dollars ” and substituting therefor “ \$400 ”; and

(e) by adding after subsection (9) the following subsections:—

“(10) The Supreme Court may, on the application of the Council, order the distribution of money standing in a licensee's trust account to the persons entitled thereto.

“(11) The Supreme Court may, if it is satisfied that the money standing in a licensee's trust account has been distributed to all persons entitled thereto, order the distribution of the surplus in the discharge of any other liabilities of the licensee.”.

44 Section 49 of the Principal Act is amended by omitting the words “ Two hundred dollars ” (wherever occurring) and substituting therefor “ \$400 ” in each case.

Record of transactions.

45 Section 50 of the Principal Act is amended—

Furnishing particulars of trust account, &c., to Minister or Council.

(a) by omitting from subsection (2) the words “ Two hundred dollars ” and substituting therefor “ \$400 ”; and

(b) by omitting from subsection (3) the numeral “(1)” and substituting therefor the numeral “(2)”.

Inspection of documents.

46 Section 51 of the Principal Act is amended by omitting from subsection (5) the words "Two hundred dollars" and substituting therefor "\$400".

Inspection of bank records, &c.

47 Section 52 of the Principal Act is amended by omitting the words "Two hundred dollars" (wherever occurring) and substituting therefor "\$400" in each case.

Inspection of fidelity bonds.

48 Section 53 of the Principal Act is amended by omitting subsections (2) to (7) inclusive.

Publication of names of licensees.

49 Section 54 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words "and the address of the, or one of the, places of business specified in the licence";
- (b) by omitting from that subsection the words "Two hundred dollars" and substituting therefor "\$400"; and
- (c) by omitting from subsection (2) the words "Two hundred dollars" and "one hundred dollars" and substituting therefor "\$400" and "\$200" respectively.

New Parts VIA and VIb.

50 After section 54 of the Principal Act the following Parts are inserted:—

" PART VIA

" AUCTIONEERS' AND ESTATE AGENTS' GUARANTEE FUND

Interpretation.

" 54A In this Part, unless the contrary intention appears—

'lowest balance' means the lowest daily balance in a trust account, or where a licensee keeps more than one trust account the lowest daily sum of the daily balances in a licensee's trust accounts;

'trust deposit account' means an account kept as provided by section 54F (1);

'year' means a year commencing on 1st January.

Auctioneers' and Estate Agents' Trust.

" 54B—(1) There shall be established an Auctioneers' and Estate Agents' Trust which shall be a body corporate with perpetual succession and a common seal.

"(2) Subject to section 54C, the Trust shall consist of the chairman of the Council and two other persons appointed by the Governor, of whom—

- (a) one shall be appointed as representing estate agents; and

(b) one shall be a person who has a wide knowledge of financial matters.

“(3) The chairman of the Council shall be the chairman of the Trust.

“(4) The members of the Trust are not, as such, subject to the *Public Service Act 1973*, but an officer of the Public Service may hold office as a member of the Trust in conjunction with his office in the Public Service.

“(5) The Trust shall pay to its members such remuneration and travelling or other allowances as the Governor determines.

“54c—(1) This section does not apply to the chairman of the Trust. Term of office and removal of Members of the Trust.

“(2) Subject to this section a member of the Trust, unless he sooner resigns or is removed from office or otherwise ceases to hold office, continues in office for a period of 3 years from the date on which he was last appointed a member of the Trust.

“(3) Where a member of the Trust dies or ceases to hold office otherwise than by reason of the effluxion of time, the Governor may appoint a person to fill the vacancy and the person so appointed ceases to hold office at the expiration of the unexpired term of office of the member in whose place he is appointed.

“(4) The Governor may remove from office any member of the Trust who he is satisfied—

- (a) has become permanently incapable of carrying out the duties of his office;
- (b) has misconducted himself in the performance of the duties of his office;
- (c) has, without the leave of the Trust, been absent from 3 or more consecutive meetings of the Trust;
- (d) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or
- (e) has been convicted (whether in this State or elsewhere) of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to be a member of the Trust.

“(5) A member of the Trust shall not be removed from office otherwise than in accordance with this section.

Proceedings of
the Trust.

“54D—(1) The chairman of the Trust, or if he is absent or there is no chairman, such one of the other members of the Trust present as they choose, shall preside at meetings of the Trust.

“(2) The chairman or other person presiding at a meeting of the Trust has a deliberative vote only and, in the event of an equality of votes on any matter before a meeting of the Trust, that matter stands adjourned to the next meeting of the Trust at which all members of the Trust are present.

“(3) Two members of the Trust constitute a quorum at any meeting of the Trust.

“(4) Subject to this Act, the Trust may regulate its own proceedings.

Officers of
the Trust.

“54E The Trust may employ such officers as it considers necessary for carrying out its functions under this Part and may pay to the officers such remuneration as the Trust, with the approval of the Minister, determines.

Trust deposit
accounts,
investment of
moneys in
those accounts
and application
of interest on
those
investments.

“54F—(1) The Trust shall open and keep such accounts as it thinks fit at branches of banks, which accounts shall be called trust deposit accounts, with such distinguishing additions as may be prescribed.

“(2) The Trust shall cause so much of the moneys paid into the trust deposit accounts as it thinks proper to be invested in any manner in which trustees are authorized to invest trust funds or in such other manner as the Treasurer may approve.

“(3) A person having a claim on a licensee’s trust account has no right to any particular sum invested as provided in subsection (2) and no right to the income from any such investment.

“(4) The interest on moneys deposited in trust deposit accounts and any other revenue received by the Trust shall be applied—

(a) in the remuneration of members of the Trust as provided in section 54B (5);

(b) in the payment of its officers appointed under section 54E and of its other administrative expenses, including auditors’ fees; and

(c) as provided in section 54M (5),

and, in so far as it is not so applied, shall be paid into the Guarantee Fund in accordance with section 54M.

“54G The Trust shall—

Trust to submit books of account, &c., for audit, and report to Council on certain matters.

- (a) keep, in such form as its auditor may subject to the regulations require, books of account or other accounting records and within 14 days of being requested to do so by its auditor submit them together with such statements as he may require for audit by a company auditor under section 9 of the *Companies Act* 1962 and approved by the Council;
- (b) deposit with the Council and the Minister, within one month of their being certified by the company auditor to which they are submitted under paragraph (a), copies of the statements submitted to him under that paragraph;
- (c) report to the Council and the Minister by 31st January, 15th April, 15th July, and 15th October in every year on the operation of section 54H; and
- (d) report to the Council as at 30th June and 31st December in every year and within one month of those dates, and at other times as required by the Council, on the financial position of the Trust and its operation generally.

“54H—(1) There shall be paid out of every trust account into the trust deposit account designated for that purpose by the Trust 40 per cent of the lowest daily balance in a trust account during the 3 months before the commencement of this section.

Deposit of trust moneys.

“(2) The sums required to be paid out of a trust account under subsection (1) shall be paid by the licensee in whose name it is kept.

“(3) A licensee shall on or before the last days of January, April, July, and October in every year pay out of its trust account into the designated trust deposit account an amount that, taken together with any amount already paid by him into that account and not repaid, is not less than 40 per cent of the lowest balance in the licensee’s trust account during the 3 months ending on that day.

“(4) Where on a day mentioned in subsection (3) the amount paid by a licensee into the designated trust deposit account and not repaid exceeds 40 per cent of the lowest balance in the licensee’s trust account the licensee becomes entitled to be repaid such amount as will reduce the amount paid by the licensee into the trust deposit account to 40 per cent of the lowest balance in the licensee’s trust account.

“(5) Where a licensee carries on business at more than one office and keeps a separate trust account in respect of the business carried on in any one or more of those offices, the office or offices in respect of which the separate trust account is kept shall be regarded for the purposes of this section as the office and trust account of a separate licensee different from the licensee carrying on business at the other office or offices.

“(6) Where a trust account is maintained by licensees who are practising in partnership, the trust account shall, for the purpose of this section, be deemed to be the trust account of each member of the partnership and the members of the partnership are each liable to perform the obligations imposed by this section, but the discharge by one member of the partnership of his obligations under this section in relation to the trust account shall be taken as a discharge by all the members of the partnership of their obligations in relation to that trust account.

Variation of deposit.

“54J—(1) Where the Trust or a licensee considers that the amount of a lowest balance occurred in circumstances that render it unjust or inexpedient that it should be used for the purposes of section 54H, the Trust and the licensee may agree upon a sum that shall be deemed to be the lowest balance in respect of any day to which that section refers.

“(2) If agreement is not reached under subsection (1) either party may apply to a judge in chambers to determine what sum should be so deemed, having regard to any unusual transactions during the relevant period.

Non-compliance with section 54H.

“54K—(1) If it appears to the Council on a report by the Trust that a licensee has failed to comply with section 54H the Council may in its discretion, after inquiring into the apparent failure and the reason therefor and giving the licensee an opportunity to explain, if it finds that the licensee has so failed, suspend his licence.

“(2) When the Council is satisfied that the failure to comply with section 54H has been rectified it may cancel the suspension.

Withdrawals by licensees.

“54L—(1) When a licensee requires for the purposes of his trust account money paid from that account into a trust deposit account he may draw bills of exchange on the Trust up to the full amount that he has at the relevant time on deposit in the trust deposit account without regard to any withdrawal therefrom by the Trust, and the Trust shall so conduct its affairs as to meet the bills on demand.

“(2) It is the duty of a licensee—

- (a) not to draw on the Trust unnecessarily under this section;
- (b) to recoup the relevant trust deposit account at the first reasonable opportunity; and
- (c) to give the Trust all reasonable assistance in carrying out this Part.

“(3) If in the opinion of the Trust a licensee has abused his rights under subsection (1) or has kept the amount on deposit in the relevant trust deposit account too small, it shall so report to the Council.

“(4) On a report under subsection (3) the Council may call on the licensee concerned to explain why he has drawn on the Trust under this section or why he has not recouped the relevant trust deposit account and, if from the licensee’s answer there appears to have been misconduct, the Council shall take such action as that misconduct requires.

“54M—(1) The Trust shall, with payments as provided in section 54F (4), create and maintain a fund to be known as ‘the Auctioneers’ and Estate Agents’ Guarantee Fund’.

Auctioneers’
and Estate
Agents’
Guarantee
Fund.

“(2) The Guarantee Fund shall be built up to and kept built up to—

- (a) \$500 000; or
- (b) such greater amount as is determined by the Minister and the Council.

“(3) The Guarantee Fund shall be kept in the form of such investments as are lawful under section 54F for moneys withdrawn by the Trust from a trust deposit account.

“(4) The income of the Guarantee Fund shall, subject to meeting such expenses of administration as the Trust and its auditor agree to be proper, be added to the Guarantee Fund.

“(5) Where the Guarantee Fund exceeds the relevant amount referred to in subsection (2) the Trust may, at the discretion of the Council and with the approval of the Minister, pay the whole or any part of the surplus to the Council for its use—

- (a) in defraying the cost of research relating to the business of auctioneers and estate agents;
- (b) in defraying the cost of educating estate agents; and
- (c) for any other purpose.

“54N—(1) Subject to subsection (2), the Council shall permit inspection of the statements deposited with it under section 54G (b) by any person on payment of the prescribed fee.

Inspection of
accounts.

“(2) The Council shall not permit inspection under this section of a part of a statement that discloses the amounts deposited by individual licensees under section 54H.

Exemptions.

“ 54P Where a licensee would be required to pay an amount less than \$2 000 into his trust deposit account pursuant to section 54H, the Trust may, if in its discretion it thinks it advisable to do so, grant the licensee a certificate of exemption from paying the amount into that account.

Exemption from stamp duty.

“ 54Q—(1) The Trust and the Council are not liable to any duty under the *Stamp Duties Act 1931* in respect of payments received by either of them under this Act.

“(2) A licensee is not liable to any duty under that Act in respect of a bill of exchange drawn by him on the Trust under this Act.

Secrecy.

“ 54R A member, auditor, or officer of the Trust shall not, except in the course of duty, disclose any information about the amounts in a licensee’s trust account or from which any such amount could be calculated or inferred.

Rules.

“ 54s The Trust may, with the approval of the Attorney-General, make rules for the purposes of this Part and in particular may—

- (a) regulate the procedure in connection with—
 - (i) payments into and out of trust deposit accounts; and
 - (ii) drawing on the Trust under section 54L;
- (b) regulate the opening and keeping of trust deposit accounts and provide for licensees to be informed of the state of such of them as concern only themselves; and
- (c) regulate the Trust’s system of accounts.

“ PART VI B

“ SETTLEMENT OF CLAIMS AGAINST DEFAULTING LICENSEES

Interpretation.

“ 54T—(1) In relation to a fidelity bond the moneys secured by which have been paid into court under section 54U—

‘ fund in court ’ means the fund in court constituted of the moneys secured by the fidelity bond together with any further moneys that may be paid into that fund under this Part;

‘ licensee ’ means the licensee in respect of whom the fidelity bond was entered into;

‘ obligor ’ means the obligor under the fidelity bond.

“(2) In this Part ‘ court ’ means the Supreme Court.

“ 54u—(1) Any person may with the approval of the Minister in writing sue upon a fidelity bond lodged under section 42 for indemnity in respect of any loss covered by the fidelity bond as if that person had been the obligee thereof. Claims under fidelity bonds.

“(2) Where the Minister is satisfied that there are, or are likely to be, several claims against the obligor under a fidelity bond lodged under section 42, the Minister, if he considers it necessary or desirable to do so in order to avoid a multiplicity of actions, may direct the obligor to pay the moneys secured by the bond into court and the obligor shall comply with that direction.

“(3) On the making of a direction under subsection (2) all actions against the obligor in respect of the moneys secured by the bond shall be stayed.

“ 54v—(1) If the licensee has moneys in a trust account that are available to discharge, in whole or in part, any such claim as is referred to in section 54w (1) (b) the court may, at the suit of the Trust, make such orders as will cause so much of the moneys in the trust account as are so available to be paid into the fund in court. Payment of moneys in trust account into fund in court.

“(2) Any moneys paid into court pursuant to subsection (1) form a single fund with the other moneys in the fund in court free from all equities affecting the trust account.

“ 54w—(1) Subject to this section, the fund in court shall be applied as the court may direct— Application of the fund in court.

(a) in the payment of administration expenses; and

(b) towards the discharge of all claims of the licensee’s clients for—

(i) the return of money or other property held, acquired, or received by the licensee to their use; or

- (ii) the exoneration of their property fraudulently mortgaged, pledged, or otherwise charged by the licensee or any person on his behalf otherwise than for the client's benefit.

“(2) Notwithstanding anything in subsection (1), so much of the fund in court as arises from the proceeds of the fidelity bond shall not be payable in or towards the discharge of any claim or the administration expenses in relation thereto, unless the claim arises from any default or other wrongful act committed during the period covered by fidelity bonds given by the obligor in respect of the licensee for the purpose of section 42.

“(3) The claims referred to in subsection (1) shall, subject to the payment of administration expenses required by the court to be paid out of the fund in court, be discharged in full from the fund in court, if it is sufficient for the purpose, and otherwise shall be discharged ratably.

“(4) In the administration of the fund in court the court may order—

- (a) an interim dividend to be paid before all claims of clients payable out of the fund under subsection (1) are determined;
- (b) an advance payment in a case of personal hardship; and
- (c) an advance return to the obligor of money clearly not required to discharge claims of clients.

“(5) The court may order the Trust, the obligor, or a client claiming under subsection (1) to take, at the expense of the fund in court, proceedings against the licensee (including proceedings in bankruptcy) or against any other person from whom the amount of the claim, or any part thereof, may be recovered.

“(6) An order shall not be given under subsection (5) to the Trust or the obligor unless the Trust or the obligor, as the case may be, consents to the order.

“(7) The fund in court under this section is not subject to marshalling for the exoneration of any other fund.

“(8) For the purposes of this section—

‘administration expenses’ means—

- (a) the costs and expenses incurred by the Trust and the Council in relation to proceedings under this Part or to the administration of the fund in court;

(b) any expenses payable out of the fund in court under subsection (5); and

(c) any expenses awarded against the Trust and the Council;

'client', in relation to a licensee, includes any person from whom the licensee has received any money or property in pursuance of negotiations carried on on behalf of any person.

"54x—(1) If the fund in court is at any time insufficient to discharge all the claims referred to in section 54w (1) the Trust shall pay into the fund such sums as the court may direct to make up the deficiency. Payments from Guarantee Fund to fund in court.

"(2) The Trust shall not be required under this section to pay any sums into the fund in court beyond the amount standing to the credit of the Guarantee Fund at the close of business on the day on which the obligor was directed to pay the moneys secured by the fidelity bond into court pursuant to section 54u.

"54y—(1) Unless the court otherwise orders, before any person claiming under section 54w (1) may receive a payment out of the fund in court, he shall, to the extent to which his claim in respect of any debt against the licensee will be discharged by the payment, make such assignment of his rights to recover the debt, or the amount thereof, whether from the licensee or any other person, as the Trust and the obligor or, in default of their agreement, the court may direct. Assignment of debts of claimants.

"(2) Any sum recovered pursuant to an assignment under subsection (1) shall, after deducting the expenses for the recovery thereof, be paid as follows:—

(a) Firstly, to the Trust to the extent of the payments of the Trust into the fund in court to meet the claim in respect of which the assignment was made; and

(b) Secondly, to the obligor to the extent of the payments of the obligor into the fund in court to meet that claim.

"(3) In determining for the purposes of subsection (2) the amount of the payments of the obligor into the fund in court there shall be deducted therefrom any sums paid out of the fund to the obligor under section 54w (4) (c) or 54z.

Repayment to obligor out of fund in court.

“ 54z So much of the fund in court as consists of sums paid therein by the obligor that are not required to be applied for the purposes of this Part shall, at the direction of the court, be paid to the obligor.

Procedure in relation to claims against fund in court.

“ 54ZA—(1) On the payment of money into court pursuant to section 54U the court may make an order—

- (a) requiring the Council to advertise for claims against the fund in court to be lodged with the Council; and
- (b) fixing a closing date for the lodging of those claims with the Council.

“(2) When money has been paid into court pursuant to section 54U any person claiming under section 54w (1) (b) may lodge his claim with the Council, but unless the court otherwise directs no claims lodged after the closing date fixed pursuant to subsection (1) shall be met out of the fund in court.

“(3) The Council shall notify a person who has lodged a claim against the fund in court pursuant to subsection (1) that his claim—

- (a) has been accepted by the Council; or
- (b) has been rejected in whole or in part by the Council.

“(4) A person the whole or part of whose claim is rejected by the Council may apply to the court to hear and determine that claim or part of that claim.

“(5) Except with the leave of the court an application under subsection (4) shall not be made after the expiration of one month from the date on which the person intending to make the application was notified of the Council’s decision under subsection (3).

“(6) Evidence on an application under subsection (4) may be given by affidavit, but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

“54zB The Council may exercise the like powers in relation to the fund in court as if the fund were a fund paid in under a judgment in an action in which the Council were the plaintiff and without prejudice to the rights of any other person the Council may apply to the court for directions under this Part and generally for the purposes thereof.

Powers of Council in relation to fund in court.

“54zC The powers of the court under this Part may be exercised by a judge in chambers.”.

Powers of court exercisable by judge in chambers.

51 After section 56 of the Principal Act the following section is inserted:—

“ 56A—(1) The Council may conduct examinations for the purposes of this Act.

Examinations.

“(2) The Governor may make regulations providing for the payment to the Council of fees by candidates at any such examination.”.

52 Section 57 of the Principal Act is amended by omitting paragraph (b) of subsection (1) and substituting therefor the following paragraph:—

Exemptions.

“(b) any liquidator, assignee of a bankrupt or insolvent, or committee appointed under Part VI of the *Mental Health Act 1963*, acting in the course of his functions as such;”.

53 Each provision of the Principal Act specified in the first column of the Schedule is amended in the manner set forth against that provision in the second column of that Schedule.

Consequential amendments.

54—(1) Where an application for an auctioneer’s temporary permit has been made before the commencement of section 11 of this Act the like proceedings shall be had on the application and it shall be heard and determined in the like manner as if that section and other provisions of this Act commencing at the same time had not been enacted, and an auctioneer’s temporary permit granted pursuant to an application made under the Principal Act before the commencement of that section has effect as if it were granted under the provisions of the Principal Act as amended by this Act.

Transitional provisions.

(2) Where an application for an auction permit has been made before the commencement of section 12 of this Act the like proceedings shall be had on the application and it shall be heard and

determined in the like manner as if that section and other provisions of this Act commencing at the same time had not been enacted, and an auction permit granted pursuant to an application made under the Principal Act before the commencement of that section has effect as if it were granted under the provisions of the Principal Act as amended by this Act.

(3) Where any application for a licence or renewal of a licence has been made before the commencement of section 26 of this Act the like proceedings shall be had on the application and it shall be heard and determined in the like manner as if that section and other provisions of this Act commencing at the same time had not been enacted, and a licence granted pursuant to an application made under the Principal Act before the commencement of that section has effect as if it were granted under the provisions of the Principal Act as amended by this Act.

(4) Where an application for the endorsement of the name of any person on an auctioneer's licence has been made before the commencement of section 30 of this Act the like proceedings shall be had on the application and it shall be heard and determined in the like manner as if that section and other provisions of this Act commencing at the same time had not been enacted, and an endorsement made pursuant to an application made under the Principal Act before the commencement of that section has effect as if it were granted under the provisions of the Principal Act as amended by this Act.

(5) An auctioneer's licence in force at the commencement of section 7 of this Act continues to have effect as a real estate auctioneer's licence.

(6) Where an action has been brought on a fidelity bond before the commencement of section 50 of this Act, the like proceedings shall be had thereon as if that section had not been enacted.

THE SCHEDULE

(Section 53)

CONSEQUENTIAL AMENDMENTS OF THE PRINCIPAL ACT

Provision	How amended
Section 3	By omitting from subsection (1) the definition of " clerk ".
Section 10 ..	By omitting from subsection (1) the words " to object under this Act to the grant or renewal of a licence, or to the endorsement of the name of any person on an auctioneer's licence, and ".

Provision	How amended
Section 34	By omitting subsections (3), (4), and (5).
Section 35	By omitting that section.
Section 36	By omitting from that section the words "police magistrate" (wherever occurring) and substituting therefor the word "Council" in each case;
	By omitting from subsection (1) the word "he" and substituting therefor the word "it";
	By omitting from subsection (2) (a) the word "thereof" and substituting therefor the words "of the body corporate"; and
	By omitting from subsection (2) (b) the words "he considers its" and substituting therefor the words "the Council considers the body corporate's".
Section 37A	By omitting from that section the words "police magistrate" (wherever occurring) and substituting therefor the word "Council" in each case;
	By omitting from subsection (1) the word "he" (first occurring) and substituting the word "it";
	By omitting from subsection (2) the word "he" and substituting the word "it";
	By omitting from subsection (4) (a) the word "thereof" and substituting therefor the words "of the body corporate"; and
	By omitting from subsection (4) (b) the words "he considers its" and substituting therefor the words "the Council considers the body corporate's".
Section 37C	By omitting from subsection (5) the words "police magistrate" (wherever occurring) and substituting therefor the word "Council" in each case;
	By omitting from subsection (8) the words "a police magistrate" and substituting therefor the words "the Council";
	By omitting from that subsection the word "he" and substituting therefor the word "it"; and
	By omitting from subsections (9) and (11) the word "clerk" (wherever occurring) and substituting therefor the word "Council" in each case.
Section 39	By omitting the words "if it is not a real estate salesman's licence, to the clerk, or if it is such a licence, to the Council," and substituting therefor the words "to the Council".

Provision	How amended
Section 41	By omitting from subsection (1) the word "clerk" and substituting therefor the word "Council".
Section 42	By omitting from subsection (2) the words "clerk to whom the application to which it relates has been made or if it has been lodged, on some previous occasion, with a clerk to whom some previous application to which it related has been made" and substituting therefor the word "Council".
Section 44	<p>By omitting subsections (1), (2), and (2A) and substituting therefor the following subsections:—</p> <p>"(1) Where the Council grants or renews a licence or makes an endorsement of the name of a person on an auctioneer's licence, it shall forthwith give notice in writing thereof to the Minister.</p> <p>"(2) Where a court revokes a licence, cancels an endorsement of the name of a person on an auctioneer's licence, or imposes a disqualification on a person from holding a licence, the appropriate officer shall forthwith give notice in writing thereof to the Minister and to the Council.</p> <p>"(2A) The Council shall notify the Minister of—</p> <p>(a) any cancellations made by it under section 37 (4);</p> <p>(b) any alterations made by it under section 41; and</p> <p>(c) any licences surrendered to it."</p>
Section 53	<p>By omitting from subsection (1) the word "clerk" (first occurring) and substituting therefor the word "Council"; and</p> <p>By omitting from that subsection the words "a clerk" and substituting therefor the words "the Council".</p>