



# Weights and Measures Act 1985

## 1985 CHAPTER 72

### PART IV

#### REGULATION OF TRANSACTIONS IN GOODS

##### *Defences*

### 33 Warranty

- (1) Subject to the following provisions of this section, in any proceedings for an offence under this Part of this Act or any instrument made under this Part, being an offence relating to the quantity or pre-packing of any goods, it shall be a defence for the person charged to prove—
- (a) that he bought the goods from some other person—
    - (i) as being of the quantity which the person charged purported to sell or represented, or which was marked on any container or stated in any document to which the proceedings relate, or
    - (ii) as conforming with the statement marked on any container to which the proceedings relate, or with the requirements with respect to the pre-packing of goods of this Part of this Act or any instrument made under this Part, as the case may require, and
  - (b) that he so bought the goods with a written warranty from that other person that they were of that quantity or, as the case may be, did so conform, and
  - (c) that at the time of the commission of the offence he did in fact believe the statement contained in the warranty to be accurate and had no reason to believe it to be inaccurate, and
  - (d) if the warranty was given by a person who at the time he gave it was resident outside Great Britain and any designated country, that the person charged had taken reasonable steps to check the accuracy of the statement contained in the warranty, and
  - (e) in the case of proceedings relating to the quantity of any goods, that he took all reasonable steps to ensure that, while in his possession, the quantity of the

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*Status: This is the original version (as it was originally enacted).*

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goods remained unchanged and, in the case of such or any other proceedings, that apart from any change in their quantity the goods were at the time of the commission of the offence in the same state as when he bought them.

- (2) A warranty shall not be a defence in any such proceedings as are mentioned in subsection (1) above unless, not later than three days before the date of the hearing, the person charged has sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom the warranty was received, and has also sent a like notice to that person.
- (3) Where the person charged is the employee of a person who, if he had been charged, would have been entitled to plead a warranty as a defence under this section, subsection (1) above shall have effect—
  - (a) with the substitution, for any reference (however expressed) in paragraphs (a), (b), (d) and (e) to the person charged, of a reference to his employer, and
  - (b) with the substitution for paragraph (c) of the following—
    - “(c) that at the time of the commission of the offence his employer did in fact believe the statement contained in the warranty to be accurate and the person charged had no reason to believe it to be inaccurate.”.
- (4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence.
- (5) If the person charged in any such proceedings as are mentioned in subsection (1) above wilfully attributes to any goods a warranty given in relation to any other goods, he shall be guilty of an offence.
- (6) A person who, in respect of any goods sold by him in respect of which a warranty might be pleaded under this section, gives to the buyer a false warranty in writing shall be guilty of an offence unless he proves that when he gave the warranty he took all reasonable steps to ensure that the statements contained in it were, and would continue at all relevant times to be, accurate.
- (7) Where in any such proceedings as are mentioned in subsection (1) above ("the original proceedings") the person charged relies successfully on a warranty given to him or to his employer, any proceedings under subsection (6) above in respect of the warranty may, at the option of the prosecutor, be taken either before a court having jurisdiction in the place where the original proceedings were taken or before a court having jurisdiction in the place where the warranty was given.
- (8) For the purposes of this section, any statement with respect to any goods which is contained in any document required by or under this Part of this Act to be associated with the goods or in any invoice, and, in the case of goods made up in or on a container for sale or for delivery after sale, any statement with respect to those goods with which that container is marked, shall be taken to be a written warranty of the accuracy of that statement.

### **34 Reasonable precautions and due diligence**

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

- (2) If in any case the defence provided by subsection (1) above involves an allegation that the commission of the offence in question was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, before the beginning of the period of seven days ending with the date when the hearing of the charge began, he served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his possession.

### **35 Subsequent deficiency**

- (1) This subsection applies to any proceedings for an offence under this Part of this Act, or any instrument made under this Part, by reason of the quantity—
- (a) of any goods made up for sale or for delivery after sale (whether by way of pre-packing or otherwise) in or on a container marked with an indication of quantity,
  - (b) of any goods which, in connection with their sale or an agreement for their sale, have associated with them a document purporting to state the quantity of the goods, or
  - (c) of any goods required by or under this Part of this Act to be pre-packed, or to be otherwise made up in or on a container for sale or for delivery after sale, or to be made for sale, only in particular quantities,
- being less than that marked on the container or stated in the document in question or than the relevant particular quantity, as the case may be.
- (2) In any proceedings to which subsection (1) above applies, it shall be a defence for the person charged to prove that the deficiency arose—
- (a) in a case falling within paragraph (a) of subsection (1) above, after the making up of the goods and the marking of the container,
  - (b) in a case falling within paragraph (b) of that subsection, after the preparation of the goods for delivery in pursuance of the sale or agreement and after the completion of the document,
  - (c) in a case falling within paragraph (c) of that subsection, after the making up or making, as the case may be, of the goods for sale,
- and was attributable wholly to factors for which reasonable allowance was made in stating the quantity of the goods in the marking or document or in making up or making the goods for sale, as the case may be.
- (3) In the case of a sale by retail of food, other than food pre-packed in a container which is, or is required by or under this Part of this Act to be, marked with an indication of quantity, in any proceedings for an offence under this Part of this Act or any instrument made under this Part, by reason of the quantity delivered to the buyer being less than that purported to be sold, it shall be a defence for the person charged to prove that the deficiency was due wholly to unavoidable evaporation or drainage since the sale and that due care and precaution were taken to minimise any such evaporation or drainage.
- (4) If in any proceedings for an offence under this Part of this Act or any instrument made under this Part, being an offence in respect of any deficiency in the quantity of any goods sold, it is shown that between the sale and the discovery of the deficiency the goods were with the consent of the buyer subjected to treatment which could result in a reduction in the quantity of those goods for delivery to, or to any person nominated

in that behalf by, the buyer, the person charged shall not be found guilty of that offence unless it is shown that the deficiency cannot be accounted for by the subjecting of the goods to that treatment.

### **36 Excess due to precautions**

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

### **37 Provisions as to testing**

- (1) If proceedings for an offence under this Part of this Act, or any instrument made under this Part, in respect of any deficiency or excess in the quantity—
  - (a) of any goods made up for sale (whether by way of pre-packing or otherwise) in or on a container marked with an indication of quantity, or
  - (b) of any goods which have been pre-packed or otherwise made up in or on a container for sale or for delivery after sale, or which have been made for sale, and which are required by or under this Part of this Act to be prepacked, or to be otherwise so made up, or to be so made, as the case may be, only in particular quantities,are brought with respect to any article, and it is proved that, at the time and place at which that article was tested, other articles of the same kind, being articles which, or articles containing goods which, had been sold by the person charged or were in that person's possession for sale or for delivery after sale, were available for testing, the person charged shall not be convicted of such an offence with respect to that article unless a reasonable number of those other articles was also tested.
- (2) In any proceedings for such an offence as is mentioned in subsection (1) above, the court—
  - (a) if the proceedings are with respect to one or more of a number of articles tested on the same occasion, shall have regard to the average quantity in all the articles tested,
  - (b) if the proceedings are with respect to a single article, shall disregard any inconsiderable deficiency or excess, and
  - (c) shall have regard generally to all the circumstances of the case.
- (3) Subsections (1) and (2) above shall apply with the necessary modifications to proceedings for an offence in respect of the size, capacity or contents of a container as they apply to proceedings for an offence in respect of the excess or deficiency in the quantity of certain goods.
- (4) Where by virtue of section 32 above a person is charged with an offence with which some other person might have been charged, the reference in subsection (1) above to articles or goods sold by or in the possession of the person charged shall be construed as a reference to articles or goods sold by or in the possession of that other person.