
STATUTORY INSTRUMENTS

1981 No. 231

Weights and Measures (Northern Ireland) Order 1981

PART V

REGULATION OF CERTAIN TRANSACTIONS IN GOODS

Transactions in particular goods

19.—(1) Schedules 3, 4, 5, 6 and 7 shall have effect for the purposes of transactions in the goods mentioned in those Schedules.

(2) The Department may by order make provision with respect to any goods specified in the order for all or any of the following purposes, that is to say, to ensure that, except in such cases or in such circumstances as may be so specified, the goods in question—

- (a) are sold only by quantity expressed in such manner as may be so specified; or
- (b) are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, only if the container is marked with such information as to the quantity of the goods as may be so specified; or
- (c) are pre-packed, or are otherwise made up for sale or for delivery after sale, only in or on a container of a size or capacity so specified; or
- (d) are sold, or are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, or are made for sale, only in such quantities as may be so specified; or
- (e) are not sold without the quantity sold expressed as mentioned in sub-paragraph (a) being made known to the buyer at or before such time as may be so specified; or
- (f) are sold by means of, or are offered or exposed for sale in, a vending machine only if there is displayed on or in the machine—
 - (i) such information as to the quantity of the goods in question comprised in each item for sale by means of that machine as may be so specified; and
 - (ii) a statement of the name and address of the seller; or
- (g) are carried for reward only in pursuance of an agreement made by reference to the quantity of the goods in question expressed as mentioned in sub-paragraph (a); or
- (h) in such circumstances as may be so specified, have associated with them in such manner as may be so specified a document containing a statement of the quantity of the goods in question expressed in such manner, and a statement of such other particulars, if any, as may be so specified; or
- (i) when carried on a road vehicle along a highway are accompanied by a document containing such particulars determined in such manner as may be so specified as to the weight of the vehicle and its load apart from the goods in question.

(3) An order under paragraph (2) may be made with respect to any goods, including goods to which any of the provisions of any of the Schedules mentioned in paragraph (1) applies, and may—

- (a) make provision for any of the purposes mentioned in paragraph (2) in such manner, whether by means of amending, or of applying with or without modifications, or of excluding the application in whole or in part of, any provision of this Order or otherwise,
- (b) make such, if any, different provision for retail and other sales respectively, and
- (c) contain such consequential, incidental or supplementary provision, whether by the means such as are mentioned in sub-paragraph (a) or otherwise,

as may appear to the Department to be expedient, and may in particular make provision in respect of contraventions of the order for which no penalty is provided by this Order for the imposition of penalties not exceeding those provided by Article 47(5) for an offence under this Order.

(4) Without prejudice to the generality of the powers conferred by virtue of paragraph (2)(c) an order made by virtue of that paragraph may require a container to be marked with such information concerning it or its contents as is specified in the order.

(5) Without prejudice to the generality of those powers, an order made by virtue of paragraph (2) (c) may, in order to prevent size or capacity from giving a false impression of the quantity of the goods in a container, prescribe a minimum quantity for the goods in a container of a given capacity, and the minimum quantity may be expressed by weight or volume, by percentage of the capacity of the container or in any other manner.

(6) The Department may make regulations—

- (a) as to the manner in which any container required by any of the provisions of any of the Schedules mentioned in paragraph (1) or of any order under paragraph (2) to be marked with information (including, in particular, information as to quantity or capacity) is to be so marked;
- (b) as to the manner in which any information required by any of the provisions of any of the Schedules mentioned in paragraph (1) to be displayed on or in a vending machine is to be so displayed;
- (c) as to the conditions which must be satisfied in marking with information as to the quantity of goods made up in the container in or on which any goods are made up for sale (whether by way of pre-packing or otherwise) where those goods are goods on a sale of which (whether any sale or a sale of any particular description) the quantity of the goods sold is required by any of the provisions of any of the Schedules mentioned in paragraph (1) to be made known to the buyer at or before a particular time;
- (d) as to the units of measurement to be used in marking any container or machine such as is mentioned in sub-paragraphs (a) to (c) with any information;
- (e) for securing, in the case of pre-packed goods, that the container is so marked as to enable the packer to be identified;
- (f) as to the method by which and conditions under which quantity is to be determined in connection with any information with respect to such quantity required by or under this Article;
- (g) permitting in the case of such goods and in such circumstances as may be specified in the regulations the weight of such articles used in making up the goods for sale as may be so specified to be included in the net weight of the goods for the purposes of this Order;

and any person who contravenes any regulation made under this paragraph otherwise than by virtue of sub-paragraph (f) or (g) shall be guilty of an offence.

(7) The Department may by order grant with respect to goods or sales of such descriptions as may be specified in the order, exemption, either generally or in such circumstances as may be so specified, from all or any requirements imposed by or under this Article; and, until otherwise provided by such an order, the following shall be exempted from all such requirements, that is to say,—

- (a) goods made up in or on a container for sale only for use by Her Majesty's forces or by a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952 and not sold or offered, exposed or in any person's possession for sale for any other use;
- (b) any sale of goods in the case of which the buyer gives notice in writing to the seller before the sale is completed that the goods are being bought—
 - (i) for despatch to a destination outside Northern Ireland and any designated country; or
 - (ii) for use as stores within the meaning of the Customs and Excise Management Act 1979 in a ship or aircraft on a voyage or flight to an eventual destination outside the United Kingdom and the Isle of Man;
- (c) any goods sold for, or offered, exposed or in any person's possession for sale only for, use or consumption at the premises of the seller, not being intoxicating liquor;
- (d) any assortment of articles of food pre-packed together for consumption together as a meal and ready for such consumption without being cooked, heated or otherwise prepared.

Offences in transactions in particular goods

20.—(1) Subject to the provisions of this Part, in the case of any goods which, when not pre-packed, are required by or under this Order to be sold only by quantity expressed in a particular manner or only in a particular quantity, any person shall be guilty of an offence who—

- (a) whether on his own behalf or on behalf of another person, offers or exposes for sale, sells or agrees to sell, or
- (b) causes or suffers any other person to offer or expose for sale, sell or agree to sell on his behalf,

those goods otherwise than by quantity expressed in that manner or, as the case may be, otherwise than in that quantity.

(2) ^{F1}Subject to the provisions of this Part, in the case of any goods required by or under this Order to be pre-packed, or to be otherwise made up in or on a container for sale or for delivery after sale, or to be made for sale, only in particular quantities, or to be pre-packed, or to be otherwise made up as aforesaid, only if the container is marked with particular information or only in or on a container of a particular description, any person shall be guilty of an offence who—

- (a) whether on his own behalf or on behalf of another person, has in his possession for sale, sells or agrees to sell, or
- (b) except in the course of carriage of the goods for reward, has in his possession for delivery after sale, or
- (c) causes or suffers any other person to have in his possession for sale or for delivery after sale, sell or agree to sell on behalf of the first-mentioned person,

any such goods pre-packed, otherwise made up as aforesaid or made otherwise than in that quantity or otherwise than in or on a container so marked or a container of that description, as the case may be, whether the sale is, or is to be, by retail or otherwise.

(3) Subject to the provisions of this Part, in the case of any sale where the quantity of the goods sold expressed in a particular manner is required by or under this Order to be made known to the buyer at or before a particular time and that quantity is not so made known, the person by whom, and any other person on whose behalf, the goods were sold shall be guilty of an offence.

(4) Subject to the provisions of this Part, where any goods required by or under this Order to be sold by means of, or to be offered or exposed for sale in, a vending machine only if certain requirements are complied with are so sold, offered or exposed without those requirements being

complied with, the seller or person causing the goods to be so offered or exposed shall be guilty of an offence.

Para. (5) rep. by 1996 NI 11

[^{F2}(6) For the purposes of this Article the quantity of goods in a package, or of a loaf of bread, to which the packaged goods regulations apply shall be deemed to be the nominal quantity (within the meaning of those regulations) of the package or the loaf of bread.]

F1 SR 1989/69

F2 Art. 20(6) added (1.11.2011) by [Weights and Measures \(Packaged Goods\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/331\)](#), reg. 22, **Sch. 1 Pt. 2 para. 3** (with regs. 3, 21)

Quantity to be stated in writing in certain cases

21.—(1) Subject to paragraph (6), the provisions of this Article shall have effect on any sale of goods—

- (a) which is required by or under this Order to be a sale by quantity expressed in a particular manner; or
- (b) in the case of which the quantity of the goods sold expressed in a particular manner is required by or under this Order to be made known to the buyer at or before a particular time; or
- (c) which, being a sale by retail not falling within sub-paragraph (a) or (b), is, or purports to be, a sale by quantity expressed in a particular manner other than by number.

(2) Subject to paragraphs (3), (4) and (5), unless the quantity of the goods sold expressed in the manner in question is made known to the buyer at the premises of the seller and the goods are delivered to the buyer at those premises on the same occasion as, and at or after the time when, that quantity is so made known to him, a statement in writing of that quantity shall be delivered to the consignee at or before delivery of the goods to him; and if this paragraph is contravened, then, subject to the provisions of this Part, the person by whom, and any other person on whose behalf, the goods were sold shall be guilty of an offence.

(3) If at the time when the goods are delivered the consignee is absent, it shall be sufficient compliance with paragraph (2) if the document referred to in that paragraph is left at some suitable place at the premises at which the goods are delivered.

(4) Paragraph (2) shall not apply to any sale otherwise than by retail where, by agreement with the buyer, the quantity of the goods sold is to be determined after their delivery to the consignee.

(5) Where any liquid goods are sold by capacity measurement and the quantity sold is measured at the time of delivery and elsewhere than at the premises of the seller, paragraph (2) shall not apply but, unless the quantity by capacity measurement of the goods sold is measured in the presence of the buyer, the person by whom the goods are delivered shall immediately after the delivery hand to the buyer, or if the buyer is not present leave at some suitable place at the premises at which the goods are delivered, a statement in writing of the quantity by capacity measurement delivered, and if without reasonable cause he fails so to do he shall be guilty of an offence.

(6) The Department may by order grant, with respect to goods or sales of such descriptions as may be specified in the order, exemption, either generally or in such circumstances as may be so specified, from all or any of the requirements of this Article; and, until otherwise provided by such an order, nothing in paragraphs (1) to (5) shall apply to—

- (a) a sale by retail from a vehicle of—
 - (i) any of the following in a quantity not exceeding^[F3] 187.5 kilograms], that is to say, any solid fuel within the meaning of Schedule 5 and peat and wood fuel;

- (ii) any of the following in a quantity not exceeding^[F3] 25 litres], that is to say, liquid fuel, lubricating oil, and any mixture of such fuel and oil;
- (b) a sale by retail of—
 - (i) bread within the meaning of the Weights and Measures (Bread) (Termination of Imperial Quantities) Order (Northern Ireland) 1979 ;
 - (ii) milk within the meaning of the Weights and Measures (Milk) Order (Northern Ireland) 1980 ;
- (c) goods made up for sale (whether by way of pre-packing or otherwise) in or on a container marked with a statement in writing with respect to the quantity of the goods expressed in the manner in question, being a container which is delivered with the goods;
- (d) a sale of goods in the case of which a document stating the quantity of the goods expressed in the manner in question is required to be delivered to the buyer or consignee of the goods by or under any other provision of this Order;
- (e) any such goods or sales as are mentioned in Article 19(7)(a) to (d);
- (f) a sale of intoxicating liquor for consumption at the premises of the seller;
- (g) a sale by means of a vending machine; or
- (h) goods delivered at premises of the buyer by means of an installation providing a connection of a permanent nature between those premises and premises of the seller.

[^{F4}(7) There shall be exempt from the requirements of this Article goods that are subject to the FIC Regulation.]

<p>F3 SR 1995/226</p> <p>F4 Art. 21(7) inserted (18.4.2016) by The Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/187), regs. 1, 5</p>
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Short weight, etc.

22.—(1) Subject to the provisions of this Part, any person who, in selling or purporting to sell any goods by weight or other measurement or by number, delivers or causes to be delivered to the buyer a lesser quantity than that purported to be sold or than corresponds with the price charged shall be guilty of an offence.

(2) ^{F5}

(3) If, in the case of any [^{F6}goods that are pre-packed within the meaning of this Order or are prepacked food within the meaning of the FIC Regulation and (in either case) are] in or on a container marked with a statement in writing with respect to the quantity of the goods, the quantity of the goods is at any time found to be less than that stated, then, subject to the provisions of this Part and in particular to Article 24(2), any person who has those goods in his possession for sale, and (if it is shown that the deficiency cannot be accounted for by anything occurring after the goods had been sold by retail and delivered to, or to a person nominated in that behalf by, the buyer) any person by whom or on whose behalf those goods have been sold or agreed to be sold at any time while they were pre-packed [^{F7}within the meaning of this Order or were prepacked food within the meaning of the FIC Regulation and (in either case) were] in or on the container in question, shall be guilty of an offence.

(4) If—

- (a) in the case of a sale of or agreement to sell any goods which, not being pre-packed [^{F8}within the meaning of this Order or prepacked food within the meaning of the FIC Regulation] ,

are made up for sale or for delivery after sale in or on a container marked with a statement in writing with respect to the quantity of the goods; or

- (b) in the case of any goods which, in connection with a sale or agreement for the sale of the goods, have associated with them a document containing such a statement as is mentioned in sub-paragraph (a),

the quantity of the goods is at any time found to be less than that stated, then, if it is shown that the deficiency cannot be accounted for by anything occurring after the goods had been delivered to, or to a person nominated in that behalf by, the buyer, and subject to the provisions of this Part and in particular to Article 24(2) and (3) and paragraph 10 of Schedule 4, the person by whom, and any other person on whose behalf, the goods were sold or agreed to be sold shall be guilty of an offence.

(5) Paragraphs (3) and (4) shall have effect notwithstanding that the quantity stated is expressed to be the quantity of the goods at a specified time falling before the time in question, or is expressed with some other qualification of whatever description, except where—

- (a) that quantity is so expressed in pursuance of an express requirement of this Order or any instrument made under it; or
- (b) the goods, although falling within paragraph (3) or paragraph (4)(a)—
- (i) are not required by or under this Order to be pre-packed as mentioned in paragraph (3) [^{F9}or required by the FIC Regulation to be prepacked food as mentioned in that paragraph] or, as the case may be, to be made up for sale or for delivery after sale in or on a container only if the container is marked as mentioned in paragraph (4)(a); and
 - (ii) are not goods on a sale of which (whether any sale or a sale of any particular description) the quantity sold is required by or under any provision of this Order other than Article 21 [^{F10}or required by the FIC Regulation] to be made known to the buyer at or before a particular time; or
- (c) the goods, although falling within sub-paragraph (b) of paragraph (4) are not required by or under this Order to have associated with them such a document as is mentioned in that sub-paragraph.

(6) In any case to which, by virtue of paragraph (5)(a), (b) or (c), the provisions of paragraph (3) or (4) do not apply, if it is found at any time that the quantity of the goods in question is less than that stated and it is shown that the deficiency is greater than can be reasonably justified on the ground justifying the qualification in question, then, subject to the provisions of this Part—

- (a) in the case of goods such as are mentioned in paragraph (3), if it is further shown as mentioned in that paragraph, then—
- (i) where the container in question was marked in Northern Ireland, the person by whom, and any other person on whose behalf, the container was marked, or
 - (ii) where the container in question was marked outside Northern Ireland, the person by whom, and any other person on whose behalf, the goods were first sold in Northern Ireland,

shall be guilty of an offence;

- (b) in the case of goods such as are mentioned in paragraph (4), the person by whom, and any other person on whose behalf, the goods were sold or agreed to be sold shall be guilty of an offence if, but only if, he would, but for paragraph (5)(a), (b) or (c), have been guilty of an offence under paragraph (4).

(7) Without prejudice to paragraphs (4) to (6), if in the case of any goods required by or under this Order to have associated with them a document containing particular statements, that document is found to contain any such statement which is materially incorrect, any person who, knowing or having reasonable cause to suspect that statement to be materially incorrect, inserted it or caused it

to be inserted in the document, or used the document for the purposes of this Order or any instrument made under it while that statement was contained therein shall be guilty of an offence.

(8) For the purposes of this Article, any statement, whether oral or in writing, as to the weight of any goods shall be deemed, unless otherwise expressed, to be a statement as to the net weight of the goods.

(9) Nothing in this Article shall apply in relation to—

- (a) any such goods or sales as are mentioned in Article 19(7)(a) or (b);
- (b) any pre-package of wine or grape must within the meaning of the Pre-packaging and Labelling of Wine and Grape Must (EEC Requirements) Regulations 1978.

[^{F11}(10) For the purposes of this Article the quantity of goods in a package, or of a loaf of bread, to which the packaged goods regulations apply shall be deemed to be the nominal quantity (within the meaning of those regulations) of the package or the loaf of bread.]

- F5** Art. 22(2) revoked (26.5.2008) by Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 30(1)(3), Sch. 2 para. 77, **Sch. 4 Pt. 2** (with savings in reg. 28(2)(3))
- F6** Words in art. 22(3) substituted (18.4.2016) by The Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/187), regs. 1, **6(a)**
- F7** Words in art. 22(3) inserted (18.4.2016) by The Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/187), regs. 1, **6(a)**
- F8** Words in art. 22(4)(a) inserted (18.4.2016) by The Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/187), regs. 1, **6(b)**
- F9** Words in art. 22(5)(b)(i) inserted (18.4.2016) by The Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/187), regs. 1, **6(c)**
- F10** Words in art. 22(5)(b)(ii) inserted (18.4.2016) by The Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/187), regs. 1, **6(d)**
- F11** Art. 22(10) added (1.11.2011) by Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (S.R. 2011/331), reg. 22, **Sch. 1 Pt. 2 para. 4** (with regs. 3, 21)

[^{F12}**Non-compliance with certain requirements of the FIC Regulation**

22A.—(1) Subject to paragraph (2), a food business operator to which Article 1(3) of the FIC Regulation applies is guilty of an offence if that food business operator fails to comply with—

- (a) any of the provisions of Article 8 of the FIC Regulation (responsibilities of food business operators) applicable to the food business operator, to the extent that the provisions relate to net quantity;
- (b) Article 9(1)(e) of the FIC Regulation (mandatory indication of net quantity of food), except to the extent that it relates to a failure to comply with Article 13(5) of the FIC Regulation; or
- (c) Chapter V of the FIC Regulation (voluntary food information), to the extent that it imposes requirements in respect of net quantity.

(2) A food business operator is not guilty of an offence under paragraph (1) if the food business operator acts in accordance with any of the following—

- (a) an exception contained in Chapter IV of the FIC Regulation;
- (b) national measures adopted under Article 40 of the FIC Regulation (milk and milk products);
- (c) national measures maintained under Article 42 of the FIC Regulation (measures adopted before 12 December 2011);
- (d) transitional measures under Article 54(1) of the FIC Regulation.

(3) In this Article “food business operator” and “net quantity” have the same meanings as in the FIC Regulation.]

F12 Art. 22A inserted (18.4.2016) by [The Weights and Measures \(Food\) \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/187\)](#), regs. 1, 7

Pleading of warranty as defence

23.—(1) Subject to the provisions of this Article, in any proceedings for an offence under this Part or any instrument made under it, being an offence relating to the quantity or pre-packing of any goods, it shall be a defence for the person charged to prove—

- (a) that he bought the goods from some other person—
 - (i) as being of the quantity which the person charged purported to sell or represented, or which was marked on any container or stated in any document to which the proceedings relate; or
 - (ii) as conforming to the statement marked on any container to which the proceedings relate, or to the requirements of this Order, and any instrument made under it, with respect to the pre-packing of goods,
 as the case may require; and
- (b) that he so bought the goods with a written warranty from that other person that they were of that quantity or, as the case may be, did so conform; and
- (c) that at the time of the commission of the offence he had no reason to believe the statement contained in the warranty to be inaccurate, that he did in fact believe in its accuracy and, if the warranty was given by a person who at the time he gave it was resident outside Northern Ireland and any designated country, that the person charged had taken such steps, if any, as were reasonably practicable to check the accuracy of that statement; and
- (d) in the case of proceedings relating to the quantity of any goods, that he took all reasonable steps to ensure that, while in his possession, the quantity of the goods remained unchanged and, in the case of such or any other proceedings, that apart from any change in their quantity the goods were at the time of the commission of the offence in the same state as when he bought them.

(2) Where the proceedings are in respect of an offence committed by the person charged in the course of his employment, it shall be a defence for him to prove—

- (a) that if his employer had been charged the employer would have had a defence under paragraph (1) in respect of a warranty; and
- (b) that at the time of the commission of the offence the person charged had no reason to believe the statement contained in the warranty to be inaccurate.

(3) Where the person charged intends to set up a defence under this paragraph he shall, not more than fourteen days after the date of the service of the summons on him nor less than seven clear days before the date of the hearing—

- (a) send to the complainant a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person by whom it is alleged to have been given; and
- (b) send to the last-mentioned person a notice giving the date and place of the hearing and stating that he intends to rely on the warranty.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence.

(5) If the person charged in any such proceedings as aforesaid wilfully attributes to any goods a warranty given in relation to any other goods, he shall be guilty of an offence.

(6) A person who, in respect of any goods sold by him in respect of which a warranty might be pleaded under this Article, gives to the buyer a false warranty in writing shall be guilty of an offence unless he proves that when he gave the warranty he took all reasonable steps to ensure that the statements contained in it were, and would continue at all relevant times to be, accurate.

(7) Where in any such proceedings as aforesaid the person charged relies successfully on a warranty given to him or to his employer, any proceedings under paragraph (6) in respect of the warranty may, at the option of the complainant, be taken either before a court having jurisdiction in the place where the first-mentioned proceedings were taken or before a court having jurisdiction in the place where the warranty was given.

(8) For the purposes of this Article, any statement with respect to any goods which is contained in any document required by or under this Order to be associated with the goods or in any invoice, and, in the case of goods made up in or on a container for sale or for delivery after sale, any statement with respect to those goods with which that container is marked, shall be deemed to be a written warranty of the accuracy of that statement.

Additional defences and safeguards for traders

24.—(1) In any proceedings for an offence under this Part or any instrument made under it, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) In any proceedings for an offence under this Part or any instrument made under it by reason of the quantity—

- (a) of any goods made up for sale or for delivery after sale (whether by way of pre-packing or otherwise) in or on a container marked with an indication of quantity; or
- (b) of any goods which, in connection with a sale or agreement for the sale thereof, have associated therewith a document purporting to state the quantity of the goods; or
- (c) of any goods required by or under this Order to be pre-packed, or to be otherwise made up in or on a container for sale or for delivery after sale, or to be made for sale, only in particular quantities,

being less than that marked on the container or stated in the document in question or than the relevant particular quantity, as the case may be, it shall be a defence for the person charged to prove that the deficiency arose—

- (i) in a case falling within sub-paragraph (a), after the making up of the goods and the marking of the container;
- (ii) in a case falling within sub-paragraph (b), after the preparation of the goods for delivery in pursuance of the sale or agreement and after the completion of the document;
- (iii) in a case falling within sub-paragraph (c) after the making up or making, as the case may be, of the goods for sale,

and was attributable wholly to factors for which reasonable allowance was made in stating the quantity of the goods in the marking or document or in making up or making the goods for sale, as the case may be.

(3) In the case of a sale by retail of food, not being food pre-packed in a container which is, or is required by or under this Order [^{F13}or the FIC Regulation] to be, marked with an indication of quantity, in any proceedings for an offence under this Part or any instrument made under it by reason of the quantity delivered to the buyer being less than that purported to be sold, it shall be a defence for the person charged to prove that the deficiency was due wholly to unavoidable evaporation or

drainage since the sale and that due care and precaution were taken to minimise any such evaporation or drainage.

(4) If in any proceedings for an offence under this Part or any instrument made under it, being an offence in respect of any deficiency in the quantity of any goods sold, it is shown that between the sale and the discovery of the deficiency the goods were with the consent of the buyer subjected to treatment which could result in a reduction in the quantity of those goods for delivery to, or to any person nominated in that behalf by, the buyer, the person charged shall not be found guilty of that offence unless it is shown that the deficiency cannot be accounted for by the subjecting of the goods to that treatment.

(5) In any proceedings for an offence under this Part or any instrument made under it, being an offence in respect of any excess in the quantity of any goods, it shall be a defence for the person charged to prove that the excess was attributable to the taking of measures reasonably necessary in order to avoid the commission of an offence in respect of a deficiency in those or other goods.

(6) If proceedings for an offence under this Part or any instrument made under it in respect of any deficiency or excess in the quantity—

- (a) of any goods made up for sale (whether by way of pre-packing or otherwise) in or on a container marked with an indication of quantity;
- (b) of any goods which have been pre-packed or otherwise made up in or on a container for sale or for delivery after sale, or which have been made for sale, and which are required by or under this Order [^{F14}or the FIC Regulation] to be pre-packed, or to be otherwise so made up, or to be so made, as the case may be, only in particular quantities,

are brought with respect to any article, and it is proved that, at the time and place at which that article was tested, other articles of the same kind, being articles which, or articles containing goods which, had been sold by the person charged or were in that person's possession for sale or for delivery after sale, were available for testing, the person charged shall not be convicted of such an offence with respect to that article unless a reasonable number of those other articles was also tested.

(7) In any proceedings for an offence under this Part or any instrument made under it, the court—

- (a) if the proceedings are with respect to one or more of a number of articles tested on the same occasion, shall have regard to the average quantity in all the articles tested;
- (b) if the proceedings are with respect to a single article, shall disregard any inconsiderable deficiency or excess; and
- (c) shall have regard generally to all the circumstances of the case.

(8) Paragraphs (6) and (7) shall apply with the necessary modifications to proceedings for an offence in respect of the size, capacity or contents of a container as it applies to proceedings for an offence in respect of the excess or deficiency in the quantity of certain goods.

F13 Words in art. 24(3) inserted (18.4.2016) by [The Weights and Measures \(Food\) \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/187\)](#), regs. 1, **8**

F14 Words in art. 24(6)(b) inserted (18.4.2016) by [The Weights and Measures \(Food\) \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/187\)](#), regs. 1, **9**

Offences due to default of third person

25.—(1) If in any case the defence provided by Article 24(1) involves an allegation that the commission of the offence in question was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, before the beginning of the period of seven days ending with the date when the hearing of the charge began, he served on the prosecution a

notice giving such information identifying or assisting in the identification of the other person as was then in his possession.

(2) Where the commission by any person of an offence under this Part [^{F15}(other than Article 22A)] or an instrument made under it is due to the act or default of some other person, the other person shall be guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

(3) Where by virtue of paragraph (2) a person is charged with an offence with which some other person might have been charged, the reference in Article 24(6) to articles or goods sold by or in the possession of the person charged shall be construed as a reference to articles or goods sold by or in the possession of that other person.

F15 Words in art. 25(2) inserted (18.4.2016) by [The Weights and Measures \(Food\) \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/187\)](#), regs. 1, **10**

Special powers of inspector with respect to certain goods

26.—(1) Subject to paragraph (3), where any person—

- (a) makes in any manner any representation as to the quantity of any goods offered or exposed for sale by him; or
- (b) has in his possession or charge awaiting or in the course of delivery to the buyer any goods which have been sold or agreed to be sold, and the sale is, or purports to be, or is required by or under this Order [^{F16}or the FIC Regulation] to be, by quantity expressed in a particular manner, or is such that the quantity of the goods sold is required by or under any provision of this Order other than Article 21 to be made known to the buyer at or before a particular time; or
- (c) has in his possession or charge for sale, or awaiting or in the course of delivery to a buyer after they have been sold or agreed to be sold, any goods pre-packed or otherwise made up in or on a container for sale or for delivery after sale which are required by or under this Order [^{F16}or the FIC Regulation] to be pre-packed, or to be otherwise so made up, as the case may be, only in particular quantities or only if the container is marked with particular information, or any goods pre-packed in or on a container marked with an indication of quantity, or any goods required by or under this Order [^{F16}or the FIC Regulation] to be made for sale only in particular quantities; or
- (d) has in his possession or charge for sale or awaiting or in the course of delivery to a buyer after they have been sold or agreed to be sold, any goods subject to a requirement imposed by virtue of Article 19(2)(c);

the powers of an inspector under [^{F17}Schedule 5 to the Consumer Rights Act 2015] shall include power to require that person either to do in the presence of the inspector, or to permit the inspector to do, all or any of the following things, that is to say—

- (i) weigh or otherwise measure or count the goods;
- (ii) weigh or otherwise measure any container in or on which the goods are made up;
- (iii) in the case of goods within sub-paragraph (d), do anything else as respects the goods or container which is reasonably necessary to ascertain whether the requirement there mentioned is complied with, and which does not damage or depreciate the goods or container;
- (iv) if necessary for any of the purposes of heads (i) to (iii), break open any container of goods or open any vending machine in which goods are offered or exposed for sale,

and, in the case of any of the goods which are not already sold, power to require that person to sell any of them to the inspector.

(2) Where any container of goods is broken open under paragraph (1) and all requirements of, and of any instrument made under, this Order [^{F18}or the FIC Regulation] which are applicable to those goods are found to have been complied with, then, if the container can be resealed without injury to the contents, the inspector may reseat it with a label certifying that all such requirements have been complied with or, if he does not so reseat it or it cannot be so resealed without injury to the contents, shall at the request of the person mentioned in paragraph (1) buy the goods on behalf of the Department.

(3) The powers conferred by paragraph (1) shall not be exercisable in relation to milk within the meaning of the Weights and Measures (Milk) Order (Northern Ireland) 1980 except while the milk is on the premises which are used by a licence holder under the [^{F19}Milk (Northern Ireland) Order 1983] for making up milk in bottles or other containers, and paragraph (2) shall not apply in relation to such milk.

- F16** Words in art. 26(1)(b)(c) inserted (18.4.2016) by [The Weights and Measures \(Food\) \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/187\)](#), regs. 1, **11**
- F17** Words in art. 26(1) substituted (11.1.2017) by [The Consumer Rights \(Enforcement and Amendments\) Order 2016 \(S.I. 2016/1259\)](#), art. 1, **Sch. para. 1(2)**
- F18** Words in art. 26(2) inserted (18.4.2016) by virtue of [The Weights and Measures \(Food\) \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/187\)](#), regs. 1, **11**
- F19** 1983 NI 2

Powers of inspector with respect to certain documents

27.—(1) An inspector, subject to the production, if so requested, of his credentials, may require the person in charge of any document required by or under this Order to be associated with any goods to produce that document for inspection.

(2) If the inspector has reasonable cause to believe that any document produced to him under paragraph (1) contains any inaccurate statement, he may either—

- (a) seize and detain the document, giving in exchange therefor a statement signed by him certifying that the document has been seized and giving particulars of the document and particulars of any inaccuracy alleged; or
- (b) without prejudice to any proceedings which may be taken by reason of any inaccuracy alleged, make on the document an endorsement signed by him giving particulars of any such inaccuracy;

and any reference in this Order to any such document shall be deemed to include a reference to a statement given in pursuance of sub-paragraph (a).

(3) Where, in the case of any goods being carried on a road vehicle, the whole of the vehicle's load is being carried for, or for delivery after, sale to the same person, and any document produced in pursuance of paragraph (1) by the person in charge of the vehicle purports, or is required by or under this Order, to state the quantity of the goods, then, for the purpose of the exercise of his powers under Article 26(1), the inspector may do all or any of the following things, that is to say—

- (a) require the goods to which the document relates to be unloaded from the vehicle;
- (b) require the vehicle to be taken to the nearest suitable and available weighing or measuring equipment;
- (c) require the person in charge of the vehicle to have it check-weighed.

(4) The powers conferred by paragraph (3) shall be exercised only to such extent as may appear to the inspector reasonably necessary in order to secure that the provisions of this Order and any instrument made under it are duly observed.

Check-weighing of certain road vehicles

28.—(1) Without prejudice to Part II of Schedule 5, where any road vehicle is loaded with goods for sale by weight to a single buyer of the whole of the vehicle's load, or for delivery to the buyer after they have been so sold, the buyer or seller of the goods, or any inspector who shows that he is authorised so to do by the buyer or seller of the goods, may require the person in charge of the vehicle to have it check-weighed, and if that person fails without reasonable cause to comply with any such requirement he shall be guilty of an offence.

(2) Where after the check-weighing in pursuance of a request by the buyer under paragraph (1) the weight of the goods is found to be not less than that stated by the seller in any document delivered to the buyer at or before the delivery of the goods to him, the buyer shall be liable to defray all costs reasonably incurred in connection with the check-weighing, but where the weight of the goods is so found to be less than that so stated, all such costs shall be defrayable by the seller.

Selling by quantity, making quantity known, and weighing in presence

29.—(1) Where any goods are required by or under this Order to be sold only by quantity expressed in a particular manner—

- (a) it shall be a sufficient compliance with that requirement in the case of any sale of, or agreement to sell, any such goods if the quantity of the goods expressed in the manner in question is made known to the buyer before the purchase price is agreed;
- (b) no person shall be guilty of an offence under Article 20(1) by reason of the exposing or offering for sale of such goods at any time if both the quantity of the goods expressed in the manner in question and the price at which they are exposed or offered for sale are made known at that time to any prospective buyer.

(2) For the purposes of this Order and any instrument made under it, without prejudice to any other method of making known to a person the quantity of any goods expressed in a particular manner, that quantity shall be deemed to be made known to that person—

- (a) if the goods are weighed or otherwise measured or counted, as the case may require, in the presence of that person; or
- (b) if the goods are made up in or on a container marked with a statement in writing of the quantity of the goods expressed in the manner in question and the container is readily available for inspection by that person; or
- (c) upon such a statement in writing being delivered to that person.

(3) Where the Department by order provides that this paragraph is to apply, in the case of such goods in such circumstances as are specified in the order, to any requirement so specified of, or of any instrument made under, this Order with respect to the making known to the buyer of the quantity by weight of such goods sold by retail, then, in any case to which the order applies, that requirement shall be deemed to be satisfied if the goods are bought at premises at which weighing equipment of such description as may be prescribed—

- (a) is kept available by the occupier of those premises for use without charge by any prospective buyer of such goods for the purpose of weighing for himself any such goods offered or exposed for sale by retail on those premises; and
- (b) is so kept available in a position on those premises which is suitable and convenient for such use of the equipment; and

(c) is reserved for use for that purpose at all times while those premises are open for retail transactions,
and a notice of the availability of the equipment for such use is displayed in a position on the premises where it may be readily seen by any such prospective buyer.

(4) For the purposes of this Order and any instrument made under it, a person shall not be deemed to weigh or otherwise measure or count any goods in the presence of any other person unless he causes any equipment used for the purpose to be so placed, and so conducts the operation of weighing or otherwise measuring or counting the goods, as to permit that other person a clear and unobstructed view of the equipment, if any, and of the operation, and of any indication of quantity given by any such equipment as the result of that operation.

Changes to legislation:

There are currently no known outstanding effects for the Weights and Measures (Northern Ireland) Order 1981, PART V.