



Consumer Protection Act 1987

1987 CHAPTER 43

PART V

MISCELLANEOUS AND SUPPLEMENTAL

36 Amendments of Part I of the Health and Safety at Work etc. Act 1974

Part I of the Health and Safety at Work etc. Act 1974 (which includes provision with respect to the safety of certain articles and substances) shall have effect with the amendments specified in Schedule 3 to this Act; and, accordingly, the general purposes of that Part of that Act 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.

37 Power of Commissioners of Customs and Excise to disclose information

- (1) If they think it appropriate to do so for the purpose of facilitating the exercise by any person to whom subsection (2) below applies of any functions conferred on that person by or under Part II of this Act, or by or under Part IV of this Act in its application for the purposes of the safety provisions, the Commissioners of Customs and Excise may authorise the disclosure to that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imported goods.
- (2) This subsection applies to an enforcement authority and to any officer of an enforcement authority.
- (3) A disclosure of information made to any person under subsection (1) above shall be made in such manner as may be directed by the Commissioners of Customs and Excise and may be made through such persons acting on behalf of that person as may be so directed.
- (4) Information may be disclosed to a person under subsection (1) above whether or not the disclosure of the information has been requested by or on behalf of that person.

38 Restrictions on disclosure of information

- (1) Subject to the following provisions of this section, a person shall be guilty of an offence if he discloses any information—
- (a) which was obtained by him in consequence of its being given to any person in compliance with any requirement imposed by safety regulations or regulations under section 26 above;
 - (b) which consists in a secret manufacturing process or a trade secret and was obtained by him in consequence of the inclusion of the information—
 - (i) in written or oral representations made for the purposes of Part I or II of Schedule 2 to this Act; or
 - (ii) in a statement of a witness in connection with any such oral representations;
 - (c) which was obtained by him in consequence of the exercise by the Secretary of State of the power conferred by section 18 above;
 - (d) which was obtained by him in consequence of the exercise by any person of any power conferred by Part IV of this Act; or
 - (e) which was disclosed to or through him under section 37 above.
- (2) Subsection (1) above shall not apply to a disclosure of information if the information is publicised information or the disclosure is made—
- (a) for the purpose of facilitating the exercise of a relevant person's functions under this Act or any enactment or subordinate legislation mentioned in subsection (3) below;
 - (b) for the purposes of compliance with a Community obligation; or
 - (c) in connection with the investigation of any criminal offence or for the purposes of any civil or criminal proceedings.
- (3) The enactments and subordinate legislation referred to in subsection (2)(a) above are—
- (a) the Trade Descriptions Act 1968;
 - (b) Parts II and III and section 125 of the Fair Trading Act 1973;
 - (c) the relevant statutory provision's within the meaning of Part I of the Health and Safety at Work etc. Act 1974 or within the meaning of the Health and Safety at Work (Northern Ireland) Order 1978;
 - (d) the Consumer Credit Act 1974;
 - (e) the Restrictive Trade Practices Act 1976;
 - (f) the Resale Prices Act 1976;
 - (g) the Estate Agents Act 1979;
 - (h) the Competition Act 1980;
 - (i) the Telecommunications Act 1984;
 - (j) the Airports Act 1986;
 - (k) the Gas Act 1986;
 - (l) any subordinate legislation made (whether before or after the passing of this Act) for the purpose of securing compliance with the Directive of the Council of the European Communities, dated 10th September 1984 (No. [84/450/EEC](#)) on the approximation of the laws, regulations and administrative provisions of the member States concerning misleading advertising.

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- (4) In subsection (2)(a) above the reference to a person's functions shall include a reference to any function of making, amending or revoking any regulations or order.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (6) In this section—
- "publicised information" means any information which has been disclosed in any civil or criminal proceedings or is or has been required to be contained in a warning published in pursuance of a notice to warn; and
- "relevant person" means any of the following, that is to say—
- (a) a Minister of the Crown, Government department or Northern Ireland department;
 - (b) the Monopolies and Mergers Commission, the Director General of Fair Trading, the Director General of Telecommunications or the Director General of Gas Supply;
 - (c) the Civil Aviation Authority;
 - (d) any weights and measures authority, any district council in Northern Ireland or any person on whom functions are conferred by regulations under section 27(2) above;
 - (e) any person who is an enforcing authority for the purposes of Part I of the Health and Safety at Work etc. Act 1974 or for the purposes of Part II of the Health and Safety at Work (Northern Ireland) Order 1978.

39 Defence of due diligence

- (1) Subject to the following provisions of this section, in proceedings against any person for an offence to which this section applies 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 subsection (1) above 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 subsection (3) below on the person bringing the proceedings.
- (3) A notice under this subsection 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 subsection (1) above 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—

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- (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.
- (5) This section shall apply to an offence under section 10, 12(1), (2) or (3), 13(4), 14(6) or 20(1) above.

40 Liability of persons other than principal offender

- (1) Where the commission by any person of an offence to which section 39 above 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 subsection whether or not proceedings are taken against the first-mentioned person.
- (2) Where a body corporate is guilty of an offence under this Act (including where it is so guilty by virtue of subsection (1) above) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate; shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members, subsection (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

41 Civil proceedings

- (1) An obligation imposed by safety regulations shall be a duty owed to any person who may be affected by a contravention of the obligation and, subject to any provision to the contrary in the regulations and to the defences and other incidents applying to actions for breach of statutory duty, a contravention of any such obligation shall be actionable accordingly.
- (2) This Act shall not be construed as conferring any other right of action in civil proceedings; apart from the right conferred by virtue of Part I of this Act, in respect of any loss or damage suffered in consequence of a contravention of a safety provision or of a provision made by or under Part III of this Act.
- (3) 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 safety provision or of a provision made by or under Part III of this Act.
- (4) Liability by virtue of subsection (1) above shall not be limited or excluded by any contract term, by any notice or (subject to the power contained in subsection (1) above to limit or exclude it in safety regulations) by any other provision.
- (5) Nothing in subsection (1) above shall prejudice the operation of section 12 of the Nuclear Installations Act 1965 (rights to compensation for certain breaches of duties confined to rights under that Act).
- (6) In this section "damage" includes personal injury and death.

42 Reports etc.

- (1) It shall be the duty of the Secretary of State at least once in every five years to lay before each House of Parliament a report on the exercise during the period to which the report relates of the functions which under Part II of this Act, or under Part IV of this Act in its application for the purposes of the safety provisions, are exercisable by the Secretary of State, weights and measures authorities, district councils in Northern Ireland and persons on whom functions are conferred by regulations made under section 27(2) above.
- (2) The Secretary of State may from time to time prepare and lay before each House of Parliament such other reports on the exercise of those functions as he considers appropriate.
- (3) Every weights and measures authority, every district council in Northern Ireland and every person on whom functions are conferred by regulations under subsection (2) of section 27 above shall, whenever the Secretary of State so directs, make a report to the Secretary of State on the exercise of the functions exercisable by that authority or council under that section or by that person by virtue of any such regulations.
- (4) A report under subsection (3) above shall be in such form and shall contain such particulars as are specified in the direction of the Secretary of State.
- (5) The first report under subsection (1) above shall be laid before each House of Parliament not more than five years after the laying of the last report under section 8(2) of the Consumer Safety Act 1978.

43 Financial provisions

- (1) There shall be paid out of money provided by Parliament—
 - (a) any expenses incurred or compensation payable by a Minister of the Crown or Government department in consequence of any provision of this Act; and
 - (b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.
- (2) Any sums received by a Minister of the Crown or Government department by virtue of this Act shall be paid into the Consolidated Fund.

44 Service of documents etc.

- (1) Any document required or authorised by virtue of this Act to be served on a person may be so served—
 - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
 - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
 - (c) if the person is a partnership, by serving it in accordance with that paragraph on a partner or on a person having control or management of the partnership business.
- (2) For the purposes of subsection (1) above, and for the purposes of section 7 of the Interpretation Act 1978 (which relates to the service of documents by post) in its application to that subsection, the proper address of any person on whom a document is to be served by virtue of this Act shall be his last known address except that—

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- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

- (3) The Secretary of State 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 of this Act.
- (4) Without prejudice to the generality of subsection (3) above regulations made by the Secretary of State may prescribe the person, or manner of determining the person, who is to be treated for the purposes of section 28(2) or 30 above as the person from whom any goods were purchased or seized where the goods were purchased or seized from a vending machine.
- (5) The power to make regulations under subsection (3) or (4) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power—
 - (a) to make different provision for different cases; and
 - (b) to make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

45 Interpretation

- (1) In this Act, except in so far as the context otherwise requires—
 - "aircraft" includes gliders, balloons and hovercraft;
 - "business" includes a trade or profession and the activities of a professional or trade association or of a local authority 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 but as if in the definitions in that Act "goods" had the same meaning as in this Act;
 - "contravention" includes a failure to comply and cognate expressions shall be construed accordingly;
 - "enforcement authority" means the Secretary of State, any other Minister of the Crown in charge of a Government department, any such department and any authority, council or other person on whom functions under this Act are conferred by or under section 27 above;
 - "gas" has the same meaning as in Part I of the Gas Act 1986;
 - "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;
 - "magistrates' court", in relation to Northern Ireland, means a court of summary jurisdiction;
 - "mark" and "trade mark" have the same meanings as in the Trade Marks Act 1938;
 - "modifications" includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;
 - "motor vehicle" has the same meaning as in the Road Traffic Act 1972;

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"notice" means a notice in writing;

"notice to warn" means a notice under section 13(1)(b) above;

"officer", in relation to an enforcement authority, means a person authorised in writing to assist the authority in carrying out its functions under or for the purposes of the enforcement of any of the safety provisions or of any of the provisions made by or under Part III of this Act;

"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;

"prohibition notice" means a notice under section 13(1)(a) above;

"records" includes any books or documents and any records in non-documentary form;

"safety provision" means the general safety requirement in section 10 above or any provision of safety regulations, a prohibition notice or a suspension notice;

"safety regulations" means regulations under section 11 above;

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

"subordinate legislation" has the same meaning as in the Interpretation Act 1978;

"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" and cognate expressions shall be construed in accordance with section 46 below;

"suspension notice" means a notice under section 14 above.

- (2) Except in so far as the context otherwise requires, references in this Act to a contravention of a safety provision shall, in relation to any goods, include references to anything which would constitute such a contravention if the goods were supplied to any person.
- (3) References in this Act to any goods in relation to which any safety provision has been or may have been contravened shall include references to any goods which it is not reasonably practicable to separate from any such goods.
- (4) Section 68(2) of the Trade Marks Act 1938 (construction of references to use of a mark) shall apply for the purposes of this Act as it applies for the purposes of that Act.
- (5) In Scotland, any reference in this Act to things comprised in land by virtue of being attached to it is a reference to moveables which have become heritable by accession to heritable property.

46 Meaning of "supply"

- (1) Subject to the following provisions of this section, references in this Act 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;

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- (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 Act 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 subsection (4) below, 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 Act 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, notices to warn or any provision made by or under Part III of this Act, references in this Act 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 I of this Act references in this Act 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 subsection it shall be immaterial whether the business is a business of dealing in the goods.
- (6) For the purposes of subsection (5) above 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) Except for the purposes of, and in relation to, prohibition notices or suspension notices, references in Parts II to IV of this Act 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 they were hired or lent shall be treated for the purposes of this Act 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 Act 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.

47 Savings for certain privileges

- (1) Nothing in this Act shall be taken 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, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or 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 Act 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.

48 Minor and consequential amendments and repeals

- (1) The enactments mentioned in Schedule 4 to this Act shall have effect subject to the amendments specified in that Schedule (being minor amendments and amendments consequential on the provisions of this Act).
- (2) The following Acts shall cease to have effect, that is to say—
- (a) the Trade Descriptions Act 1972; and
 - (b) the Fabrics (Misdescription) Act 1913.
- (3) The enactments mentioned in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

49 Northern Ireland

- (1) This Act shall extend to Northern Ireland with the exception of—
- (a) the provisions of Parts I and III;
 - (b) any provision amending or repealing an enactment which does not so extend; and
 - (c) any other provision so far as it has effect for the purposes of, or in relation to, a provision falling within paragraph (a) or (b) above.
- (2) Subject to any Order in Council made by virtue of subsection (1)(a) of section 3 of the Northern Ireland Constitution Act 1973, consumer safety shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.
- (3) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (exercise of legislative functions for Northern Ireland) which states that it is made only for purposes corresponding to any of the provisions of this Act mentioned in subsection (1)(a) to (c) above—

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- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution procedure and procedure in cases of urgency); but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

50 Short title, commencement and transitional provision

- (1) This Act may be cited as the Consumer Protection Act 1987.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions or for different purposes.
- (3) The Secretary of State shall not make an order under subsection (2) above bringing into force the repeal of the Trade Descriptions Act 1972, a repeal of any provision of that Act or a repeal of that Act or of any provision of it for any purposes, unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) An order under subsection (2) above bringing a provision into force may contain such transitional provision in connection with the coming into force of that provision as the Secretary of State considers appropriate.
- (5) Without prejudice to the generality of the power conferred by subsection (4) above, the Secretary of State may by order provide for any regulations made under the Consumer Protection Act 1961 or the Consumer Protection Act (Northern Ireland) 1965 to have effect as if made under section 11 above and for any such regulations to have effect with such modifications as he considers appropriate for that purpose.
- (6) The power of the Secretary of State by order to make such provision as is mentioned in subsection (5) above, shall, in so far as it is not exercised by an order under subsection (2) above, be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Nothing in this Act or in any order under subsection (2) above shall make any person liable by virtue of Part I of this Act 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 force of Part I of this Act.
- (8) Expressions used in subsection (7) above and in Part I of this Act have the same meanings in that subsection as in that Part.