

The Property Misdescriptions Act 1991

The Property Misdescriptions (Specified Matters) Order 1992

Purpose

This guidance note sets out the main provisions of the Property Misdescriptions Act 1991 and the Property Misdescriptions (Specified Matters) Order 1992, and provides general advice on them.

This information is not, however, intended to be used as a substitute for the text of the legislation itself, which is available from the HMSO online Office of Public Sector Information website www.opsi.gov.uk.

The DTI hopes that you will find this guidance helpful, but you should bear in mind that the Department's view on the meaning of the legislation has no particular authority and the question whether there has been a breach of the law is ultimately a matter for a court to decide. If in doubt you should seek your own legal advice.

When did the legislation come into force?

The Property Misdescriptions Act came into force on 27 June 1991. However, it only had practical effect when the Property Misdescriptions (Specified Matters) Order came into force on 4 April 1993. The Order prescribes those matters in respect of which false or misleading descriptions will be an offence.

What in General do the Act and the Order require?

Essentially the Property Misdescriptions Act 1991 makes it an offence to make false or misleading statements about specified aspects of land (which includes buildings) offered for sale by those in estate agency or property development business. There is no general requirement to disclose information. But where information is given, it must be accurate and must not be misleading. The aspects of property (strictly matters relating to land) in respect of which misdescription is to be an offence are listed in the Order. The coverage of the list (copy attached) is broad, reflecting the fact that it is not a list of matters about which information must be given, but stipulates matters about which information must not be misleading.

Who is subject to the Act and the Order?

The Act and the Order apply to statements about prescribed matters made in the course of an estate agency or property development business. They do not apply to statements made in the course of the provision of conveyancing services. A solicitor is thus subject to the Act when providing an estate agency service but not when providing conveyancing services. "Estate agency business" is linked to the definition in Section 1 of the Estate Agents Act 1979. This is based on the taking of instructions from a client introduce him to a third party, with a view to acquiring or disposing of an interest in land.

Neither the Property Misdescriptions Act 1992 nor the Estate Agents Act 1979 refer specifically to the position of sub-agents. There is scope for differing interpretations as to whether sub-agents are subject to the provisions of the

Property Misdescriptions Act, but it is the view of the Department that they are. The qualifications in the introduction to this note apply to this as to the other guidance it contains.

The Act does not apply to statements made directly to prospective purchasers by private individuals, nor does it apply to such statements by ordinary traders who are offering their business premises for sale. Where however either employs an agent, the agent must comply with the Act in respect of any information which either provides to the agent and which the agent repeats to prospective purchasers.

What property is covered?

The Act applies to statements made in the course of estate agency or property development business for the purpose of disposing or acquiring an interest in land. It thus covers both residential and commercial property. Property development businesses are caught only when they offer for sale an interest in land which consists of or includes a building constructed or renovated as part of that business. A property developer seeking to dispose of land or buildings surplus to his requirements which he had not in the event developed or re-developed would not be caught by the provisions of the Act.

"Interest in land" is defined for England and Wales and Northern Ireland by reference to the provisions of the Estate Agents Act 1979 to cover sales of freehold and of leasehold property having a capital value. For Scotland the reference is to the Land Registration (Scotland) Act 1979, which defines an interest in land to mean a heritable right over land, but excluding a lease which is not a probative lease exceeding 20 years. The Act does not therefore generally extend to rented property. (The Order nevertheless includes references to rent to cover, for example, rents receivable from tenants, ground rents payable, or garages available for rent to purchasers of flats.) The terms of the two 1979 Acts are such that "land" means land within the United Kingdom - property elsewhere is not covered.

What constitutes a false or misleading statement?

A false statement is one which is false to a material degree. The definition adopts the wording of the Trade Descriptions Act 1968 and is intended to ensure that trivial errors or discrepancies in descriptions will not constitute an offence. What constitutes a material degree will vary with the circumstances. For example, what may be a material discrepancy between quoted and actual room sizes may be one of no consequence if it relates to the dimensions of a garden. In considering whether an offence had been committed a court would be likely to base its view on what a normal prospective purchaser would consider to be false to a material degree having regard to generally accepted standards. In this context it should be borne in mind that there may be differences in what would be considered material by, say, private purchasers of residential property and buyers of large commercial premises.

A misleading statement is one from which a reasonable person would be likely to make a false inference, even though the statement is not itself false.

The offence under the Act is one of strict liability - it is not necessary for the prosecution to prove that there was an intention to mislead in order to secure a conviction - but only that the statement was false or misleading.

A statement may be oral or written, or be in the form of a picture, model, or any other means of conveying information.

What can an agent who is unsure of the accuracy of information do?

There are three broad possibilities. He can check and if necessary correct it before disclosing it to prospective purchasers. He can qualify it so that the prospective buyer will be clear as to the extent to which he can rely on what he is told. Or he can avoid saying anything about aspects of the property where he has doubts about the reliability of his information. These options are dealt with more fully later in this note.

What steps must be taken to verify information and what about genuine mistakes?

The Act provides a defence where the agent or developer can show that he took all reasonable steps and exercised all due diligence to avoid the commission of an offence. Where therefore an agent was able to satisfy a court that although a false statement had been made it was in spite of all reasonable steps having been taken and all due diligence having been exercised to avoid it occurring, he could avoid conviction.

There is no absolute obligation to check all information supplied to the agent by the vendor or others. But to avail himself of the "due diligence" defence where he relied upon information supplied to him by another person, an agent would need to satisfy the court that it was reasonable to do so, having regard in particular to the steps he took or might reasonably have taken to verify the information and whether he had any reason to disbelieve it.

Where an agent is charged with an offence and proposes to use the defence that he committed it as the result of the act or default of another or relied on information supplied by another, he must give the prosecutor seven day's notice of this proposal, including information in his possession which identifies the person concerned. This may enable the agent to secure acquittal even where an offence has been committed, for example where he can satisfy a court that it was reasonable to rely on the information provided by another person, eg the vendor, or an employee of the agent. However, only in the case of an employee does the Act provide for that other person to be prosecuted (see also para below).

What about the use of disclaimers?

The Act does not provide that disclaimers may be used nor does it prohibit their use. However, the concept of disclaimers has been developed by the courts in relation to the Trade Descriptions Act 1968 and the principles governing their effectiveness for the purposes of that Act have been established by the courts. It is considered likely that the same principles will be applied in determining the effectiveness of disclaimers under the Property Misdescriptions Act. Thus any disclaimer which is applied must be as bold, precise and compelling as the statement to which it relates, be as effectively brought to the notice of anyone to whom the property may be sold, and equal the description in the extent to which it is likely to get home to prospective purchasers.

A disclaimer which is applied to a statement which the maker of that statement knows is false will not be effective. A disclaimer may not always be effective in other circumstances; for example, where an agent stated that room sizes were approximate and then systematically overstated them. Nor would a blanket

statement that information quoted had not been checked or verified necessarily be effective - a court might wish to consider what steps might reasonably have been taken to ensure that the information, particularly that which could be readily verified, was correct.

Disclaimers may nevertheless have a useful role where an agent considers that an unqualified statement might be misleading. An example might be a statement that a house had full central heating, when the agent knew that the system had not been used for some years and therefore had reason to believe that it might not be in working order. In such circumstances it might be considered prudent - and helpful to prospective purchasers - to state that the condition of the system was unknown.

What about disclosing unfavourable information - e.g. a bad survey?

As noted above, there is no general requirement to disclose information, but an offence can arise where a statement is misleading because of an omission from it. For example, this might be held to be the case where a property was stated to have views over open country when there was a cement works a few fields away.

There is no obligation to volunteer either the existence of a survey or any results from it. But answers to questions need to be truthful, and must not be misleading.

What about updating particulars?

To continue to issue particulars containing information which is no longer accurate could well involve an offence. Where a prospective purchaser showing interest in a property might be relying on outdated particulars it would be both prudent and desirable to inform him of the up-to-date position. It might help to avoid confusion on the part of both estate agency staff and prospective purchasers and thus reduce the possibility of an offence being committed if particulars carried the date on which they were compiled or had been revised.

Who can be held liable for an offence?

The person by whom the estate agency or property development business is carried out can be held liable. This could be an individual or a body corporate or an unincorporated body or person or (in Scotland) a partnership. In addition, officers of a body corporate and employees of the person carrying on the business can also be liable. It is also possible for both a company and its officers to be prosecuted. In Scotland, liability can extend to an individual partner in addition to the partnership itself.

Why does the Order refer to the Consumer Protection Act 1987 in relation to price?

Statements about prices are, generally speaking, covered. However, price statements about new private dwellings, including conversions where the building previously served some other purpose, are already subject to the provisions of Part III of the Consumer Protection Act 1987 and the associated Code of Practice for Traders on Price Indications. The Order therefore excludes statements about the prices of new private dwellings which are covered by this existing legislation, which has been in force for some years.

Who enforces the Act?

The Act is enforced by local authority trading standards officers, except in Northern Ireland, where it is enforced by the Department of Economic Development Trading Standards Branch.

What powers do they have?

Where they have reasonable cause to **suspect** that an offence has been committed enforcement officers can require the production of books, documents or hard copy of information held on computers and can take copies of them. Where they have reasonable causes to **believe** that an offence has been committed they can seize and retain such material.

There are powers for enforcement officers to enter premises at a reasonable hour and, on production of credentials, to ascertain whether an offence has been committed. In certain limited circumstances, but only after obtaining a warrant from a justice of the peace (or sheriff in Scotland), enforcement officers may enter premises by force.

It is an offence for enforcement officers to disclose information obtained in exercising these powers, except for the purpose of performing their functions under the Act or for the purposes mentioned in Section 38(2) of the Consumer Protection Act 1987.

These provisions follow the standard pattern for legislation of this kind. There are no powers to enter private dwellings, even where it is the description applied to private dwelling which is in dispute.

What are the penalties under the Act for making a false or misleading statement?

On summary conviction (i.e. before a magistrates' court) a fine not exceeding the statutory maximum (£5,000 from October 1992). On conviction on indictment, i.e. before a Crown court, an unlimited fine.

Isn't there an associated Order under the Estate Agents Act 1979?

The Estate Agents (Specified Offences) (No. 2) (Amendment) Order 1992, will also come into force on 4 April 1993. This will add offences under the Property Misdescriptions Act to the offences in respect of which the Director General of Fair Trading may issue prohibition notices under the Estate Agents Act 1979. The DGFT can use such notices to prohibit offenders from engaging in some or all types of estate agency work. Notices do not apply to other kinds of work which estate agents may do, such as property letting or property management. A guide to Estate Agents Act 1979 legislation - The Estate Agency Guide - is issued by the Office of Fair Trading. The current guide is available from OFT's Distribution Unit, telephone 071 269 8768.

ANNEX - SPECIFIED MATTERS

1. Location or address.
2. Aspect, view, outlook or environment.
3. Availability and nature of services, facilities or amenities.
4. Proximity to any services, places, facilities or amenities.
5. Accommodation, measurements or sizes.
6. Fixtures and fittings.
7. Physical or structural characteristics, form of construction or condition.
8. Fitness for any purpose or strength of any buildings or other structures on land or of land itself.
9. Treatments, processes, repairs or improvements or the effects thereof.
10. Conformity or compliance with any scheme, standard, test or regulations or the existence of any guarantee.
11. Survey, inspection, investigation, valuation or appraisal by any person or the results thereof.
12. The grant or giving of any award or prize for design or construction.
13. History, including the age, ownership or use of land or any building or fixture and the date of any alterations thereto.
14. Person by whom any building, (or part of any building), fixture or component was designed, constructed, built, produced, treated, processed, repaired, reconditioned or tested.
15. The length of time during which land has been available for sale either generally or by or through a particular person.
16. Price (other than the price at which accommodation or facilities are available and are to be provided by means of the creation or disposal of an interest in land in the circumstances specified in section 23 (1)(a) and (b) of the Consumer Protection Act 1987(a) or Article 16(1)(a) and (b) of the Consumer Protection (NI) Order 1987(b) (which relate to the creation or disposal of certain interests in new dwellings)) and previous price.
17. Tenure or estate.
18. Length of any lease or of the unexpired term of any lease and the terms and conditions of a lease (and, in relation to land in Northern Ireland, any fee farm grant creating the relation of landlord and tenant shall be treated as a lease.)
19. Amount of any ground-rent, rent or premium and frequency of any review.

20. Amount of any rent-charge.
21. Where all or any part of any land is let to a tenant or is subject to a licence, particulars of the tenancy or licence, including any rent, premium or other payment due and frequency of any review.
22. Amount of any service or maintenance charge or liability for common repairs.
23. Council tax payable in respect of a dwelling within the meaning of section 3, or in Scotland section 72, of the Local Government Finance Act 1992(a) or the basis or any part of the basis on which that tax is calculated.
24. Rates payable in respect of a non-domestic hereditament within the meaning of section 64 of the Local Government Finance Act 1988(b) or, in Scotland, in respect of lands and heritages shown on a valuation roll or the basis or any part of the basis on which those rates are calculated.
25. Rates payable in respect of a hereditament within the meaning of the Rates (Northern Ireland) Order 1977(c) or the basis or any part of the basis on which those rates are calculated.
26. Existence or nature of any planning permission or proposals for development, construction or change of use.
27. In relation to land in England and Wales, the passing or rejection of any plans of proposed building work in accordance with section 16 of the Building Act 1984(d) and the giving of any completion certificate in accordance with regulation 15 of the Building Regulations 1991(e).
28. In relation to land in Scotland, the granting of a warrant under section 6 of the Building (Scotland) Act 1959(a) or the granting of a certificate of completion under section 9 of that Act.
29. In relation to land in Northern Ireland, the passing or rejection of any plans of proposed building work in accordance with Article 13 of the Building Regulations (Northern Ireland) Order 1979(b) and the giving of any completion certificate in accordance with building regulations made under that Order.
30. Application of any statutory provision which restricts the use of land or which requires it to be preserved or maintained in a specified manner.
31. Existence or nature of any restrictive covenants, or of any restrictions on resale, restrictions on use, or pre-emption rights and, in relation to land in Scotland, (in addition to the matters mentioned previously in this paragraph) the existence or nature of any reservations or real conditions.
32. Easements, servitudes or wayleaves.
33. Existence and extent of any public or private right of way.

Where to obtain the legislation

The Property Misdescriptions Act 1991, the Property Misdescriptions (Specified Matters) Order 1992, Statutory Instrument 1992 no. 2834, and the Estate Agents (Specified Offences) (No. 2) (Amendment) Order, Statutory Instrument 1992 No. 2833 can be obtained from [The Stationery Office](#) - London enquiry telephone number 020 7873 0011, or see local telephone directory.

■ Contacts

You can obtain further guidance from your local authority Trading Standards Department and in Northern Ireland from local officers of the Department of Economic Development Trading Standards Branch.

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