

Do you sell at car boot sales?

If you sell at car boot sales, you cannot afford to ignore this information.

Each year, many millions of pounds are spent at car boot sales. If you participate at these sales, regularly or otherwise, it is in your interests to read this information. It will help you decide whether you are a 'trader' and, if so, what you must do to comply with the law. It is also designed to help genuine private sellers decide what they should and should not sell.

Unfortunately, what started as an informal and friendly means of recycling unwanted goods has been tainted by the activities of a few rogues who have conducted trade under the guise of private individuals and thereby tried to escape their liabilities to buyers. Trading standards have discovered the sale of stolen, unsafe and counterfeit goods at boot sales.

Are you a trader?

A survey showed that most people who sell at boot sales don't consider themselves to be in trade. Many, however, admitted selling at such sales several times a year. Trading standards reports that up to fifty per cent of participants are regulars at such events.

So, when does the law consider you a trader? There is no hard and fast rule, but ask yourself the following questions:

- Are the goods you are selling your personal property? If not, and you buy goods in specially to resell - for example, from newspaper adverts or a cash and carry - you are very likely to be a TRADER.
- Do you attend boot sales regularly, once every couple of months or more? If so, you are likely to be a TRADER even if boot sales are not a major source of income.

- Do you employ anyone to help you with sales? If so, you are probably a TRADER.
- Do you sell similar goods at other venues - for example, markets, in the street or from home? If so, you are almost certainly a TRADER.
- How much of your income is derived from participation in car boot sales and for what percentage of your income does it account?

Traders and the law

- **Indicating who you are**

The Companies Act 2006, Part 41 states that if you do not trade under your own name, you must clearly display your name and an address where legal documents can be sent to you. These requirements also apply to receipts, invoices, orders and correspondence issued in the course of your business. You may feel uneasy about providing customers with this information, but if you do not, you will be in breach of the legislation and liable for penalties imposed if trading standards take formal action. For more advice, please see the Companies House website (<http://www.companieshouse.gov.uk/about/guidance.shtml>). In addition the new Consumer Protection from Unfair Trading Regulations 2008 require that, in many circumstances, even if you are trading under your own name, you may still be required to give details of your identity and geographical address if this information would affect the purchasing decision of the customer.

- **Safety of goods**

The Consumer Protection Act 1987 and the General Product Safety Regulations 2005 require all goods sold to be safe. You should be particularly careful with toys, electrical goods, cosmetics, upholstered furniture and clothing, particularly nightwear.

- **Pricing of goods**

The Price Marking Order 2004 requires you to show a price in writing for all goods offered for sale (sales by auction or sales of works of art and antiques are not included). Price indications can be attached to the goods, or placed adjacent to them.

The Consumer Protection from Unfair Trading Regulations 2008 state that you should not indicate prices in a manner that is misleading, either through the way in which it is given (because it is false or deceptive) or

by omitting information about the price which the consumer needs to know (such as a compulsory delivery charge) if this would affect the customer's decision to buy. You should therefore not use price comparisons or 'sale' signs when the higher price you quote in comparisons is unfair or meaningless, for example. Remember that, while it is in the nature of the market place to barter, the law does not allow you to mislead customers about the price of the goods you sell. In addition you should consult the Pricing Practices Guide published by the Department for Business, Innovation and Skills (BIS) (<http://www.berr.gov.uk/files/file46254.pdf>).

- **Consumers' rights**

The Consumer Protection from Unfair Trading Regulations 2008 state that you must not restrict, or appear to restrict, a consumer's rights in any way. You should therefore not display any signs such as 'NO REFUNDS' or 'SOLD AS SEEN', which would appear to affect the consumer's statutory rights. If you put such a phrase on a receipt, this will not affect your obligations to consumers, and they will still be entitled to redress in the event of faulty or misdescribed goods.

- **Food items**

There are rules that govern the labelling and composition of food under the Food Safety Act 1990, and you must ensure that you have checked that food is properly labelled – please see our information leaflet 'Food labelling of prepacked foods' for further information (http://www.derbyshire.gov.uk/images/std23_tcm9-90304.pdf). Fines for selling food which contravenes these requirements can be high. There are also controls on hygiene and food which is unfit to eat. Enforcement of these rules may be either by your local environmental health service and/or trading standards, depending on where you live. You should contact your local council for further help.

- **Descriptions of goods and counterfeits**

It is a breach of contract if goods are misdescribed [Sale of Goods Act 1979 (as amended by Sale and Supply of Goods to Consumers Regulations)]. It is also a breach of the Consumer Protection from Unfair Trading Regulations 2008 to mislead consumers with regard to the description of goods.

Before selling recorded or branded items such as cassettes, videos, DVDs or t-shirts, satisfy yourself that they are not counterfeit, because

heavy penalties can be imposed on anyone who breaches copyright and trade mark laws (Trade Marks Act 1994).

As well as possible offences under the Trade Marks Act, if the marketing of the products you sell could cause confusion with a competitor's product (through the use of trade marks, trade names, or other distinguishing marks of a competitor) and, by misleading the customer, you cause him to buy something he would not otherwise have bought then there would also be a breach of the Consumer Protection from Unfair Trading Regulations 2008.

Selling films on video or DVD is risky because the sale of films that have not been properly classified by the British Board of Film Classification can attract fines of up to £20,000 per tape or a prison sentence under the Video Recordings Act 1984. You are strongly advised to take more detailed advice on the Video Recordings Act before putting video films out for sale. Don't be fooled into selling bootleg music or films by the seeming informality of the setting. Even if it was not you who copied from the original, the Copyright, Designs and Patents Act 1988 provides for secondary infringement so long as you are benefiting from the exercise commercially and you know or have reason to believe that copyright had been infringed.

- **Misrepresentation Act 1967**

Any false claims about the quality, origin, authenticity of the goods sold may amount to a misrepresentation and would entitle the customer to sue you in the civil courts.

- **Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods to Consumers Regulations 2002)**

If you sell something, whether new or second-hand, it should be of a satisfactory quality, as described and fit for its purpose, subject to some qualification if it is an antique, for example, and it is being purchased for its aesthetic value rather than its functionality. If you sell something which does not meet these requirements, your customer has a right to a refund provided they reject the goods promptly. However, it is now presumed that the trader is at fault for the first six months after purchase, if there is a problem with the goods. So you will still be liable to replace the item, have it repaired or provide a partial refund during this period. After the six months is up, the consumer may still have an arguable case if they can prove to you your goods were intrinsically faulty. As a trader, you should be ready to honour these rights. If you are selling something with defects, you can only escape your obligation

to provide these remedies if you point out the faults at the time of sale. Doing this does not protect you, however, from a claim if the item has further faults. Your obligations here are civil, to the customer, rather than criminal but, under the Enterprise Act 2002, trading standards officers and the Office of Fair Trading can apply to the civil courts for an enforcement order preventing you from breaching the civil law.

- **General duty to trade fairly**

There is now a general duty not to trade unfairly which was introduced with the Consumer Protection from Unfair Trading Regulations 2008. If you do anything which is unfair, and which would affect the consumer's decision, for example to purchase or not to attempt to get their money back, then you could be breaching the law.

If you are not a trader

If you are a genuine 'non-trader' seller, you will be largely outside the controls of consumer law, but there are exceptions - for example, if you describe goods in any way and that description proves to be false, you will be obliged to give a refund or replacement or reduce the price to reflect the misdescription or misrepresentation.

There are things you can do, however, which will help avoid problems and which are recommended as 'good practice' during private sales. These are as follows:

Electrical goods

We advise consumers not to buy items such as electric fires, electric blankets and irons at boot sales; so unless the item has a reputable recent source, we would caution strongly against its sale.

Food

Boot sales are not the place to try to get rid of those unwanted tins and packets lurking in the back of your food cupboards. It is not a good idea to sell items past their 'best before' date, as you may commit an offence if items are found not to be of the quality demanded. It is an offence to sell (including offering for sale) food which has an expired "use by" date.

Clothes

Think twice before selling nightwear. It might well not meet flammability requirements that apply to nightwear sold by traders. Children's coats with hood-cords can also pose a hazard, so beware of selling these items if their source and safety is uncertain.

Toys

Check toys to make sure there are no sharp points or small parts that can be pulled off. Put the toy in a skip rather than a sale if it is in bad shape or very old. It will assist you if you still have the packaging, as instructions on usage, or intended age of the user, can then be provided to the purchaser.

Cosmetic products

Some ingredients are regulated and, if seals are not intact, the items can become contaminated. There are many controls over what can and cannot be sold. We suggest that you contact Citizens Advice (www.adviceguide.org.uk) before selling such goods.

Other danger areas

Caution should be exercised in the sale of the types of goods listed below. All of them have their own safety standards when sold by traders and you should have them checked carefully before you even think about selling them.

- Prams and pushchairs.
- Paraffin heaters.
- Oil heaters.

Receipts

There is a general misconception among the public that a trader must provide a receipt for purchases. This is a convention - even good practice - but not a legal requirement. Of course, if you are a trader, it never hurts to try to please the customer, but you are not obliged to comply. However, it may help you to keep a detailed log, so you can submit reliable records to the Inland Revenue.

A police message

Handling stolen goods can attract greater penalties than the theft. If you sell stolen goods, the buyer is entitled to their money back from you, not the thief.

In your own interest, when buying goods, ask for a RECEIPT and proper IDENTIFICATION, note the seller's VEHICLE NUMBER and contact the nearest police station if you are suspicious.

BEWARE of popular items of stolen property, especially garden equipment, power tools and mountain bikes.

Toy and ball bearing ('BB') guns

Whether you are buying or selling toy or imitation firearms, you need to make sure that you do so responsibly. The Violent Crime Reduction Act 2006 and supporting Regulations now makes it an offence to sell an 'imitation firearm' to a person under 18 and, for a person under 18 to buy one. Apart from a few exceptions, it is also an offence to sell 'realistic imitation firearms'. Those guns, which are obviously toys, e.g. due to their unrealistic look or size, can still be sold with no restrictions. If you are unsure about any gun you wish to sell, you should seek further advice from the police.

Licensing of car boot sales

There is no consensus among local authorities as to how car boot sales should be classified but in some areas councils impose the normal conditions attached to market licences. Some will permit car boot sales only if the proceeds are going to charity as opposed to benefiting commercial enterprises. Other authorities permit only a small number of sales per year. Therefore, as a participant, your behaviour may positively or adversely affect the view of authorities to grant future licences to car boot sale organisers, so be responsible about noise, litter and traffic, as well as your conduct towards customers at the sale.

Remember

It is not our intention to spoil the fun of people who enjoy buying and selling at boot sales. As well as being a social occasion, boot sales recycle goods and, therefore, have some environmental benefits.

Our main objective is to see that where traders move in, they behave as traders and meet their obligations.

Whether you are a regular trader or not, you should be ready to co-operate with trading standards officers who may visit boot sales at any time to carry out inspections, give advice and investigate complaints.

Where can I get further help?

This leaflet is not an authoritative document on the law and is only intended for guidance. For further details or clarification contact Derbyshire Trading Standards at:

Chatsworth Hall
Chesterfield Road
Matlock
Derbyshire
DE4 3FW

Telephone:

Businesses:	Call Derbyshire	08 456 058 058
Consumers:	Citizens Advice consumer helpline	08454 040506

Fax: 01629 536197

Website: www.derbyshire.gov.uk/tradingstandards

We want everyone to be able to understand us. On request, we will arrange:

- Language interpreters, including for sign language
- Translation of written materials into other languages
- Materials in large print, on tape or in Braille.

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