

# businesscompanion

trading standards law explained

## Property descriptions: sale or let

In the guide

[The law](#)

[NTSELAT material information guidance](#)

[Recommended practices](#)

[General terms and descriptions](#)

[Location](#)

[Council Tax](#)

[Environment](#)

[Photographs](#)

[Measurements](#)

[New instructions](#)

[Pricing](#)

[Tenures](#)

[Extensions, loft conversions and outhouses](#)

[Communal areas and parking places](#)

[Re-checking](#)

[Disclaimers](#)

[Other matters that may affect you](#)

[Letting agency registration](#)

[Trading Standards](#)

[In this update](#)

[Key legislation](#)

In this guide, the words 'must' or 'must not' are used where there is a legal requirement to do (or not do) something. The word 'should' is used where there is established legal guidance or best practice that is likely to help you avoid breaking the law.

### **This guidance is for Scotland**

The Consumer Protection from Unfair Trading Regulations 2008 (known as the CPRs) are the Regulations that control descriptions used by estate agents and letting agents. They create criminal offences for traders that breach them. The Regulations prohibit 'misleading actions' and 'misleading omissions' that cause, or are likely to cause, the average consumer to take a transactional decision they would not have

taken otherwise.

Care should be taken when using general descriptions relating to location, environment, photographs, measurements, parking and pricing. General disclaimers in small print, telling buyers not to rely on details, won't be effective in preventing offences. This also applies to information provided on your website.

## The law

The CPRs prohibit misleading actions that cause, or are likely to cause, the average consumer to take a transactional decision they would not have taken otherwise. The definition of a 'misleading action' is very detailed (regulation 5 of the CPRs), but it essentially means providing false information or giving an overall presentation that deceives or is likely to deceive the consumer, even if the information is factually correct.

The CPRs also prohibit the omission of material information provided to consumers, if that omission could cause the consumer to take a transactional decision they would not have taken otherwise. 'Material information' is defined as "information which the average consumer needs, according to the context, to take an informed transactional decision". A 'transactional decision' is not just whether a consumer decides to purchase or rent a property, but could also include such things as whether to view a property in the first place.

Things you say verbally about the property will be covered, as well as the printed word, photos, plans, models, websites, etc.

The CPRs do not prevent you from acting in vendors' interests by presenting a property in the best light, as long as what you say, or do, does not mislead the purchaser or the vendor.

See '[Protection from unfair trading](#)' for further information on the CPRs.

The CPRs only cover descriptions used in the sale of property to consumers. However, similar provisions exist in the sale of commercial property by way of the Business Protection from Misleading Marketing Regulations 2008 (see '[Business-to-business marketing](#)').

## NTSELAT material information guidance

The [National Trading Standards Estate and Letting Agency Team \(NTSELAT\)](#) has issued guidance on what information is considered to be 'material' and should therefore be included on the UK's major property listing portals. Failure to include the specified information will be flagged on the listing and will link to advice for consumers on why that information is important and how it may be obtained. For full details regarding the information to be disclosed, see the [material information](#) guidance on the National Trading Standards website; in particular follow the links to 'NTSELAT guidance for Estate Agents' and 'NTSELAT guidance for Letting Agents'.

Material information that applies to all properties:

- **physical characteristics of the property.** Property type - for example, house, flat, room, etc and property construction materials
- **number and types of rooms,** including measurements
- **utilities.** Gas, electricity, water, sewerage, heating, broadband, mobile signal
- **parking**

Material information that may apply if the property is affected by it:

- **building safety.** Any possible danger including cladding, asbestos, risk of collapse
- **restrictions** - for example, conservation area, listed building status, tree preservation order
- **rights of access** - for example, public rights of way, shared drives
- **flood risk**
- **coastal erosion risk**
- **planning permission,** for the property itself and its immediate locality
- **accessibility / adaptations** - for example, step-free access, wet room, essential living accommodation on entrance level
- **coalfield** or mining area

## Recommended practices

Ask vendors to sign a document confirming that particulars are correct before you market a property. Give them a chance to amend anything that is wrong. This won't protect you if you print a misdescription you could have reasonably checked out for yourself, but it will minimise the risk.

Think about all the descriptive phrases you use and ask yourself what they will mean to a purchaser.

Make it somebody's task to proofread particulars and sign to say they have done so.

When you get enquiries about a property, ensure that the person who prepared the details answers the questions, and keep a record of what is said on file.

Check everything you can. Ask to see receipts and guarantees for work carried out. Call to check Council Tax bands. Ask for evidence of sales and turnover if you want to describe the success of a business property.

Set up a process to ensure that your staff are adequately trained and that their work is regularly checked. You should consider random double-checking of property details against the property itself during this auditing process. Any deficiencies can then be dealt with by issuing corrected particulars and retraining where necessary. You should keep records of training and checks made.

## General terms and descriptions

Care should be taken when using terms such as 'immaculate condition' or 'recently decorated'. These terms will be taken to refer to the entire property unless otherwise stated. If there are any particularly attractive features, your client will obviously expect you to use them as selling points, but they should not be emphasised to the exclusion of bad features if the overall result is a misleading description.

For guidance issued by NTSELAT on general terms such as 'new on the market', 'new instructions', etc; on terms for sales, such as 'under offer', 'sale agreed', etc; and on terms for lettings, such as 'let agreed' and 'let', see [Terms Used in Property Advertising \(Sales & Lettings\): Guidance for Industry, Consumers, and Other Stakeholders](#).

NTSELAT guidance on general terms used in sales and lettings includes the following:

- **"New on the market.** A property that has not been advertised since the last sale or let of that property. This description should only be used for short period of time\*
- **"New instruction.** A property where an agent has recently been instructed to market (and which may have been offered for sale by another agent without being sold or let); the description should only be used for a short period of time\*

- **"New and exclusive.** A property that is either a new instruction or new on the market which is exclusive to that agent or portal (depending on the context). The description 'new' should only be used for a short period of time\*, although the term 'exclusive' can be used for as long as it is applicable"
- **"New method of sale / let.** A property that is now being advertised for sale or let using an alternative mechanism to the original advert (e.g., changing to an auction or sealed bid for a property sale). This description should only be used for a short period of time\*"
- **"Reduced.** A property that has been recently reduced in price. Any reduction should be a genuine reduction against the previous price, in accordance with the Chartered Trading Standards Institute's *Guidance for Traders on Pricing Practices*" (which can be found in ['Providing price information'](#))
- **"Sold subject to conclusion of missives.** A property where an offer has been accepted but the sale has not yet concluded, pending the exchange and agreement of the missives. The property should no longer be actively marketed for sale. In rare cases the sale may still fall through, hence the use of this description"
- **"Sold.** A property where the sale has concluded, resulting in the buyer becoming the legal owner of the property. 'Sold' property listings should be removed in line with property portal requirements, relevant codes of practice, and local planning laws"
- (letting) **"Under offer.** A property where an offer has been received which is under consideration by the landlord, but the property is normally still on the market, i.e., further offers may be made dependent upon the landlord's written instructions. This description should only be used until the offer is accepted or declined"
- **"Let agreed.** A property where a landlord has, in principle, agreed to enter into a rental agreement with a prospective renter, subject to further checks and referencing"
- **"Let.** A property where a landlord and renter have entered into a binding rental agreement"

**\*Note:** Any guidance on the length of time for which the above descriptions are used (i.e., a 'short period of time', referred to above) can only be very general. Material considerations such as the advertising medium, the buoyancy (or otherwise) of the market, the method of marketing and perhaps even the nature of the 'average consumer' at whom the marketing in question is targeted will vary greatly and only the courts will be able to decide based on all the individual circumstances. Use of the above terms for a period not exceeding one calendar month is unlikely, in the general course of events, to be considered misleading."

## Location

Don't stretch popular and desirable areas too far; use the correct postal address. If a house is in one county geographically, but its postal address is in a neighbouring county, you should include both with equal prominence.

Comments concerning the proximity of properties to local services should be used with care. Terms such as 'close' or 'easy access' are best avoided, as are estimates of journey times. A statement of the actual distance is more accurate - for example, three miles to junction 4 of the M8.

## Council Tax

The Council Tax band applicable to a property will be considered as material information, and will therefore need to be disclosed. This will be found in the Home Report.

## Environment

If a house has open fields on three sides and a builder's yard or nightclub on the fourth, the safest option is to not refer to the outlook of the property. If you said that it was surrounded by views across open fields, you would mislead unless you made equal reference to the view on the fourth side. If the fourth side was of such importance to a consumer that it could affect their decision to buy, it may be a misleading omission not to mention it. If you use a photograph of the back or the side of a property on its own, you should make that fact clear.

## Photographs

A photograph can be misleading. Do not doctor photos or use extreme lenses that affect the perspective of the image. If you take a photo of the view from a bedroom window, but cannot include the rubbish dump, don't say 'panoramic views' or 'unspoilt countryside'.

## Measurements

You should try to make measurements as accurate as you can. Laser measures are the most common tool used by agents and these should be regularly checked for accuracy against a known distance.

Be careful with gardens, where large length or area measurements can be involved. Ensure that accurate dimensions etc are given.

## New instructions

You may advertise a property as a 'new instruction' to your agency for only a short period (we would suggest no more than a month) after you have been asked to become the vendor's agent. This applies even if the property has been advertised previously with another agency.

See also the NTSELAT guidance on terms used in property advertising, which is outlined in 'General terms and descriptions' above.

## Pricing

In the case of lettings, the material information required by NTSELAT includes the monthly rent and any deposit payable. In the case of fixed price sales 'the price specified as a single amount' is required.

The CPRs cover the pricing of all properties and you must be careful not to mislead consumers with regard to the previous price of a property if you are claiming a reduction in price. *Guidance for Traders on Pricing Practices*, produced by the Chartered Trading Standards Institute (CTSI), gives guidance as to how price reductions can be advertised. The guidance can be found in '[Providing price information](#)'.

You should also be aware that the Regulations ban a trader from passing on materially inaccurate information about market conditions with the intention of getting the consumer to make a purchase in less favourable conditions (for example, an agent incorrectly telling a consumer that they have sold several properties in the same area, just like the one the consumer is viewing, at a certain price, in order to get the consumer to buy at an inflated price).

Of course, you can change the price at any time and not claim a 'reduction' (but make sure all copies and

methods of advertising a property are changed at the same time).

## **Tenures**

NTSELAT requires the following.

'For Sale' means a transfer of ownership.

'For Rent' / 'To Let' means a tenancy agreement, which should include:

- current service charge information
- any review period
- length of lease (if this forms part of the rental agreement)

If shared ownership, disclose details of share being sold, and any additional liabilities or obligations.

A simple search with the Land Register of Scotland can assist in providing this information.

## **Extensions, loft conversions and outhouses**

Extensions, loft conversions and outhouses have created problems where an estate agent has described a room as a bedroom, but it has not been subject to planning or building regulation approval and, therefore, is not suitable to be used as such.

If a vendor is unable to supply details, then the planning office should be approached for confirmation.

If you are unable to establish that the room was correctly approved, then great care needs to be exercised; either describe the room as a boarded loft area (or other appropriate description), or state clearly that planning permission for the room has not been obtained.

## **Communal areas and parking places**

Problems have arisen when a vendor has assumed that they own, or have rights over, a particular parking space when actually they only park there by habit or private arrangement. If a parking space used by a vendor is not clearly within the boundary of a property, further checks should be made or great care should be used when describing this feature.

## **Re-checking**

If you have a property that has been under your instruction for a long period of time, it is advisable to check whether the details are still correct. If particulars are issued that contain information that is no longer accurate, an offence could be committed.

If a new road is planned, or if the local train operator withdraws a train service to which you had referred, you should modify your details and advertisements. You should consider a system of re-verifying particulars with vendors and including a clause in their contract requiring notification of any material alterations they make to the property post-marketing.

It is suggested that particulars should carry the date on which they were compiled or revised to avoid

confusion.

## Disclaimers

The CPRs do not state that disclaimers may be used, nor do they prohibit their use.

General disclaimers in small print, telling buyers not to rely on details, won't be effective in preventing offences. In particular, they are unlikely to be effective in relation to any misleading omission under the CPRs.

However, there are some cases where a specific qualifying description may be acceptable. For example, if the vendor claims, without documentary evidence, that the property was treated for dry rot, you may only mention this if you say as part of that description that you have not seen any documents to verify this. A similar qualification might be applied to the working order of household appliances, central heating or claims about the history of a property. The crucial fact in assessing whether a qualified description is valid is the ease with which you could have reasonably checked it.

## Other matters that may affect you

The CPRs apply in relation to all elements of estate agency work, so will not only cover descriptions you apply to properties, but also any description you make concerning the service you provide, as well as the service itself. For example, if you display a 'For Sale' board outside a property you are not authorised to market, or display a 'Sold' board outside a property you have not sold, you are likely to be breaching the Regulations and could face civil and/or criminal action.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) apply to contracts made on-premises, off-premises and at a distance (such as via the internet). Where contracts to provide estate agency services are made off-premises or at a distance, the consumer has a right to cancel the contract within a 14-day period and the Regulations set out strict requirements as to how this right to cancel must be communicated to the consumer. See '[Consumer contracts: off-premises sales](#)' or '[Consumer contracts: distance sales](#)' for more information.

The CCRs also create requirements for the provision of certain information that a trader must give a consumer before a contract is agreed. This is covered in the two guides linked to above and also in '[Consumer contracts: on-premises sales](#)'.

Although you are unlikely to finalise a sale without any face-to-face contact with the purchaser, if you use a website to advertise properties, the Electronic Commerce (EC Directive) Regulations 2002 will apply. These are also covered in '[Consumer contracts: distance sales](#)'.

Homes for sale must have a Home Report available to prospective purchasers. The Home Report is a pack of three documents:

- **single survey.** Contains an assessment by a surveyor of the condition of the home, a valuation, and an accessibility audit for people with particular needs
- **energy report.** Contains an assessment by a surveyor of the energy efficiency of the home and its environmental impact. It also recommends ways to improve the home's energy efficiency
- **property questionnaire.** Completed by the seller of the home. It contains additional information about the home, such as Council Tax banding and factoring costs that will be useful to buyers

Details of the [Home Report requirements](#) can be found on the Scottish Government website.

The Consumers, Estate Agents and Redress Act 2007 places a requirement on estate agents to belong to an approved redress scheme. NTSELAT has approved two [redress schemes](#), operated by [The Property Ombudsman](#) and the [Property Redress Scheme](#).

Under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, the display of temporary 'For Sale', 'To Let' or 'Sold' boards is allowed by way of a 'deemed planning consent', providing certain criteria regarding maximum size etc are met. Once a sale has gone through, or a premises has been let, a sign such as 'Sold' or 'Let' may only be displayed for a maximum of 14 days.

Most of the Estate Agents Act 1979 is enforced by the NTSELAT by a system of negative licensing. This means you do not need a licence to act as an estate agent, but if you breach the legislation, you may be banned. It covers various undesirable practices, such as failure to declare a personal interest, failing to pass on offers, discriminating against buyers that do not take other services, conviction for other offences involving fraud, dishonesty, etc. The part enforced by Trading Standards services relates to the maintenance and auditing of clients' accounts.

Anyone who lets furnished accommodation as a business activity, including letting agents, estate agents and private landlords needs to be aware of the safety requirements; see '[Goods in rented accommodation](#)'.

If you offer credit, or introduce people to sources of credit, you need to be authorised by the Financial Conduct Authority; see '[Credit and other financial matters](#)'.

## Letting agency registration

Letting agency work is defined as carrying out work for a private landlord who wants to let their property out to a tenant, or managing a property that is either rented out to a tenant or is planned to be. The definition of managing a property includes collecting rent, inspecting the property and arranging for repairs and maintenance.

If you fall within the above definition you must be registered with the Scottish Government and follow the Letting Agent Code of Practice.

You must also have one, or more, separate and dedicated client accounts, have client money protection and have professional indemnity insurance.

For more information see '[Letting agents and property management](#)'.

## Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see '[Trading Standards: powers, enforcement and penalties](#)'.

## In this update

No major changes.

Last reviewed / updated: January 2025



## Key legislation

- [Estate Agents Act 1979](#)
- [Town and Country Planning \(Control of Advertisements\) \(Scotland\) Regulations 1984](#)
- [Enterprise Act 2002](#)
- [Housing \(Scotland\) Act 2006](#)
- [Consumers, Estate Agents and Redress Act 2007](#)
- [Consumer Protection from Unfair Trading Regulations 2008](#)
- [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#)
- [Housing \(Scotland\) Act 2014](#)

## Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on changes to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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