

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

SCHEDULES

Schedule 5

Part II: Preliminary paragraphs

Head C: Trade and Industry

Section C7: Consumer Protection

Details of Provisions

Reservation

There are three main groups of reserved matters: the regulation of various matters, the safety of consumer services, and the subject-matter of various enactments.

(i) First Group

The regulation of the following are reserved matters:

- i. *the sale and supply of goods and services to consumers*. This covers the terms on which goods and services are sold and supplied to consumers. There are currently a number of pieces of legislation falling under this heading including the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999. The scope of most of this legislation goes beyond the reserved matter of protection of consumers. The reservation does not prevent the Scottish Parliament from legislating about these wider matters;
- ii. *guarantees in relation to such goods and services*. Statutory implied terms in relation to the sale and supply of goods and services to consumers are covered by the reservation at (a) above;
- iii. *hire purchase*, including the subject-matter of Part III of the Hire Purchase Act 1964. This currently includes the provisions of the Supply of Goods (Implied Terms) Act 1973. Part III of the Hire Purchase Act 1964 deals with title to motor vehicles which are disposed of while subject to hire purchase agreements;
- iv. *trade descriptions*, except in relation to food. This deals with all matters related to false trade descriptions and is not limited to the protection of consumers. It currently includes the subject-matter of the Trade Descriptions Act 1968. There is an exception made for trade descriptions for food;
- v. *misleading and comparative advertising*, except regulation specifically in relation to food, tobacco and tobacco products. This deals with all matters related to misleading advertising and other regulation of advertising, apart from the specific exemptions. This currently includes the subject-matter of the Control of Misleading Advertisements Regulations 1988 and of the Comparative Advertising Directive 1997;

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- vi. *price indications*. This deals with all matters related to the regulation of price indications. This currently includes relevant provisions in the Consumer Protection Act 1987 and the EC Directive on Price Indications;
- vii. *trading stamps*. This deals with all matters regulating the issue, use and redemption of trading stamps and similar tokens and the right of holders of such stamps. It currently includes the Trading Stamps Act 1964;
- viii. *auctions and mock auctions of goods and services*. This relates to all matters related to sale of goods and services by auction and the prohibition of mock auctions i.e. sales which purport to be auctions, but in which the right to bid is restricted, goods are sold below the bid price or are given away, and similar trading practices intended to put undue pressure on customers. This currently includes the Auctioneers Act 1845, the Auctions (Bidding Agreements) Act 1969 and the Mock Auctions Act 1961; and
- ix. *hall-marking and gun barrel proofing*. This covers the regulation of hallmarks applied to articles of precious metal. Gun barrel proofing is the process of testing a gun for safety in order to disclose any fault or weakness and is a statutory requirement for all small arms.

(b) Second Group

Matters relating to the safety of, and liability for, services to consumers are reserved. This covers any matters related to the supply of services which reflect similar provisions as those relating to product safety and liability in Section C8.

(c) Third Group

The subject-matter of the following enactments are reserved:

- i. *the Hearing Aid Council Act 1968*. This provides for the establishment of the Hearing Aid Council and its function of ensuring that hearing aid dispensers maintain adequate standards of competence and conduct;
- ii. *the Unsolicited Goods and Services Acts 1971 and 1975*. This provides for protection of people, whether consumers or others who receive unsolicited goods. The Act also provides measures of protection of people who are charged for unsolicited directory entries;
- iii. *Parts I to III and XI of the Fair Trading Act 1973*. Part I of the Fair Trading Act (FTA) deals with the role and functions of the Director General of Fair Trading (DGFT);

Part II of the FTA provides for the establishment of a Consumer Protection Advisory Committee and deals with its functions and the Orders which may be made following its recommendations;

Part III of the FTA sets out the powers of the DGFT to deal with traders who follow a course of conduct which is unfair and detrimental to the interests of consumers;

Part XI of the FTA contains provisions for regulations to be made setting out requirements which the organisers of pyramid selling and similar trading schemes must observe in relation to participants and prospective participants and creates offences related to some pyramid selling activities. While a participant acts in a trading rather than a consumer role, this issue has formed part of the consumer policy area because participants are seen to need protection of a similar nature to that needed by consumers;

- iv. *the Consumer Credit Act 1974*. This regulates the advertising and provision of credit and hire arrangements to individuals (consumers and unincorporated entities) and provides for the licensing of credit providers and hirers;

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- v. *the Estate Agents Act 1979*. This regulates the activities of estate agents. The 1979 Act does not apply to things done in the course of his profession by a practising solicitor or person employed by him;
- vi. *the Timeshare Act 1992*. This provides for the minimum information which must be given to consumers prior to contract, the minimum contents of contracts and for the cancellation of agreements without penalty within a cooling off period. The Act was amended by the Timeshare Regulations 1997 which implemented the EC Timeshare Directive;
- vii. *the Package Travel, Package Holiday and Package Tours Regulations 1992*. This covers requirements on information given to consumers, in brochures and otherwise, content and form of contracts, provisions which traders must make for the protection of consumers' pre-payments, other obligations of traders and related offences and civil rights of consumers; and
- viii. *the Commercial Agents (Council Directive) Regulations 1993*. This provides for the rights and duties of principals and their agents in relation to each other, the remuneration and commission to which agents are entitled, the right of an agent to a contract and provisions on the termination of contract. While the regulations do not deal with consumers, the issue has been dealt with as part of the consumer policy agenda because of the imbalance of power which often exists between the agent and the principal.