

The estate agency guide

What you need to know if you are engaged in estate agency work



This booklet is for people who are engaged in estate agency work. Even if you are not called an estate agent, you are seen as one by law if:

- 🏠 you introduce and/or negotiate with people who want to buy or sell freehold or leasehold property (or their Scottish equivalents) including commercial and agricultural property
- 🏠 you do this in the course of business
- 🏠 you act on instructions from a client.

There are some important exceptions to this - see 'Activities not controlled by the Estate Agents Act' on page two.

The law applies in the same way to you, even if you are employed by someone else. You cannot engage in estate agency work of any description if:

- 🏠 you are an undischarged bankrupt (but you can work for another estate agency as long as it is not your own company)
- 🏠 you are banned altogether by the Office of Fair Trading.

This booklet is based on the Estate Agents Act 1979 and regulations and orders made under it. It explains the requirements of the law which came into force in 1991 but doesn't cover any other law which may affect your business. Further advice on the Act or on other consumer protection law can be obtained from your local trading standards (or consumer protection) department. In Northern Ireland contact the trading standards branch of the Department of Economic Development.

Please note that certain provisions of the Act have not been brought into force. These relate to insurance cover for clients' money, to regulation of pre-contract deposits outside Scotland and to standards of competence.

Reference should also be made to the Property Misdescriptions Act 1991 which makes property misdescription unlawful. A guidance note on this Act and regulations made under it may be obtained from the Department of Trade and Industry, Consumer and Competition Policy Directorate, Room 464, 1 Victoria Street, London SW1H 0ET or on their website www.dti.gov.uk.

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Part Two - Detailed information

Introduction

The Estate Agents Act 1979 regulates your work as an estate agent. Its purpose is to make sure that you act in the best interests of your clients and that both buyers and sellers are treated honestly, fairly and promptly.

This booklet gives a broad outline of your legal obligations to sellers and buyers. If you don't meet these obligations you could be banned from working as an estate agent or being employed as one. If you ignore a ban, you could be prosecuted and fined.

Part One outlines the essential information you must know to be able to keep within the law.

Part Two gives more detailed information on some important topics.

The estate agency guide is essential reading if you're not sure how the law affects you. IT IS NOT, HOWEVER, A SUBSTITUTE FOR THE LAW and if you are in any doubt you should consult a professional adviser.

Activities not controlled by the Estate Agents Act

Some property related work is not covered by the law, including:

- 🏠 work done by solicitors or their employees as part of their work as solicitors
- 🏠 surveys or valuations carried out independently of any other estate agency work
- 🏠 work connected with planning applications and matters covered by the town and country planning legislation
- 🏠 arranging rentals or property management
- 🏠 businesses providing advertising about property with no other estate agent function - for example, newspapers
- 🏠 overseas property transactions
- 🏠 things done in the course of arranging mortgages and insurance.



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Part One - Essential information

What you must tell your client

Your client is usually the seller but the law covers circumstances where you are instructed to find property for a buyer.

You must give all the following information to prospective clients IN WRITING as soon as possible and certainly BEFORE they agree to you acting for them.

Fees and charges

It is important that you tell potential clients how much you are going to charge them for your services so that they are given an opportunity to check the various amounts. The details are to be found in section 18(2) of the Act, but here is a general guide to the information you must give:

- 🏠 details of all the circumstances in which they have to pay agency fees to you, including details of any fees or charges that will be made if the property is taken off the market without a sale
- 🏠 the amount of your fee or, if that is not known at the time, details of how you will calculate it
- 🏠 details of any OTHER payments on top of your agency fee
- 🏠 details of the circumstances in which any additional payment becomes necessary
- 🏠 the amount of any such payment or, if that is not known, an estimate of the amount and details of how you will calculate it.

With regard to any charges on top of your agency fee you must give as detailed a breakdown of the amounts as is practicable. If you can reasonably itemise the payments you must do so - you would not be

If you don't give this information in writing to potential clients before they agree to you acting for them, you will not be able to enforce payment without a court order.

complying with the law if you gave a total sum, whether estimated or actual, for a list of chargeable items without giving a breakdown.

It may be impractical to cost some items of expenditure. The cost of advertising, for example, may depend on how long it takes to sell the property. In such cases you may have to estimate. If so, you should indicate clearly what's to be provided within the estimate.

Any estimate you give should show the client roughly the maximum amount payable. If it looks as though you will have to charge more you must write to the client for further approval. When you put the amount in writing, it would be acceptable for you to quote 'An estimate of £X, not in any case to exceed to £Y' - but bear in mind that your client may prefer a straightforward estimate or quotation.

When you need to produce a special brochure you must quote an amount for producing and distributing a certain number of copies. If additional copies are needed you will need your client's permission to charge for them.

If there are any changes to the information you give to the client, they must be given in writing as soon as possible and agreed with the client.

Services to potential buyers

You must tell clients selling their property through you about any services you (or a CONNECTED PERSON) will or intend to offer potential buyers of their property. This must be done in writing before they agree to you acting for them.

You must detail the type of service involved - such as arranging mortgages, insurance or the sale of the buyer's property, or offering a removal service. But you don't have to say how much you will be paid.

You must also tell clients about services which may be offered to potential buyers by ANY OTHER PERSON if you or a connected person will receive a benefit from that person - for example, if you get commission from someone you recommend to the buyer.

The definition of a connected person is very wide and includes employees and employers as well as spouses, relatives, business associates and spouses and relatives of business associates. See page 15 for full details.

Terms of business

If you intend to use any of the following phrases as part of your terms of business you must explain in writing what they mean using the definitions given on pages 17-18 and give them the required prominence:

- 🏠 sole selling rights
- 🏠 sole agency
- 🏠 ready, willing and able purchaser.

You must use these definitions IN FULL unless this would be misleading because of the other provisions in the contract - you should amend the definition to give an accurate description of the client's liability to pay.

If you use any different term which has the same meaning you should still use the relevant definitions to explain your term.



Declaring a personal interest

You must reveal promptly and in writing any personal interest you or a connected person have in a transaction. Remember, connected person is very widely defined (see page 15).

If you have an EXISTING personal interest you must declare this in writing before you begin negotiations.

If you or a connected person are seeking to acquire an interest in your client's property you must tell the client in writing as soon as possible. You should do the same if you or a connected person are selling your property to the client.

You must not seek or receive a deposit for the sale of a property in which you have a personal interest.

'Promptly' means as soon as is reasonably practical in the circumstances.



Handling negotiations

During negotiations, you must make sure that everyone involved is treated equally, fairly and promptly.

Keeping clients informed about offers

You must give your client written details of all offers received from potential buyers - except those which the client has told you in writing need not be passed on (for example, those below a certain price). You may find it helpful to keep a written record of all offers received.

This information must be passed on promptly. It can be sent by hand, post or fax.

Keeping clients informed about services

You must tell your client in writing:

- 🏠 as soon as you or a connected person are asked to provide potential buyers with services which relate to buying your client's property - for example, arranging mortgages, insurance or the sale of the buyer's property, or offering a removals service
- 🏠 if you or a connected person will receive a benefit from another person who provides services to a potential buyer - for example, if you get commission for recommending someone to the buyer.

You must list the services but you don't have to say how much you will be paid for them.

Misleading statements

It is illegal to mislead buyers or sellers in any way. In particular, you must not:

- 🏠 give misleading information about offers for a particular property, or invent bids - for example, claim to have first time or cash buyers unless you can show why you think this is true
- 🏠 give misleading information about the existence or status of any potential buyer - for example, advertise or state that you have potential buyers unless you can prove that this is true.

Remember that a statement that is factually true can be presented in a misleading way. You must take care to avoid this.

Property misdescription

It is an offence under the Property Misdescriptions Act 1991 to make a false or misleading statement about property. This applies whether the statement is made orally or in writing, by pictures or by any other method of signifying meaning.

Avoiding bias

You must not discriminate against potential buyers because they don't want, or might refuse, to take services from you or a connected person, or someone from whom you or a connected person may receive financial benefits.

For example, you must not:

- 🏠 refuse to provide information about property to these buyers
- 🏠 take longer to forward property particulars to these buyers than to others
- 🏠 make additional requirements of these buyers as a condition of passing on an offer - for example, make them have a mortgage survey before you will pass on their offers.

Handling clients' money

YOU MAY FIND IT HELPFUL TO CONSULT YOUR ACCOUNTANT ABOUT THE FOLLOWING REQUIREMENTS.

You may be asked to hold money in the form of a deposit. Effectively, you hold this money on trust and there are specific procedures you must follow when dealing with it.

In Scotland, it is illegal to accept a pre-contract deposit.

Deposits

Deposits are usually of two kinds:

- 🏠 pre-contract - the deposit is paid before the exchange of contracts to show a real intention to buy
- 🏠 contract - the deposit is paid at exchange of contracts.

All deposits must be held in a special account (called a 'client account') set up for the purpose at a bank or other institution authorised for that purpose. No other client money, such as rents, should be paid into this account.

Interest on any deposit over £500 must be paid if it amounts to £10 or more.

Money from a connected contract may be paid into a client account, for example, money to buy carpets or curtains in the property.

Keeping accounts

You must keep detailed records of all the transactions relating to a client account and give detailed receipts for all the money you receive. It is an offence not to do so.

Your accounts must be examined and reported on by a qualified auditor within six months of the end of your accounting period.

You must produce your latest auditor's report if asked to do so by an authorised officer, for example, a Trading Standards Officer. It is an offence if you don't produce it.

Accounts and records must be kept for six years after the end of the accounting period to which they relate. If you take over accounts and records from someone else you must make sure that they are completed to the end of the transaction and are kept for the full six years.

Further information on what your accounts should contain is given on pages 19-20.

If you don't handle clients' money correctly you could be convicted by a court, get a warning or prohibition order and you could be sued.



Checklist

Here is a summary of all the things which are required of you by law.

You can use it to check that your office procedures are correct.

The Act and regulations and orders made under it are listed on page 24. You should be aware that where there is a reference to an 'undesirable practice' in the 1991 Order no. 1032 this includes even a single instance of the misconduct in question.

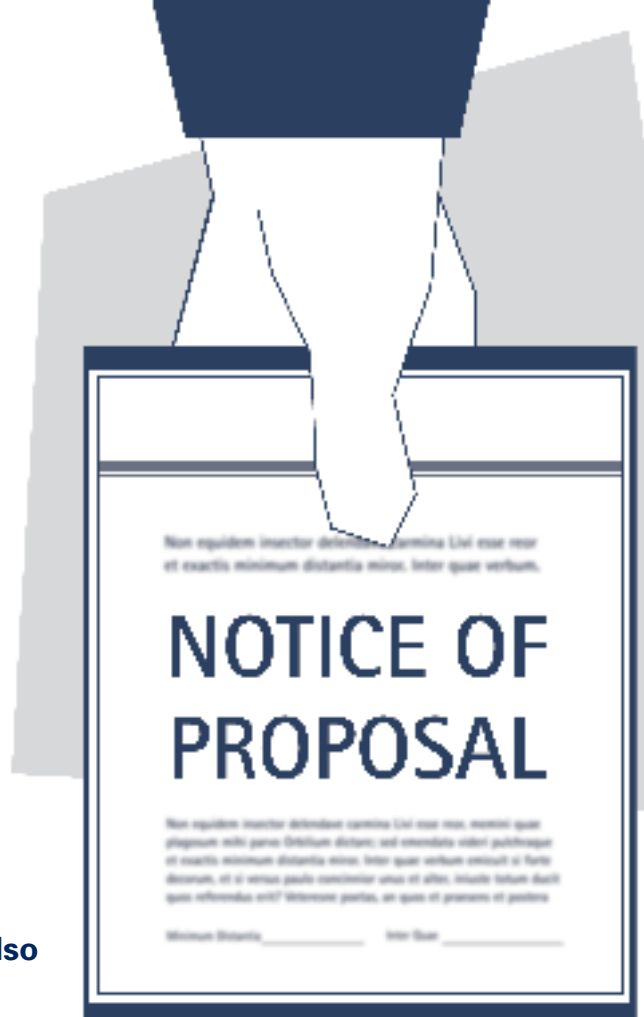
You should	Section	Regulation or Order
check that you know who your connected persons are	s21, 31, 32	1991 no. 859 reg 1(2) 1991 no. 1032 art 1(2)
check that you know if you or a connected person will receive a benefit from another person offering services	s18(4) s3(1)(d)	1991 no. 859 reg 2 1991 no. 1032 art 2(b) and sch 2 para 2(a)
provide advance written information about fees and charges	s18(1),(2) and (4)	1991 no. 859 reg 3 and 4
make written statements of when fees become payable	s18(2)	1991 no. 859 reg 3 and 4
provide written information about changes to fees and charges	s18(3)	1991 no. 859 reg 4
give written definitions of terms in contracts or agreements	s18(4)	1991 no. 859 reg 5 and 6
tell clients in writing if you or a connected person or another person will offer services to a potential buyer	s18(4)	1991 no. 859 reg 2
set up procedures so you know whether there is a personal interest to disclose including that of connected persons	s21	1991 no. 1032 art 2(a) and sch 1

You should	Section	Regulation or Order
tell all potential buyers in writing about any existing personal interest (including that of connected persons)	s21(1)	1991 no. 1032 art 2(a) and sch 1
tell clients in writing about possible future personal interests (including those of connected persons)	s21(2)	1991 no. 1032 art 2(a) and sch 1
check, as far as possible, that first time and cash buyers are as they say	s3(1)(d)	1991 no. 1032 art 2(c) and sch 3 para 1
promptly send written information to the client when you receive offers	s3(1)(d)	1991 no. 1032 art 2(c) and sch 3 para 2
tell the client whenever the buyer asks you or a connected person to provide services	s3(1)(d)	1991 no. 1032 art 2(b) and sch 2 para 2
make sure all buyers are treated the same regardless of their value to your business	s3(1)(d)	1991 no. 1032 art 2(b) and sch 2 para 1
open client account(s) to hold deposits	s14	1981 no. 1520 reg 6
provide receipts for deposits with all the necessary details	s14	1981 no. 1520 reg 6
pay interest on deposits if appropriate	s15	1981 no. 1520 reg 7
keep records of money paid into and out of client accounts	s14	1981 no. 1520 reg 6
arrange for an annual audit of client accounts	s14	1981 no. 1520 reg 8
be able to produce the latest auditor's report for trading standards officers on demand	s14	1981 no. 1520 reg 8
and under the Property Misdescriptions Act 1991		
check that property particulars are correct	s1	1992 no. 2834

Enforcement of the Act

The Office of Fair Trading is responsible for the working and enforcement of the law.

Local authority trading standards departments and, in Northern Ireland, the Department of Economic Development are also enforcement authorities.



The Office of Fair Trading can issue warning and prohibition orders that could stop you working as an estate agent. These orders can be made against individuals, partnerships or companies, and anyone employed by them.

In deciding whether to issue an order and to carry out our other functions under the law the Office of Fair Trading can require anyone, including clients and potential buyers, to give information or produce documents.

Before any order is made, the Office of Fair Trading will issue a 'Notice of Proposal'. You will have at least 21 days to explain why the proposed order should not be made.

Warning orders

If you break the law relating to:

- 🏠 information on charges
- 🏠 definition of terms
- 🏠 your personal interest
- 🏠 information to clients on offers
- 🏠 information to clients on services provided to buyers

- 🏠 misleading statements
- 🏠 avoiding bias against buyers
- 🏠 interest on clients' money

the Office of Fair Trading can issue a warning order. Any further breaches of the law will be taken as evidence that you are not fit to be an estate agent. This may, in turn, lead to a prohibition order.

Prohibition orders

A prohibition order can ban someone from all, or some aspect of, estate agency work. Such an order can be issued whether or not a warning order has been made.

Failure to comply with a prohibition order is a criminal offence which means you could be fined.

A prohibition order can be issued if:

- 🏠 you have breached any of the provisions listed under 'Warning orders'
- 🏠 you have been convicted of an offence involving fraud or other dishonesty, or violence
- 🏠 you have committed racial or sexual discrimination during your work as an estate agent
- 🏠 you have been convicted of any of the specified offences listed on pages 21-23
- 🏠 you have been convicted of certain offences under the Act.

There is a right of appeal to the Secretary of State and then, only on a point of law, to the High Court or, in Scotland, the Court of Session.

Enterprise Act 2002

Breaches of the Estate Agents Act 1979 are also enforceable by action under Part 8 of the Enterprise Act 2002.

For more details, see the OFT's guidance on Part 8 of the Enterprise Act *Enforcement of consumer protection legislation* available from the OFT mailing house on 0870 60 60 321 or look at the OFT website www.of.gov.uk

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Part Two - Detailed information

Connected persons

You should be aware that the definition of 'connected persons' is very wide indeed. The word 'persons' itself has a wider meaning than you might think. Here, it includes partnerships, companies and unincorporated associations as well as individuals. If you are in any doubt whether a person or body with whom you have some link is a connected person, you should get legal advice.

Your connected persons are any of the following:

- 1 your employer or principal
- 2 your employee or agent
- 3 any 'associate' either of you or of any of the persons mentioned above (1 and 2). Note that associate includes any 'business associate' (see page 16).

Associates

Associates include:

- 1 A person's 'spouse' and 'relatives' and the spouse and relatives of a person's business associate.
 - 🏠 spouse includes a former spouse and someone living as if they were a spouse
 - 🏠 relative includes a brother, sister, uncle, aunt, nephew, niece, lineal ancestor and linear descendant, whether or not any particular child is illegitimate or a stepchild.
- 2 Companies are associates of each other if:
 - 🏠 the same person is a 'controller' of both, or
 - 🏠 a person is a controller of one and his associates are controllers of the other or

The controller of a company means the person or company that normally tells the directors of the company how to act or owns or controls one third of the shares in the company. As regards the shareholdings, this may be alone or with any associate.

- 🏠 a person is a controller of one and he and his associates are controllers of the other, or
- 🏠 the same group of two or more persons is a controller of each company.

3 Partnerships are associates of each other if:

- 🏠 any person is a member of both, or
- 🏠 a partner in one is an associate of a partner in the other, or
- 🏠 a partner has an associate who is also an associate of a partner in the other.

4 Unincorporated associations are associates of each other if any person:

- 🏠 is an officer of both, or
- 🏠 has the management or control of the activities of both, or
- 🏠 is an officer of one and has the management or control of the activities of the other.

Business associates

1 A company is a business associate of each of its directors and controllers.

2 In a partnership, each of the partners is a business associate of each other and of the partnership itself. If one of the partners is a company, every business associate of the company is also a business associate of each of the partners.

3 An unincorporated association is a business associate of each of its officers and of each person who has management or control of its activities.

Terms of business

Definitions

These definitions must be used in the form in which they appear here - unless this would be misleading because of the other provisions of the contract.

Otherwise, you must not alter or add to the text which must be reproduced prominently, clearly and legibly.

If you use any different term which has the same meaning you should still use the relevant definitions to explain your term.

The wording must be as prominent as the rest of the information given to the prospective client - apart from the headings, trade names, names of the parties and numbers or lettering subsequently inserted.

'Sole selling rights'

You will be liable to pay remuneration to us, in addition to any other costs or charges agreed, in each of the following circumstances:

- 🏠 if [unconditional contracts for the sale of the property are exchanged]* in the period during which we have sole selling rights, even if the purchaser was not found by us but by another agent or by any other person, including yourself
- 🏠 if [unconditional contracts for the sale of the property are exchanged]* after the expiry of the period during which we have sole selling rights but to a purchaser who was introduced to you during that period or with whom we had negotiations about the property during that period.

Instead of the words 'us', 'we', 'our', 'you' or 'your' you can insert or print the name of the agent, the agency or the client, as appropriate. Instead of using 'the property' you can insert the address.

*In Scotland for the words in square brackets there shall be substituted 'unconditional missives for the sale of the property are concluded.'

**In Scotland for the words in square brackets there shall be substituted 'conclude unconditional missives for the purchase of your property'

'Sole agency'

You will be liable to pay remuneration to us, in addition to any other costs or charges agreed, if at any time [unconditional contracts for the sale of the property are exchanged]**:

- 🏠 with a purchaser introduced by us during the period of our sole agency or with whom we had negotiations about the property during that period, or
- 🏠 with a purchaser introduced by another agent during that period.

'Ready, willing and able purchaser'

A purchaser is a 'ready, willing and able' purchaser if he is prepared and is able to [exchange unconditional contracts for the purchase of your property].**

You will be liable to pay remuneration to us, in addition to any other costs or charges agreed, if such a purchaser is introduced by us in accordance with your instructions and this must be paid even if you subsequently withdraw and [unconditional contracts for sale are not exchanged]***, irrespective of your reasons.'

***In Scotland for the words in square brackets there shall be substituted 'unconditional missives for sale are not concluded'.

Receipts and accounts

Receipts

Your receipts for money received must include the following items:

- 1 the amount
- 2 the date of receipt
- 3 the name and address of the payer
- 4 whether it is a contract or pre-contract deposit (and whether any money is for a connected contract)
- 5 if the amount includes a sum which is not to go towards payment for the property or is not in respect of a connected contract, the purpose of the payment and the form in which it is received
- 6 particulars of the property and whether freehold or leasehold.

Receipts should also comply with the Business Names Act 1985.

Accounting records

You must keep counterfoils or copies of receipts issued as part of your accounting records.

Money paid in

Records must show items 1-6 under receipts and:

- 7 the name of the seller
- 8 the capacity in which the money is received and (where known) whether it is held from time to time as agent or in any other capacity
- 9 the name of the person for whom the money is received and, if a change occurs so that the money is held for someone else, the name of that person (if known).

Money paid out

Records must show:

- 1 the amount
- 2 the date of payment
- 3 the name of the payee
- 4 particulars of the property and whether freehold or leasehold
- 5 the corresponding payment into the account
- 6 the occasion of the payment (for example, completion of sale).

If money is paid out for estate agency work there should be enough detail in the records to explain what the payment is for. The same applies if you exercise a legal right (called a lien) to deduct money owing to you before paying any balance over to the client.

If money is transferred from one client account to another, you should record the reason for the transfer and identify the corresponding payment into the account.

Specified offences which can lead to prohibition orders

In addition to the other offences listed on pages 13-14, you may be issued with a Notice of Proposal of Prohibition if you have been convicted of any of the following offences:

Act or Order	Provision	Description of offence
Administration of Justice Act 1970	s40(1)(a)	unlawful harassment of debtors
Administration of Justice Act 1985	s35	pretence of being a licensed conveyancer or recognised body
Building Societies Act 1986	para 5 of part III, and para 6 of part IV, of sch 8	performance by building society employee who has certain duties of service for associated body which carries out estate agency work
Company Directors Disqualification Act 1986	s11(1)	undischarged bankrupt acting as company director without leave
	s12(2)	acting as company director without leave where court revokes administration order
	s13	acting as a director in contravention of a disqualification order, etc
Companies (Northern Ireland) Order 1986	art 303(7)	acting in contravention of a disqualification order
	art 310	undischarged bankrupt acting as company director without leave

Act or Order	Provision	Description of offence
Consumer Credit Act 1974	s7	provision of false or misleading information to Director General of Fair Trading
	s39(1), (2) and (3)	licensing offences
	s46(1)	false or misleading advertisements
	s154	canvassing ancillary credit activities off trade premises
	s165(1)	obstruction of authorised officer
	s167(2)	breach of certain regulations
Consumer Protection Act 1987	s20(1) and (2)	misleading indication of prices of goods, services, etc
	s32(1) and (2) (b)	obstruction of authorised officer
Consumer Protection (Northern Ireland) Order 1987	art 13 Paras (1) and (2)	misleading indication of prices of goods, services, etc
	art 24(1) and (2)(b)	obstruction of authorised officer
Data Protection Act 1984	s5	prohibition of unregistered holding, etc, of personal data
	s6(6)	provision of false, etc, information to Data Protection Registrar
	s10(9)	failure to comply with an enforcement notice
	s15	unauthorised disclosure by computer bureau
Financial Services Act 1986	s4	carrying on investment business without authorisation, etc
	s57	issue of investment advertisements not approved by an authorised person
	s59(5)	employment in contravention of disqualification direction
	s105(10)	investigation powers: failure to comply with a requirement
	s111(1)	furnishing false or misleading information to auditors, etc

Act or Order	Provision	Description of offence
	s130	restriction on promotion of contracts of insurance
	s133(1)(b)	misleading statements as to insurance
	s199(6)	obstruction of powers of entry
	s200(1), (2) and (3)	false or misleading statements, etc
	sch 6 para 5(3)	failure in relation to attendance at, and evidence, etc, before, Financial Services Tribunal
Malicious Communications Act 1988	s1(1)(a)(i) and (ii)	sending letters, etc, with intent to cause distress or anxiety
Malicious Communications (Northern Ireland) Order 1988	art 3(1)(a)(i) and (ii)	sending letters, etc, with intent to cause distress or anxiety
Property Misdescriptions Act 1991	s1	false or misleading statements about property
Trade Descriptions Act 1968	s1(1)	applying false trade description in relation to goods
	s13	false representations as to supply of goods or services
	s14(1)(b)	false or misleading statements as to services, etc
	s29(1)	obstruction of authorised officers

Statutory instruments made under the Estate Agents Act 1979

- 🏠 [The Estate Agents Act 1979 \(Commencement No. 1\) Order 1981 SI 1981 No. 1517](#)
- 🏠 [The Estate Agents \(Appeals\) Regulations 1981 SI 1981 No. 1518](#)
- 🏠 [The Estate Agents \(Entry and Inspection\) Regulations 1981 SI 1981 No. 1519](#)
- 🏠 [The Estate Agents \(Accounts\) Regulations 1981 SI 1981 No. 1520](#)
- 🏠 [The Estate Agents \(Fees\) Regulations 1982 SI 1982 No. 637](#)
- 🏠 [The Estate Agents \(Provision of Information\) Regulations 1991 SI 1991 No. 859](#)
- 🏠 [The Estate Agents \(Undesirable Practices\) \(No. 2\) Order 1991 SI 1991 No. 1302](#)
- 🏠 [The Estate Agents \(Specified Offences\) \(No. 2\) Order 1991 SI 1991 No. 1091](#)
- 🏠 [The Estate Agents \(Specified Offences\) \(No. 2\) \(Amendment\) Order 1992 SI 1992 No. 2833](#)

Statutory instrument made under the Property Misdescriptions Act 1991

- 🏠 [The Property Misdescriptions \(Specified Matters\) Order 1992 SI 1992 No. 2834](#)

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