

For discussion
on 7 May 2001

Legislative Council Panel on Housing

Proposed Amendments to the Estate Agents (Licensing) Regulation

Purpose

This paper briefs Members on the proposed amendments to the Estate Agents (Licensing) Regulation which will be gazetted on 8 June 2001 and tabled at the Legislation Council for negative vetting on 13 June 2001.

Background

2. The Estate Agents Ordinance (the “EAO”) aims to improve the standard of service provided by estate agents and protect consumers involved in property transactions. The Estate Agents Authority (the “EAA”) was set up on 1 November 1997 to regulate the trade through, inter alia, the implementation of a licensing system. The Estate Agents (Licensing) Regulation (the “Regulation”) was passed by the Legislative Council on 18 November 1998 and the licensing system was introduced on

1 January 1999. Estate agents and salespersons who practise estate agency work are now required to obtain a licence from the EAA.

3. The Regulation sets out, inter alia, the licensing requirements, level of licence fees and matters on licensing procedures and forms.

Arrangement for existing practitioners

4. To ensure that the standard of service provided by estate agents reaches a stipulated standard, new entrants to the trade are required to have an educational qualification of Form 5 and passage of a qualifying examination.

5. When the licensing system was introduced, the aim was to strike a balance between raising the standard of service and minimising disruptions to the trade. Existing practitioners are granted **conditional licences** to continue to practice. The educational qualification of completion of Form 5 is **not** applicable to them. Practising agents are given three years until 31 December 2001 to pass the qualifying examination. In recognition of the experience of some senior members of

the trade, estate agents who have six years' experience in estate agency work are exempted from the examination. They are only required to complete a training relevant to the estate agency work within the three year period. Those who are unable to fulfil these requirements will not have their licences renewed after 31 December 2001 and, should they apply for the licence again in future, they will be dealt with as new entrants to the trade and subject to the educational and other requirements.

Review of the Regulation

6. The EAA has reviewed the Regulation and proposes amendments to the Regulation to provide more flexibility to existing licensing arrangement and to reduce the present level of licensing fees with effect from **1 January 2002**. Under section 56 of the EAO, the EAA may purpose the amendments with the approval of the Secretary for Housing.

Proposals

Flexibility to existing licensing arrangements

Re-entry conditions for licensees whose licences have expired

7. Under existing regulations, an ex-licensee is treated as a new entrant if he wish to re-enter the trade, i.e. he has to satisfy the Form 5 requirement and resit and pass the requisite qualifying examination. This is considered excessively rigid when compared with the licensing systems for other more demanding professions and trades. **It is now proposed that, with effect from 1 January 2002, an ex-licensee who applies for a licence not more than 24 months from the expiry date of his last licence shall be exempted from the educational and examination requirements stipulated in section 7(1)(a) of the Regulation.**

8. The proposal will give licensees the option to leave the trade temporarily without losing their licensing credentials when they return to the trade. The proposed relaxation is considered reasonable. The EAA does not propose to impose compulsory training requirements on estate agents in connection with the relaxation. The rationale for this is that the estate agent trade is not expected to experience significant changes over a period of 24 months. The ‘professional’ knowledge of an estate agent who has left the trade for less than two years should not be out-dated to the

extent that it will adversely affect the standards of his service. If mandatory conditions such as a minimum period of refresher courses are imposed on the proposed relaxation, the cost and time incurred to both the EAA and the practitioners will be such that it will run counter to the objective of the proposal i.e. to provide an administratively simple system for practitioners to leave and re-enter the trade within a reasonable period of time. However, the EAA will still reinforce its training effort to help practitioners upgrade and update their knowledge from time to time.

Switch between estate agent's and salesperson's licence

9. There are two categories of licences for individual practitioners: the "estate agent (individual)" licence and the "salesperson" licence. The two types of licensees basically carry out the same type of work, except that the "estate agent" may run an estate agency business as a proprietor, director, partner or manager, while the "salesperson" must work in the employ of a licensed "estate agent". In addition to a difference in the level of annual licensing fees (\$2,880 for estate agent licence and \$1,840 for salesperson licence), there are also differences in

examination requirements, and the “estate agent” is expected to demonstrate greater breadth and depth in terms of professional knowledge.

10. Under the existing Regulation, a licensee who wishes to switch to another category will be considered as a new entrant when applying for a licence, meaning that he has to fulfil the Form 5 requirement and pass the relevant qualifying examination. To address this problem, **it is proposed that, with effect from 1 January 2002, licensees intending to switch to another category of practice may have their licensing credentials preserved, without having to fulfil requirements imposed on new entrants.**

11. A summary of the application of the requirements for switch between licences is at **Annex 1**.

Miscellaneous amendments

12. To give further flexibility in the licensing systems, a number of miscellaneous amendments to the Regulation are proposed. These include : extension of the validity period of the licence from 12 months to

either 12 months or 24 months at the licensee's choice; removal of the various application forms from the Regulation so that the EAA may have the necessary latitude to design the forms to suit current use; spelling out specifically in the Regulation the purposes for which the register of licensees are kept in line with Personal Data (Privacy) Ordinance; and rationalisation of the provision of information in the register of licencees, in business documents and on advertisements.

Reduction of licence fees

13. The licence fees were last adjusted by a reduction of 20% with effect from 1 January 2000 when the Estate Agents (Licensing) (Amendment) Regulation was passed on 15 December 1999.

14. The EAA has completed a further review of the level of licence fees. The EAA noted the strong demand of the trade for a reduction of licence fees. In 2001-02, the EAA will have an income of \$55.7M against an expenditure of \$50.8M, thus registering a surplus of \$4.9M. The EAA has a cumulative fund of \$49.1M after setting aside a capital fund of \$22M (for funding various capital projects including

enhancement of RVD's Infoline Hotline service & setting up a new electronic licensing system) and a litigation fund of \$1.5M per annum. Taking the above into consideration, **the EAA considers that it is in a position to reduce the level of licence fees.**

15. In deciding the extent to which the level of licence fees may be reduced, the EAA has considered the following factors -

(a) uncertainty in the licensee population

It is anticipated that the number of licensees will be reduced following the lapse of the transition period¹ on 1 January 2002 and as a result of the option of temporary exit offered by the proposed 24-month unconditional re-entry arrangement. It is projected that the licensee population will be decreased by about 25% at the close of the transition period on 31 December 2001, offset by intake of 8% to give a net attrition of about 17%.

¹ The Regulation provides for a transition period from 1 January 1999 to 31 December 2001 during which certain licensing requirements are relaxed for estate agents practising on or before 1 January 1999 when

(b) *financial commitments*

The EAA, being a self-financing public body, has the responsibility to ensure that its finance is in order and that provision is in place for its day-to-day operation and future commitments, including repayment of the start-up loan to the Government. The EAA aims to maintain a cumulative reserve fund equivalent to 25% of the expenditure of the following year as a buffer against contingencies

With the above factors in mind, **the EAA proposes a reduction of the level of licence fees by 20% with effect from 1 January 2002.** With this level of reduction, the EAA will begin to run an operating deficit of \$14M in 2002/03. The 25% buffer can still be maintained until 2003/04, but the cumulative fund will be fully depleted by 2004/05. The projected income and expenditure of the EAA from 2001-02 to 2005-06 and the revised fee schedule are at **Annexes 2 and 3** respectively.

16. The Authority will continue its stringent control on expenditure. The freeze on staff establishment as well as flexible and

the licensing system was introduced.

value-added deployment of human resources will continue in order to save on operational expenses. Consideration is being given to the introduction of an electronic licensing system, this will further reduce the operational expenses of the Authority in the long term. The EAA will monitor the its financial position and the licensee population carefully, particularly after the end of the transition period when the forecast parameters become less uncertain. The EAA would take necessary action (including consideration of increase of licence fees) before the cumulative reserve fund is actually depleted completely.

Consultation with the trade

17. The EAA has consulted the trade on the above proposals through regular contacts, at briefing meetings and through trade members on the EAA Board. The trade are generally supportive of the proposed measures to introduce more flexibility into the licensing system. They also welcome the proposed reduction of licence fees though some of them have expressed the wish for a larger reduction which is considered not acceptable, given the reasons stated above.

Timing

18. The above proposed amendments will be enacted as the Estate Agents (Licensing) (Amendment) (No. 2) Regulation (the “Amendment Regulation”) to be gazetted on 8 June 2001. It is proposed that the Amendment Regulation be tabled before LegCo on 13 June 2001 for approval by negative vetting so that the proposed measures and new licence fees can be introduced on 1 January 2002.

**Housing Bureau
May 2001**

Switch between estate agent's licence and salesperson's licence

Type of Existing Licence	Licensing credentials already achieved	Examination requirement*
Estate Agent	Passed qualifying examination for estate agents or completed course for estate agents	Not required
Salesperson	Passed qualifying examination for estate agents or completed course for estate agents	Not required
	Passed qualifying examination for salespersons only or completed course for salespersons only	To pass the Qualifying Examination for Estate Agents**

* An applicant shall also fulfil the other licensing requirements such as the fit and proper criteria

** From 1.1.2002, no applicant may base on the status of senior practitioner to complete a specified training course to fulfil the licensing requirement

All new entrants shall have to pass the requisite examination before being issued a licence

Annex 2

Matter in respect of which the fee is payable	<u>Proposed Fees</u>		<u>Existing Fees</u>
	Fee(\$)	Fee(\$)	Fee(\$)
	<u>Per one year</u>	<u>Per two years</u>	<u>Per one year</u>
1. Grant or renewal of a licence			
(a) Salesperson's licence	1,470	2,860	1,840
(b) Estate agent's licence (individual)	2,300	4,480	2,880
- for individual estate agent	2,430	4,730	3,040
<u>plus</u>			
- for operation of a sole proprietorship/partnership under each business name at one place of business	2,430	4,730	3,040
<u>plus</u>			
- for operation of each additional place of business under each business name			
(c) Estate agent's licence (company)			
- for operating under one business name:	3,200	6,240	4,000
(i) at one place of business	2,430	4,730	3,040
(ii) at each additional place of business			
<u>plus</u>			
- for operating under each additional business name:	3,200	6,240	4,000
(i) at one place of business	2,430	4,730	3,040
(ii) at each additional place of business			

