
STATUTORY INSTRUMENTS

1987 No. 2049

The Consumer Protection (Northern Ireland) Order 1987

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—

“agricultural produce” means any produce of the soil, of stock-farming or of fisheries;

“dependant” and “relative” have the same meaning as they have in the Fatal Accidents (Northern Ireland) Order 1977(1);

“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.

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;

- (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.

(4) Neither paragraph (2) nor paragraph (3) shall apply to a person in respect of any defect in any game or agricultural produce if the only supply of the game or produce by that person to another was at a time when it had not undergone an industrial process.

(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.

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

- (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(2), 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(3) and the Fatal Accidents (Northern Ireland) Order 1977(4) 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(5) 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)

(2) 1977 NI 18
 (3) 1937 c. 9 (N.I.)
 (4) 1977 NI 18
 (5) 1976 c. 28

1948⁽⁶⁾ 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.

(6) Schedule 1 shall have effect for the purpose of amending the Statute of Limitations (Northern Ireland) 1958⁽⁷⁾ in its application in relation to the bringing of actions by virtue of this Part.

(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⁽⁸⁾ (rights to compensation for certain breaches of duties confined to rights under that Act).

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 Secretary of State 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 him 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.

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⁽⁹⁾.

⁽⁶⁾ 1948 c. 23 (N.I.)

⁽⁷⁾ 1958 c. 10 (N.I.)

⁽⁸⁾ 1965 c. 57

⁽⁹⁾ 1947 c. 44