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STATUTORY INSTRUMENTS

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**1987 No. 2049 (N.I. 20)**

**The Consumer Protection (Northern Ireland) Order 1987**

- - - - - 26th November 1987

**PART I**  
**INTRODUCTORY**

**Title, commencement and transitional provision**

1.—(1) This Order may be cited as the Consumer Protection (Northern Ireland) Order 1987.

(2) The following provisions, namely—

- (a) Part I;
- (b) Part II and Schedule 1;
- (c) Article 28 and Schedule 2;
- (d) paragraphs 3 and 7 of Schedule 3, and Article 35(1) in so far as it relates to those paragraphs of that Schedule; and
- (e) Article 35(2) and Schedule 4;

shall come into operation on 1st March 1988.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>F1</sup>.

(4) An order under paragraph (3) may contain such transitional provisions as the Head of the Department considers appropriate.

(5) Nothing in this Order shall make any person liable by virtue of Part II for any damage caused wholly or partly by a defect in a product which was supplied to any person by its producer before the coming into operation of Part II.

(6) Expressions used in paragraph (5) and in Part II have the same meanings in that paragraph as in that Part.

**F1** fully exercised by SR 1989/30

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F2</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

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(2) In this Order—

“aircraft” includes gliders, balloons and hovercraft;

“business” includes a trade or profession and the activities of a professional or trade association or of a district council or other public authority;

“conditional sale agreement”, “credit sale agreement” and “hire#purchase agreement” have the same meanings as in the Consumer Credit Act 1974<sup>F3</sup> but as if in the definitions in that Act “goods” had the same meaning as in this Order;

“the Department” means the Department of Economic Development;

“gas” means—

- (a) any substance in a gaseous state which consists wholly or mainly of—
  - (i) methane, ethane, propane, butane, hydrogen or carbon monoxide;
  - (ii) a mixture of two or more of those gases; or
  - (iii) a combustible mixture of one or more of those gases and air; and
- (b) any other substance in a gaseous state which is gaseous at a temperature of 15°C and a pressure of 1013.25 millibars and is specified in an order made by the Department subject to negative resolution;

“goods” includes substances, growing crops and things comprised in land by virtue of being attached to it and any ship, aircraft or vehicle;

“information” includes accounts, estimates and returns;

*Definition rep. by 1994 c. 26*

“modifications” includes additions, alterations and omissions;

“motor vehicle” has the same meaning as in the Road Traffic (Northern Ireland) Order 1981<sup>F4</sup>;

“notice” means a notice in writing;

“officer”, in relation to the Department, means a person authorised in writing to assist the Department in carrying out its functions under or for the purposes of the enforcement of any of the provisions made by or under Part III;

“personal injury” includes any disease and any other impairment of a person's physical or mental condition;

“premises” includes any place and any ship, aircraft or vehicle;

“records” includes any books or documents and any records in non#documentary form;

“ship” includes any boat and any other description of vessel used in navigation;

“subordinate legislation” means a statutory instrument as defined in section 1(d) of the Interpretation Act (Northern Ireland) 1954<sup>F5</sup>;

“substance” means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of a vapour, and includes substances that are comprised in or mixed with other goods;

“supply” shall be construed in accordance with Article 3.

*Para. (3) rep. by 1994 c. 26*

<b>F2</b>	1954 c. 33 (N.I.)
<b>F3</b>	1974 c. 39
<b>F4</b>	1981 NI 1
<b>F5</b>	1954 c. 33 (N.I.)

### Meaning of “supply”

3.—(1) Subject to the following provisions of this Article, references in this Order to supplying goods shall be construed as references to doing any of the following, whether as principal or agent, that is to say—

- (a) selling, hiring out or lending the goods;
- (b) entering into a hire#purchase agreement to furnish the goods;
- (c) the performance of any contract for work and materials to furnish the goods;
- (d) providing the goods in exchange for any consideration (including trading stamps) other than money;
- (e) providing the goods in or in connection with the performance of any statutory function; or
- (f) giving the goods as a prize or otherwise making a gift of the goods;

and, in relation to gas or water, those references shall be construed as including references to providing the service by which the gas or water is made available for use.

(2) For the purposes of any reference in this Order to supplying goods, where a person (“the ostensible supplier”) supplies goods to another person (“the customer”) under a hire#purchase agreement, conditional sale agreement or credit#sale agreement or under an agreement for the hiring of goods (other than a hire#purchase agreement) and the ostensible supplier—

- (a) carries on the business of financing the provision of goods for others by means of such agreements; and
- (b) in the course of that business acquired his interest in the goods supplied to the customer as a means of financing the provision of them for the customer by a further person (“the effective supplier”),

the effective supplier and not the ostensible supplier shall be treated as supplying the goods to the customer.

(3) Subject to paragraph (4), the performance of any contract by the erection of any building or structure on any land or by the carrying out of any other building works shall be treated for the purposes of this Order as a supply of goods in so far as, but only in so far as, it involves the provision of any goods to any person by means of their incorporation into the building, structure or works.

(4) Except for the purposes of, and in relation to, any provision made by or under Part III, references in this Order to supplying goods shall not include references to supplying goods comprised in land where the supply is effected by the creation or disposal of an interest in the land.

(5) Except in Part II, references in this Order to a person's supplying goods shall be confined to references to that person's supplying goods in the course of a business of his, but for the purposes of this paragraph it shall be immaterial whether the business is a business of dealing in the goods.

(6) For the purposes of paragraph (5) goods shall not be treated as supplied in the course of a business if they are supplied, in pursuance of an obligation arising under or in connection with the insurance of the goods, to the person with whom they were insured.

(7) References in Parts III and IV to supplying goods shall not include—

- (a) references to supplying goods where the person supplied carries on a business of buying goods of the same description as those goods and repairing or reconditioning them;
- (b) references to supplying goods by a sale of articles as scrap (that is to say, for the value of materials included in the articles rather than for the value of the articles themselves).

(8) Where any goods have at any time been supplied by being hired out or lent to any person, neither a continuation or renewal of the hire or loan (whether on the same or different terms) nor any transaction for the transfer after that time of any interest in the goods to the person to whom

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they were hired or lent shall be treated for the purposes of this Order as a further supply of the goods to that person.

(9) A ship, aircraft or motor vehicle shall not be treated for the purposes of this Order as supplied to any person by reason only that services consisting in the carriage of goods or passengers in that ship, aircraft or vehicle, or in its use for any other purpose, are provided to that person in pursuance of an agreement relating to the use of the ship, aircraft or vehicle for a particular period or for particular voyages, flights or journeys.

## PART II

### PRODUCT LIABILITY

#### **Purpose and construction of Part II**

4.—(1) This Part shall have effect for the purpose of making such provision as is necessary in order to comply with the product liability Directive and shall be construed accordingly.

(2) In this Part—

*Definition rep. by 2001 c. 13 (NI)*

“dependant” and “relative” have the same meaning as they have in the Fatal Accidents (Northern Ireland) Order 1977<sup>F6</sup>;

“producer”, in relation to a product, means—

- (a) the person who manufactured it;
- (b) in the case of a substance which has not been manufactured but has been won or abstracted, the person who won or abstracted it;
- (c) in the case of a product which has not been manufactured, won or abstracted but essential characteristics of which are attributable to an industrial or other process having been carried out (for example, in relation to agricultural produce), the person who carried out that process;

“product” means any goods or electricity and (subject to paragraph (3)) includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise; and

“the product liability Directive” means the Directive of the Council of the European Communities, dated 25th July 1985 (No.85/374/EEC) on the approximation of the laws, regulations and administrative provisions of the member States concerning liability for defective products.

(3) For the purposes of this Part a person who supplies any product in which products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of his supply of that product as supplying any of the products so comprised.

F6 1977 NI 18
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#### **Liability for defective products**

5.—(1) Subject to this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom paragraph (2) applies shall be liable for the damage.

(2) This paragraph applies to—

- (a) the producer of the product;

- <sup>F7</sup>(b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product;
- (c) any person who has imported the product into a member State from a place outside the member States in order, in the course of any business of his, to supply it to another.

(3) Subject to this Part, where any damage is caused wholly or partly by a defect in a product, any person who supplied the product (whether to the person who suffered the damage, to the producer of any product in which the product in question is comprised or to any other person) shall be liable for the damage if—

- (a) the person who suffered the damage requests the supplier to identify one or more of the persons (whether still in existence or not) to whom paragraph (2) applies in relation to the product;
- (b) that request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons; and
- (c) the supplier fails, within a reasonable period after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

*Para. (4) rep. by 2001 c. 13 (NI)*

(5) Where two or more persons are liable by virtue of this Part for the same damage, their liability shall be joint and several.

(6) This Article shall be without prejudice to any liability arising otherwise than by virtue of this Part.

F7 mod. by 1994 c. 26

### Meaning of “defect”

6.—(1) Subject to the following provisions of this Article, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes “safety”, in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.

(2) In determining for the purposes of paragraph (1) what persons generally are entitled to expect in relation to a product all the circumstances shall be taken into account, including—

- (a) the manner in which, and purposes for which, the product has been marketed, its get#up, the use of any mark in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product;
- (b) what might reasonably be expected to be done with or in relation to the product; and
- (c) the time when the product was supplied by its producer to another;

and nothing in this Article shall require a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

### Defences

7.—(1) In any civil proceedings by virtue of this Part against any person (“the person proceeded against”) in respect of a defect in a product it shall be a defence for him to show—

- (a) that the defect is attributable to compliance with any requirement imposed by or under any enactment or with any Community obligation; or

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- (b) that the person proceeded against did not at any time supply the product to another; or
  - (c) that the following conditions are satisfied, that is to say—
    - (i) that the only supply of the product to another by the person proceeded against was otherwise than in the course of a business of that person's; and
    - (ii) that Article 5(2) does not apply to that person or applies to him by virtue only of things done otherwise than with a view to profit; or
  - (d) that the defect did not exist in the product at the relevant time; or
  - (e) that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control; or
  - (f) that the defect—
    - (i) constituted a defect in a product ( “the subsequent product”) in which the product in question had been comprised; and
    - (ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.
- (2) In this Article “the relevant time”, in relation to electricity, means the time at which it was generated, being a time before it was transmitted or distributed, and in relation to any other product, means—
- (a) if the person proceeded against is a person to whom paragraph (2) of Article 5 applies in relation to the product, the time when he supplied the product to another;
  - (b) if that paragraph does not apply to that person in relation to the product, the time when the product was last supplied by a person to whom that paragraph does apply in relation to the product.

### **Damage giving rise to liability**

8.—(1) Subject to this Article, in this Part “damage” means death or personal injury or any loss of or damage to any property (including land).

(2) A person shall not be liable under Article 5 in respect of any defect in a product for the loss of or any damage to the product itself or for the loss of or any damage to the whole or any part of any product which has been supplied with the product in question comprised in it.

(3) A person shall not be liable under Article 5 for any loss of or damage to any property which, at the time it is lost or damaged, is not—

- (a) of a description of property ordinarily intended for private use, occupation or consumption; and
- (b) intended by the person suffering the loss or damage mainly for his own private use, occupation or consumption.

(4) No damages shall be awarded to any person by virtue of this Part in respect of any loss of or damage to any property if the amount which would fall to be so awarded to that person, apart from this paragraph and any liability for interest, does not exceed £275.

(5) In determining for the purposes of this Part who has suffered any loss of or damage to property and when any such loss or damage occurred, the loss or damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the loss or damage.

(6) For the purposes of paragraph (5) the material facts about any loss of or damage to any property are such facts about the loss or damage as would lead a reasonable person with an interest in the property to consider the loss or damage sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(7) For the purposes of paragraph (5) a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him; or
- (b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;

but a person shall not be taken by virtue of this paragraph to have knowledge of a fact ascertainable by him only with the help of expert advice unless he has failed to take all reasonable steps to obtain (and, where appropriate, to act on) that advice.

#### **Application of certain enactments etc.**

9.—(1) Any damage for which a person is liable under Article 5 shall be deemed to have been caused for the purposes of the Fatal Accidents (Northern Ireland) Order 1977<sup>F8</sup>, by that person's wrongful act, neglect or default.

(2) Where—

- (a) a person's death is caused wholly or partly by a defect in a product, or a person dies after suffering damage which has been so caused;
- (b) a request such as mentioned in sub#paragraph ( a ) of paragraph (3) of Article 5 is made to a supplier of the product by that person's personal representatives or, in the case of a person whose death is caused wholly or partly by the defect, by any dependant or relative of that person; and
- (c) the conditions specified in sub#paragraphs ( b ) and ( c ) of that paragraph are satisfied in relation to that request,

this Part shall have effect for the purposes of Part III of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937<sup>F9</sup> and the Fatal Accidents (Northern Ireland) Order 1977<sup>F10</sup> as if liability of the supplier to that person under that paragraph did not depend on that person having requested the supplier to identify certain persons or on the said conditions having been satisfied in relation to a request made by that person.

(3) Section 1 of the Congenital Disabilities (Civil Liability) Act 1976<sup>F11</sup> shall have effect for the purposes of this Part as if—

- (a) a person were answerable to a child in respect of an occurrence caused wholly or partly by a defect in a product if he is or has been liable under Article 5 in respect of any effect of the occurrence on a parent of the child, or would be so liable if the occurrence caused a parent of the child to suffer damage;
- (b) the provisions of this Part relating to liability under Article 5 applied in relation to liability by virtue of sub#paragraph ( a ) under the said section 1; and
- (c) subsection (6) of the said section 1 (exclusion of liability) were omitted.

(4) Where any damage is caused partly by a defect in a product and partly by the fault of the person suffering the damage, the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948<sup>F12</sup> and Article 7 of the Fatal Accidents (Northern Ireland) Order 1977 (contributory negligence) shall have effect as if the defect were the fault of every person liable by virtue of this Part for the damage caused by the defect.

(5) In paragraph (4) “fault” has the same meaning as in the said Act of 1948.

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*Para. (6) rep. by 1989 NI 11*

(7) It is hereby declared that liability by virtue of this Part is to be treated as liability in tort for the purposes of any enactment conferring jurisdiction on any court with respect to any matter.

(8) Nothing in this Part shall prejudice the operation of section 12 of the Nuclear Installations Act 1965<sup>F13</sup> (rights to compensation for certain breaches of duties confined to rights under that Act).

**F8** 1977 NI 18  
**F9** 1937 c. 9 (N.I.)  
**F10** 1977 NI 18  
**F11** 1976 c. 28  
**F12** 1948 c. 23 (N.I.)  
**F13** 1965 c. 57

### Prohibition on exclusions from liability

**10.** The liability of a person by virtue of this Part to a person who has suffered damage caused wholly or partly by a defect in a product, or to a dependant or relative of such a person, shall not be limited or excluded by any contract term, by any notice or by any other provision.

### Power to modify enactments

**11.—(1)** The<sup>F14</sup> Department<sup>F14</sup> may by order make such modifications of this Part and of any other enactment (including an enactment contained in Part I and the following Parts, or in an Order, Measure or Act made or passed after this Order) as appear to<sup>F14</sup> it<sup>F14</sup> to be necessary or expedient in consequence of any modification of the product liability Directive which is made at any time after the making of this Order.

(2) An order under paragraph(1) shall be subject to affirmative resolution.

**F14** 2001 c. 13 (NI)

### Application of Part II to Crown

**12.—(1)** Subject to paragraph (2), this Part shall bind the Crown; including the Crown in right of Her Majesty's Government in the United Kingdom.

(2) The Crown shall not, as regards the Crown's liability by virtue of this Part, be bound by this Part further than the Crown is made liable in tort under the Crown Proceedings Act 1947<sup>F15</sup>.

**F15** 1947 c. 44

## PART III

### MISLEADING PRICE INDICATIONS

#### Offence of giving misleading indication

**13.—(1)** Subject to this Part, a person shall be guilty of an offence if, in the course of any business of his, he gives (by any means whatever) to any consumers an indication which is misleading as to



the price at which any goods, services, accommodation or facilities are available (whether generally or from particular persons).

- (2) Subject as aforesaid, a person shall be guilty of an offence if—
- (a) in the course of any business of his, he has given an indication to any consumers which, after it was given, has become misleading as mentioned in paragraph (1); and
  - (b) some or all of those consumers might reasonably be expected to rely on the indication at a time after it has become misleading; and
  - (c) he fails to take all such steps as are reasonable to prevent those consumers from relying on the indication.
- (3) For the purposes of this Article it shall be immaterial—
- (a) whether the person who gives or gave the indication is or was acting on his own behalf or on behalf of another;
  - (b) whether or not that person is the person, or included among the persons, from whom the goods, services, accommodation or facilities are available; and
  - (c) whether the indication is or has become misleading in relation to all the consumers to whom it is or was given or only in relation to some of them.
- (4) A person guilty of an offence under paragraph (1) or (2) shall be liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) No prosecution for an offence under paragraph (1) or (2) shall be brought after whichever is the earlier of the following, that is to say—
- (a) the end of the period of three years beginning with the day on which the offence was committed; and
  - (b) the end of the period of one year beginning with the day on which the person bringing the prosecution discovered that the offence had been committed.

[<sup>F16</sup>(5A) A person is not guilty of an offence under paragraph (1) or (2) above if, in giving the misleading indication which would otherwise constitute an offence under either of those paragraphs, he is guilty of an offence under section 397 of the Financial Services and Markets Act 2000 (misleading statements and practices).]

<sup>F16</sup>(6) In this Part—

“consumer”

- (a) in relation to any goods, means any person who might wish to be supplied with the goods for his own private use or consumption;
- (b) in relation to any services or facilities, means any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his; and
- (c) in relation to any accommodation, means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his;

“price”, in relation to any goods, services, accommodation or facilities, means—

- (a) the aggregate of the sums required to be paid by a consumer for or otherwise in respect of the supply of the goods or the provision of the services, accommodation or facilities; or
- (b) except in Article 14, any method which will be or has been applied for the purpose of determining that aggregate.

**Meaning of “misleading”**

14.—(1) For the purposes of Article 13 an indication given to any consumers is misleading as to a price if what is conveyed by the indication, or what those consumers might reasonably be expected to infer from the indication or any omission from it, includes any of the following, that is to say—

- (a) that the price is less than in fact it is;
- (b) that the applicability of the price does not depend on facts or circumstances on which its applicability does in fact depend;
- (c) that the price covers matters in respect of which an additional charge is in fact made;
- (d) that a person who in fact has no such expectation—
  - (i) expects the price to be increased or reduced (whether or not at a particular time or by a particular amount); or
  - (ii) expects the price, or the price as increased or reduced, to be maintained (whether or not for a particular period); or
- (e) that the facts or circumstances by reference to which the consumers might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what in fact they are.

(2) For the purposes of Article 13, an indication given to any consumers is misleading as to a method of determining a price if what is conveyed by the indication, or what those consumers might reasonably be expected to infer from the indication or any omission from it, includes any of the following, that is to say—

- (a) that the method is not what in fact it is;
- (b) that the applicability of the method does not depend on facts or circumstances on which its applicability does in fact depend;
- (c) that the method takes into account matters in respect of which an additional charge will in fact be made;
- (d) that a person who in fact has no such expectation—
  - (i) expects the method to be altered (whether or not at a particular time or in a particular respect); or
  - (ii) expects the method, or that method as altered, to remain unaltered (whether or not for a particular period); or
- (e) that the facts or circumstances by reference to which the consumers might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what in fact they are.

(3) For the purposes of paragraphs (1)(e) and (2)(e) a comparison is a relevant comparison in relation to a price or method of determining a price if it is made between that price or that method, or any price which has been or may be determined by that method, and—

- (a) any price or value which is stated or implied to be, to have been or to be likely to be attributed or attributable to the goods, services, accommodation or facilities in question or to any other goods, services, accommodation or facilities; or
- (b) any method, or other method, which is stated or implied to be, to have been or to be likely to be applied or applicable for the determination of the price or value of the goods, services, accommodation or facilities in question or of the price or value of any other goods, services, accommodation or facilities.

## Application to provision of services and facilities

15.—(1) Subject to paragraphs (2) to (5), references in this Part to services or facilities are references to any services or facilities whatever including, in particular—

- (a) the provision of credit or of banking or insurance services and the provision of facilities incidental to the provision of such services;
- (b) the purchase or sale of foreign currency;
- (c) the supply of electricity;
- (d) the provision of a place, other than on a public road, for the parking of a motor vehicle;
- (e) the making of arrangements for a person to put or keep a caravan on any land other than arrangements by virtue of which that person may occupy the caravan as his only or main residence.

(2) References in this Part to services shall not include references to services provided to an employer under a contract of employment.

*Para. (3) rep. by SI 2001/3649*

(4) In relation to a service consisting in the purchase or sale of foreign currency, references in this Part to the method by which the price of the service is determined shall include references to the rate of exchange.

(5) In this Article—

*Definitions rep. by SI 2001/3649*

“caravan” has the same meaning as in the Caravans Act (Northern Ireland) 1963<sup>F17</sup>;

“contract of employment” and “employer” have the same meanings as in the Industrial Relations (Northern Ireland) Order 1976<sup>F18</sup>;

“credit” has the same meaning as in the Consumer Credit Act 1974<sup>F19</sup>.

**F17** 1963 c. 17 (N.I.)

**F18** 1976 NI 16

**F19** 1974 c. 39

## Application to provision of accommodation etc.

16.—(1) Subject to paragraph (2), references in this Part to accommodation or facilities being available shall not include references to accommodation or facilities being available to be provided by means of the creation or disposal of an interest in land except where—

- (a) the person who is to create or dispose of the interest will do so in the course of any business of his; and
- (b) the interest to be created or disposed of is a relevant interest in a new dwelling and is to be created or disposed of for the purpose of enabling that dwelling to be occupied as a residence, or one of the residences, of the person acquiring the interest.

(2) Paragraph (1) shall not prevent the application of any provision of this Part in relation to—

- (a) the supply of any goods as part of the same transaction as any creation or disposal of an interest in land; or
- (b) the provision of any services or facilities for the purposes of, or in connection with, any transaction for the creation or disposal of such an interest.

(3) In this Article—

“new dwelling” means any building or part of a building in Northern Ireland which—

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- (a) has been constructed or adapted to be occupied as a residence; and
- (b) has not previously been so occupied or has been so occupied only with other premises or as more than one residence,

and includes any yard, garden, out#houses or appurtenances which belong to that building or part or are to be enjoyed with it;

“relevant interest” in relation to a new dwelling means the freehold estate in the dwelling or a leasehold interest in the dwelling for a term of years of more than twenty#one years, not being a term of which twenty#one years or less remains unexpired.

## Defences

**17.—**(1) In any proceedings against a person for an offence under paragraph (1) or (2) of Article 13 in respect of any indication it shall be a defence for that person to show that his acts or omissions were authorised for the purposes of this paragraph by regulations made under Article 19.

(2) In proceedings against a person for an offence under Article 13(1) or (2) in respect of an indication published in a book, newspaper, magazine,<sup>F20</sup> or film or in a programme included in a programme service (within the meaning of the Broadcasting Act 1990),<sup>F20</sup> it shall be a defence for that person to show that the indication was not contained in an advertisement.

(3) In proceedings against a person for an offence under Article 13(1) or (2) in respect of an indication published in an advertisement it shall be a defence for that person to show that—

- (a) he is a person who carries on a business of publishing or arranging for the publication of advertisements;
- (b) he received the advertisement for publication in the ordinary course of that business; and
- (c) at the time of publication he did not know and had no grounds for suspecting that the publication would involve the commission of the offence.

(4) In any proceedings against a person for an offence under Article 13(1) in respect of any indication, it shall be a defence for that person to show that—

- (a) the indication did not relate to the availability from him of any goods, services, accommodation or facilities;
- (b) a price had been recommended to every person from whom the goods, services, accommodation or facilities were indicated as being available;
- (c) the indication related to that price and was misleading as to that price only by reason of a failure by any person to follow the recommendation; and
- (d) it was reasonable for the person who gave the indication to assume that the recommendation was for the most part being followed.

(5) This Article is without prejudice to Article 30.

(6) In this Article—

“advertisement” includes a catalogue, a circular and a price list;

*Definition rep. by 1990 c. 42*

**F20** 1990 c. 42

## Code of practice

**18.**—(1) The Department may, after consulting<sup>F21</sup> the Office of Fair Trading<sup>F21</sup> and such other persons as the Department considers it appropriate to consult, by order approve any code of practice issued (whether by the Department or another person) for the purpose of—

- (a) giving practical guidance with respect to any of the requirements of Article 13; and
- (b) promoting what appear to the Department to be desirable practices as to the circumstances and manner in which any person gives an indication as to the price at which any goods, services, accommodation or facilities are available or indicates any other matter in respect of which any such indication may be misleading.

(2) A contravention of a code of practice approved under this Article shall not of itself give rise to any criminal or civil liability, but in any proceedings against any person for an offence under Article 13(1) or (2)—

- (a) any contravention by that person of such a code may be relied on in relation to any matter for the purpose of establishing that that person committed the offence or of negating any defence; and
- (b) compliance by that person with such a code may be relied on in relation to any matter for the purpose of showing that the commission of the offence by that person has not been established or that that person has a defence.

(3) Where the Department approves a code of practice under this Article it may, after such consultation as is mentioned in paragraph (1), at any time by order—

- (a) approve any modification of the code; or
- (b) withdraw its approval;

and references in paragraph (2) to a code of practice approved under this Article shall be construed accordingly.

(4) An order under this Article shall be subject to negative resolution.

**F21** [2002 c. 40](#)

## Power to make regulations

**19.**—(1) The Department may, after consulting the<sup>F22</sup> the Office of Fair Trading<sup>F22</sup> and such other persons as the Department considers it appropriate to consult, by regulations make provision—

- (a) for the purpose of regulating the circumstances and manner in which any person—
  - (i) gives any indication as to the price at which any goods, services, accommodation or facilities will be or are available or have been supplied or provided; or
  - (ii) indicates any other matter in respect of which any such indication may be misleading;
- (b) for the purpose of facilitating the enforcement of Article 13 or of any regulations made under this Article.

(2) The Department shall not make regulations by virtue of paragraph (1)( a) except in relation to—

- (a) indications given by persons in the course of business; and
- (b) such indications given otherwise than in the course of business as—
  - (i) are given by or on behalf of persons by whom accommodation is provided to others by means of leases or licences; and

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- (ii) relate to goods, services or facilities supplied or provided to those others in connection with the provisions of the accommodation.
- (3) Without prejudice to the generality of paragraph (1), regulations under this Article may—
- (a) prohibit an indication as to a price from referring to such matters as may be prescribed by the regulations;
  - (b) require an indication as to a price or other matter to be accompanied or supplemented by such explanation or such additional information as may be prescribed by the regulations;
  - (c) require information or explanations with respect to a price or other matter to be given to an officer of an enforcement authority and to authorise such an officer to require such information or explanations to be given;
  - (d) require any information or explanation provided for the purposes of any regulations made by virtue of sub#paragraph ( b) or ( c) to be accurate;
  - (e) prohibit the inclusion in indications as to a price or other matter of statements that the indications are not to be relied upon;
  - (f) provide that expressions used in any indication as to a price or other matter shall be construed in a particular way for the purposes of this Part;
  - (g) provide that a contravention of any provision of the regulations shall constitute a criminal offence punishable—
    - (i) on conviction on indictment by a fine;
    - (ii) on summary conviction, by a fine not exceeding the statutory maximum;
  - (h) apply any provision of this Order which relates to a criminal offence to an offence created by virtue of sub#paragraph ( g).
- (4) Regulations under this Article shall be subject to negative resolution and may make such supplemental, consequential and transitional provision as the Department considers appropriate.
- (5) In this Article “lease” includes—
- (a) any tenancy,
  - (b) a sub#lease or sub#tenancy,
  - (c) an agreement for a lease or tenancy, and
  - (d) a statutory tenancy (within the meaning of the Rent (Northern Ireland) Order 1978<sup>F23</sup>).

**F22** 2002 c. 40

**F23** 1978 NI 20

## PART IV

### ENFORCEMENT OF PART III

#### Enforcement

**20.** It shall be the duty of the Department to enforce the provisions of Part III.

#### Test purchases

**21.—(1)** Where—

(a) any goods purchased by or on behalf of the Department, for the purpose of ascertaining whether any provision made by or under Part III has been contravened, are submitted to a test; and

(b) the test leads to the bringing of proceedings for an offence in respect of a contravention in relation to the goods of any provision made by or under Part III; and

(c) the Department is requested to do so and it is practicable for it to comply with the request, the Department shall allow the person from whom the goods were purchased or any person who is a party to the proceedings to have the goods tested.

(2) The Department may by regulations provide that any test of goods purchased under this Article by or on its behalf shall—

- (a) be carried out at the expense of the Department in a manner and by a person prescribed by or determined under the regulations; or
- (b) be carried out either as mentioned in sub#paragraph ( a) or by the Department in a manner prescribed by the regulations.

(3) Regulations under paragraph (2)—

- (a) may make such supplemental, consequential and transitional provision as the Department considers appropriate; and
- (b) shall be subject to negative resolution.

#### **Powers of search etc.**

22.—(1) Subject to Articles 23 to 26, a duly authorised officer of the Department may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by paragraphs (2) to (5).

(2) The officer may, for the purpose of ascertaining whether there has been any contravention of any provision made by or under Part III, inspect any goods and enter any premises other than premises occupied only as a person's residence.

(3) If the officer has reasonable grounds for suspecting that there has been a contravention in relation to any goods of any provision made by or under Part III, he may—

- (a) for the purpose of ascertaining whether there has been any such contravention, require any person carrying on a business, or employed in connection with a business, to produce any records relating to the business;
- (b) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain the goods;
- (c) take copies of, or of any entry in, any records produced by virtue of sub#paragraph ( a).

(4) The officer may seize and detain any goods or records which he has reasonable grounds for believing may be required as evidence in proceedings for an offence in respect of a contravention of any provision made by or under Part III.

(5) If and to the extent that it is reasonably necessary to do so to prevent a contravention of any provision made by or under Part III, the officer may, for the purpose of exercising his power under paragraph (3) or (4) to seize any goods or records—

- (a) require any person having authority to do so to open any container or to open any vending machine; and
- (b) himself open or break open any such container or machine where a requirement made under sub#paragraph ( a) in relation to the container or machine has not been complied with.

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## Provisions supplemental to Article 22

23.—(1) An officer seizing any goods or records under Article 22 shall inform the following persons that the goods or records have been so seized, that is to say—

- (a) the person from whom they are seized; and
- (b) in the case of imported goods seized on any premises under the control of the Commissioners of Customs and Excise, the importer of those goods (within the meaning of the Customs and Excise Management Act 1979<sup>F24</sup>).

(2) If a justice of the peace—

- (a) is satisfied by any written complaint on oath that there are reasonable grounds for believing either—
  - (i) that any goods or records which any officer has power to inspect under Article 22 are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of any provision made by or under Part III; or
  - (ii) that such a contravention has taken place, is taking place or is about to take place on any premise; and
- (b) is also satisfied by any such complaint either—
  - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this paragraph has been given to the occupier; or
  - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any officer of the Department to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of Article 22 or a warrant under paragraph (2) may take with him such other persons and such equipment as may appear to him necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under paragraph (2), that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) If any person who is not an officer of the Department purports to act as such under Article 22 or this Article he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where any goods seized by an officer under Article 22 are submitted to a test, the officer shall inform the persons mentioned in paragraph (1) of the result of the test and, if—

- (a) proceedings are brought for an offence in respect of a contravention in relation to the goods of any provision made by or under Part III; and
- (b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or, to have the goods tested.

(7) The Department may by regulations provide that any test of goods seized under Article 22 by an officer of the Department shall—

- (a) be carried out at the expense of the Department in a manner and by a person prescribed by or determined under the regulations; or
- (b) be carried out either as mentioned in sub#paragraph ( a) or by the Department in a manner prescribed by the regulations.

(8) Regulations under paragraph (7)—



- (a) may make such supplemental, consequential and transitional provisions as the Department considers appropriate; and
- (b) shall be subject to negative resolution.

F24 1979 c. 2

### **Obstruction of authorised officer**

**24.**—(1) Any person who—

- (a) intentionally obstructs any officer of the Department who is acting in pursuance of any provision of this Part; or
- (b) intentionally fails to comply with any requirement made of him by any officer of the Department under any provision of this Part; or
- (c) without reasonable cause fails to give any officer of the Department who is so acting any other assistance or information which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of this Part,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person shall be guilty of an offence if, in giving information which is required of him by virtue of paragraph (1)(c)—

- (a) he makes any statement which he knows is false in a material particular; or
- (b) he recklessly makes a statement which is false in a material particular.

(3) A person guilty of an offence under paragraph (2) shall be liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

### **Appeals against detention of goods**

**25.**—(1) Any person having an interest in any goods which are for the time being detained under any provision of this Part by the Department or by an officer of the Department may apply for an order requiring the goods to be released to him or to another person.

(2) An application under this Article may be made—

- (a) to any court of summary jurisdiction in which proceedings have been brought for an offence in respect of a contravention in relation to the goods of any provision made by or under Part III;
- (b) where no such proceedings have been so brought, by way of complaint to a court of summary jurisdiction.

(3) On an application under this Article to a court of summary jurisdiction, an order requiring goods to be released shall be made only if the court is satisfied—

- (a) that proceedings for an offence in respect of a contravention in relation to the goods of any provision made by or under Part III have not been brought or, having been brought, have been concluded; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the goods were seized.

(4) Any person aggrieved by an order made under this Article by a court of summary jurisdiction, or by a decision of such a court not to make such an order, may appeal against that order or decision

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to the county court; and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F25</sup> (statement of case)).

**F25** 1981 NI 26

### **Compensation for seizure and detention**

**26.**—(1) Where an officer of the Department exercises any power under Article 22 to seize and detain goods, the Department shall be liable to pay compensation to any person having an interest in the goods in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) there has been no contravention in relation to the goods of any provision made by or under Part III; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to or the amount of any compensation payable under this Article shall be determined by arbitration.

### **Recovery of expenses of enforcement**

**27.**—(1) This Article shall apply where a court convicts a person of an offence in respect of a contravention in relation to any goods of any provision made by or under Part III.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the goods to reimburse the Department for any expenditure which has been or may be incurred by the Department in connection with any seizure or detention of the goods by or on behalf of the Department.

## **PART V**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### **Amendments of the Health and Safety at Work (Northern Ireland) Order 1978**

**28.** The Health and Safety at Work (Northern Ireland) Order 1978<sup>F26</sup> (which includes provision with respect to the safety of certain articles and substances) shall have effect with the amendments specified in Schedule 2; and, accordingly, the general purposes of Part II of that Order shall include the purpose of protecting persons from the risks protection from which would not be afforded by virtue of that Part but for those amendments.

**F26** 1978 NI 9

*Art. 29 rep. by SI 2003/1400*

#### **Defence of due diligence**

**30.**—(1) Subject to paragraphs (2) to (4), in proceedings against any person for an offence under Article 13(1) it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

#### **Liability of persons other than principal offender**

**31.** Where the commission by any person of an offence to which Article 30(1) applies is due to an act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this Article whether or not proceedings are taken against the first-mentioned person.

#### **Civil proceedings**

**32.—(1)** This Order shall not be construed as conferring any other right of action in civil proceedings, apart from the right conferred by virtue of Part II, in respect of any loss or damage suffered in consequence of a provision made by or under Part III.

(2) Subject to any provision to the contrary in the agreement itself, an agreement shall not be void or unenforceable by reason only of a contravention of a provision made by or under Part III.

(3) In this Article “damage” includes personal injury and death.

#### **Regulations as to giving information to certain persons, etc.**

**33.—(1)** The Department may by regulations make provision for the manner in which any information is to be given to any person under any provision of Part IV.

(2) Regulations made by the Department may prescribe the person, or manner of determining the person, who is to be treated for the purposes of Article 21(1) or 23 as the person from whom any goods were purchased or seized where the goods were purchased or seized from a vending machine.

- (3) Regulations under paragraph (1) or (2)—
  - (a) may make such supplemental, consequential and transitional provisions as the Department considers appropriate; and
  - (b) shall be subject to negative resolution.

#### **Savings for certain privileges**

**34.—(1)** Nothing in this Order shall be taken—

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- (a) as requiring any person to produce any records if he would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege; or
  - (b) as authorising any person to take possession of any records which are in the possession of a person who would be so entitled.
- (2) Nothing in this Order shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

*Article 35—Amendments and repeals*

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*Schedule 1 rep. by 1989 NI 11 Schedule 1 rep. by 1989 NI 11*

*Schedules 2, 3—Amendments*

*Schedule 4—Repeals*

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