

PRODUCT LIABILITY (AMENDMENT) ACT (NORTHERN IRELAND) 2001

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Product Liability (Amendment) Act (Northern Ireland) 2001 which implements European Directive 1999/34. They have been prepared by the Department of Finance and Personnel in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. These notes need to be read in conjunction with the Act, and are not meant to be a comprehensive description of the Act. A Regulatory Impact Assessment has been prepared and is provided at Annex A.

BACKGROUND AND POLICY OBJECTIVES

Background to the proposals

3. Directive 1999/34 of the European Parliament and of the Council of 10th May 1999 (OJ no. L141, 4.6.99, p. 20) amends Council Directive 85/374/EEC of 25 July 1985 (OJ No. L210, 7.8.85, p. 29) on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (the 1985 Directive). The 1985 Directive was implemented in Northern Ireland by the Consumer Protection (Northern Ireland) Order 1987. Directive 1999/34 extends product liability to primary agricultural products and game.
4. The 1985 Directive introduced a system of strict liability for products that do not provide the safety which people are generally entitled to expect (defined as “defective product”). It was implemented by the then Department of Economic Development in the 1987 Order. The Directive places strict liability on producers for death, injury, loss or damage to private property caused by defective products. This means that a person injured by a defective product can sue for damages without having to prove a producer negligent. However, he

must prove that the product was defective and that the defect in the product caused the injury.

The Amending Directive

5. The amending Directive (1999/34) means that strict liability will apply to “primary agricultural products” and game as it already does to other products (including processed agricultural products). The 1985 Directive defines “primary agricultural products” as meaning products of the soil, of stock-farming and of fisheries which have not undergone “initial processing”. The amendment removes this doubt by applying the system of strict liability to all agricultural products.
6. Producers in this context include farmers, fruit and vegetable growers and fisheries. Importers of such products from non-EU countries are also liable as producers. Others such as wholesalers and retailers would only be liable if they fail to identify the producer to an injured person.
7. The amendment does not change other provisions of the 1985 Directive. A producer of unprocessed agricultural products will therefore have the same access to the defences provided by the Directive. These are set out in the attached summary of the 1985 Directive.

OPTIONS CONSIDERED

8. The implementation of the Directive is mandatory.

COMMENTARY ON SECTIONS

Section 1: Product liability: repeal of exclusion for game and agricultural produce

Section 1 repeals an existing exemption which has applied to primary agricultural products, defined in the earlier 1985 Directive as meaning products of the soil, of stock farming and of fisheries which have not undergone “initial processing”. The effect will be that an action may be taken if it can be proved that such a product caused an injury or illness and that product can be traced back to its origin. A summary of the various matters relating to the 1985 Directive which will now apply to such products is enclosed at Annex B.

Section 2: Power to modify enactments in consequence of modification of product liability Directive.

Section 2 substitutes an existing power of the Secretary of State to modify enactments in consequence of modification of the product liability Directive with the appropriate

Northern Ireland Department. This will permit any future changes to the original Directive to be effected by the more straightforward process of secondary legislation.

ANNEX A

REGULATORY IMPACT ASSESSMENT EXTENSION OF PRODUCT LIABILITY TO PRIMARY AGRICULTURAL PRODUCTS

Introduction

This regulatory impact assessment relates to the implementation of EC Council Directive 1999/34 which extends strict product liability to primary agricultural products and game. It is based on findings from a UK wide consultation exercise carried out in 1998 by the Department of Trade and Industry in conjunction with the Ministry of Agriculture, Fisheries and Food.

Purpose and intended effect of the measure

Objective

To increase the level of EU consumer protection against damage caused to health or property by a defective product, and to harmonise further the laws with regard to liability for defective products started by Directive 85/374/EEC.

Issue

Consumers have a legitimate expectation that their health will be protected within the single market. Demands for the inclusion of unprocessed primary agricultural products within the scope of the product liability Directive have increased in recent years. The inclusion of unprocessed primary agricultural products within the scope of the Directive would constitute an important step in the protection of consumers under Community law, although it cannot itself constitute a solution to the problems likely to arise in this area, such as those surrounding the BSE crisis.

Risk Assessment

The lack of a clear distinction between those agricultural products considered to have been subject to “initial processing” (which are already covered by the existing provisions of the Directive) and those which have not (which are the subject of the proposed amendment) may discourage consumers from pursuing legitimate claims. The lack of full harmonisation also results in there being no uniform rule governing the liability of farmers and other primary producers, which could distort competition and impede the free movement of agricultural products. There may be some difficulties in tracing a defect back to the producer in the case of mixed bulk products such as milk, cereals and fish, but these are not seen as an insurmountable problem.

Options and issues of equity or fairness

The approach adopted by the Commission in its proposal seeks to achieve the desired objectives at minimum cost. Action in this area is within the exclusive competence of the Community and is aimed at harmonising application of the rules on liability for defective products across the Community. Any additional costs arising from the measure would apply to businesses throughout the Community and would not affect the competitive position of Northern Ireland based businesses in relation to those based in other member states.

The benefits (to business, citizens, the environment) identified and valued

Experience in those member states which have extended product liability to primary agricultural products reveals no evidence of any particular negative effects on agricultural economies. Businesses throughout the Community will be operating on a level playing field and citizens will have the assurance that all foods purchased are covered by the Directive.

Compliance costs for business

The costs arising from adoption of this change are those associated with insuring against the possibility of damage claims as a result of the removal of the exemption. The sectors directly affected by the proposal are:

- Products of the soil (cereals, oilseeds, pulses, sugar beet, fresh fruit and vegetables)
- Stock farming (cattle, calves, sheep, lambs, pigs and poultry)
- Dairy products (milk and eggs)
- Fisheries
- Game.

The following are also affected because the Directive considers them liable as producers if they fail to identify the producer to the injured person:

- Importers from third countries
- Wholesalers
- Retailers.

The size of business affected by this proposal will vary from the very large agricultural enterprises to the small and medium sized operations which produce, supply and distribute products in their natural state. It is therefore not possible to define a “typical business” or to estimate meaningfully its compliance cost.

Product liability insurance is estimated to cost within the region of £170 to £350 per year per business according to figures obtained in the England and Wales consultation,

although such insurance is often offered as part of a larger business insurance package. Some of the consultees in England and Wales believe that cost would increase but did not provide figures to substantiate this. Information from other member states which have this legislation (Finland, Sweden, Greece and Luxembourg) has suggested that the insurance costs are low.

It is estimated that some 99% of farmers in the UK already carry product liability cover, as do most fish and shellfish producers. Some 70% of fresh fruit and vegetables produced in the UK are sold by supermarket chains which are likely already to have product liability insurance. The additional costs to these producers are likely to be minimal. The remaining 30% is sold by small independent producers, who are likely to incur a small additional insurance cost.

Impact on small business

It is believed that the insurance costs will be at the lower end of the £170 to £350 per year range.

Other costs (e.g. to citizens, the environment, Government)

There is a possibility that part or all of the costs of new insurance, or increased insurance premiums, resulting from this change may be passed on to consumers.

Results of consultation

The DTI and MAFF in England and Wales consulted 115 interested parties on a UK wide basis in 1998 and overall the results did not throw up any significant problems for industry. Whilst concerns were aired in relation to insurance increases, no hard facts and figures were given. Consumers welcomed the proposal believing that the extension of product liability to primary agricultural products was long overdue.

Summary of recommendations/conclusions

The benefits for consumers in increased protection are considered to outweigh the estimated costs to business.

ANNEX B

COUNCIL DIRECTIVE 85/374/EEC OF 25 JULY 1985 ON LIABILITY FOR DEFECTIVE PRODUCTS

The following is a summary of the 1985 Directive as implemented in Part I of the Consumer Protection Act 1987 and replicated in the corresponding provisions of the Consumer Protection (Northern Ireland) Order 1987. It is simplified in places and is not comprehensive and should not therefore be taken as a complete summary of the legislation.

Scope

Applies to consumer goods and goods used at a place of work. All products (except unprocessed agricultural products and game, which are the subject of the present proposal) are covered. For example, the 1985 Directive currently applies to a producer of canned peas, but not to the grower of the peas.

Who is liable?

An injured person can take action, by way of a civil law case, against:

Producers - the manufacturer, or in the case of raw materials the person who mined or otherwise obtained them.

Importers - meaning importers into the Community, not just into the UK. Where goods are imported into the Community from another EC country and subsequently sold in the United Kingdom, liability rests with the first importer, not the UK importer.

Own-branders - suppliers who put their name on the product and give the impression that they are the producer.

Other suppliers, such as wholesalers and retailers, are not liable unless they fail to identify the producer, importer or “own-brander”, if asked to do so by a person suffering damage.

Liability is joint and several, so where more than one person is liable for the same damage the plaintiff may sue any or all. It is not possible to exclude liability by means of any contract term or provision.

A defective product is defined as one where the safety of the product is not such as people generally are entitled to expect.

Damage covered

A person can sue under the Act for compensation for

- **Death**
- **Personal injury**
- **Private property (provided the amount of loss or damage is £275 or more)**

There is no financial limit to a producer's total liability.

The plaintiff must be able to show that, on the balance of probabilities, the defect in the product caused the damage.

Defences

A producer or importer can avoid liability if he can prove any of 6 defences:

- he did not supply the product;
- the state of scientific and technical knowledge at the time he supplied the product 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;
- the defect was the inevitable consequence of complying with the law;
- the defect was not in the product at the time it was supplied;
- the product was not manufactured by him or supplied by him in the course of a business;
- (in the case of a producer of a component used in another product) the defect was due either to the design of the finished product, or to defective specifications given to the component manufacturer by the producer of the finished product.

Time limit for bringing a claim

A plaintiff must begin his court action within three years of the date he was injured by the product or, if later, the date when he knew he had a claim against the defendant. However, he cannot sue under this legislation for injury when ten years have elapsed since the defective product was supplied by the producer.