

*These notes refer to the Product Liability (Amendment) Act (Northern Ireland) 2001 (c.13) which received Royal Assent on 20 July 2001*

# Product Liability (Amendment) Act (Northern Ireland) 2001

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## **EXPLANATORY NOTES**

## **ANNEX A: REGULATORY IMPACT ASSESSMENT**

### **EXTENSION OF PRODUCT LIABILITY TO PRIMARY AGRICULTURAL PRODUCTS**

#### ***Introduction***

This regulatory impact assessment relates to the implementation of EC Council Directive 1999/34 which extends strict product liability to primary agricultural products and game. It is based on findings from a UK wide consultation exercise carried out in 1998 by the Department of Trade and Industry in conjunction with the Ministry of Agriculture, Fisheries and Food.

#### ***Purpose and intended effect of the measure***

##### ***Objective***

To increase the level of EU consumer protection against damage caused to health or property by a defective product, and to harmonise further the laws with regard to liability for defective products started by Directive [85/374/EEC](#).

##### ***Issue***

Consumers have a legitimate expectation that their health will be protected within the single market. Demands for the inclusion of unprocessed primary agricultural products within the scope of the product liability Directive have increased in recent years. The inclusion of unprocessed primary agricultural products within the scope of the Directive would constitute an important step in the protection of consumers under Community law, although it cannot itself constitute a solution to the problems likely to arise in this area, such as those surrounding the BSE crisis.

##### ***Risk Assessment***

The lack of a clear distinction between those agricultural products considered to have been subject to “initial processing” (which are already covered by the existing provisions of the Directive) and those which have not (which are the subject of the proposed amendment) may discourage consumers from pursuing legitimate claims. The lack of full harmonisation also results in there being no uniform rule governing the liability of farmers and other primary producers, which could distort competition and impede the free movement of agricultural products. There may be some difficulties in tracing a defect back to the producer in the case of mixed bulk products such as milk, cereals and fish, but these are not seen as an insurmountable problem.

##### ***Options and issues of equity or fairness***

The approach adopted by the Commission in its proposal seeks to achieve the desired objectives at minimum cost. Action in this area is within the exclusive competence of the Community and is aimed at harmonising application of the rules on liability for defective products across the Community. Any additional costs

arising from the measure would apply to businesses throughout the Community and would not affect the competitive position of Northern Ireland based businesses in relation to those based in other member states.

***The benefits (to business, citizens, the environment) identified and valued***

Experience in those member states which have extended product liability to primary agricultural products reveals no evidence of any particular negative effects on agricultural economies. Businesses throughout the Community will be operating on a level playing field and citizens will have the assurance that all foods purchased are covered by the Directive.

***Compliance costs for business***

The costs arising from adoption of this change are those associated with insuring against the possibility of damage claims as a result of the removal of the exemption. The sectors directly affected by the proposal are:

Products of the soil (cereals, oilseeds, pulses, sugar beet, fresh fruit and vegetables)

Stock farming (cattle, calves, sheep, lambs, pigs and poultry)

Dairy products (milk and eggs)

Fisheries

Game.

The following are also affected because the Directive considers them liable as producers if they fail to identify the producer to the injured person:

Importers from third countries

Wholesalers

Retailers.

The size of business affected by this proposal will vary from the very large agricultural enterprises to the small and medium sized operations which produce, supply and distribute products in their natural state. It is therefore not possible to define a “typical business” or to estimate meaningfully its compliance cost.

Product liability insurance is estimated to cost within the region of £170 to £350 per year per business according to figures obtained in the England and Wales consultation, although such insurance is often offered as part of a larger business insurance package. Some of the consultees in England and Wales believe that cost would increase but did not provide figures to substantiate this. Information from other member states which have this legislation (Finland, Sweden, Greece and Luxembourg) has suggested that the insurance costs are low.

It is estimated that some 99% of farmers in the UK already carry product liability cover, as do most fish and shellfish producers. Some 70% of fresh fruit and vegetables produced in the UK are sold by supermarket chains which are likely

already to have product liability insurance. The additional costs to these producers are likely to be minimal. The remaining 30% is sold by small independent producers, who are likely to incur a small additional insurance cost.

***Impact on small business***

It is believed that the insurance costs will be at the lower end of the £170 to £350 per year range.

***Other costs (e.g. to citizens, the environment, Government)***

There is a possibility that part or all of the costs of new insurance, or increased insurance premiums, resulting from this change may be passed on to consumers.

***Results of consultation***

The DTI and MAFF in England and Wales consulted 115 interested parties on a UK wide basis in 1998 and overall the results did not throw up any significant problems for industry. Whilst concerns were aired in relation to insurance increases, no hard facts and figures were given. Consumers welcomed the proposal believing that the extension of product liability to primary agricultural products was long overdue.

***Summary of recommendations/conclusions***

The benefits for consumers in increased protection are considered to outweigh the estimated costs to business.